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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Doc. Number AMS–FV–14–0090, FV–16–327]

U.S. Standards for Grades of Fresh Fruits and Vegetables, Fruits and Vegetables for Processing, Nuts, and Specialty Crops

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA) is revising 41 U.S. Standards for Grades of fresh fruits and vegetables, fruits and vegetables for processing, nuts, and specialty crops by removing the ''Unclassified'' category from each standard. This revision brings these grade standards in line with other recently amended standards and current terminology. The change also updates the standards to more accurately represent today's marketing practices and provide the industry with greater flexibility.

DATES: September 6, 2016.

ADDRESSES: Standardization Branch, Specialty Crops Inspection Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, National Training and Development Center, Riverside Business Park, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406.

FOR FURTHER INFORMATION CONTACT: Olivia Vernon, Standardization Branch, Specialty Crops Inspection Division, at the address above or by telephone at (540) 361–2743; fax (540) 361–1199; or, email *olivia.vernon@ams.usda.gov.* The current U.S. Standards for Grades are available on the AMS Web site at *http://www.ams.usda.gov/grades-standards.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official grade standards available upon request. The U.S. Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. import requirements no longer appear in the Code of Federal Regulations (CFR), but are maintained by USDA, AMS, Specialty Crops Program, and are available on the Internet at *http://www.ams.usda.gov/grades-standards.*

AMS is revising these voluntary U.S. standards for grades using the procedures in part 36, title 7 of the Code of Federal Regulations (7 CFR part 36).

Background

AMS is eliminating the ''Unclassified'' section in 41 U.S. grade standards that were issued under the Agricultural Marketing Act of 1946.

The fresh fruit and vegetable grade standards covered by these changes are: Sweet anise, lima beans, beets, Brussels sprouts, cabbage, cucumbers, endive, garlic, collard greens or broccoli greens, mustard greens and turnip greens, horseradish roots, greenhouse leaf lettuce, mushrooms, common green onions, onion sets, parsnips, fresh peas, southern peas, rhubarb, romaine, bunched shallots, spinach plants, summer squash, turnips or rutabagas, dewberries and blackberries, American (eastern type) grapes, juice grapes (European or vinifera type), and raspberries.

In the Proposed Notice, AMS inadvertently included celery, honey dew and honey ball type melons, Persian limes, summer and fall pears, and winter pears in this rulemaking. The grade standards for these commodities are published in the CFR at 7 CFR part 51 whereas the standards for the 41 commodities addressed here are not published in the CFR. AMS ultimately intends to remove celery, honey dew and honey ball type melons, Persian limes, summer and fall pears, and winter pears standards from the CFR. At that time, the ''Unclassified'' section will be removed from the grade standards for celery, honey dew and honey ball type melons, Persian limes, summer and fall pears, and winter pears. The fresh fruit and vegetable for processing grade standards covered by these changes are spinach, berries, blueberries, red sour cherries for manufacture, sweet cherries for canning or freezing, cranberries for processing, currants, raspberries, growers' stock strawberries for manufacture, and washed and sorted strawberries for freezing.

The nut and specialty crops grade standards covered by these changes are: Brazil nuts in the shell, cut peonies in the bud, and tomato plants.

AMS continually reviews all fruit, vegetable, nut and specialty crop grade standards to ensure their usefulness to the industry. AMS determined that the ''Unclassified'' section should be eliminated from the aforementioned 41 U.S. Standards for Grade as the category is not a grade and only serves to show that no grade has been applied to the lot. It is no longer considered necessary.

On September 9, 2015, AMS published a Proposed Notice in the **Federal Register** (80 FR 53021) soliciting comments on removing the term ''Unclassified'' from the standards. Seven comments were received by November 2, 2015, the closing date of the public comment period, from six private citizens and one individual associated with a U.S. university.

The six private citizen commenters supported the revisions as a positive step forward for the USDA that will offer produce companies and everyday shoppers a clearer idea of the quality of produce they are purchasing. The final commenter suggested that making this change to the standards would create the need for additional grades and categories to cover all variants with in different commodities. The USDA stands by its decision to remove the unclassified category because there is no evidence of use of the category by industry, and for the reason that commodities would fall into one of the established grades currently listed in the standards.

Based on the information gathered, AMS is removing the ''Unclassified'' category from the aforementioned U.S.

Standards for Grade. The revision brings these grade standards in line with other recently amended standards and current terminology, and updates the standards to more accurately represent today's marketing practices and provide the industry with greater flexibility.

Authority: 7 U.S.C. 1621–1627.

Dated: July 29, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–18451 Filed 8–3–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 986

[Docket No. AO–FV–15–0139; AMS–FV–15–0023; FV15–986–1]

Pecans Grown in the States of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas; Order Regulating Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a marketing agreement and order (order) for pecans grown in the states of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas. The order provides authority to collect industry data and to conduct research and promotion activities. In addition, the order provides authority for the industry to recommend grade, quality and size regulation, as well as pack and container regulation, subject to approval by the Department of Agriculture (USDA). The program will be financed by assessments on handlers of pecans grown in the production area and will be locally administered, under USDA oversight, by a Council of seventeen growers and shellers (handlers) nominated by the industry and appointed by USDA.

DATES: This rule is effective August 5, 2016.

ADDRESSES: Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Senior Marketing Specialist; Telephone: (202) 557–4783, Fax: (435) 259–1502, or Michelle Sharrow, Rulemaking Branch Chief; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Melissa.Schmaedick@ams.usda.gov* or *Michelle.Sharrow@ams.usda.gov.*

Small businesses may request information on this proceeding by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on June 26, 2015, and published in the July 2, 2015, issue of the **Federal Register** (80 FR 38021); Recommended Decision and Opportunity to File Written Exceptions issued on October 20, 2015, and published in the October 28, 2015, issue of the **Federal Register** (80 FR 66372); and Secretary's Decision and Referendum Order issued on February 22, 2016, and published in the February 29, 2016, issue of the **Federal Register** (81 FR 10138).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Orders 12866, 13563, and 13175. Notice of this rulemaking action was provided to tribal governments through USDA's Office of Tribal Relations; no comments have been received.

Preliminary Statement

The marketing agreement and order regulating the handling of pecans grown in the states of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas is based on the record of public hearing held July 20 through July 21, 2015, in Las Cruces, New Mexico; July 23 through July 24, 2015, in Dallas, Texas; and, July 27 through July 29, 2015, in Tifton, Georgia. The hearing was held to receive evidence on the marketing order from growers, handlers, and other interested parties located throughout the production area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900). The marketing order is authorized under section 8(c) of the Act. Notice of this hearing was published in the **Federal Register** on July 2, 2015.

The proposal was submitted for consideration to the Department on May 22, 2015, by the American Pecan Board (Board), a proponent group established in 2013 to represent the interests of growers and handlers throughout the fifteen-state production area. A subsequent, modified draft of the regulatory text was submitted on June 10, 2015.

The order provides the pecan industry with tools to assist the industry in addressing a number of challenges, including: a lack of organized representation of industry-wide interests in a single organization; a lack of accurate data to assist the industry in its analysis of production, demand and prices; a lack of coordinated domestic promotion or research; and a forecasted increase in production as a result of new plantings.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on October 20, 2015, filed with the Hearing Clerk, USDA, a Recommended Decision and Opportunity to File Written Exceptions thereto by November 27, 2015. No exceptions were filed. That document also announced AMS's intent to request approval of new information collection requirements to implement the program. Written comments on the proposed information collection requirements were due by December 28, 2015. None were filed.

However, USDA provided two conforming changes to the order language as published in the Recommended Decision. These conforming changes replaced the word ''redefining'' in § 986.55 (c)(6) with ''reestablishment,'' and the word ''redefining'' in § 986.33(b) with ''reestablishment,'' thereby conforming to the terminology used in § 986.58.

Further, USDA provided a correction to the Regulatory Flexibility Act (RFA) analysis published in the Recommended Decision. The RFA incorrectly referenced a Small Business Administration (SBA) threshold of $7 million in annual receipts to identify small handler entities, while hearing testimony correctly identified a $7.5 million threshold.

The specifics of these corrections were addressed in the Secretary's Decision and Referendum Order issued on February 22, 2016, and published in the February 29, 2016, issue of the **Federal Register**.

That document also directed that a referendum be conducted during the period of March 9 through March 30, 2016, among growers who produced a minimum average, annual amount of 50,000 pounds of inshell pecans between August 1, 2011, and July 31, 2015, or who owned a minimum of 30 pecan acres, to determine whether they favored issuance of the order. In the referendum, the order was favored by more than two-thirds of the growers voting in the referendum by number and volume.

The marketing agreement was mailed to all pecan shellers (handlers) in the production area for approval. The marketing agreement was approved by more than 50 percent of the volume of pecans handled by all shellers (handlers) during the representative period of August 1, 2014, and July 31, 2015.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers that will be regulated under the order, are defined as those with annual receipts of less than $7,500,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the order on small businesses. The record evidence is that while the program will impose some costs on the regulated parties, those costs will be outweighed by the benefits expected to accrue to the U.S. pecan industry.

Specific evidence on the number of large and small pecan farms (above and below the SBA threshold figure of $750,000 in annual sales) was not presented at the hearing. However, percentages can be estimated based on record evidence.

The 2014 season average grower prices per pound for improved and native seedling pecans were $2.12 and $0.88, respectively. A weighted grower price of $1.85 is computed by applying as weights the percentage split between improved and native acreage on a representative U.S. pecan farm, which are 78 and 22 percent, respectively. The average yield on the representative farm is 1,666.67 pounds per acre. Multiplying the $1.85 price by the average yield gives a total revenue per acre figure of $3,080. Dividing the $750,000 SBA annual sales threshold figure by the revenue per acre figure of $3,080 gives an estimate of 243 acres as the size of farm that would have annual sales about equal to $750,000, given the previous assumptions. Any farm of that size or larger would qualify as a large farm under the SBA definition.

Data presented in the record show that about 52 percent of commercial U.S. pecan farms have 250 or more acres of pecans. Since the 243 acre estimate above is close to 250 acres, it can be extrapolated that 52 percent is a reasonable approximation of the proportion of large farms and 48 percent is the proportion of small pecan farms. According to the record, this estimate does not include ''backyard'' production.

According to record evidence, there are an estimated 250 handlers in the U.S. Of these handlers, which include accumulators, there are an estimated 50 commercially viable shellers with production over 1 million pounds of inshell pecans operating within the production area. Fourteen of these shellers meet the SBA definition for large business entity and the remaining 36 are small business entities.

Record evidence indicates that implementing the order would not represent a disproportionate burden on small businesses. An economic impact study of the authority for generic promotion presented at the hearing provided that the program would likely benefit all industry participants.

Impact of Generic Promotion Through a Marketing Order

The record shows that generic promotion over a wide variety of agricultural products stimulates product demand and translates into higher prices for growers than would have been the case without promotion.

Promotional impact studies of other tree nuts (almonds and walnuts), and of Texas pecans, show price increases as high as 6 percent, but the record indicates that 0 to 3 percent is a more representative range. Since the other tree nut promotion programs are well-established, the record shows that a representative middle (most likely) scenario would be a price increase from promotion of 1.5 percent for the early years of a new pecan promotion program. Low and high scenarios were 0.5 and 3.0 percent, respectively.

The record indicates that an analytical method used historical yearly prices from 1997 to 2014 in a simulation covering that period to obtain an expected average price without promotion. In a subsequent step, the simulation applied a demand increase of 1.5 percent to the entire distribution of prices to represent the impact of promotion. The projected increases in grower prices from promotion for improved and native pecans were 6.3 and 3.6 cents per pound, respectively, as shown in Table 1. These two price increase projections represent a range of results. Based on a range of simulated price increases as high as 3 percent, the low and high price increase projections for improved pecans were 4.0 and 9.6 cents, respectively. For native varieties, the results ranged from 2.7 to 4.2 cents.

The record indicates that a key analytical step was developing an example farm with specific characteristics to explain market characteristics and marketing order impacts. An important characteristic of this ''representative farm'' is the acreage allocation between improved and native pecans of 78 and 22 percent, respectively. This is similar to the proportion of the U.S. pecan crop in recent years allocated to improved and native varieties. Average yield per acre of the representative farm (covering all states and varieties) is 1,666.67 pounds per acre.

The acreage split of 78 and 22 percent are used as weights to compute weighted average prices (combining improved and native pecans) of 5.7 and 2.3 cents, respectively, as shown in the fourth column of Table 1.

The record shows that the initial ranges of marketing order assessments per pound are 2 to 3 cents for improved pecans and 1 to 2 cents for native pecans. The midpoints of these ranges (2.5 and 1.5 cents, respectively) are used to compute a benefit-cost ratio from promotion, with a weighted average assessment cost of 2.3 cents, as shown in Table 2. Assessments would be collected from handlers, not growers, but for purposes of this analysis, it is assumed that 100 percent of the assessment cost would be passed through to growers.

Table 1 shows that dividing the projected benefit of 5.7 cents per pound (weighted price increase from promotion) by the estimated assessment cost of 2.3 cents (weighted assessment rate per pound), yields a benefit-cost ratio of 2.5. Each dollar spent on pecan promotion through a Federal marketing order is expected to result in $2.50 in increased revenue to the pecan growers of the United States.

TABLE 1—ESTIMATED BENEFIT-COST RATIO OF PECAN PROMOTION THROUGH A FEDERAL MARKETING ORDER

	Improved pecans	Native pecans	Weighted
Benefit: Projected price increase from pecan promotion (cents per pound)	6.3	3.6	5.7
Cost: FMO Assessment rate (cents per pound)	2.5	1.5	2.3
Benefit-cost ratio	2.52	2.40	2.50

*Weights for improved and native pecans are 78% and 22%, respectively, which is the acreage allocation of a representative U.S. pecan farm, according to the record.

Examining potential costs and benefits from promotion across different farm sizes is done in Table 2. Record evidence showed that the minimum size of a commercial pecan farm is 30 acres, and that a representative average yield across the entire production area is 1,666.67 pounds per acre. This combination of acreage and yield results in a minimum threshold level of commercial production of 50,000 pounds. Witnesses stated that expenditures for the minimum necessary level of inputs for commercial pecan production cannot be justified for any operation smaller than this.

In Table 2, a very small farm is defined as being at the minimum commercial threshold level of 30 acres and 50,000 pounds. Small and large farms are represented by farm size levels of 175 and 500 acres, respectively. Multiplying those acreage levels by the average yield for the entire production area gives total annual production level estimates of 291,667 and 833,335 pounds, respectively.

Multiplying the 2014 grower price per pound of $2.14 by the 291,677 pounds of production from the small farm (175 acres) yields an annual crop value estimate of about $618,000. This computation shows that the small farm definition from the record is consistent with the SBA definition of a small farm (annual sales value of up to $750,000).

Table 2 shows for the three representative pecan farm sizes the allocation of total production levels between improved and native varieties (78 and 22 percent, respectively).

Although marketing order assessments are paid by handlers, not growers, it is nevertheless useful to estimate the impact on growers, based on the assumption that handlers may pass part or all of the assessment cost onto growers from whom they purchase pecans. To compute the marketing order burden for each farm size, the improved and native production quantities are multiplied by 2.5 and 1.5 cents per pound of improved and native pecans, respectively. For the representative small farm (175 acres), summing the improved and native assessments yields a total annual assessment cost of $6,650. For the large farm, the total assessment cost is $19,000.

A parallel computation is made to obtain the total dollar benefit for each farm size. The improved and native quantities for the representative farm sizes are multiplied by the corresponding projected price increases of 6.3 and 3.6 cents. Summing the improved and native benefits for the small and large farm size yields projected annual total benefits for the small and large representative farm sizes of $16,643 and $47,550, respectively. The results of dividing the benefits for each farm size by the corresponding costs is 2.5, which equals the benefit-cost ratio shown in Table 2.

TABLE 2—COSTS AND BENEFITS OF PROMOTION FOR THREE SIZES OF REPRESENTATIVE U.S. PECAN FARMS

	Very small farm	Small farm	Large farm
Representative Pecan Farms: Acres and Production			
Acres per farm	30	175	500
Production on Representative Farms (Acres multiplied by estimated U.S. average yield of 1666.67 pounds per acre)	50,000	291,667	833,335
Improved pecan production (78% of farm acres)	39,000	227,500	650,001
Native pecan production (22% of farm acres)	11,000	64,167	183,334
Cost per farm: Grower burden of program represented as cost per pound			
Improved (2.5 cents)	$975	$5,688	$16,250
Native (1.5 cents)	$165	$963	$2,750
Total Estimated Cost per Farm	$1,140	$6,650	$19,000
Benefit per farm: Price increase per pound from pecan promotion multiplied by improved and native production			
Improved (6.3 cents)	$2,457	$14,333	$40,950
Native (3.6 cents)	$396	$2,310	$6,600
Total Estimated Benefit per Farm	$2,853	$16,643	$47,550

The computations in Table 2 provide an illustration, based on evidence from the record, that there would be no disproportionate impact on smaller size farms from establishing a marketing order and implementing a promotion program. Costs are assessed per pound and thus represent an equal burden regardless of size. The projected benefits from promotion are realized through increases in price per pound and are thus distributed proportionally among different sizes of farms.

All of the grower and handler witnesses, both large and small, testified that the projected price increases from promotion of pecans (6.3 and 3.6 cents per pound for improved and native pecans, respectively) were reasonable estimates of the benefits from generic promotion of pecans. A number of them expressed the view that the price increase estimates were conservative and that, over time, the price impact would be larger.

As mentioned above, marketing order assessments are paid by handlers, not

growers. However, since handlers may pass some or all of the assessment cost onto growers, it is useful to provide this illustration of potential impact on both growers and handlers.

Using the most recent three years of prices as examples of typical U.S. annual grower prices, Table 3 summarizes evidence from the record that shows the marketing order assessment rates as percentages of grower and handler prices received. Based on record evidence that a representative handler margin is 57.5 cents per pound, handler prices are estimated by summing the grower price and handler margin.

TABLE 3—MARKETING ORDER ASSESSMENT RATES AS A PERCENTAGE OF PRICES FOR PECANS RECEIVED BY GROWERS AND HANDLERS

	Grower and handler prices			Assessment rates ***	Assessment rates as a % of prices received		
	2012	2013	2014		2012	2013	2014
Grower price *							
Improved	$1.73	$1.90	$2.12	$0.025	1.4%	1.3%	1.2%
Native	0.88	0.92	0.88	0.015	1.7	1.6	1.7
Handler price **							
Improved	2.31	2.48	2.70	0.025	1.08	1.01	0.93
Native	1.46	1.50	1.46	0.015	1.03	1.00	1.03

* Season average grower price per pound from NASS/USDA.
** Grower price plus average handler margin of 57.5 cents per pound, based on hearing evidence.
*** Midpoints of initial marketing order assessment rates: Improved (2 to 3 cents); Native (1 to 2 cents). For growers this represents the cost of the marketing order burden and for handlers this represents the cost of the assessment paid.

For both improved and native pecans, using 2012 to 2014 prices as examples, Table 3 shows that the potential burden of the program can be calculated at between 1 and 2 percent of operating expenses for growers and are approximately 1 percent of operating expenses for handlers. Grower and handler witnesses, both large and small, covering both improved and native pecans, testified that the initial marketing order assessment rates would not represent a significant burden to their businesses and that the benefits of the generic promotion program substantially outweigh the cost. Sheller witnesses (large and small) that would likely become handlers under a Federal marketing order testified that the additional recordkeeping required to collect assessments to send to the marketing order board (American Pecan Council) would not be a significant additional burden and that the benefits would substantially outweigh the costs. Several witnesses stated that one reason that collecting the assessments would have only a minor impact is that they already perform similar functions for promotion and other pecan-related programs (or other commodity programs) organized under state law.

Additional Marketing Order Program Benefits

Statements of support for additional benefits that could come from a Federal marketing order came from grower and handler witnesses, both large and small, covering both improved and native pecans. The additional benefits cited included: (1) Additional and more accurate market information, including data on production, inventory, and total supplies, (2) funding of research on health and nutrition aspects of pecans, improved technology relating to the pecan supply chain and crop health, consumer trends, and other topics, and (3) uniform, industry-wide quality standards for pecans, as well as packaging standards and shipping protocols. Witnesses testified that the burden of funding and participating in marketing order programs with these features would be minor, and that the benefits would substantially outweigh the costs.

The order will impose some reporting and recordkeeping requirements on handlers. However, testimony indicated that the expected burden that will be imposed with respect to these requirements would be negligible. Most of the information that will be reported to the Council is already compiled by handlers for other uses and is readily available. Reporting and recordkeeping requirements issued under other tree nut programs impose an average annual burden on each regulated handler of about 8 hours. It is reasonable to expect that a similar burden may be imposed under this marketing order on the estimated 250 handlers of pecans in the production area.

The record evidence also indicates that the benefits to small as well as large handlers are likely to be greater than would accrue under the alternatives to the order; namely, no marketing order.

In determining that the order and its provisions will not have a disproportionate economic impact on a substantial number of small entities, all of the issues discussed above were considered. Based on hearing record evidence and USDA's analysis of the economic information provided, the order provisions have been carefully reviewed to ensure that every effort has been made to eliminate any unnecessary costs or requirements.

Although the order may impose some additional costs and requirements on handlers, it is anticipated that the order will help to strengthen demand for pecans. Therefore, any additional costs would be offset by the benefits derived from expanded sales benefiting handlers and growers alike. Accordingly, it is determined that the order will not have a disproportionate economic impact on a substantial number of small handlers or growers.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the forms to be used for nomination and selection of the initial administrative council will be submitted to OMB for approval. Any additional information collection and recordkeeping requirements that may be imposed under the order as a result of future council recommendations and rulemaking would also be submitted to OMB for approval. Those requirements would not become effective prior to OMB approval.

Civil Justice Reform

The provisions of the marketing agreement and order have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. The agreement and order will not preempt any State or local laws, regulations, or

policies, unless they present an irreconcilable conflict with this rule.

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

Findings and Determinations

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon a proposed marketing agreement and order regulating the handling of pecans grown in the States of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas.

Upon the basis of evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order regulate the handling of pecans grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order are limited in its application to the smallest regional production area that is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order prescribe, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of pecans grown in the production area; and

(5) All handling of pecans grown in the production area as defined in the marketing agreement and order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make the provisions of this order effective not later than one day after publication in the **Federal Register**. A later date would unnecessarily delay implementation of the program, which is expected to benefit the pecan industry. Making the program effective as specified would allow for the nomination, selection and organization of the initial administrative council in advance of the 2016 harvest season. It also allows time for the council to recommend a budget and any administrative rules and regulations deemed necessary to operate the program.

In view of the foregoing, it is hereby found and determined that good cause exists for making the order provisions effective one day after publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The ''Marketing Agreement Regulating the Handling of Pecans Grown in Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas,'' upon which the aforesaid public hearing was held, has been signed by handlers who during the period of August 1, 2014, through July 31, 2015 handled not less than 50 percent of the volume of such pecans covered by the order, and

(2) The issuance of this order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and, who produced a minimum average, annual amount of 50,000 pounds of inshell pecans between August 1, 2011, and July 31, 2015, (which has been determined to be a representative period) or who owned a minimum of 30 pecan acres. Such producers also produced for market at least two-thirds of the volume of pecans represented in the referendum.

List of Subjects in 7 CFR Part 986

Marketing agreements, Pecans, Reporting and recordkeeping requirements.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of pecans grown in the States of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas, shall be in conformity to, and in compliance with, the terms and conditions of the said order as follows:

The provisions of the marketing agreement and order are set forth in full herein.

■ Title 7, chapter IX is amended by adding part 986 to read as follows:

PART 986—PECANS GROWN IN THE STATES OF ALABAMA, ARKANSAS, ARIZONA, CALIFORNIA, FLORIDA, GEORGIA, KANSAS, LOUISIANA, MISSOURI, MISSISSIPPI, NORTH CAROLINA, NEW MEXICO, OKLAHOMA, SOUTH CAROLINA, AND TEXAS

Subpart A—Order Regulating Handling of Pecans

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Subpart B—Reserved

Authority: 7 U.S.C. 601–674.

Definitions

§ 986.1 Accumulator.

Accumulator means a person who compiles inshell pecans from other persons for the purpose of resale or transfer.

§ 986.2 Act.

Act means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*).

§ 986.3 Affiliation.

Affiliation. This term normally appears as ''affiliate of'' or ''affiliated with,'' and means a person such as a grower or sheller who is: A grower or handler that directly, or indirectly through one or more intermediaries, owns or controls, or is controlled by, or is under common control with the grower or handler specified; or a grower or handler that directly, or indirectly through one or more intermediaries, is connected in a proprietary capacity, or shares the ownership or control of the specified grower or handler with one or more other growers or handlers. As used in this part, the term ''control'' (including the terms ''controlling,'' ''controlled by,'' and ''under the common control with'') means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a handler or a grower, whether through voting securities, membership in a cooperative, by contract or otherwise.

§ 986.4 Blowouts.

Blowouts mean lightweight or underdeveloped inshell pecan nuts that are considered of lesser quality and market value.

§ 986.5 To certify.

To certify means the issuance of a certification of inspection of pecans by the inspection service.

§ 986.6 Confidential data or information.

Confidential data or information submitted to the Council consists of data or information constituting a trade secret or disclosure of the trade position, financial condition, or business operations of a particular entity or its customers.

§ 986.7 Container.

Container means a box, bag, crate, carton, package (including retail packaging), or any other type of receptacle used in the packaging or handling of pecans.

§ 986.8 Council.

Council means the American Pecan Council established pursuant to § 986.45, American Pecan Council.

§ 986.9 Crack.

Crack means to break, crack, or otherwise compromise the outer shell of a pecan so as to expose the kernel inside to air outside the shell.

§ 986.10 Cracks.

Cracks refer to an accumulated group or container of pecans that have been cracked in harvesting or handling.

§ 986.11 Custom harvester.

Custom harvester means a person who harvests inshell pecans for a fee.

§ 986.12 Department or USDA.

Department or *USDA* means the United States Department of Agriculture.

§ 986.13 Disappearance.

Disappearance means the difference between the sum of grower-cleaned production and handler-cleaned production (whether from improved orchards or native and seedling groves) and the sum of inshell and shelled merchantable pecans reported on an inshell weight basis.

§ 986.14 Farm Service Agency.

Farm Service Agency or FSA means that agency of the U.S. Department of Agriculture.

§ 986.15 Fiscal year.

Fiscal year means the twelve months from October 1 to September 30, both inclusive, or any other such period deemed appropriate by the Council and approved by the Secretary.

§ 986.16 Grade and size.

Grade and size means any of the officially established grades of pecans and any of the officially established sizes of pecans as set forth in the United States standards for inshell and shelled pecans or amendments thereto, or modifications thereof, or other variations of grade and size based thereon recommended by the Council and approved by the Secretary.

§ 986.17 Grower.

(a) *Grower* is synonymous with producer and means any person engaged within the production area in a proprietary capacity in the production of pecans if such person:

(1) Owns an orchard and harvests its pecans for sale (even if a custom harvester is used); or

(2) Is a lessee of a pecan orchard and has the right to sell the harvest (even if

the lessee must remit a percentage of the crop or rent to a lessor).

(b) The term ''grower'' shall only include those who produce a minimum of 50,000 pounds of inshell pecans during a representative period (average of four years) or who own a minimum of 30 pecan acres according to the FSA, including acres calculated by the FSA based on pecan tree density. In the absence of any FSA delineation of pecan acreage, the regular definition of an acre will apply. The Council may recommend changes to this definition subject to the approval of the Secretary.

§ 986.18 Grower-cleaned production.

Grower-cleaned production means production harvested and processed through a cleaning plant to determine volumes of improved pecans, native and seedling pecans, and substandard pecans to transfer to a handler for sale.

§ 986.19 Handler.

Handler means any person who handles inshell or shelled pecans in any manner described in § 986.20.

§ 986.20 To handle.

To handle means to receive, shell, crack, accumulate, warehouse, roast, pack, sell, consign, transport, export, or ship (except as a common or contract carrier of pecans owned by another person), or in any other way to put inshell or shelled pecans into any and all markets in the stream of commerce either within the area of production or from such area to any point outside thereof. The term ''to handle'' shall not include: sales and deliveries within the area of production by growers to handlers; grower warehousing; custom handling (except for selling, consigning or exporting) or other similar activities paid for on a fee-for-service basis by a grower who retains the ownership of the pecans; or transfers between handlers.

§ 986.21 Handler inventory.

Handler inventory means all pecans, shelled or inshell, as of any date and wherever located within the production area, then held by a handler for their account.

§ 986.22 Handler-cleaned production.

Handler-cleaned production is production that is received, purchased or consigned from the grower by a handler prior to processing through a cleaning plant, and then subsequently processed through a cleaning plant so as to determine volumes of improved pecans, native and seedling pecans, and substandard pecans.

§ 986.23 Hican.

Hican means a tree resulting from a cross between a pecan and some other type of hickory (members of the genus *Carya*) or the nut from such a hybrid tree.

§ 986.24 Inshell pecans.

Inshell pecans are nuts whose kernel is maintained inside the shell.

§ 986.25 Inspection Service.

Inspection service means the Federal-State Inspection Service or any other inspection service authorized by the Secretary.

§ 986.26 Inter-handler transfer.

Inter-handler transfer means the movement of inshell pecans from one handler to another inside the production area for the purposes of additional handling. Any assessments or requirements under this part with respect to inshell pecans so transferred may be assumed by the receiving handler.

§ 986.27 Merchantable pecans.

(a) *Inshell. Merchantable inshell* pecans mean all inshell pecans meeting the minimum grade regulations that may be effective pursuant to § 986.69, Authorities regulating handling.

(b) *Shelled. Merchantable shelled* pecans means all shelled pecans meeting the minimum grade regulations that may be effective pursuant to § 986.69, Authorities regulating handling.

§ 986.28 Pack.

Pack means to clean, grade, or otherwise prepare pecans for market as inshell or shelled pecans.

§ 986.29 Pecans.

(a) *Pecans* means and includes any and all varieties or subvarieties of Genus: *Carya,* Species: *illinoensis,* expressed also as *Carya illinoinensis (syn. C. illinoenses)* including all varieties thereof, excluding hicans, that are produced in the production area and are classified as:

(1) *Native or seedling* pecans harvested from non-grafted or naturally propagated tree varieties;

(2) *Improved pecans* harvested from grafted tree varieties bred or selected for superior traits of nut size, ease of shelling, production characteristics, and resistance to certain insects and diseases, including but not limited to: Desirable, Elliot, Forkert, Sumner, Creek, Excel, Gracross, Gratex, Gloria Grande, Kiowa, Moreland, Sioux, Mahan, Mandan, Moneymaker, Morrill, Cunard, Zinner, Byrd, McMillan, Stuart, Pawnee, Eastern and Western Schley, Wichita, Success, Cape Fear, Choctaw, Cheyenne, Lakota, Kanza, Caddo, and Oconee; and

(3) *Substandard pecans* that are blowouts, cracks, stick-tights, and other inferior quality pecans, whether native or improved, that, with further handling, can be cleaned and eventually sold into the stream of commerce.

(b) The Council, with the approval of the Secretary, may recognize new or delete obsolete varieties or sub-varieties for each category.

§ 986.30 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 986.31 Production area.

Production area means the following fifteen pecan-producing states within the United States: Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Mississippi, Missouri, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas.

§ 986.32 Proprietary capacity.

Proprietary capacity means the capacity or interest of a grower or handler that, either directly or through one or more intermediaries or affiliates, is a property owner together with all the appurtenant rights of an owner, including the right to vote the interest in that capacity as an individual, a shareholder, member of a cooperative, partner, trustee or in any other capacity with respect to any other business unit.

§ 986.33 Regions.

(a) *Regions* within the production area shall consist of the following:

(1) *Eastern Region,* consisting of: Alabama, Florida, Georgia, North Carolina, South Carolina

(2) *Central Region,* consisting of: Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Texas

(3) *Western Region,* consisting of: Arizona, California, New Mexico

(b) With the approval of the Secretary, the boundaries of any region may be changed pursuant to § 986.58, Reapportionment and reestablishment of regions.

§ 986.34 Representative period.

Representative period is the previous four fiscal years for which a grower's annual average production is calculated, or any other period recommended by the Council and approved by the Secretary.

§ 986.35 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the United

States Department of Agriculture who is, or who may be, authorized to perform the duties of the Secretary of Agriculture of the United States.

§ 986.36 Sheller.

Sheller refers to any person who converts inshell pecans to shelled pecans and sells the output in any and all markets in the stream of commerce, both within and outside of the production area; *Provided,* That the term ''sheller'' shall only include those who shell more than 1 million pounds of inshell pecans in a fiscal year. The Council may recommend changes to this definition subject to the approval of the Secretary.

§ 986.37 Shelled pecans.

Shelled pecans are pecans whose shells have been removed leaving only edible kernels, kernel pieces or pecan meal. *Shelled pecans* are synonymous with *pecan meats.*

§ 986.38 Stick-tights.

Stick-tights means pecans whose outer shuck has adhered to the shell causing their value to decrease or be discounted.

§ 986.39 Trade supply.

Trade supply means the quantity of merchantable inshell or shelled pecans that growers will supply to handlers during a fiscal year for sale in the United States and abroad or, in the absence of handler regulations § 986.69 setting forth minimum grade regulations for merchantable pecans, the sum of handler-cleaned and grower-cleaned production.

§ 986.40 Unassessed inventory.

Unassessed inventory means inshell pecans held by growers or handlers for which no assessment has been paid to the Council.

§ 986.41 Varieties.

Varieties mean and include all cultivars, classifications, or subdivisions of pecans.

§ 986.42 Warehousing.

Warehousing means to hold assessed or unassessed inventory.

§ 986.43 Weight.

Weight means pounds of inshell pecans, received by handler within each fiscal year; *Provided,* That for shelled pecans the actual weight shall be multiplied by two to obtain an inshell weight.

Administrative Body

§ 986.45 American Pecan Council.

The American Pecan Council is hereby established consisting of 17 members selected by the Secretary, each of whom shall have an alternate member nominated with the same qualifications as the member. The 17 members shall include nine (9) grower seats, six (6) sheller seats, and two (2) at-large seats allocated to one accumulator and one public member. The grower and sheller nominees and their alternates shall be growers and shellers at the time of their nomination and for the duration of their tenure. Grower and sheller members and their alternates shall be selected by the Secretary from nominees submitted by the Council. The two at-large seats shall be nominated by the Council and appointed by the Secretary.

(a) Each region shall be allocated the following member seats:

(1) *Eastern Region:* Three (3) growers and two (2) shellers;

(2) *Central Region:* Three (3) growers and two (2) shellers;

(3) *Western Region:* Three (3) growers and two (2) shellers.

(b) Within each region, the grower and sheller seats shall be defined as follows:

(1) *Grower seats:* Each region shall have a grower Seat 1 and Seat 2 allocated to growers whose acreage is equal to or exceeds 176 pecan acres. Each region shall also have a grower Seat 3 allocated to a grower whose acreage is less than 176 pecan acres.

(2) *Sheller seats:* Each region shall have a sheller Seat 1 allocated to a sheller who handles more than 12.5 million pounds of inshell pecans in the fiscal year preceding nomination, and a sheller Seat 2 allocated to a sheller who handles less than or equal to 12.5 million pounds of inshell pecans in the fiscal year preceding nomination.

(c) The Council may recommend, subject to the approval of the Secretary, revisions to the above requirements for grower and sheller seats to accommodate changes within the industry.

§ 986.46 Council nominations and voting.

Nomination of Council members and alternate members shall follow the procedure set forth in this section, or as may be changed as recommended by the Council and approved by the Secretary. All nominees must meet the requirements set forth in §§ 986.45, American Pecan Council, and 986.48, Eligibility, or as otherwise identified by the Secretary, to serve on the Council.

(a) *Initial members.* Nominations for initial Council members and alternate members shall be conducted by the Secretary by either holding meetings of shellers and growers, by mail, or by email, and shall be submitted on approved nomination forms. Eligibility to cast votes on nomination ballots, accounting of nomination ballot results, and identification of member and alternate nominees shall follow the procedures set forth in this section, or by any other criteria deemed necessary by the Secretary. The Secretary shall select and appoint the initial members and alternate members of the Council.

(b) *Successor members.* Subsequent nominations of Council members and alternate members shall be conducted as follows:

(1) *Call for nominations.* (i) Nominations for the grower member seats for each region shall be received from growers in that region on approved forms containing the information stipulated in this section.

(ii) If a grower is engaged in producing pecans in more than one region, such grower shall nominate in the region in which they grow the largest volume of their production.

(iii) Nominations for the sheller member seats for each region shall be received from shellers in that region on approved forms containing the information stipulated in this section.

(iv) If a sheller is engaged in handling in more than one region, such sheller shall nominate in the region in which they shelled the largest volume in the preceding fiscal year.

(2) *Voting for nominees.* (i) Only growers, through duly authorized officers or employees of growers, if applicable, may participate in the nomination of grower member nominees and their alternates. Each grower shall be entitled to cast only one nomination ballot for each of the three grower seats in their region.

(ii) If a grower is engaged in producing pecans in more than one region, such grower shall cast their nomination ballot in the region in which they grow the largest volume of their production. Notwithstanding this stipulation, such grower may vote their volume produced in any or all of the three regions.

(iii) Only shellers, through duly authorized officers or employees of shellers, if applicable, may participate in the nomination of the sheller member nominees and their alternates. Each sheller shall be entitled to cast only one nomination ballot for each of the two sheller seats in their region.

(iv) If a sheller is engaged in handling in more than one region, such sheller shall cast their nomination ballot in the region in which they shelled the largest

volume in the preceding fiscal year. Notwithstanding this stipulation, such sheller may vote their volume handled in all three regions.

(v) If a person is both a grower and a sheller of pecans, such person may not participate in both grower and sheller nominations. Such person must elect to participate either as a grower or a sheller.

(3) *Nomination procedure for grower seats.* (i) The Council shall mail to all growers who are on record with the Council within the respective regions a grower nomination ballot indicating the nominees for each of the three grower member seats, along with voting instructions. Growers may cast ballots on the proper ballot form either at meetings of growers, by mail, or by email as designated by the Council. For ballots to be considered, they must be submitted on the proper forms with all required information, including signatures.

(ii) On the ballot, growers shall indicate their vote for the grower nominee candidates for the grower seats and also indicate their average annual volume of inshell pecan production for the preceding four fiscal years.

(iii) *Seat 1* (growers with equal to or more than 176 acres of pecans). The nominee for this seat in each region shall be the grower receiving the highest volume of production (pounds of inshell pecans) votes from the respective region, and the grower receiving the second highest volume of production votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(iv) *Seat 2* (growers with equal to or more than 176 acres of pecans). The nominee for this seat in each region shall be the grower receiving the highest number of votes from their respective region, and the grower receiving the second highest number of votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(v) *Seat 3* (grower with less than 176 acres of pecans). The nominee for this seat in each region shall be the grower receiving the highest number of votes from the respective region, and the grower receiving the second highest number of votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(4) *Nomination procedure for sheller seats.* (i) The Council shall mail to all shellers who are on record with the Council within the respective regions the sheller ballot indicating the nominees for each of the two sheller member seats in their respective regions, along with voting instructions. Shellers may cast ballots on approved ballot forms either at meetings of shellers, by mail, or by email as designated by the Council. For ballots to be considered, they must be submitted on the approved forms with all required information, including signatures.

(ii) *Seat 1* (shellers handling more than 12.5 million lbs. of inshell pecans in the preceding fiscal year). The nominee for this seat in each region shall be assigned to the sheller receiving the highest number of votes from the respective region, and the sheller receiving the second highest number of votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(iii) *Seat 2* (shellers handling equal to or less than 12.5 million lbs. of inshell pecans in the preceding fiscal year). The nominee for this seat in each region shall be assigned to the sheller receiving the highest number of votes from the respective region, and the sheller receiving the second highest number of votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(5) *Reports to the Secretary.* Nominations in the foregoing manner received by the Council shall be reported to the Secretary on or before 15 of each July of any year in which nominations are held, together with a certified summary of the results of the nominations and other information deemed by the Council to be pertinent or requested by the Secretary. From those nominations, the Secretary shall select the fifteen grower and sheller members of the Council and an alternate for each member, unless the Secretary rejects any nomination submitted. In the event the Secretary rejects a nomination, a second nomination process may be conducted to identify other nominee candidates, the resulting nominee information may be reported to the Secretary after July 15 and before September 15. If the Council fails to report nominations to the Secretary in the manner herein specified, the Secretary may select the members without nomination. If nominations for the public and accumulator at-large members are not submitted by September 15 of any year in which their nomination is due, the Secretary may select such members without nomination.

(6) *At-large members.* The grower and sheller members of the Council shall select one public member and one accumulator member and respective alternates for consideration, selection and appointment by the Secretary. The public member and alternate public member may not have any financial interest, individually or corporately, or affiliation with persons vested in the pecan industry. The accumulator member and alternate accumulator member must meet the criteria set forth in § 986.1, Accumulator, and may reside or maintain a place of business in any region.

(7) *Nomination forms.* The Council may distribute nomination forms at meetings, by mail, by email, or by any other form of distribution recommended by the Council and approved by the Secretary.

(i) *Grower nomination forms.* Each nomination form submitted by a grower shall include the following information:

(A) The name of the nominated grower;

(B) The name and signature of the nominating grower;

(C) Two additional names and respective signatures of growers in support of the nomination;

(D) Any other such information recommended by the Council and approved by the Secretary.

(ii) *Sheller nomination forms.* Each nomination form submitted by a sheller shall include the following:

(A) The name of the nominated sheller;

(B) The name and signature of the nominating sheller;

(C) One additional name and signature of a sheller in support of the nomination;

(D) Any other such information recommended by the Council and approved by the Secretary.

(8) *Changes to the nomination and voting procedures.* The Council may recommend, subject to the approval of the Secretary, a change to these procedures should the Council determine that a revision is necessary.

§ 986.47 Alternate members.

(a) Each member of the Council shall have an alternate member to be nominated in the same manner as the member.

(b) An alternate for a member of the Council shall act in the place and stead of such member in their absence or in the event of their death, removal, resignation, or disqualification, until the next nomination and elections take place for the Council or the vacancy has been filled pursuant to § 986.48, Eligibility.

(c) In the event any member of the Council and their alternate are both unable to attend a meeting of the Council, any alternate for any other

member representing the same group as the absent member may serve in the place of the absent member.

§ 986.48 Eligibility.

(a) Each grower member and alternate shall be, at the time of selection and during the term of office, a grower or an officer, or employee, of a grower in the region and in the classification for which nominated.

(b) Each sheller member and alternate shall be, at the time of selection and during the term of office, a sheller or an officer or employee of a sheller in the region and in the classification for which nominated.

(c) A grower can be a nominee for only one grower member seat. If a grower is nominated for two grower member seats, he or she shall select the seat in which he or she desires to run, and the grower ballot shall reflect that selection.

(d) Any member or alternate member who at the time of selection was employed by or affiliated with the person who is nominated shall, upon termination of that relationship, become disqualified to serve further as a member and that position shall be deemed vacant.

(e) No person nominated to serve as a public member or alternate public member shall have a financial interest in any pecan grower or handling operation.

§ 986.49 Acceptance.

Each person to be selected by the Secretary as a member or as an alternate member of the Council shall, prior to such selection, qualify by advising the Secretary that if selected, such person agrees to serve in the position for which that nomination has been made.

§ 986.50 Term of office.

(a) Selected members and alternate members of the Council shall serve for terms of four years: *Provided*, That at the end of the first four (4) year term and in the nomination and selection of the second Council only, four of the grower member and alternate seats and three of the sheller member and alternate seats shall be seated for terms of two years so that approximately half of the memberships' and alternates' terms expire every two years thereafter. Member and alternate seats assigned two-year terms for the seating of the second Council only shall be as follows:

(1) Grower member Seat 2 in all regions shall be assigned a two-year term;

(2) Grower member Seat 3 in all regions shall, by drawing, identify one member seat to be assigned a two-year term; and,

(3) Sheller Seat 2 in all regions shall be assigned a two-year term.

(b) Council members and alternates may serve up to two consecutive, four-year terms of office. Subject to paragraph (c) of this section, in no event shall any member or alternate serve more than eight consecutive years on the Council as either a member or an alternate. However, if selected, an alternate having served up to two consecutive terms may immediately serve as a member for two consecutive terms without any interruption in service. The same is true for a member who, after serving for up to two consecutive terms, may serve as an alternate if nominated without any interruption in service. A person having served the maximum number of terms as set forth above may not serve again as a member or an alternate for at least twelve consecutive months. For purposes of determining when a member or alternate has served two consecutive terms, the accrual of terms shall begin following any period of at least twelve consecutive months out of office.

(c) Each member and alternate member shall continue to serve until a successor is selected and has qualified.

(d) A term of office shall begin as set forth in the by-laws or as directed by the Secretary each year for all members.

(e) The Council may recommend, subject to approval of the Secretary, revisions to the start day for the term of office, the number of years in a term, and the number of terms a member or an alternate can serve.

§ 986.51 Vacancy.

Any vacancy on the Council occurring by the failure of any person selected to the Council to qualify as a member or alternate member due to a change in status making the member ineligible to serve, or due to death, removal, or resignation, shall be filled, by a majority vote of the Council for the unexpired portion of the term. However, that person shall fulfill all the qualifications set forth in this part as required for the member whose office that person is to fill. The qualifications of any person to fill a vacancy on the Council shall be certified in writing to the Secretary. The Secretary shall notify the Council if the Secretary determines that any such person is not qualified.

§ 986.52 Council expenses.

The members and their alternates of the Council shall serve without compensation, but shall be reimbursed for the reasonable and necessary expenses incurred by them in the performance of their duties under this part.

§ 986.53 Powers.

The Council shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make bylaws, rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 986.54 Duties.

The duties of the Council shall be as follows:

(a) To act as intermediary between the Secretary and any handler or grower;

(b) To keep minute books and records which will clearly reflect all of its acts and transactions, and such minute books and records shall at any time be subject to the examination of the Secretary;

(c) To furnish to the Secretary a complete report of all meetings and such other available information as he or she may request;

(d) To appoint such employees as it may deem necessary and to determine the salaries, define the duties, and fix the bonds of such employees;

(e) To cause the books of the Council to be audited by one or more certified public accountants at least once for each fiscal year and at such other times as the Council deems necessary or as the Secretary may request, and to file with the Secretary three copies of all audit reports made;

(f) To investigate the growing, shipping and marketing conditions with respect to pecans and to assemble data in connection therewith;

(g) To investigate compliance with the provisions of this part; and,

(h) To recommend by-laws, rules and regulations for the purpose of administering this part.

§ 986.55 Procedure.

(a) The members of the Council shall select a chairman from their membership, and shall select such other officers and adopt such rules for the conduct of Council business as they deem advisable.

(b) The Council may provide for meetings by telephone, or other means of communication, and any vote cast at such a meeting shall be confirmed promptly in writing. The Council shall give the Secretary the same notice of its meetings as is given to members of the Council.

(c) *Quorum.* A quorum of the Council shall be any twelve voting Council members. The vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the Council; *Provided*, That:

(1) Actions of the Council with respect to the following issues shall require a two-thirds (12 members) concurring vote of the Council:

(i) Establishment of or changes to by-laws;

(ii) Appointment or administrative issues relating to the program's manager or chief executive officer;

(iii) Budget;

(iv) Assessments;

(v) Compliance and audits;

(vi) Reestablishment of regions and reapportionment or reallocation of Council membership;

(vii) Modifying definitions of grower and sheller;

(viii) Research or promotion activities under § 986.68;

(ix) Grade, quality and size regulation under § 986.69(a)(1) and (2);

(x) Pack and container regulation under § 986.69(a)(3); and,

(2) Actions of the Council with respect to the securing of commercial bank loans for the purpose of financing start-up costs of the Council and its activities or securing financial assistance in emergency situations shall require a unanimous vote of all members present at an in-person meeting; *Provided*, That in the event of an emergency that warrants immediate attention sooner than a face-to-face meeting is possible, a vote for financing may be taken. In such event, the Council's first preference is a videoconference and second preference is phone conference, both followed by written confirmation of the members attending the meeting.

§ 986.56 Right of the Secretary.

The members and alternates for members and any agent or employee appointed or employed by the Council shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 986.57 Funds and other property.

(a) All funds received pursuant to any of the provisions of this part shall be used solely for the purposes specified in this part, and the Secretary may require the Council and its members to account for all receipts and disbursements.

(b) Upon the death, resignation, removal, disqualification, or expiration of the term of office of any member or employee, all books, records, funds, and other property in their possession belonging to the Council shall be delivered to their successor in office or to the Council, and such assignments and other instruments shall be executed as may be necessary to vest in such successor or in the Council full title to all the books, records, funds, and other property in the possession or under the control of such member or employee pursuant to this subpart.

§ 986.58 Reapportionment and reestablishment of regions.

The Council may recommend, subject to approval of the Secretary, reestablishment of regions, reapportionment of members among regions, and may revise the groups eligible for representation on the Council. In recommending any such changes, the following shall be considered:

(a) Shifts in acreage within regions and within the production area during recent years;

(b) The importance of new production in its relation to existing regions;

(c) The equitable relationship between Council apportionment and regions;

(d) Changes in industry structure and/or the percentage of crop represented by various industry entities; and

(e) Other relevant factors.

Expenses, Assessments, and Marketing Policy

§ 986.60 Budget.

As soon as practicable before the beginning of each fiscal year, and as may be necessary thereafter, the Council shall prepare a budget of income and expenditures necessary for the administration of this part. The Council may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The Council shall present such budget to the Secretary with an accompanying report showing the basis for its calculations, and all shall be subject to Secretary approval.

§ 986.61 Assessments.

(a) Each handler who first handles inshell pecans shall pay assessments to the Council. Assessments collected each fiscal year shall defray expenses which the Secretary finds reasonable and likely to be incurred by the Council during that fiscal year. Each handler's share of assessments paid to the Council shall be equal to the ratio between the total quantity of inshell pecans handled by them as the first handler thereof during the applicable fiscal year, and the total quantity of inshell pecans handled by all regulated handlers in the production area during the same fiscal year. The payment of assessments for the maintenance and functioning of the Council may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative. Handlers may avail themselves of an inter-handler transfer, as provided for in § 986.62, Inter-handler transfers.

(b) Based upon a recommendation of the Council or other available data, the Secretary shall fix three base rates of assessment for inshell pecans handled during each fiscal year. Such base rates shall include one rate of assessment for any or all varieties of pecans classified as native and seedling; one rate of assessment for any or all varieties of pecans classified as improved; and one rate of assessment for any pecans classified as substandard.

(c) Upon implementation of this part and subject to the approval of the Secretary, initial assessment rates per classification shall be set within the following prescribed ranges: Native and seedling classified pecans shall be assessed at one-cent to two-cents per pound; improved classified pecans shall be assessed at two-cents to three-cents per pound; and, substandard classified pecans shall be assessed at one-cent to two-cents per pound. These assessment ranges shall be in effect for the initial four years of the order.

(d) Subsequent assessment rates shall not exceed two percent of the aggregate of all prices in each classification across the production area based on Council data, or the average of USDA reported average price received by growers for each classification, in the preceding fiscal year as recommended by the Council and approved by the Secretary. After four years from the implementation of this part, the Council may recommend, subject to the approval of the Secretary, revisions to this calculation or assessment ranges.

(e) The Council, with the approval of the Secretary, may revise the assessment rates if it determines, based on information including crop size and value, that the action is necessary, and if the revision does not exceed the assessment limitation specified in this section and is made prior to the final billing of the assessment.

(f) In order to provide funds for the administration of the provisions of this part during the first part of a fiscal year, before sufficient operating income is

available from assessments, the Council may accept the payment of assessments in advance and may also borrow money for such purposes; *Provided*, That no loan may amount to more than 50 percent of projected assessment revenue projected for the year in which the loan is secured, and the loan must be repaid within five years.

(g) If a handler does not pay assessments within the time prescribed by the Council, the assessment may be increased by a late payment charge and/or an interest rate charge at amounts prescribed by the Council with approval of the Secretary.

(h) On August 31 of each year, every handler warehousing inshell pecans shall be identified as the first handler of those pecans and shall be required to pay the assessed rate on the category of pecans in their possession on that date. The terms of this paragraph may be revised subject to the recommendation of the Council and approval by the Secretary.

(i) On August 31 of each year, all inventories warehoused by growers from the current fiscal year shall cease to be eligible for inter-handler transfer treatment. Instead, such inventory will require the first handler that handles such inventory to pay the assessment thereon in accordance with the prevailing assessment rates at the time of transfer from the grower to the said handler. The terms of this paragraph may be revised subject to the recommendation of the Council and approval by the Secretary.

§ 986.62 Inter-handler transfers.

Any handler inside the production area, except as provided for in § 986.61(h) and (i), Assessments, may transfer inshell pecans to another handler inside the production area for additional handling, and any assessments or other marketing order requirements with respect to pecans so transferred may be assumed by the receiving handler. The Council, with the approval of the Secretary, may establish methods and procedures, including necessary reports, to maintain accurate records for such transfers. All inter-handler transfers will be documented by forms or electronic transfer receipts approved by the Council, and all forms or electronic transfer receipts used for inter-handler transfers shall require that copies be sent to the selling party, the receiving party, and the Council. Such forms must state which handler has the assessment responsibilities.

§ 986.63 Contributions.

The Council may accept voluntary contributions. Such contributions may only be accepted if they are free from any encumbrances or restrictions on their use and the Council shall retain complete control of their use. The Council may receive contributions from both within and outside of the production area.

§ 986.64 Accounting.

(a) Assessments collected in excess of expenses incurred shall be accounted for in accordance with one of the following:

(1) Excess funds not retained in a reserve, as provided in paragraph (a)(2) of this section shall be refunded proportionately to the persons from whom they were collected; or

(2) The Council, with the approval of the Secretary, may carry over excess funds into subsequent fiscal periods as reserves: *Provided*, That funds already in reserves do not equal approximately three fiscal years' expenses. Such reserve funds may be used:

(i) To defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any fiscal period when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and

(iv) To cover necessary expenses of liquidation in the event of termination of this part.

(b) Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(c) All funds received by the Council pursuant to the provisions of this part shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided for in this part. The Secretary may at any time require the Council and its members to account for all receipts and disbursements.

(d) Upon the removal or expiration of the term of office of any member of the Council, such member shall account for all receipts and disbursements and deliver all property and funds in their possession to the Council, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the Council full title to all of the property, funds, and claims vested in such member pursuant to this part.

(e) The Council may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other Council property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and if the Secretary determines such action appropriate, he or she may direct that such person or persons shall act as trustee or trustees for the Council.

§ 986.65 Marketing policy.

By the end of each fiscal year, the Council shall make a report and recommendation to the Secretary on the Council's proposed marketing policy for the next fiscal year. Each year such report and recommendation shall be adopted by the affirmative vote of at least two-thirds (2/3) of the members of the Council and shall include the following and, where applicable, on an inshell basis:

(a) Estimate of the grower-cleaned production and handler-cleaned production in the area of production for the fiscal year;

(b) Estimate of disappearance;

(c) Estimate of the improved, native, and substandard pecans;

(d) Estimate of the handler inventory on August 31, of inshell and shelled pecans;

(e) Estimate of unassessed inventory;

(f) Estimate of the trade supply, taking into consideration imports, and other factors;

(g) Preferable handler inventory of inshell and shelled pecans on August 31 of the following year;

(h) Projected prices in the new fiscal year;

(i) Competing nut supplies; and

(j) Any other relevant factors.

Authorities Relating to Research, Promotion, Data Gathering, Packaging, Grading, Compliance, and Reporting

§ 986.67 Recommendations for regulations.

Upon complying with § 986.65, Marketing policy, the Council may propose regulations to the Secretary whenever it finds that such proposed regulations may assist in effectuating the declared policy of the Act.

§ 986.68 Authority for research and promotion activities.

The Council, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects, and marketing promotion, including paid generic advertising, designed to assist, improve,

or promote the marketing, distribution, and consumption or efficient production of pecans including product development, nutritional research, and container development. The expenses of such projects shall be paid from funds collected pursuant to this part.

§ 986.69 Authorities regulating handling.

(a) The Council may recommend, subject to the approval of the Secretary, regulations that:

(1) Establish handling requirements or minimum tolerances for particular grades, sizes, or qualities, or any combination thereof, of any or all varieties or classifications of pecans during any period;

(2) Establish different handling requirements or minimum tolerances for particular grades, sizes, or qualities, or any combination thereof for different varieties or classifications, for different containers, for different portions of the production area, or any combination of the foregoing, during any period;

(3) Fix the size, capacity, weight, dimensions, or pack of the container or containers, which may be used in the packaging, transportation, sale, preparation for market, shipment, or other handling of pecans; and

(4) Establish inspection and certification requirements for the purposes of (a)(1) through (3) of this section.

(b) Regulations issued hereunder may be amended, modified, suspended, or terminated whenever it is determined:

(1) That such action is warranted upon recommendation of the Council and approval by the Secretary, or other available information; or

(2) That regulations issued hereunder no longer tend to effectuate the declared policy of the Act.

(c) The authority to regulate as put forward in this subsection shall not in any way constitute authority for the Council to recommend volume regulation, such as reserve pools, producer allotments, or handler withholding requirements which limit the flow of product to market for the purpose of reducing market supply.

(d) The Council may recommend, subject to the approval of the Secretary, rules and regulations to effectuate this subpart.

§ 986.70 Handling for special purposes.

Regulations in effect pursuant to § 986.69, Authorities regulating handling, may be modified, suspended, or terminated to facilitate handling of pecans for:

(a) Relief or charity;

(b) Experimental purposes; and

(c) Other purposes which may be recommended by the Council and approved by the Secretary.

§ 986.71 Safeguards.

The Council, with the approval of the Secretary, may establish through rules such requirements as may be necessary to establish that shipments made pursuant to § 986.70, Handling for special purposes, were handled and used for the purpose stated.

§ 986.72 Notification of regulation.

The Secretary shall promptly notify the Council of regulations issued or of any modification, suspension, or termination thereof. The Council shall give reasonable notice thereof to industry participants.

Reports, Books, and Other Records

§ 986.75 Reports of handler inventory.

Each handler shall submit to the Council in such form and on such dates as the Council may prescribe, reports showing their inventory of inshell and shelled pecans.

§ 986.76 Reports of merchantable pecans handled.

Each handler who handles merchantable pecans at any time during a fiscal year shall submit to the Council in such form and at such intervals as the Council may prescribe, reports showing the quantity so handled and such other information pertinent thereto as the Council may specify.

§ 986.77 Reports of pecans received by handlers.

Each handler shall file such reports of their pecan receipts from growers, handlers, or others in such form and at such times as may be required by the Council with the approval of the Secretary.

§ 986.78 Other handler reports.

Upon request of the Council made with the approval of the Secretary each handler shall furnish such other reports and information as are needed to enable the Council to perform its duties and exercise its powers under this part.

§ 986.79 Verification of reports.

For the purpose of verifying and checking reports filed by handlers on their operations, the Secretary and the Council, through their duly authorized representatives, shall have access to any premises where pecans and pecan records are held. Such access shall be available at any time during reasonable business hours. Authorized representatives of the Council or the Secretary shall be permitted to inspect any pecans held and any and all records of the handler with respect to matters within the purview of this part. Each handler shall maintain complete records on the receiving, holding, and disposition of all pecans. Each handler shall furnish all labor necessary to facilitate such inspections at no expense to the Council or the Secretary. Each handler shall store all pecans held by him in such manner as to facilitate inspection and shall maintain adequate storage records which will permit accurate identification with respect to inspection certificates of respective lots and of all such pecans held or disposed of theretofore. The Council, with the approval of the Secretary, may establish any methods and procedures needed to verify reports.

§ 986.80 Certification of reports.

All reports submitted to the Council as required in this part shall be certified to the Secretary and the Council as to the completeness and correctness of the information contained therein.

§ 986.81 Confidential information.

All reports and records submitted by handlers to the Council, which include data or information constituting a trade secret or disclosing the trade position, or financial condition or business operations of the handler shall be kept in the custody of one or more employees of the Council and shall be disclosed to no person except the Secretary.

§ 986.82 Books and other records.

Each handler shall maintain such records of pecans received, held and disposed of by them as may be prescribed by the Council for the purpose of performing its duties under this part. Such books and records shall be retained and be available for examination by authorized representatives of the Council and the Secretary for the current fiscal year and the preceding three (3) fiscal years.

Additional Provisions

§ 986.86 Exemptions.

(a) Any handler may handle inshell pecans within the production area free of the requirements of this part if such pecans are handled in quantities not exceeding 1,000 inshell pounds during any fiscal year.

(b) Any handler may handle shelled pecans within the production area free of the requirements of this part if such pecans are handled in quantities not exceeding 500 shelled pounds during any fiscal year.

(c) Mail order sales are not exempt sales under this part.

(d) The Council, with the approval of the Secretary, may establish such rules,

regulations, and safeguards, and require such reports, certifications, and other conditions, as are necessary to ensure compliance with this part.

§ 986.87 Compliance.

Except as provided in this subpart, no handler shall handle pecans, the handling of which has been prohibited by the Secretary in accordance with provisions of this part, or the rules and regulations thereunder.

§ 986.88 Duration of immunities.

The benefits, privileges, and immunities conferred by virtue of this part shall cease upon termination hereof, except with respect to acts done under and during the existence of this part.

§ 986.89 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remaining provisions and the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 986.90 Derogation.

Nothing contained in this part is or shall be construed to be in derogation of, or in modification of, the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 986.91 Liability.

No member or alternate of the Council nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any party under this part or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent or employee, except for acts of dishonesty, willful misconduct, or gross negligence. The Council may purchase liability insurance for its members and officers.

§ 986.92 Agents.

The Secretary may name, by designation in writing, any person, including any officer or employee of the USDA or the United States to act as their agent or representative in connection with any of the provisions of this part.

§ 986.93 Effective time.

The provisions of this part and of any amendment thereto shall become effective at such time as the Secretary may declare, and shall continue in force until terminated in one of the ways specified in § 986.94.

§ 986.94 Termination.

(a) The Secretary may at any time terminate this part.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this part whenever he or she finds that such operation obstructs or does not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this part applicable to pecans for market or pecans for handling at the end of any fiscal year whenever the Secretary finds, by referendum or otherwise, that such termination is favored by a majority of growers; *Provided*, That such majority of growers has produced more than 50 percent of the volume of pecans in the production area during such fiscal year. Such termination shall be effective only if announced on or before the last day of the then current fiscal year.

(d) The Secretary shall conduct a referendum within every five-year period beginning from the implementation of this part, to ascertain whether continuance of the provisions of this part applicable to pecans are favored by two-thirds by number or volume of growers voting in the referendum. The Secretary may terminate the provisions of this part at the end of any fiscal year in which the Secretary has found that continuance of this part is not favored by growers who, during an appropriate period of time determined by the Secretary, have been engaged in the production of pecans in the production area: *Provided*, That termination of this part shall be effective only if announced on or before the last day of the then current fiscal year.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 986.95 Proceedings after termination.

(a) Upon the termination of this part, the Council members serving shall continue as joint trustees for the purpose of liquidating all funds and property then in the possession or under the control of the Council, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The joint trustees shall continue in such capacity until discharged by the Secretary; from time to time accounting for all receipts and disbursements; delivering all funds and property on hand, together with all books and records of the Council and of the joint trustees to such person as the Secretary shall direct; and, upon the request of the Secretary, executing such assignments or other instruments necessary and appropriate to vest in such person full title and right to all of the funds, property, or claims vested in the Council or in said joint trustees.

(c) Any funds collected pursuant to this part and held by such joint trustees or such person over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the joint trustees or such other person in the performance of their duties under this subpart, as soon as practicable after the termination hereof, shall be returned to the handlers pro rata in proportion to their contributions thereto.

(d) Any person to whom funds, property, or claims have been transferred or delivered by the Council, upon direction of the Secretary, as provided in this part, shall be subject to the same obligations and duties with respect to said funds, property, or claims as are imposed upon said joint trustees.

§ 986.96 Amendments.

Amendments to this part may be proposed from time to time by the Council or by the Secretary.

§ 986.97 Counterparts.

Handlers may sign an agreement with the Secretary indicating their support for this marketing order. This agreement may be executed in multiple counterparts by each handler. If more than fifty percent of the handlers, weighted by the volume of pecans handled during an appropriate period of time determined by the Secretary, enter into such an agreement, then a marketing agreement shall exist for the pecans marketing order. This marketing agreement shall not alter the terms of this part. Upon the termination of this part, the marketing agreement has no further force or effect.

§ 986.98 Additional parties.

After this part becomes effective, any handler may become a party to the marketing agreement if a counterpart is executed by the handler and delivered to the Secretary.

§ 986.99 Order with marketing agreement.

Each signatory handler hereby requests the Secretary to issue, pursuant to the Act, an order for regulating the handling of pecans in the same manner as is provided for in this agreement.

Subpart B—[Reserved]

Dated: July 27, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–18346 Filed 8–3–16; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 126

RIN 3245–AG81

HUBZone and National Defense Authorization Act for Fiscal Year 2016 Amendments

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: This direct final rule contains several amendments to the regulations governing the HUBZone Program. The U.S. Small Business Administration (SBA) is making changes to its regulations to implement section 866 of the National Defense Authorization Act for Fiscal Year 2016 (2016 NDAA). Section 866 of the 2016 NDAA made the following changes to the HUBZone program: authorized Native Hawaiian Organizations to own HUBZone small business concerns; expanded the definition of ''base closure area'' under the HUBZone program; and authorized the inclusion of ''qualified disaster areas'' under the HUBZone program. This direct final rule would implement these changes in SBA's regulations.

DATES: This rule is effective on October 3, 2016 without further action, unless significant adverse comment is received by September 6, 2016. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by RIN 3245–AG81 by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* Mariana Pardo, Director, HUBZone Program, 409 Third Street SW., Washington, DC 20416.

SBA will post all comments on *http://www.Regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.Regulations.gov*, please submit the information to Mariana Pardo, Director, HUBZone Program, 409 Third Street SW., Washington, DC 20416 and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination of whether the information will be published or not.

FOR FURTHER INFORMATION CONTACT: Mariana Pardo, Director, HUBZone Program, 409 Third Street SW., Washington, DC 20416, 202–205–2985, *hubzone@sba.gov.*

SUPPLEMENTARY INFORMATION:

This direct final rule implements several conforming amendments to SBA regulations from the National Defense Authorization Act for Fiscal Year 2016, Public Law 114–92, 129 Stat. 726, November 25, 2015 (2016 NDAA). The 2016 NDAA became effective on November 25, 2015. Section 866 of the 2016 NDAA made the following changes to the HUBZone program: authorized Native Hawaiian Organizations (NHOs) to own HUBZone small business concerns; expanded the definition of ''base closure area'' under the HUBZone program; and authorized the inclusion of ''qualified disaster areas'' under the HUBZone program.

SBA seeks to amend its HUBZone regulations to mirror the changes the 2016 NDAA made to the Small Business Act, and to avoid public confusion and possible misinterpretations of SBA's HUBZone program. Since these are conforming amendments, with no extraneous interpretation or other expanded materials, SBA expects no significant adverse comments. Based on that fact, SBA has decided to proceed with a direct final rule giving the public 30 days to comment. If SBA receives a significant adverse comment during the comment period, SBA will withdraw the rule, and proceed with a new proposed rule. The statute makes the following changes:

- *General Summary*—Expands the HUBZone program to assist small businesses in disasters areas and base closure areas and provides equal treatment under the HUBZone program for small businesses owned by NHOs.
- ''*Major Disaster*'' Areas—Treats major disaster areas as HUBZones for a period of 5 years. Applies to census tracts and nonmetropolitan counties (NMC) located in ''major disaster'' areas, if such census tract or NMC lost its HUBZone eligibility within the past 5 years or will lose its HUBZone eligibility within 2 years after the major disaster.
- ''*Catastrophic Incident'' Areas*—Treats areas where catastrophic incidents occurred as HUBZones for a period of 10 years. Applies to census tracts and NMCs located in areas where catastrophic incidents occurred, if such census tract or NMC lost its HUBZone eligibility within the past 5 years or will lose its HUBZone eligibility within 2 years after the catastrophic incident.
- *Base Closures Areas (BRAC)*—Extends HUBZone eligibility for BRACs to 8 years (up from 5) and expands HUBZone eligibility to census tracts and NMCs that (1) contain BRACs, (2) intersect with BRACs, (3) are contiguous to BRACs, or (4) are contiguous to any census tract or NMC described in (1) through (3).
- *Native Hawaiian Organizations (NHO)*—Allows small businesses owned by NHOs to qualify as HUBZone companies.

In order to implement the changes made by section 866 of the 2016 NDAA, SBA is amending §§ 126.103 and 126.200 of its regulations.

SBA is amending § 126.103 by revising the definitions of the terms ''Base closure area'', ''HUBZone'', ''HUBZone small business concern (HUBZone SBC)'', and ''Qualified base closure area'', and by adding new definitions for the terms ''Native Hawaiian Organization (NHO)'' and ''Qualified disaster area''. This rules adopts the definitions of these terms provided in amended sections 3(p)(1), 3(p)(3), 3(p)(4)(D), and new section 3(p)(4)(E), of the Small Business Act, 15 U.S.C. 632(p)(1), 632(p)(3), 632(p)(4)(D), 632(p)(4)(E).

SBA is amending § 126.200 by revising paragraph (b)(1) to implement the statutory authority for HUBZone small business concerns to be wholly or partly owned by NHOs. This rule adopts the language provided in new section 3(p)(3)(D) of the Small Business Act, 15 U.S.C. 632(p)(3)(D).

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this direct final rule does not constitute a significant regulatory action under Executive Order 12866. This rule is also not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For the purposes of Executive Order 13132, SBA has determined that this direct final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132, Federalism, SBA has determined that this direct final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Within the meaning of RFA, SBA certifies that this direct rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 126

Administrative practice and procedure, Government procurement, Small businesses.

Accordingly, for the reasons stated in the supplementary information, SBA amends 13 CFR part 126 as follows:

PART 126—HUBZONE PROGRAM

■ 1. The authority for 13 CFR part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p), 644 and 657a.

■ 2. Amend § 126.103 by revising the definitions of ''Base closure area'', ''HUBZone'', ''HUBZone small business concern (HUBZone SBC)'', and ''Qualified base closure area'' and by adding new definitions alphabetically for the terms ''Native Hawaiian Organization (NHO)'' and ''Qualified disaster area'', to read as follows:

§ 126.103 What definitions are important in the HUBZone program?

* * * * *

Base closure area means:

(1) Lands within the external boundaries of a military installation that were closed through a privatization process under the authority of:

(i) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Pub. L. 101–510; 10 U.S.C. 2687 note);

(ii) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100–526; 10 U.S.C. 2687 note);

(iii) 10 U.S.C. 2687; or

(iv) Any other provision of law authorizing or directing the Secretary of Defense or the Secretary of a military department to dispose of real property at the military installation for purposes relating to base closures of redevelopment, while retaining the authority to enter into a leaseback of all or a portion of the property for military use;

(2) The census tract or nonmetropolitan county (excluding any qualified census tract and any qualified non-metropolitan county) in which the lands described in paragraph (1) of this definition are wholly contained;

(3) A census tract or nonmetropolitan county (excluding any qualified census tract and any qualified non-metropolitan county) the boundaries of which intersect the area described in paragraph (1) of this definition; and

(4) A census tract or nonmetropolitan county (excluding any qualified census tract and any qualified non-metropolitan county) the boundaries of which are contiguous to the area described in paragraph (2) or paragraph (3) of this definition.

* * * * *

HUBZone means a historically underutilized business zone, which is an area located within one or more:

(1) Qualified census tracts;

(2) Qualified non-metropolitan counties;

(3) Lands within the external boundaries of an Indian reservation;

(4) Qualified base closure areas;

(5) Redesignated areas; or

(6) Qualified disaster areas.

HUBZone small business concern (HUBZone SBC) means an SBC that is:

(1) At least 51% owned and controlled by 1 or more persons, each of whom is a United States citizen;

(2) An ANC owned and controlled by Natives (as determined pursuant to section 29(e)(1) of the ANCSA, 43 U.S.C. 1626(e)(1));

(3) A direct or indirect subsidiary corporation, joint venture, or partnership of an ANC qualifying pursuant to section 29(e)(1) of the ANCSA, 43 U.S.C. 1626(e)(1)), if that subsidiary, joint venture, or partnership is owned and controlled by Natives (as determined pursuant to section 29(e)(2) of the ANCSA, 43 U.S.C. 1626(e)(2));

(4) Wholly owned by one or more Indian Tribal Governments, or by a corporation that is wholly owned by one or more Indian Tribal Governments;

(5) An SBC that is owned in part by one or more Indian Tribal Governments or in part by a corporation that is wholly owned by one or more Indian Tribal Governments, if all other owners are either United States citizens or SBCs;

(6) An SBC that is wholly owned by a CDC or owned in part by one or more CDCs, if all other owners are either United States citizens or SBCs;

(7) An SBC that is a small agricultural cooperative organized or incorporated in the United States, wholly owned by one or more small agricultural cooperatives organized or incorporated in the United States or owned in part by one or more small agricultural cooperatives organized or incorporated in the United States, provided that all other owners are small business concerns or United States citizens;

(8) Wholly owned by one or more Native Hawaiian Organizations, or by a corporation that is wholly owned by one or more Native Hawaiian Organizations; or

(9) Owned in part by one or more Native Hawaiian Organizations or by a corporation that is wholly owned by one or more Native Hawaiian Organizations, if all other owners are either United States citizens or small business concerns.

* * * * *

Native Hawaiian Organization (NHO) means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organziation chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

* * * * *

Qualified base closure area means:

(1) A base closure area that is treated as a HUBZone for a period of not less than 8 years, beginning on the date the military installation undergoes final closure and ending on the latter of the following:

(i) The date the Administrator makes a final determination as to whether or not to implement the applicable designations in accordance with the

results of the decennial census conducted after the area was initially designated as a base closure area; or

(ii) The date 8 years after the base closure area was initially designated as a HUBZone.

(2) However, if a base closure area was treated as a HUBZone at any time after 2010, it shall be treated as a HUBZone until such time as the Administrator makes a final determination as to whether or not to implement the applicable designations in accordance with the results of the 2020 decennial census.

* * * * *

Qualified disaster area means any census tract or nonmetropolitan county located in an area for which the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), or located in an area in which a catastrophic incident has occurred if such census tract or nonmetropolitan county ceased to be categorized as either a qualified census tract or qualified nonmetropolitan county, as applicable, during the period beginning 5 years before the date on which the President declared the major disaster or the catastrophic incident occurred and ending 2 years after such date. However, the following exceptions apply:

(1) In the case of a major disaster declared by the President, a census tract or nonmetropolitan county may be a qualified disaster area only during the 5-year period beginning on the date on which the President declared the major disaster for the area in which the census tract or nonmetropolitan county is located; and

(2) In the case of a catastrophic incident, a census tract or nonmetropolitan county may be a qualified disaster area only during the 10-year period beginning on the date on which the catastrophic incident occurred in the area in which the census tract or nonmetropolitan county is located.

* * * * *

■ 3. Amend § 126.200 by revising paragraph (b)(1) to read as follows:

§ 126.200 What requirements must a concern meet to receive SBA certification as a qualified HUBZone SBC?

* * * * *

(b) *Concerns owned by U.S. citizens, ANCs, NHOs, or CDCs.*—(1) *Ownership.* (i) The concern must be at least 51% unconditionally and directly owned and controlled by persons who are United States citizens;

Example: A concern that is a partnership owned 50% by an individual who is a United States citizen and 50% by someone who is not a United States citizen, is not an eligible concern because it is not at least 51% owned by United States citizens.

(ii) The concern must be an ANC owned and controlled by Natives (determined pursuant to section 29(e)(1) of the ANCSA); or a direct or indirect subsidiary corporation, joint venture, or partnership of an ANC qualifying pursuant to section 29(e)(1) of ANCSA, if that subsidiary, joint venture, or partnership is owned and controlled by Natives (determined pursuant to section 29(e)(2)) of the ANCSA);

(iii) The concern must be wholly owned by one or more NHOs, or by a corporation that is wholly owned by one or more NHOs, or owned in part by one or more NHOs, if all other owners are either United States citizens or small business concerns; or

(iv) The concern must be wholly owned by a CDC, or owned in part by one or more CDCs, if all other owners are either United States citizens or SBCs.

* * * * *

Dated: July 22, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–18251 Filed 8–3–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8472; Directorate Identifier 2014–NM–106–AD; Amendment 39–18603; AD 2016–16–05]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes. This AD was prompted by a design review that revealed a hot spot may develop in the main fuel tank under certain failure conditions of the solenoid of the level control pilot valve, the reed switch of the main tank overflow valve, the level float switch of the collector tank, or the solenoid of the main tank fueling shut-off valve. This AD requires installing fuses in the wiring of the solenoid of the level control pilot valve, the reed switch of the main tank overflow valve, the level float switch of the collector tank, and the solenoid of the main tank fueling shut-off valve, as applicable. This AD also requires accomplishing concurrent actions and revising the airplane maintenance or inspection program, as applicable, by incorporating fuel airworthiness limitation items and critical design configuration control limitations (CDCCLs). We are issuing this AD to prevent an ignition source in the main fuel tank vapor space, which could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective September 8, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 8, 2016.

ADDRESSES: For service information identified in this final rule, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8472.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8472; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA

98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes. The NPRM published in the **Federal Register** on January 20, 2016 (81 FR 3042) (''the NPRM'').

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0107, dated May 7, 2014 (referred to after this the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes. The MCAI states:

> Prompted by an accident * * *, the Federal Aviation Administration (FAA) published Special Federal Aviation Regulation (SFAR) 88 [(66 FR 23086, May 7, 2001)], and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12.
>
> The review conducted by Fokker Services on the Fokker F28 design in response to these regulations revealed that, under certain failure conditions of the solenoid of the level control pilot valve, the main tank overflow valve reed switch, the collector tank level float switch or the main tank fuelling shut-off valve solenoid, a hot spot may develop in the tank.
>
> This condition, if not corrected, could create an ignition source in the main tank vapour space, possibly resulting in a fuel tank explosion and consequent loss of the aeroplane.
>
> To address this potential unsafe condition, Fokker Services developed a modification to the wiring (installation of fuses) of the affected components.
>
> For the reasons described above, this [EASA] AD requires the installation of fuses in the wiring of the affected components [the solenoid of the level control pilot valve, the reed switch of the main tank overflow valve, the level float switch of the collector tank, and the solenoid of the main tank fuelling shut-off valve] and, subsequently, the implementation of the associated Critical Design Configuration Control Limitations (CDCCL) items [and revision of the maintenance or inspection program].
>
> More information on this subject can be found in Fokker Services All Operators Message AOF28.038#02.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8472.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Explanation of Changes Made to This AD

We revised certain document citations throughout this AD to meet the Office of the Federal Register's requirements for materials incorporated by reference. These changes are for formatting purposes and do not affect the requirements of this AD.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Fokker Services B.V. has issued Manual Change Notification—Maintenance Documentation MCNM–F28–035, Rev 1, dated January 9, 2014; and Fokker Service Bulletin SBF28–28–049, Revision 2, dated November 3, 2014. This service information describes procedures for installing fuses packed in jiffy junctions (*i.e.,* crimped wire in-line junction device(s)).

Fokker Services B.V. has also issued Manual Change Notification—Maintenance Documentation MCNM–F28–034 Rev 1, dated January 9, 2014; and Service Bulletin SBF28–28–051, Revision 2, dated November 3, 2014. This service information describes procedures for reworking the wiring and installing fuses packed in jiffy junctions in the power supply wire of the solenoid in the left and right level control pilot valves.

In addition, Fokker Services B.V. has issued Proforma Service Bulletin SBF28–28–056, dated January 9, 2014; and F28 Appendix Service Bulletin SBF28–28–056/APP01, dated July 15, 2014. This service information describes procedures for installing fuses in the wiring of the solenoid of the level control pilot valve, the reed switch of the main tank overflow valve, the level float switch of the collector tank, and the solenoid of the main tank fueling shut-off valve. This service information also describes certain CDCCLs.

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

Costs of Compliance

We estimate that this AD affects 5 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation of fuses and revision to maintenance or inspection program.	21 work-hours × $85 per hour = $1,785	$5,320	$7,105	$35,525

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–16–05 Fokker Services B.V.: Amendment 39–18603; Docket No. FAA–2015–8472; Directorate Identifier 2014–NM–106–AD.

(a) Effective Date

This AD is effective September 8, 2016.

(b) Affected ADs

This AD affects AD 2011–17–03, Amendment 39–16767 (76 FR 50115, August 12, 2011) (''AD 2011–17–03''); and AD 2011–21–01, Amendment 39–16824 (76 FR 63156, October 12, 2011) (''AD 2011–21–01'').

(c) Applicability

This AD applies to Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes, certificated in any category, all serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by a design review that revealed a hot spot may develop in the main fuel tank under certain failure conditions of the solenoid of the level control pilot valve, the reed switch of the main tank overflow valve, the level float switch of the collector tank, or the solenoid of the main tank fueling shut-off valve. We are issuing this AD to prevent an ignition source in the main fuel tank vapor space, which could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Modification of Main Fuel Tank Wiring

Within 24 months after the effective date of this AD, install fuses in the wiring of the solenoid of the level control pilot valve, the reed switch of the main tank overflow valve, the level float switch of the collector tank, and the solenoid of the main tank fueling shut-off valve, as applicable, in accordance with the Accomplishment Instructions of Fokker F28 Appendix Service Bulletin SBF28–28–056/APP01, dated July 15, 2014, and Fokker Proforma Service Bulletin SBF28–28–056, dated January 9, 2014.

(h) Concurrent Requirements

Prior to or concurrently with accomplishing the requirements of paragraph (g) of this AD, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD. Accomplishment of the actions in this paragraph terminates the requirement of paragraph (g) of AD 2011–17–03.

(1) Install fuses packed in jiffy junctions (*i.e.,* crimped wire in-line junction device(s)), in accordance with the Accomplishment Instructions of the service information identified in paragraph (h)(1)(i) and the instructions of the service information identified in paragraph (h)(1)(ii) of this AD.

(i) Fokker Service Bulletin SBF28–28–049, Revision 2, dated November 3, 2014.

(ii) Fokker Manual Change Notification—Maintenance Documentation MCNM–F28–035, Rev 1, dated January 9, 2014.

Note 1 to paragraph (h)(1) of this AD: Accomplishment of this action is required by AD 2011–17–03.

(2) Rework the wiring and install fuses packed in jiffy junctions in the power supply wire of the solenoid in the left and right level control pilot valves, in accordance with the Accomplishment Instructions of the service information identified in paragraph (h)(2)(i) and the instructions of the service information identified in paragraph (h)(2)(ii) of this AD. Accomplishment of the actions in this paragraph terminates the requirement of paragraph (g) of AD 2011–21–01, for the actions specified in the Accomplishment Instructions of the service information identified in paragraph (h)(2)(i) and the instructions of the service information identified in paragraph (h)(2)(ii) of this AD only.

(i) Fokker Manual Change Notification—Maintenance Documentation MCNM–F28–034, Rev 1, dated January 9, 2014.

(ii) Fokker Service Bulletin SBF28–28–051, Revision 2, dated November 3, 2014.

Note 2 to paragraph (h)(2) of this AD: Accomplishment of this action is required by AD 2011–21–01.

(i) Revision of Maintenance or Inspection Program

Before further flight after completing the installation specified in paragraph (g) of this AD, or within 30 days after the effective date of this AD, whichever occurs later: Revise the airplane maintenance or inspection program, as applicable, by incorporating the critical design configuration control limitations (CDCCLs) specified in paragraph 1.L.(1)(c) of Fokker Proforma Service Bulletin SBF28–28–056, dated January 9, 2014.

(j) No Alternative CDCCLs

After accomplishing the revision required by paragraph (i) of this AD, no alternative CDCCLs may be used unless the CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance:* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Fokker Services B.V.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0107, dated May 7, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8472.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Fokker F28 Appendix Service Bulletin SBF28–28–056/APP01, dated July 15, 2014.

(ii) Fokker Manual Change Notification—Maintenance Documentation MCNM–F28–034 Rev 1, dated January 9, 2014.

(iii) Fokker Manual Change Notification—Maintenance Documentation MCNM–F28–035, Rev 1, dated January 9, 2014.

(iv) Fokker Proforma Service Bulletin SBF28–28–056, dated January 9, 2014.

(v) Fokker Service Bulletin SBF28–28–049, Revision 2, dated November 3, 2014.

(vi) Fokker Service Bulletin SBF28–28–051, Revision 2, dated November 3, 2014.

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 21, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–18255 Filed 8–3–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5594; Directorate Identifier 2014–NM–169–AD; Amendment 39–18596; AD 2016–15–05]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Dassault Aviation Model FALCON 900EX and FALCON 2000EX airplanes. This AD was prompted by a review that identified a nonconformity between the torque value applied to the screw-nuts of aileron servo actuators, and the torque value specified by the type design. This AD requires replacing certain aileron servo actuators with serviceable servo actuators. We are issuing this AD to prevent desynchronization between two servo actuator barrels, which could lead to reduced control of the airplane during roll maneuvers at low altitude.

DATES: This AD is effective September 8, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 8, 2016.

ADDRESSES: For service information identified in this final rule, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5594.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5594; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1139.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Dassault Aviation Model FALCON 900EX and FALCON 2000EX airplanes. The NPRM published in the **Federal Register** on April 20, 2016 (81 FR 23214) (''the NPRM'').

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0184, dated August 7, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Dassault Aviation Model FALCON 900EX and FALCON 2000EX airplanes. The MCAI states:

> A quality review of recently delivered aeroplanes identified a non-conformity concerning the torque value applied to screw-nuts of aileron servo actuators, which was inconsistent with the value specified by the type design.
>
> The subsequent investigation demonstrated that the washer which is bent on nut and rod ensures the affected selector synchronisation between two servo actuator barrels for a minimum of 2,000 flight hours (FH). After this period, a possible de-synchronization of the affected selector assembly may occur.
>
> This condition, if not corrected, could lead to reduced control of the aeroplane during roll manoeuvers at low altitude.
>
> To address this potential unsafe condition, Dassault Aviation issued Service Bulletin (SB) F900EX–476 Revision 1 and SB F2000EX–350 to provide replacement instructions for the affected aileron servo actuators, as applicable to aeroplane type.
>
> For the reasons described above, this [EASA] AD requires replacement of affected aileron servo actuators with serviceable parts. This [EASA] AD also identifies that the affected aileron servo actuators can be re-qualified as serviceable parts only after a refurbishment accomplished by an approved maintenance organization.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5594.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

• Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed Dassault Service Bulletins F900EX–476, Revision 1, dated June 25, 2014; and F2000EX–350, dated April 9, 2014. The service information describes procedures for removing the aileron servo actuator. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 284 airplanes of U.S. registry.

We also estimate that it will take about 14 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $43,460 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $12,680,600, or $44,650 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–15–05 Dassault Aviation: Amendment 39–18596; Docket No. FAA–2016–5594; Directorate Identifier 2014–NM–169–AD.

(a) Effective Date

This AD is effective September 8, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Dassault Aviation Model FALCON 900EX and FALCON 2000EX airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by a review that identified a nonconformity between the torque value applied to the screw-nuts of aileron servo actuators, and the torque value specified by the type design. We are issuing this AD to prevent desynchronization between two servo actuator barrels, which could lead to reduced control of the airplane during roll maneuvers at low altitude.

(f) Compliance

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

(g) Replacement of Aileron Servo Actuator

At the later of the applicable times specified in paragraphs (g)(1) and (g)(2) of this AD: Replace each affected aileron servo actuator, as identified in figure 1 to paragraph (g) of this AD (for Model FALCON 900EX airplanes) or figure 2 to paragraph (g) of this AD (for Model FALCON 2000EX airplanes), with a serviceable part in accordance with the Accomplishment Instructions of Dassault Service Bulletin F900EX–476, Revision 1, dated June 25, 2014; or Dassault Service Bulletin F2000EX–350, dated April 9, 2014; except where Dassault Service Bulletin F900EX–476, Revision 1, dated June 25, 2014; or F2000EX–350, dated April 9, 2014; specify to ''remove'' the applicable aileron servo actuator, this AD requires replacement of the applicable aileron servo actuator. A serviceable part is one that is specified in the ''New P/N'' column in the table of paragraph 3., ''Material Information,'' of Dassault Service Bulletin F900EX–476, Revision 1, dated June 25, 2014; or Dassault Service Bulletin F2000EX–350, dated April 9, 2014.

(1) For airplanes on which the aileron servo actuator was not replaced during maintenance: At the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) Within 25 months or 1,640 flight hours, whichever occurs first, since the date of issuance of the original airworthiness certificate or date of issuance for the original export certificate of airworthiness.

(ii) Within 30 days after the effective date of this AD.

(2) For airplanes on which the aileron servo actuator was replaced during maintenance: At the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Within 1,640 flight hours after replacement of the aileron servo actuator during maintenance.

(ii) Within 30 days after the effective date of this AD.

Note 1 to paragraph (g) of this AD: The affected aileron servo actuators are known to be installed before airplane delivery on Model FALCON 900EX airplanes having serial numbers (S/Ns) 265 through 270 inclusive, S/N 272 and S/N 273; Model FALCON 2000EX airplanes having S/N 243, S/Ns 246 through 258 inclusive, S/Ns 260 through 263 inclusive, S/Ns 702 through 710 inclusive and S/N 714; and during a maintenance operation on Model FALCON 900EX airplane having S/N 177, after airplane delivery.

FIGURE 1 TO PARAGRAPH (g) OF THIS AD—AFFECTED ACTUATORS ON MODEL FALCON 900EX AIRPLANES

Model FALCON 900EX airplane having S/N—	With actuator part number (P/N)—	And actuator S/N—
177	103117–06	5003
265	103117–06	5002
266	103117–05	5000
	103117–06	5007
267	103117–05	5001
268	103117–05	5004
269	103117–05	5005
	103117–06	5011
270	103117–06	5012
	103117–13	5017
272	103117–05	5010
	103117–14	5016
273	103117–13	5014
	103117–14	5020

FIGURE 2 TO PARAGRAPH (g) OF THIS AD—AFFECTED ACTUATORS ON MODEL FALCON 2000EX AIRPLANES

Model FALCON 2000EX airplane having S/N—	With actuator P/N—	And actuator S/N—
243	103151–08	5002
246	103151–07	5000
	103151–08	5003
247	103151–07	5001
	103151–08	5006
248	103151–07	5004
	103151–08	5007
249	103151–07	5005
	103151–08	5012
250	103151–07	5008
	103151–08	5013
251	103151–07	5009
	103151–08	5014
252	103151–07	5011
	103151–08	5016
253	103151–07	5010
	103151–08	5015
254	103151–08	5017
	103151–07	5018
255	103151–07	5019
	103151–08	5022
256	103151–07	5021
	103151–08	5023
257	103151–08	5024
	103151–07	5026
258	103151–07	5027
	103151–08	5033
260	103151–08	5032
	103151–07	5035
261	103151–08	5037
	103151–07	5041
262	103151–08	5039
	103151–07	5047
263	103151–08	5044
	103151–09	5064
702	103151–07	5029
703	103151–07	5034
	103151–08	5042
704	103151–08	5036
	103151–07	5040
705	103151–08	5038
	103151–07	5046
706	103151–08	5043
	103151–07	5048
707	103151–07	5054
	103151–08	5057
708	103151–08	5045
	103151–07	5050
709	103151–08	5074

FIGURE 2 TO PARAGRAPH (g) OF THIS AD—AFFECTED ACTUATORS ON MODEL FALCON 2000EX AIRPLANES—Continued

Model FALCON 2000EX airplane having S/N—	With actuator P/N—	And actuator S/N—
710	103151–07	5051
	103151–08	5053
714	103151–09	5065
	103151–10	5067

(h) Parts Installation Limitation

As of the effective date of this AD, no aileron servo actuator having a P/N and S/N listed in figure 1 to paragraph (g) of this AD or figure 2 to paragraph (g) of this AD is allowed to be installed on any airplane, unless the mark ''D1'' is included on the actuator repair placard.

Note 2 to paragraph (h) of this AD: The mark ''D1'' on an aileron servo actuator repair placard indicates that the affected part has been refurbished by an approved maintenance organization and is qualified as a serviceable part.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANM–116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1139. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0184, dated August 7, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5594.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Dassault Service Bulletin F900EX–476, Revision 1, dated June 25, 2014.

(ii) Dassault Service Bulletin F2000EX–350, dated April 9, 2014.

(3) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 21, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–18167 Filed 8–3–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–0466; Directorate Identifier 2014–NM–188–AD; Amendment 39–18604; AD 2016–16–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A300 B4–603, B4–605R, and B4–622R airplanes; and Model A310–304, –324, and –325 airplanes. This AD was prompted by a report of a crack found on door frame (FR) 73A between stringers 24 and 25. This AD requires inspections around the rivet heads of the seal retainer run-out holes at certain frames and corrective actions if necessary. We are issuing this AD to detect and correct cracking of the door frame, which could result in reduced structural integrity of the airplane.

DATES: This AD is effective September 8, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 8, 2016.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0466.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0466; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A300 B4–603, B4–605R, and B4–622R airplanes; and Model A310–304, -324, and -325 airplanes. The NPRM published in the **Federal Register** on February 18, 2016 (81 FR 8155) (''the NPRM''). The NPRM was prompted by a report of a crack found on door FR 73A between stringers 24 and 25. The NPRM proposed to require inspections around the rivet heads of the seal retainer run-out holes at certain frames and corrective actions if necessary. We are issuing this AD to detect and correct cracking of the door frame, which could result in reduced structural integrity of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2014–0202R1, dated September 19, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A300 B4–603, B4–605R, and B4–622R airplanes; and Model A310–304, –324, and –325 airplanes The MCAI states:

> During the preparation phase for conversion of an A300–600 aeroplane from passenger to freighter configuration, a crack was detected on door frame (FR) 73A, between stringer (STRG) 24 and STRG 25.
>
> DGAC [Direction Générale de l'Aviation Civile] France had issued AD 1999–013–276R1 to require inspections at FR 73A in accordance with the instructions of Airbus Service Bulletin (SB) A310–53–2107 or SB A300–53–6116, as applicable. However, the new crack was found in an area not covered by the existing inspection and is therefore addressed by this new [EASA] AD. (DGAC France AD 1999–013–276R1 remains in place).
>
> Further investigations identified that, on A300–600 aeroplanes, the areas at FR 56A and FR 57A have the same design and material as at FR 73A.
>
> This condition, if not detected and corrected, could affect the structural integrity of the airframe.
>
> For the reasons described above, this [EASA] AD requires repetitive [high frequency eddy current (HFEC)] inspections of the rivet heads of the seal retainer run out holes to detect cracks and, depending on findings, accomplishment of corrective actions [repair].
>
> Even though no crack has been identified at FR 56A and FR 57A, as a preventive measure, the inspection is extended to these areas. On A310 aeroplanes, only the area at FR 73A needs to be inspected.
>
> This [EASA] AD is revised to reduce the applicability to aeroplanes in post-MOD 06924 configuration.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0466.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM and the FAA's response to the comment.

Request To Reduce Compliance Time

An anonymous commenter asked why the NPRM has not yet been enacted. The commenter stated that they do not want to be on a plane that lacks structural integrity because of cracks on the door frame.

ADs are federal regulations that have the force and effect of law. In simple terms, the Administrative Procedure Act (APA), Title 5 of the United States Code (5 U.S.C.) § 553, requires all regulatory agencies such as the FAA to provide the public with notice and time for comment prior to issuing a regulation. ADs are issued in accordance with the public rulemaking procedures of the APA, FAA procedures in 14 CFR part 11, and several other relevant regulations. For this AD, we did not substantiate that a critical, immediate safety of flight problem exists that would warrant issuing a rule without prior notice or opportunity for public comment. We have not changed this AD in this regard.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletins A300–53–6175 and A310–53–2138, both dated May 28, 2014. The service information describes procedures for doing HFEC inspections around the rivet heads of the seal retainer run-out holes at certain frame locations on the left-hand and right-hand sides. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 24 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	11 work-hours × $85 per hour = $935 per inspection cycle.	$0	$935 per inspection cycle	$22,440 per inspection cycle.

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

Authority for this Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–16–06 Airbus: Amendment 39–18604; Docket No. FAA–2016–0466; Directorate Identifier 2014–NM–188–AD.

(a) Effective Date

This AD is effective September 8, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A300 B4–603, A300 B4–605R, A300 B4–622R, A310–304, A310–324, and A310–325 airplanes; certificated in any category; all manufacturer serial numbers (MSNs) in post-modification (MOD) 06924 configuration, except MSNs 464, 477, 479, 481, 482, 483, 484, and 488.

Note 1 to paragraph (c) of this AD: MSNs 464, 477, 479, 481, 482, 483, 484 and 488 partially embodied MOD 06924 by means of modification proposal D05902.

(d) Subject

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

(e) Reason

This AD was prompted by a report of a crack found on door frame (FR) 73A between stringers 24 and 25. We are issuing this AD to detect and correct cracking of the door frame, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Inspections for Cracking

At the later of the compliance times specified in paragraphs (g)(1) and (g)(2) of this AD: Do a high frequency eddy current (HFEC) inspection for any crack around the rivet heads of the seal retainer run-out holes at FR 56A, FR 57A, and FR 73A, left-hand (LH) and right-hand (RH) sides on Model A300–600 airplanes; and at FR 73A, LH and RH sides on Model A310 airplanes; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–53–2138, dated May 28, 2014; or Airbus Service Bulletin A300–53–6175, dated May 28, 2014; as applicable. Repeat the HFEC inspection thereafter at intervals not to exceed 7,500 flight cycles.

(1) Before the accumulation of 32,000 total flight cycles.

(2) Within 36 months after the effective date of this AD, or before the accumulation of 36,000 total flight cycles, whichever occurs first.

(h) Corrective Actions

If any crack is found during any inspection required by paragraph (g) of this AD, repair before further flight using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

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

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2014–0202R1, dated September 19, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0466.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Service Bulletin A300–53–6175, dated May 28, 2014.

(ii) Airbus Service Bulletin A310–53–2138, dated May 28, 2014.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 21, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–18254 Filed 8–3–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5459; Directorate Identifier 2015–NM–148–AD; Amendment 39–18597; AD 2016–15–06]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. This AD was prompted by a design review, which found that the burst pressure of the flexible hose used to vent oxygen from the high-pressure relief valve of the oxygen cylinder overboard is lower than the opening pressure of the high-pressure relief valve. This AD requires replacement of flexible relief hoses for the crew oxygen bottles with new metal design relief hoses. We are issuing this AD to prevent the accumulation of excess oxygen in an enclosed space, which could, if near a source of ignition, cause an uncontrolled oxygen-fed fire.

DATES: This AD is effective September 8, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 8, 2016.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5459.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5459; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Fabio Buttitta, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7303; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. The NPRM published in the **Federal Register** on April 12, 2016 (81 FR 21491) (''the NPRM''). The NPRM was prompted by a design review, which found that the burst pressure of the flexible hose used to vent oxygen from the high-pressure relief valve of the oxygen cylinder overboard is lower than the opening pressure of the high-pressure relief valve. This pressure difference could cause the flexible hose to burst before it is able to vent excess oxygen overboard. The NPRM proposed to require replacement of flexible relief hoses for the crew oxygen bottles with new metal design relief hoses. We are issuing this AD to prevent the accumulation of excess oxygen in an enclosed space, which could, if near a source of ignition, cause an uncontrolled oxygen-fed fire.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2015–25, dated September 10, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. The MCAI states:

> A design review found that the burst pressure of the flexible hose used to vent oxygen from the high-pressure relief valve of the oxygen cylinder overboard is lower than the opening pressure of the high-pressure relief valve. This could cause the flexible hose to burst before it is able to vent the excess oxygen overboard. If an ignition source is present, the accumulation of oxygen in an enclosed space may result in an uncontrolled oxygen-fed fire.
>
> This [Canadian] AD mandates the replacement of the oxygen [flexible] hose assembly with a new design oxygen [metal] hose assembly.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5459.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public. We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Bombardier, Inc. has issued the following service information:

- Service Bulletin 700–35–013, Revision 01, dated July 22, 2015.
- Service Bulletin 700–35–5001, Revision 01, dated July 22, 2015;
- Service Bulletin 700–35–6001, Revision 01, dated July 22, 2015; and
- Service Bulletin 700–1A11–35–012, Revision 01, dated July 22, 2015.

The service information describes procedures to replace the flexible oxygen hoses with metal hoses. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 73 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification	3 work-hours × $85 per hour = $255	$14,483	$14,738	$1,075,874

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–15–06 Bombardier, Inc.: Amendment 39–18597; Docket No. FAA–2016–5459; Directorate Identifier 2015–NM–148–AD.

(a) Effective Date

This AD is effective September 8, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category, having serial numbers (S/Ns) 9002 through 9704 inclusive, and 9998.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Reason

This AD was prompted by a design review, which found that the burst pressure of the flexible hose used to vent oxygen from the high-pressure relief valve of the oxygen cylinder overboard is lower than the opening pressure of the high-pressure relief valve. This pressure difference could cause the flexible hose to burst before it is able to vent excess oxygen overboard. We are issuing this AD to prevent the accumulation of excess oxygen in an enclosed space, which could, if near a source of ignition, cause an uncontrolled oxygen-fed fire.

(f) Compliance

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

(g) Modification

Within 2,500 flight hours or 42 months, whichever occurs first, after the effective date of this AD, incorporate Bombardier Modsum R700T400542 by replacing the oxygen flexible relief hoses for the crew oxygen bottles with new metal design hoses, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (g)(1) through (g)(4) of this AD. Airplanes with serial numbers listed in table 1 of paragraph 1, ''Planning information,'' of the service information specified in paragraphs (g)(2) and (g)(4) of this AD have incorporated Modsum R700T400542 and meet the requirements of this paragraph.

(1) For Model BD–700–1A10 airplanes having S/Ns 9002 through 9312 inclusive, 9314 through 9380 inclusive, and 9384 through 9429 inclusive: Bombardier Service Bulletin 700–35–013, Revision 01, dated July 22, 2015.

(2) For Model BD–700–1A10 airplanes having S/Ns 9313, 9381, and 9432 through 9704 inclusive: Bombardier Service Bulletin 700–35–6001, Revision 01, dated July 22, 2015.

(3) For Model BD–700–1A11 airplanes having S/Ns 9127 through 9383 inclusive, 9389 through 9400 inclusive, 9404 through 9431 inclusive, and 9998: Bombardier Service Bulletin 700–1A11–35–012, Revision 01, dated July 22, 2015.

(4) For Model BD–700–1A11 airplanes having S/Ns 9386, 9401, and 9445 through 9702 inclusive: Bombardier Service Bulletin 700–35–5001, Revision 01, dated July 22, 2015.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install on any airplane oxygen hoses in the low-pressure/high-pressure discharge system with part numbers listed in the ''Used Part No.'' column of Section 3.A, ''Kit,'' of the applicable service information specified in paragraphs (g)(1) through (g)(4) of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the applicable service information identified in paragraphs (i)(1) through (i)(4) of this AD, which are not incorporated by reference in this AD.

(1) Bombardier Service Bulletin 700–35–013, dated February 20, 2015;

(2) Bombardier Service Bulletin 700–35–5001, dated February 20, 2015;

(3) Bombardier Service Bulletin 700–35–6001, dated February 20, 2015; and

(4) Bombardier Service Bulletin 700–1A11–35–012, dated February 20, 2015.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2015–25, dated September 10, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5459.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier, Inc. Service Bulletin 700–35–013, Revision 01, dated July 22, 2015.

(ii) Bombardier, Inc. Service Bulletin 700–35–5001, Revision 01, dated July 22, 2015.

(iii) Bombardier Service Bulletin 700–35–6001, Revision 01, dated July 22, 2015.

(iv) Bombardier Service Bulletin 700–1A11–35–012, Revision 01, dated July 22, 2015.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 21, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–18172 Filed 8–3–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5460; Directorate Identifier 2015–NM–188–AD; Amendment 39–18599; AD 2016–16–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A330–200 Freighter, –200, and –300 series airplanes. This AD was prompted by a report of a manufacturing defect that affects the durability of affected parts in the cargo and cabin compartment. This AD requires an inspection of affected structural parts in the cargo and cabin compartments to determine if proper heat treatment has been done, and replacement if necessary. We are issuing this AD to prevent crack initiation and propagation, which could result in reduced structural integrity of the fuselage.

DATES: This AD is effective September 8, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 8, 2016.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office–EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com;* Internet: *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5460.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5460; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1138; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A330–200 Freighter, –200, and –300 series airplanes. The NPRM published in the **Federal Register** on April 12, 2016 (81 FR 21486) (''the NPRM''). The NPRM was prompted by a report of a manufacturing defect that affects the durability of affected parts in the cargo and cabin compartment. The NPRM proposed to require an inspection of affected structural parts in the cargo and cabin compartments to determine if proper heat treatment has been done, and replacement if necessary. We are issuing this AD to prevent crack initiation and propagation, which could result in reduced structural integrity of the fuselage.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued European Airworthiness Directive 2015–0212, dated November 4, 2015, to correct an unsafe condition for all Airbus Model A330–200 Freighter, –200, and –300 series airplanes. The MCAI states:

Airbus quality controls identified that several structural parts, intended for cargo or

cabin compartment installation, were manufactured from improperly heat-treated materials. Subsequent review identified that some of those parts were installed on airplanes manufactured between November 2011 and February 2013. From February 2013, Airbus implemented measures into manufacturing processes to ensure detection and to prevent installation of such non-conforming parts.

A detailed safety assessment was accomplished to identify the possible impact of affected parts on the airplane structure. The result of this structural analysis demonstrated the capability of the affected structure to sustain static limit loads, but failed to confirm that the affected structures met the certified fatigue life.

This condition, if not detected and corrected, could lead to crack initiation and propagation, possibly resulting in reduced structural integrity of the fuselage.

To address this potentially unsafe condition, Airbus issued Service Bulletin (SB) SB A330–53–3227 and SB A330–53–3228 to provide inspection instructions for affected cargo and cabin structural parts respectively.

For the reasons described above, this [EASA] AD requires a one-time Special Detailed Inspection (SDI) [eddy current inspection] to measure the electrical conductivity of affected structural parts, to identify the presence or absence of heat treatment, and, depending on findings, corrective action [replacement].

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5460.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information:

- Airbus Service Bulletin A330–53–3227, dated August 18, 2015. The service information describes procedures to inspect affected structural parts in the cargo compartment to determine if proper heat treatment has been done, and replacement of parts; and
- Airbus Service Bulletin A330–53–3228, dated August 18, 2015. The service information describes procedures to inspect affected structural parts in the cabin compartment to determine if proper heat treatment has been done, and replacement of parts.

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

Costs of Compliance

We estimate that this AD affects 20 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	11 work-hours × $85 per hour = $935	$0	$935	$18,700

We estimate the following costs to do any necessary replacements that will be required based on the results of the required inspection. We have received no definitive data that will enable us to provide the cost of replacement parts for the on-condition actions specified in this AD, nor the cost of repairs. We have no way of determining the number of aircraft that might need this action.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	45 work-hours × $85 per hour = $3,825.	Not Available	Not Available.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–16–01 Airbus: Amendment 39–18599; Docket No. FAA–2016–5460; Directorate Identifier 2015–NM–188–AD.

(a) Effective Date

This AD is effective September 8, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category, manufacturer serial numbers 1175, 1180, 1287 through 1475 inclusive, 1478, 1480, 1483, and 1506.

(1) Model A330–223F and –243F airplanes.

(2) Model A330–201, –202, –203, –223, and –243 airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by a report of a manufacturing defect (*i.e.* improperly heat treated materials) that affects the durability of affected parts in the cargo and cabin compartment. We are issuing this AD to prevent crack initiation and propagation, which could result in reduced structural integrity of the fuselage.

(f) Compliance

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

(g) Inspection of Affected Structure in the Cargo Compartment

Within 72 months since first flight of the airplane, do an eddy current inspection (*i.e.,* conductivity measurement) of affected structural parts in the cargo compartment to determine if proper heat treatment has been done as identified in, and in accordance with, the Accomplishment Instructions of Airbus Service Bulletin A330–53–3227, dated August 18, 2015.

(h) Replacement of Non-Conforming Parts in the Cargo Compartment

If, during the inspection required by paragraph (g) of this AD, an affected structural part in the cargo compartment is identified to have a measured value greater than 26 megasiemens per meter (MS/m), or greater than 44.8% International Annealed Copper Standard (IACS), before further flight, replace the affected structural part with a serviceable part, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3227, dated August 18, 2015.

(i) Repair of Non-Conforming Parts in the Cargo Compartment

If, during the inspection required by paragraph (g) of this AD, an affected structural part in the cargo compartment is identified to have a measured value other than those specified in Figure A–GFAAA, Sheet 01, ''Inspection Flowchart,'' of Airbus Service Bulletin A320–53–3227, dated August 18, 2015, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(j) Inspection of Affected Structure in the Cabin Compartment

Within 72 months since first flight of the airplane, do an eddy current inspection of affected structural parts in the cabin compartment to determine if proper heat treatment has been done as identified in, and in accordance with, the Accomplishment Instructions of Airbus Service Bulletin A330–53–3228, dated August 18, 2015.

(k) Replacement of Non-Conforming Parts in the Cabin Compartment

If, during the inspection required by paragraph (j) of this AD, an affected structural part in the cabin compartment is identified to have a measured value greater than 26 MS/m or greater than 44.8% IACS, before further flight, replace the affected structural part with a serviceable part, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3228, dated August 18, 2015.

(l) Repair of Non-Conforming Parts in the Cabin Compartment

If, during the inspection required by paragraph (j) of this AD, an affected structural part in the cabin compartment is identified to have a measured value other than those specified in Figure A–GFAAA, Sheet 01, ''Inspection Flowchart,'' of Airbus Service Bulletin A320–53–3228, dated August 18, 2015, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1138; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

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

(n) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2015–0212, dated November 4, 2015, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5460.

(o) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Service Bulletin A330–53–3227, dated August 18, 2015.

(ii) Airbus Service Bulletin A330–53–3228, dated August 18, 2015.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com;* Internet: *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 21, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–18168 Filed 8–3–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8469; Directorate Identifier 2014–NM–105–AD; Amendment 39–18602; AD 2016–16–04]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes. This AD was prompted by a design review that revealed insufficient measures were taken to ensure the correct locking of the attachments of the fuel quantity tank units (FQTUs) in each wing tank. When an FQTU becomes loose, this could lead to insufficient clearance between the FQTU and the adjacent tank structure or other metal parts, and under certain conditions, create an ignition source inside the wing fuel vapor space. This AD requires modifying the FQTUs by applying sealant to cover the nuts, washers, and stud ends at the FQTU attachments in each main wing tank. This AD also requires revising the maintenance or inspection program, as applicable, by incorporating a fuel airworthiness limitation item and a critical design configuration control limitation (CDCCL). We are issuing this AD to prevent an ignition source in the wing fuel tank vapor space, which could result in a wing fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective September 8, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 8, 2016.

ADDRESSES: For service information identified in this final rule, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8469.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8469; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes. The NPRM published in the **Federal Register** on January 20, 2016 (81 FR 3056) (''the NPRM'').

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0106, dated May 7, 2014 (referred to after this the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes. The MCAI states:

> Prompted by an accident * * *, the Federal Aviation Administration (FAA) published Special Federal Aviation Regulation (SFAR) 88 [(66 FR 23086, May 7, 2001)], and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12.
>
> The review conducted by Fokker Services on the Fokker F28 design, in response to these regulations, revealed that insufficient measures were taken to ensure the correct locking of the attachments of the Fuel Quantity Tank Units (FQTUs). When a FQTU becomes loose, this could lead to insufficient clearance between the FQTU and the adjacent tank structure or other metal parts and, under certain conditions, create an ignition source inside the wing fuel tank vapour space.
>
> This condition, if not detected and corrected, could result in a wing fuel tank explosion and consequent loss of the aeroplane.
>
> To address this potential unsafe condition, Fokker Services developed a modification to ensure that each FQTU remains properly attached.
>
> For the reasons described above, this [EASA] AD requires the application of sealant covering the nuts, washers and stud ends at the FQTU attachment in each wing tank [and a revision to the maintenance or inspection program, as applicable, to incorporate a fuel airworthiness limitation item and a CDCCL]. More information on this subject can be found in Fokker Services All Operators Message AOF28.038#02.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8469.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Fokker Services B.V. has issued Service Bulletin SBF28–28–050, Revision 3, dated December 11, 2014. The service information describes the fuel airworthiness limitation item and the CDCCL. Fokker Services B.V. has also issued Service Bulletin SBF28–28–054, Revision 1, dated January 9, 2014, which describes procedures for applying sealant to the attachment nuts, washers, and stud ends of the FQTU; and Manual Change Notification—Maintenance Documentation MCNM–F28–037, Rev 1, dated January 9, 2014, which describes related changes in the affected maintenance documents.

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

Costs of Compliance

We estimate that this AD affects 5 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification and maintenance program revision.	7 work-hours × $85 per hour = $595	$0	$595	$2,975

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–16–04 Fokker Services B.V.: Amendment 39–18602; Docket No. FAA–2015–8469; Directorate Identifier 2014–NM–105–AD.

(a) Effective Date

This AD is effective September 8, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes, certificated in any category, all serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by a design review that revealed insufficient measures were taken to ensure the correct locking of the attachments of the fuel quantity tank units (FQTUs) in each wing tank. When an FQTU becomes loose, this could lead to insufficient clearance between the FQTU and the adjacent tank structure or other metal parts, and under certain conditions, create an ignition source inside the wing fuel vapor space. We are issuing this AD to prevent an ignition source in the wing fuel tank vapor space, which could result in a wing fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Modification of the FQTUs

At the next scheduled opening of the fuel tanks after the effective date of this AD, but no later than 84 months after the effective date of this AD, modify the FQTU in each main wing tank by applying sealant to cover the nuts, washers, and stud ends of the FQTU attachments, and do an inspection for leakage of the tank access panels, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–054, Revision 1, dated January 9, 2014; and the information in Fokker Manual Change Notification—Maintenance Documentation MCNM–F28–037, Rev 1, dated January 9, 2014. If any fuel leakage is found, before further flight, reapply the sealant, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–054, Revision 1, dated January 9, 2014; and the information in Fokker Manual Change Notification—Maintenance Documentation MCNM–F28–037, Rev 1, dated January 9, 2014.

(h) Revision of Maintenance or Inspection Program

Before further flight after completing the modification specified in paragraph (g) of this AD, or within 30 days after the effective date of this AD, whichever occurs later: Revise the airplane maintenance or inspection program, as applicable, by incorporating the fuel airworthiness limitation item and critical design configuration control limitation (CDCCL) specified in paragraph 1.L.(1)(c) of Fokker Service Bulletin SBF28–28–054, Revision 1, dated January 9, 2014. The initial compliance times for these tasks are at the latest of the times specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD.

(1) At the applicable time specified in Fokker Service Bulletin SBF28–28–050, Revision 3, dated December 11, 2014.

(2) Before further flight after completing the modification specified in paragraph (g) of this AD.

(3) Within 30 days after the effective date of this AD.

(i) No Alternative Actions, Intervals, and CDCCLs

After accomplishing the revision required by paragraph (h) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Fokker Service Bulletin SBF28–28–054, dated June 30, 2010.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Fokker Services B.V.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0106, dated May 7, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8469.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(3) and (m)(4) of this AD.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Fokker Manual Change Notification—Maintenance Documentation MCNM–F28–037, Rev 1, dated January 9, 2014.

(ii) Fokker Service Bulletin SBF28–28–050, Revision 3, dated December 11, 2014.

(iii) Fokker Service Bulletin SBF28–28–054, Revision 1, dated January 9, 2014.

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 21, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–18171 Filed 8–3–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8838; Directorate Identifier 2016–CE–020–AD; Amendment 39–18601; AD 2016–16–03]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Pacific Aerospace Limited Models FU24–954 and FU24A–954 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracked elevator torque tubes. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective September 8, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publication listed in this AD as of September 8, 2016.

We must receive comments on this AD by September 19, 2016.

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

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

For service information identified in this AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; telephone: +64 7 843 6144; facsimile: +64 7 843 6134; email: *pacific@aerospace.co.nz;* Internet: *www.aerospace.co.nz.* You may review copies of the referenced service information at the FAA, Small Airplane

Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2016–8838.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8838; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Authority (CAA), which is the aviation authority for New Zealand, has issued AD No. DCA/FU24/184, dated July 7, 2016 (referred to after this as ''the MCAI''), to correct an unsafe condition for Pacific Aerospace Limited Models FU24–954 and FU24A–954 airplanes and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

> This AD is prompted by two reports received by the CAA of finding a crack in the elevator torque tube on two Cresco 08–600 aircraft. The same P/N elevator torque tube if fitted to FU24 and FU24A series aircraft. The AD is issued to prevent failure of the elevator torque tube due to possible fatigue, which could result in cracks, and loss of elevator and aileron control.

The MCAI requires inspecting the elevator torque tube for cracks and replacing the elevator torque tube is any cracks are found. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8838.

Related Service Information Under 1 CFR Part 51

Pacific Aerospace Limited (previously Pacific Aerospace Corporation Ltd.) has issued Chapter 27, Flight Controls, dated May 1980, of the Maintenance Manual for the Fletcher FU24 and FU24A Post–954. The information in Chapter 27 of the referenced maintenance manual describes procedures for replacing the elevator torque tube. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

FAA's Determination and Requirements of This AD

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because there are no airplanes currently on the U.S. registry and thus, does not have any impact upon the public. Therefore, we find that notice and opportunity for prior public comment are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–8838; Directorate Identifier 2016–CE–020–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD will affect 0 products of U.S. registry. We also estimate that it will take about .5 work-hour per product to comply with the basic inspection requirement of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the inspection requirement of this AD on U.S. operators to be $42.50 per product.

In addition, we estimate that any necessary follow-on actions will take about 4 work-hours and require parts costing $3,012, for a cost of $3,352 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

(4) Will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2016–16–03 Pacific Aerospace Limited: Amendment 39–18601; Docket No. FAA–2016–8838; Directorate Identifier 2016–CE–020–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 8, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pacific Aerospace Limited Models FU24–954 and FU24A–954 airplanes, all serial numbers, that are:

(1) Equipped with an elevator torque tube, part number (P/N) 242837, 242527, 242835, or 242646; and

(2) Certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks found in the elevator torque tubes. We are issuing this AD to prevent failure of the elevator torque tube, which could cause loss of elevator and aileron control.

(f) Actions and Compliance

Unless already done, do the following actions.

(1) Within the next 25 hours time-in-service after September 8, 2016 (the effective date of this AD), do a detailed visual inspection of the elevator torque tube for cracks.

(2) Before further flight after the inspection required in paragraph (f)(1) of this AD, replace the elevator torque tube with a serviceable elevator torque tube if any cracks are found. Do the replacement following Chapter 27, Flight Controls, dated May 1980, of the Maintenance Manual for the Fletcher FU24 and FU24A Post–954, Pacific Aerospace Corporation, Ltd.

Note 1 to paragraph (f) of this AD: This AD does not affect the required repetitive inspections of the control column/elevator torque tubes as specified in the FAA-approved maintenance program.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Special Flight Permit

Special flight permits are prohibited.

(i) Related Information

Refer to MCAI Civil Aviation Authority (CAA) AD No. DCA/FU24/184, dated July 7, 2016, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8838.

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Chapter 27, Flight Controls, dated May 1980, of the Maintenance Manual for the Fletcher FU24 and FU24A Post–954, Pacific Aerospace Corporation, Ltd.

(ii) Reserved.

(3) For Pacific Aerospace Limited (previously Pacific Aerospace Corporation Ltd.) service information identified in this AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; telephone: +64 7 843 6144; facsimile: +64 7 843 6134; email: *pacific@aerospace.co.nz;* Internet: *www.aerospace.co.nz.*

(4) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2016–8838.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on July 26, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–18265 Filed 8–3–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31087; Amdt. No. 3705]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 4, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 4, 2016.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPs, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on July 15, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 18 AUGUST 2016

Las Cruces, NM, Las Cruces Intl, ILS OR LOC RWY 30, Amdt 3
Las Cruces, NM, Las Cruces Intl, RNAV (GPS) RWY 12, Amdt 2
Las Cruces, NM, Las Cruces Intl, RNAV (GPS) RWY 30, Amdt 2
Las Cruces, NM, Las Cruces Intl, Takeoff Minimums and Obstacle DP, Amdt 2
Fond Du Lac, WI, Fond Du Lac County, RNAV (GPS) RWY 18, Orig-A

Effective 15 SEPTEMBER 2016

Sylacauga, AL. Merkel Field Sylacauga Muni, RNAV (GPS) RWY 9, Amdt 2
Sylacauga, AL. Merkel Field Sylacauga Muni, RNAV (GPS) RWY 27, Amdt 2
Livermore, CA, Livermore Muni, RNAV (GPS) RWY 25R, Amdt 1
San Carlos, CA, San Carlos, RNAV (GPS) Y RWY 30, Orig-A
San Carlos, CA, San Carlos, RNAV (GPS) Z RWY 30, Amdt 1A

San Diego, CA, San Diego Intl, RNAV (GPS) RWY 27, Amdt 3E
Sterling, CO, Sterling Muni, NDB RWY 33, Amdt 3B
Sterling, CO, Sterling Muni, RNAV (GPS) RWY 15, Orig-B
Orlando, FL. Executive, ILS OR LOC RWY 7, Amdt 24
Orlando, FL. Executive, ILS OR LOC RWY 25, Amdt 1
Orlando, FL. Executive, RNAV (GPS) RWY 7, Amdt 2
Orlando, FL. Executive, RNAV (GPS) RWY 25, Amdt 3
Albany, GA, Southwest Georgia Rgnl, ILS OR LOC RWY 4, Amdt 11A
Albany, GA, Southwest Georgia Rgnl, LOC BC RWY 22, Amdt 8A
Albany, GA, Southwest Georgia Rgnl, VOR OR TACAN RWY 16, Amdt 27A
Athens, GA, Athens/Ben Epps, ILS OR LOC/DME RWY 27, Amdt 2B
Athens, GA, Athens/Ben Epps, VOR RWY 2, Amdt 11C
Athens, GA, Athens/Ben Epps, VOR RWY 27, Amdt 13B
Atlanta, GA, Covington Muni, RNAV (GPS) RWY 28, Amdt 1C
Elberton, GA, Elbert County-Patz Field, VOR/DME RWY 11, Amdt 4B
Hampton, GA, Henry County Airport, RNAV (GPS) RWY 6, Amdt 2
Hampton, GA, Henry County Airport, RNAV (GPS) RWY 24, Amdt 2
Hampton, GA, Henry County Airport, Takeoff Minimums and Obstacle DP, Amdt 2
Jefferson, GA, Jackson County, VOR/DME RWY 35, Amdt 3A
Madison, GA, Madison Muni, VOR/DME–A, Amdt 8A
Monroe, GA, Monroe-Walton County, NDB–A, Amdt 1B
Washington, GA, Washington-Wilkes County, VOR/DME RWY 13, Amdt 3A
Winder, GA, Barrow County, ILS OR LOC RWY 31, Orig-D
Winder, GA, Barrow County, NDB RWY 31, Amdt 9C
Winder, GA, Barrow County, RNAV (GPS) RWY 23, Orig-B
Winder, GA, Barrow County, RNAV (GPS) RWY 31, Amdt 1C
Osceola, IA, Osceola Muni, RNAV (GPS) RWY 36, Orig-B
Kokomo, IN, Kokomo Muni, VOR RWY 23, Amdt 20, CANCELED
Olathe, KS, New Century Aircenter, RNAV (GPS) RWY 4, Orig
Olathe, KS, New Century Aircenter, RNAV (GPS) RWY 22, Orig
Tallulah, LA, Vicksburg Tallulah Rgnl, ILS OR LOC RWY 36, Orig
Tallulah, LA, Vicksburg Tallulah Rgnl, LOC RWY 36, Amdt 4A, CANCELED
Tallulah, LA, Vicksburg Tallulah Rgnl, RNAV (GPS) RWY 18, Amdt 3
Tallulah, LA, Vicksburg Tallulah Rgnl, RNAV (GPS) RWY 36, Amdt 4
Helena, MT, Helena Rgnl, NDB–D, Amdt 3B, CANCELED
Helena, MT, Helena Rgnl, RNAV (GPS) RWY 23, Orig-A, CANCELED
Sidney, MT, Sidney-Richland Muni, NDB RWY 1, Amdt 3, CANCELED
Aurora, NE, Aurora Muni-AL Potter Field, RNAV (GPS) RWY 16, Amdt 1A
Kimball, NE, Kimball Muni/Robert E Arraj Field, RNAV (GPS) RWY 28, Amdt 1B
Ogallala, NE, Searle Field, VOR/DME RWY 26, Amdt 1C
Oshkosh, NE, Garden County, NDB RWY 12, Amdt 1C
Oshkosh, NE, Garden County, RNAV (GPS) RWY 12, Amdt 2A
Sidney, NE, Sidney Muni/Lloyd W Carr Field, VOR/DME RWY 13, Amdt 5B
Sidney, NE, Sidney Muni/Lloyd W Carr Field, VOR/DME RWY 31, Amdt 5B
Whitefield, NH, Mount Washington Rgnl, LOC RWY 10, Amdt 7A, CANCELED
Newark, OH, Newark-Heath, RNAV (GPS) RWY 9, Orig
Newark, OH, Newark-Heath, RNAV (GPS) RWY 27, Amdt 1
Lancaster, PA, Lancaster, VOR/DME RWY 26, Amdt 10B
Mount Joy/Marietta, PA, Donegal Springs Airpark, RNAV (GPS) RWY 28, Orig-B
Mount Joy/Marietta, PA, Donegal Springs Airpark, VOR RWY 28, Amdt 1A
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 35, Amdt 4
Pittsburgh, PA, Allegheny County, VOR–A, Orig, CANCELED
Reading, PA, Reading Rgnl/Carl A Spaatz Field, ILS OR LOC RWY 13, Amdt 1C
Reading, PA, Reading Rgnl/Carl A Spaatz Field, ILS OR LOC RWY 36, Amdt 30C
Anderson, SC, Anderson Rgnl, ILS OR LOC RWY 5, Amdt 1A
Houston, TX, Ellington, ILS OR LOC RWY 22, Amdt 3G
Houston, TX, Ellington, ILS OR LOC RWY 35L, Amdt 6B
La Porte, TX, La Porte Muni, VOR–A, Orig-A
Terrell, TX, Terrell Muni, NDB RWY 17, Amdt 4, CANCELED
Bridgewater, VA, Bridgewater Air Park, RNAV (GPS) RWY 15, Amdt 1
Bridgewater, VA, Bridgewater Air Park, RNAV (GPS) RWY 33, Amdt 1
Charlotte Amalie, VI, Cyril E King, ILS OR LOC RWY 10, Amdt 1B
Afton, WY, Afton Muni, AFTON THREE Graphic DP

RESCINDED: On July 11, 2016 (81 FR 44765), the FAA published an Amendment in Docket No. 31082, Amdt No. 3701 to Part 97 of the Federal Aviation Regulations. The following entry, effective July 21, 2016, is hereby rescinded in its entirety:

Hailey, ID, Friedman Memorial, RNAV (GPS) X RWY 31, Amdt 1, CANCELED

[FR Doc. 2016–18444 Filed 8–3–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31086; Amdt. No. 3704]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 4, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 4, 2016.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on July 1, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [AMENDED]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
18–Aug–16	NJ	Hammonton	Hammonton Muni	5/2106	6/22/16	VOR–B, Amdt 2A.
18–Aug–16	NJ	Hammonton	Hammonton Muni	5/2107	6/22/16	RNAV (GPS) RWY 3, Amdt 1A.
18–Aug–16	TN	Murfreesboro	Murfreesboro Muni	5/2767	6/20/16	NDB RWY 18, Amdt 1B.
18–Aug–16	AL	Evergreen	Middleton Field	5/9975	6/15/16	RNAV (GPS) RWY 28, Amdt 1A.
18–Aug–16	AL	Evergreen	Middleton Field	5/9977	6/15/16	RNAV (GPS) RWY 10, Amdt 1A.
18–Aug–16	AL	Evergreen	Middleton Field	5/9978	6/15/16	RNAV (GPS) RWY 19, Amdt 1A.
18–Aug–16	AL	Evergreen	Middleton Field	5/9979	6/15/16	VOR/DME RWY 10, Amdt 3.
18–Aug–16	NC	Smithfield	Johnston Regional	6/0302	6/22/16	ILS Y OR LOC Y RWY 3, Amdt 1.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
18–Aug–16	KS	Topeka	Topeka Rgnl	6/0612	6/20/16	ILS OR LOC RWY 31, Amdt 9F.
18–Aug–16	KS	Topeka	Topeka Rgnl	6/0613	6/20/16	NDB RWY 13, Amdt 7B.
18–Aug–16	KS	Topeka	Topeka Rgnl	6/0614	6/20/16	RNAV (GPS) RWY 13, Orig-A.
18–Aug–16	KS	Topeka	Topeka Rgnl	6/0615	6/20/16	RNAV (GPS) RWY 21, Amdt 1A.
18–Aug–16	KS	Topeka	Topeka Rgnl	6/0616	6/20/16	RNAV (GPS) RWY 3, Amdt 1A.
18–Aug–16	KS	Topeka	Topeka Rgnl	6/0617	6/20/16	RNAV (GPS) RWY 31, Orig-A.
18–Aug–16	KS	Topeka	Topeka Rgnl	6/0622	6/20/16	VOR/DME OR TACAN RWY 21, Amdt 7A.
18–Aug–16	KS	Topeka	Topeka Rgnl	6/0623	6/20/16	VOR/DME OR TACAN RWY 3, Amdt 6B.
18–Aug–16	KS	Topeka	Topeka Rgnl	6/0624	6/20/16	Takeoff Minimums and (Obstacle) DP, Orig.
18–Aug–16	IN	Winamac	Arens Field	6/1100	6/15/16	VOR/DME–A, Amdt 6.
18–Aug–16	OH	Harrison	Cincinnati West	6/1575	6/21/16	RNAV (GPS) RWY 19, Orig.
18–Aug–16	OH	Harrison	Cincinnati West	6/1576	6/21/16	VOR RWY 19, Amdt 4.
18–Aug–16	IL	Peoria	General Downing—Peoria Intl.	6/1640	6/15/16	ILS OR LOC RWY 13, Amdt 6E.
18–Aug–16	WI	East Troy	East Troy Muni	6/1764	6/15/16	VOR/DME–A, Amdt 1.
18–Aug–16	WI	East Troy	East Troy Muni	6/1766	6/15/16	RNAV (GPS) RWY 8, Orig-A.
18–Aug–16	WI	East Troy	East Troy Muni	6/1767	6/15/16	RNAV (GPS) RWY 26, Orig-A.
18–Aug–16	PA	St Marys	St Marys Muni	6/1822	6/22/16	RNAV (GPS) RWY 10, Amdt 1.
18–Aug–16	PA	St Marys	St Marys Muni	6/1829	6/22/16	RNAV (GPS) RWY 28, Amdt 1B.
18–Aug–16	PA	St Marys	St Marys Muni	6/1831	6/22/16	LOC/DME RWY 28, Amdt 4B.
18–Aug–16	PA	St Marys	St Marys Muni	6/1833	6/22/16	VOR RWY 28, Amdt 7A.
18–Aug–16	WI	Amery	Amery Muni	6/2851	6/21/16	Takeoff Minimums and (Obstacle) DP, Amdt 1A.
18–Aug–16	MO	Jefferson City	Jefferson City Memorial	6/3595	6/21/16	ILS OR LOC RWY 30, Amdt 5C.
18–Aug–16	MO	Jefferson City	Jefferson City Memorial	6/3596	6/21/16	RNAV (GPS) RWY 30, Orig.
18–Aug–16	MO	Jefferson City	Jefferson City Memorial	6/3597	6/21/16	RNAV (GPS) RWY 12, Amdt 1.
18–Aug–16	OH	Elyria	Elyria	6/3625	6/21/16	VOR OR GPS–A, Amdt 7B.
18–Aug–16	NV	Lovelock	Derby Field	6/3634	6/22/16	Takeoff Minimums and (Obstacle) DP, Orig-B.
18–Aug–16	MN	Minneapolis	Anoka County—Blaine Arpt (Janes Field).	6/3652	6/21/16	RNAV (GPS) RWY 27, Orig-A.
18–Aug–16	WI	Solon Springs	Solon Springs Muni	6/4068	6/15/16	RNAV (GPS) RWY 19, Orig.
18–Aug–16	NE	Omaha	Eppley Airfield	6/4778	6/22/16	ILS OR LOC/DME RWY 14L, Amdt 1C.
18–Aug–16	NE	Omaha	Eppley Airfield	6/4782	6/22/16	ILS OR LOC RWY 32R, ILS RWY 32R (CAT II), ILS 32R (CAT III), Orig-D.
18–Aug–16	NE	Omaha	Eppley Airfield	6/4784	6/22/16	RNAV (GPS) Y RWY 14L, Amdt 1B.
18–Aug–16	OK	Poteau	Robert S Kerr	6/4841	6/15/16	RNAV (GPS) RWY 18, Orig-B.
18–Aug–16	TX	Eagle Pass	Maverick County Memorial Intl.	6/4945	6/15/16	RNAV (GPS) RWY 31, Orig.
18–Aug–16	IN	Auburn	De Kalb County	6/5467	6/21/16	RNAV (GPS) RWY 9, Orig-C.
18–Aug–16	MO	Trenton	Trenton Muni	6/6403	6/15/16	RNAV (GPS) RWY 18, Orig-A.
18–Aug–16	MO	Cape Girardeau	Cape Girardeau Rgnl	6/6659	6/15/16	LOC/DME BC RWY 28, Amdt 8A.
18–Aug–16	NY	Montgomery	Orange County	6/6840	6/20/16	RNAV (GPS) RWY 21, Amdt 1.
18–Aug–16	NY	Montgomery	Orange County	6/6841	6/20/16	RNAV (GPS) RWY 26, Amdt 1A.
18–Aug–16	NY	Montgomery	Orange County	6/6842	6/20/16	RNAV (GPS) RWY 3, Amdt 1.
18–Aug–16	NY	Montgomery	Orange County	6/6843	6/20/16	RNAV (GPS) RWY 8, Amdt 1.
18–Aug–16	NY	Montgomery	Orange County	6/6862	6/20/16	ILS OR LOC RWY 3, Amdt 3C.
18–Aug–16	ME	Brunswick	Brunswick Executive	6/6996	6/15/16	RNAV (GPS) RWY 1R, Amdt 1.
18–Aug–16	NE	Hartington	Hartington Muni/Bud Becker Fld.	6/7000	6/15/16	VOR/DME RWY 31, Orig-B.
18–Aug–16	VA	Front Royal	Front Royal—Warren County.	6/7066	6/20/16	RNAV (GPS)-A, Orig-A.
18–Aug–16	VA	Front Royal	Front Royal—Warren County.	6/7067	6/22/16	VOR (GPS)-B, Orig-A.
18–Aug–16	TN	Nashville	Nashville Intl	6/7096	6/15/16	ILS OR LOC/DME RWY 2R, ILS RWY 2R (SA CAT I), ILS RWY 2R (CAT II), ILD RWY 2R (CAT III), Amdt 8A.
18–Aug–16	TN	Nashville	Nashville Intl	6/7097	6/15/16	VOR/DME RWY 13, Amdt 13C.
18–Aug–16	GA	Lawrenceville	Gwinnett County—Briscoe Field.	6/7926	6/20/16	NDB RWY 25, Amdt 1A.
18–Aug–16	GA	Lawrenceville	Gwinnett County—Briscoe Field.	6/7927	6/20/16	RNAV (GPS) RWY 25, Orig-B.
18–Aug–16	GA	Lawrenceville	Gwinnett County—Briscoe Field.	6/7928	6/20/16	RNAV (GPS) RWY 7, Orig-A.
18–Aug–16	GA	Lawrenceville	Gwinnett County—Briscoe Field.	6/7930	6/20/16	RNAV (GPS)-A, Orig-A.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
18–Aug–16	TX	Port Isabel	Port Isabel—Cameron County.	6/8476	6/21/16	Takeoff Minimums and (Obstacle) DP, Amdt 2.
18–Aug–16	WI	Rhinelander	Rhinelander—Oneida County.	6/8728	6/15/16	ILS OR LOC RWY 9, Amdt 8A.
18–Aug–16	WI	Rhinelander	Rhinelander—Oneida County.	6/8730	6/15/16	RNAV (GPS) RWY 15, Amdt 1A.
18–Aug–16	WI	Rhinelander	Rhinelander—Oneida County.	6/8735	6/15/16	RNAV (GPS) RWY 27, Amdt 1A.
18–Aug–16	WI	Rhinelander	Rhinelander—Oneida County.	6/8736	6/15/16	VOR/DME RWY 27, Orig-F.
18–Aug–16	WI	Rhinelander	Rhinelander—Oneida County.	6/8789	6/15/16	RNAV (GPS) RWY 33, Amdt 1.
18–Aug–16	IL	Moline	Quad City Intl	6/8933	6/15/16	RNAV (GPS) RWY 13, Amdt 1A.
18–Aug–16	WI	Rhinelander	Rhinelander—Oneida County.	6/9593	6/15/16	RNAV (GPS) RWY 9, Amdt 1A.
18–Aug–16	MO	Mountain Grove	Mountain Grove Memorial.	6/9743	6/15/16	RNAV (GPS) RWY 26, Orig-A.
18–Aug–16	MO	Mountain Grove	Mountain Grove Memorial.	6/9744	6/15/16	RNAV (GPS) RWY 8, Orig.

[FR Doc. 2016–18423 Filed 8–3–16; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31088; Amdt. No. 3706]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 4, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 4, 2016.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each

separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on July 15, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [AMENDED]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
18–Aug–16 ...	MO	Trenton	Trenton Muni	6/6403	5/12/16	This NOTAM, published in TL 16–17, is hereby rescinded in its entirety.
18–Aug–16 ...	NJ	Toms River	Ocean County	6/0283	6/29/16	VOR/DME RWY 24, Amdt 4B.
18–Aug–16 ...	NJ	Toms River	Ocean County	6/0288	6/29/16	ILS OR LOC RWY 6, Amdt 2B.
18–Aug–16 ...	NJ	Toms River	Ocean County	6/0289	6/29/16	RNAV (GPS) RWY 6, Orig-B.
18–Aug–16 ...	NJ	Toms River	Ocean County	6/0307	6/29/16	VOR RWY 6, Amdt 7B.
18–Aug–16 ...	NJ	Toms River	Ocean County	6/0308	6/29/16	RNAV (GPS) RWY 24, Orig-B.
18–Aug–16 ...	MI	Menominee	Menominee-Marinette Twin County.	6/0328	7/7/16	RNAV (GPS) RWY 21, Orig-A.
18–Aug–16 ...	MI	Menominee	Menominee-Marinette Twin County.	6/0329	7/7/16	VOR–A, Amdt 3A.
18–Aug–16 ...	OK	Chickasha	Chickasha Muni	6/1087	6/27/16	VOR/DME–A, Amdt 1.
18–Aug–16 ...	TX	Beeville	Beeville Muni	6/1195	6/27/16	RNAV (GPS) RWY 30, Orig.
18–Aug–16 ...	TX	Beeville	Beeville Muni	6/1196	6/27/16	RNAV (GPS) RWY 12, Orig.
18–Aug–16 ...	TX	Beeville	Beeville Muni	6/1202	6/27/16	VOR/DME RWY 12, Amdt 6.
18–Aug–16 ...	AL	Evergreen	Middleton Field	6/1266	6/29/16	RNAV (GPS) RWY 1, Amdt 1A.
18–Aug–16 ...	OH	Akron	Akron Fulton Intl	6/1392	7/7/16	NDB RWY 25, Amdt 14.
18–Aug–16 ...	OH	Akron	Akron Fulton Intl	6/1393	7/7/16	RNAV (GPS) RWY 25 , Orig.
18–Aug–16 ...	SD	Madison	Madison Muni	6/1852	7/11/16	RNAV (GPS) RWY 33, Orig-A.
18–Aug–16 ...	PA	Pottstown	Heritage Field	6/2499	7/1/16	RNAV (GPS) RWY 28, Orig-A.
18–Aug–16 ...	TX	College Station	Easterwood Field	6/2707	7/1/16	RNAV (GPS) RWY 16, Amdt 1.
18–Aug–16 ...	IA	Decorah	Decorah Muni	6/2794	7/7/16	RNAV (GPS) RWY 11, Orig-B.
18–Aug–16 ...	IA	Decorah	Decorah Muni	6/2795	7/11/16	VOR RWY 29, Amdt 3C.
18–Aug–16 ...	MO	Joplin	Joplin Rgnl	6/2844	7/11/16	LOC BC RWY 31, Amdt 21B.
18–Aug–16 ...	MO	Joplin	Joplin Rgnl	6/2845	7/11/16	ILS OR LOC/NDB RWY 13, Orig-A.
18–Aug–16 ...	MO	Joplin	Joplin Rgnl	6/2846	7/11/16	RNAV (GPS) RWY 36, Orig-A.
18–Aug–16 ...	MO	Joplin	Joplin Rgnl	6/2847	7/11/16	RNAV (GPS) RWY 18, Orig.
18–Aug–16 ...	NC	Pinehurst/Southern Pines.	Moore County	6/3175	6/27/16	Takeoff Minimums and (Obstacle) DP, Orig.
18–Aug–16 ...	SC	Hartsville	Hartsville Rgnl	6/3343	6/29/16	RNAV (GPS) RWY 3, Orig-B.
18–Aug–16 ...	SC	Hartsville	Hartsville Rgnl	6/3346	6/29/16	RNAV (GPS) RWY 21, Orig-B.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
18–Aug–16 ...	SC	Hartsville	Hartsville Rgnl	6/3347	6/29/16	NDB RWY 21, Amdt 1A.
18–Aug–16 ...	MO	Clinton	Clinton Rgnl	6/3629	7/11/16	RNAV (GPS) RWY 18, Orig.
18–Aug–16 ...	MO	Clinton	Clinton Rgnl	6/3631	7/11/16	RNAV (GPS) RWY 36, Orig.
18–Aug–16 ...	FL	Defuniak Springs	Defuniak Springs	6/5256	6/29/16	RNAV (GPS) RWY 27, Amdt 1A.
18–Aug–16 ...	MN	Tower	Tower Muni	6/5453	7/1/16	RNAV (GPS) RWY 26, Orig.
18–Aug–16 ...	OH	Carrollton	Carroll County-Tolson	6/5722	6/27/16	VOR–A, Amdt 1.
18–Aug–16 ...	MI	Pellston	Pellston Rgnl Airport of Emmet County.	6/6126	7/1/16	RNAV (GPS) RWY 23, Orig-B.
18–Aug–16 ...	TX	Mineola	Mineola Wisener Field	6/6132	7/1/16	VOR–A, Amdt 6.
18–Aug–16 ...	ND	Kindred	Robert Odegaard Field	6/6141	7/1/16	RNAV (GPS) RWY 29, Amdt 1B.
18–Aug–16 ...	ND	Kindred	Robert Odegaard Field	6/6142	7/1/16	RNAV (GPS) RWY 11, Amdt 1B.
18–Aug–16 ...	ND	Mandan	Mandan Muni	6/6647	7/7/16	RNAV (GPS) RWY 13, Orig.
18–Aug–16 ...	ND	Mandan	Mandan Muni	6/6648	7/7/16	VOR–A, Amdt 2.
18–Aug–16 ...	ND	Mandan	Mandan Muni	6/6649	7/7/16	RNAV (GPS) RWY 31, Orig.
18–Aug–16 ...	ND	Mandan	Mandan Muni	6/6650	7/7/16	RADAR–1, Amdt 5.
18–Aug–16 ...	KS	Elkhart	Elkhart-Morton County	6/6886	6/27/16	RNAV (GPS) RWY 35, Amdt 1.
18–Aug–16 ...	KS	Elkhart	Elkhart-Morton County	6/6887	6/27/16	RNAV (GPS) RWY 22, Amdt 1.
18–Aug–16 ...	KS	Elkhart	Elkhart-Morton County	6/6888	6/27/16	RNAV (GPS) RWY 17, Amdt 1.
18–Aug–16 ...	KS	Elkhart	Elkhart-Morton County	6/6889	6/27/16	RNAV (GPS) RWY 4, Amdt 1.
18–Aug–16 ...	KS	Elkhart	Elkhart-Morton County	6/6890	6/27/16	NDB RWY 35, Amdt 2.
18–Aug–16 ...	SC	Clemson	Oconee County Rgnl	6/6955	6/27/16	RNAV (GPS) RWY 25, Amdt 3A.
18–Aug–16 ...	SC	Clemson	Oconee County Rgnl	6/6956	6/27/16	RNAV (GPS) RWY 7, Amdt 3.
18–Aug–16 ...	SC	Clemson	Oconee County Rgnl	6/6957	6/27/16	NDB RWY 25, Amdt 1.
18–Aug–16 ...	FL	Bartow	Bartow Muni	6/6958	6/29/16	VOR/DME RWY 9L, Amdt 2C.
18–Aug–16 ...	MI	Midland	Jack Barstow	6/7674	7/1/16	RNAV (GPS) RWY 6, Amdt 1.
18–Aug–16 ...	MI	Midland	Jack Barstow	6/7676	7/1/16	VOR–A, Amdt 7.
18–Aug–16 ...	RI	Providence	Theodore Francis Green State	6/8252	6/29/16	RNAV (GPS) RWY 16, Orig-C.
18–Aug–16 ...	RI	Providence	Theodore Francis Green State	6/8253	6/29/16	VOR/DME RWY 16, Amdt 4D.
18–Aug–16 ...	RI	Providence	Theodore Francis Green State	6/8257	6/29/16	VOR/DME RWY 34, Amdt 5E.
18–Aug–16 ...	RI	Providence	Theodore Francis Green State	6/8266	6/29/16	VOR RWY 34, Amdt 4E.
18–Aug–16 ...	GA	Savannah	Savannah/Hilton Head Intl	6/8592	6/29/16	RNAV (RNP) Y RWY 28, Amdt 1.

[FR Doc. 2016–18435 Filed 8–3–16; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31085; Amdt. No. 3703]

Standard Instruction Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 4, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of August 4, 2016.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4,

8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97:

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on July 1, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 18 August 2016

Albia, IA, Albia Muni, VOR–A, Amdt 4A
Coldwater, KS, Comanche County, RNAV (GPS) RWY 35, Orig

Effective 15 September 2016

Anchorage, AK, Ted Stevens Anchorage Intl, ILS RWY 15, Amdt 6C
Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (RNP) RWY 33, Orig-B
Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (RNP) Z RWY 7R, Orig-B
Galena, AK, Edward G Pitka Sr, VOR/DME RWY 7, Amdt 8A, CANCELED
Galena, AK, Edward G Pitka Sr, VOR/DME RWY 25, Amdt 11A, CANCELED
Kipnuk, AK, Kipnuk, RNAV (GPS) RWY 15, Orig, CANCELED
Kipnuk, AK, Kipnuk, RNAV (GPS) RWY 33, Orig, CANCELED
Nulato, AK, Nulato, RNAV (GPS) RWY 20, Orig-B
Willow, AK, Willow, BIG LAKE TWO Graphic DP
Arcata/Eureka, CA, Arcata, VOR/DME RWY 1, Amdt 8A, CANCELED
Bishop, CA, Bishop, VOR/DME OR GPS–B, Amdt 4B, CANCELED
Concord, CA, Buchanan Field, LDA RWY 19R, Amdt 7E
Grass Valley, CA, Nevada County Air Park, GPS RWY 7, Orig-A, CANCELED
Lancaster CA, General WM J Fox Airfield, NDB–C, Amdt 3A, CANCELED
Pueblo, CO, Pueblo Memorial, RNAV (GPS) RWY 17, Orig-A
Fort Myers, FL, Southwest Florida Intl, RNAV (GPS) RWY 6, Amdt 2
Americus, GA, Jimmy Carter Rgnl, ILS OR LOC RWY 23, Amdt 1B
Blakely, GA, Early County, LOC/NDB RWY 23, Amdt 1B
Nashville, GA, Berrien Co, Takeoff Minimums and Obstacle DP, Amdt 1A
Kamuela, HI, Waimea-Kohala, RNAV (GPS) RWY 22, Orig-B
Kamuela, HI, Waimea-Kohala, VOR/DME–A, Orig-A
Coeur D'Alene, ID, Coeur D'Alene-Pappy Boyington Field, NDB RWY 6, Amdt 2E, CANCELED
Lyons, KS, Lyons-Rice County Muni, GPS RWY 17R, Orig, CANCELED
Lyons, KS, Lyons-Rice County Muni, GPS RWY 35L, Orig, CANCELED
Lyons, KS, Lyons-Rice County Muni, NDB RWY 17R, Amdt 6, CANCELED
Lyons, KS, Lyons-Rice County Muni, RNAV (GPS) RWY 17R, Orig
Lyons, KS, Lyons-Rice County Muni, RNAV (GPS) RWY 35L, Orig
Lyons, KS, Lyons-Rice County Muni, Takeoff Minimums and Obstacle DP, Orig
Lyons, KS, Lyons-Rice County Muni, VOR–A, Amdt 4
Russellville, KY, Russellville-Logan County, VOR/DME RWY 24, Amdt 7A, CANCELED
Lake Charles, LA, Lake Charles Rgnl, ILS OR LOC RWY 15, Amdt 22
Lake Charles, LA, Lake Charles Rgnl, LOC BC RWY 33, Amdt 20
Ruston, LA, Ruston Rgnl, NDB RWY 36, Orig-A, CANCELED
Benton Harbor, MI, Southwest Michigan Rgnl, NDB RWY 28, Amdt 10C, CANCELED
Ennis, MT, Ennis-Big Sky, RNAV (GPS) RWY 16, Amdt 1
Ennis, MT, Ennis-Big Sky, RNAV (GPS) RWY 34, Orig
Burwell, NE, Cram Field, NDB RWY 15, Amdt 1A, CANCELED
Corvallis, OR, Corvallis Muni, Takeoff Minimums and Obstacle DP, Amdt 6A
Carlisle, PA, Carlisle, NDB–B, Orig-B
Harrisburg, PA, Harrisburg Intl, ILS OR LOC RWY 31, Amdt 1C

Lancaster, PA, Lancaster, ILS OR LOC RWY 8, Amdt 2B
Lancaster, PA, Lancaster, RNAV (GPS) RWY 31, Amdt 1B
Lancaster, PA, Lancaster, VOR RWY 8, Amdt 21B
Lancaster, PA, Lancaster, VOR RWY 31, Amdt 16B
Lancaster, PA, Lancaster, VOR/DME RWY 8, Amdt 6B
Lancaster, PA, Lancaster, VOR/DME RWY 31, Amdt 4C
Pittsburgh, PA, Allegheny County, Takeoff Minimums and Obstacle DP, Amdt 8A
Pittsburgh, PA, Pittsburgh Intl, Takeoff Minimums and Obstacle DP, Amdt 5
Ponce, RQ, Mercedita, Takeoff Minimums and Obstacle DP, Amdt 5
Columbia/Mount, TN, Maury County, VOR/DME–A, Amdt 4, CANCELED
Somerville, TN, Fayette County, NDB RWY 19, Amdt 1C, CANCELED
Corpus Christi, TX, Corpus Christi Intl, RNAV (GPS) RWY 18, Amdt 2
Killeen, TX, Skylark Field, ILS OR LOC RWY 1, Amdt 3, CANCELED
Killeen, TX, Skylark Field, LOC RWY 1, Orig
Killeen, TX, Skylark Field, RNAV (GPS) RWY 1, Amdt 1
Laredo, TX, Laredo Intl, NDB RWY 17L, Amdt 3A, CANCELED
Laredo, TX, Laredo Intl, VOR OR TACAN RWY 32, Amdt 11
Farmville, VA, Farmville Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1A
Morgantown, WV, Morgantown Muni-Walter L Bill Hart Fld, VOR–A, Amdt 13, CANCELED
Rawlins, WY, Rawlins Muni/Harvey Field, Takeoff Minimums and Obstacle DP, Amdt 5

[FR Doc. 2016–18438 Filed 8–3–16; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2014–0821; FRL–9950–18–Region 6]

Approval and Promulgation of Implementation Plans; Louisiana; Revisions to the New Source Review State Implementation Plan; Air Permit Procedure Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of revisions to the Louisiana New Source Review (NSR) State Implementation Plan (SIP) submitted by the Louisiana Department of Environmental Quality. These revisions to the Louisiana SIP provide updates to the minor NSR and nonattainment new source review (NNSR) permit programs in Louisiana contained within the Chapter 5 Permit Procedures and Chapter 6 Regulations on Control of Emissions through the Use of Emission Reduction Credits (ERC) Banking rules.

DATES: This final rule is effective on September 6, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2014–0821. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Stephanie Kordzi, 214–665–7520, *Kordzi.stephanie@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

The background for this action is discussed in detail in our April 20, 2016, proposal (81 FR 23232). In that document, we proposed to approve portions of ten SIP submittals for the State of Louisiana. These amendments enhance the SIP by (1) defining insignificant activities that will not require permitting; (2) correcting contradictory language in the insignificant activities list; (3) providing edits to the Permit Procedure Rule as requested by the EPA; (4) including procedures for incorporating test results; (5) unifying and streamlining name and ownership changes for all media; and (6) revising references to various LDEQ divisions. This action is being taken under section 110 of the Act. We did not receive any comments regarding our proposal although the LDEQ did send a letter to the EPA on July 14, 2016, to update information on sections 525, 527, and 529.

II. Final Action

We are approving the revisions to the Louisiana SIP as proposed in our April 20, 2016, proposal (81 FR 23232), with the exception of sections 525, 527, and 529, as discussed below. This includes SIP submittals from the State of Louisiana submitted on November 15, 1993, November 10, 1994, July 25, 1997, June 22, 1998, June 27, 2003, May 5, 2006, November 9, 2007, August 14, 2009, August 29, 2013, and November 3, 2014. These revisions provide clarity to the rules, correct contradictory language, update permit application and fee requirements, revise the rules to conform to the latest Louisiana laws, and add to the ''Insignificant Activities List''. We approve the revisions to the SIP that meet CAA requirements. Specifically, we are approving revisions to the Louisiana SIP pertaining to the following sections:

- LAC 33:III.501 as submitted on November 15, 1993, November 10, 1994, June 22, 1998, June 27, 2003, May 5, 2006, November 9, 2007, August 14, 2009; and November 3, 2014;
- LAC 33:III.502 as submitted on November 15, 1993, and November 3, 2014;
- LAC 33:III.503 as submitted on November 15, 1993, and November 3, 2014;
- LAC 33:III.504 as submitted on November 3, 2014;
- LAC 33:III.511 as submitted on November 15, 1993;
- LAC 33:III.513 as submitted on November 15, 1993, and November 9, 2007;
- LAC 33:III.515 as submitted on November 15, 1993;
- LAC 33:III.517 as submitted on November 15, 1993, November 10, 1994, July 25, 1997, June 22, 1998, and May 5, 2006;
- LAC 33:III.519 as submitted on November 15, 1993;
- LAC 33:III.521 as submitted on November 10, 1994, and May 5, 2006;
- LAC 33:III.523 as submitted on November 15, 1993, August 29, 2013, and November 3, 2014;
- LAC 33:III.601 as submitted on November 3, 2014;
- LAC 33:III.603 as submitted on November 3, 2014;
- LAC 33:III.605 as submitted on November 3, 2014;
- LAC 33:III.607 as submitted on November 3, 2014;
- LAC 33:III.615 as submitted on November 3, 2014; and
- LAC 33:III.619 as submitted on November 3, 2014.

The EPA is not taking final action as proposed on the Louisiana SIP at this time pertaining to the following sections based on LDEQ's letter of July 14, 2016, which withdrew portions of sections 525, 527, and 529 because they apply exclusively to part 70 sources. The letter specifically identified citations that are already approved into Louisiana's Operating Permits program. EPA will take action on the portion of the citations in these sections that have not been withdrawn in a future action:

• LAC 33:III.525 as submitted on November 15, 1993;

• LAC 33:III.527 as submitted on November 15, 1993, and November 10, 1994; and

• LAC 33:III.529 as submitted on November 15, 1993.

This action is being taken under section 110 of the Act.

III. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the Louisiana regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

IV. Statutory and Executive Order Reviews

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, the 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

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

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

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

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

In addition, 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. 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 October 3, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purpose of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, 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: July 26, 2016.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart T—Louisiana

■ 2. In § 52.970(c), the table titled ''EPA Approved Louisiana Regulations in the Louisiana SIP'' is amended by revising the entries for Sections 501, 503, 504, 601, 603, 605, 607, 615, and 619 and adding entries in numerical order for Sections 502, 511, 513, 515, 517, 519, 521, and 523 to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP

State citation	Title/subject	State approval date	EPA approval date	Comments
*	*	*	*	*
Section 501	Scope and Applicability	5/20/2011	8/4/2016 [Insert **Federal Register** citation].	The SIP does not include LAC 33:III.501.B.1.d. and LAC 33:III.501.B.2.d.i.(a).

EPA-APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP—Continued

State citation	Title/subject	State approval date	EPA approval date	Comments
Section 502	Definitions	5/20/2011	8/4/2016 [Insert **Federal Register** citation].	
Section 503	Minor Source Permit Requirements.	4/20/2011	8/4/2016 [Insert **Federal Register** citation].	
Section 504	Nonattainment New Source Review (NNSR) Procedures.	11/20/2012	8/4/2016 [Insert **Federal Register** citation].	The SIP does not include LAC 33:III.504.M.
*	* *	*	*	* *
Section 511	Emission Reductions	11/20/1993	8/4/2016 [Insert **Federal Register** citation].	
Section 513	General Permits, Temporary Sources, and Relocation of Portable Facilities.	10/20/2006	8/4/2016 [Insert **Federal Register** citation].	The SIP does not include LAC 33:III.513.A.1.
Section 515	Oil and Gas Wells and Pipelines Permitting Provisions.	11/20/1993	8/4/2016 [Insert **Federal Register** citation].	
Section 517	Permit Applications and Submittal of Information.	12/20/1997	8/4/2016 [Insert **Federal Register** citation].	
Section 519	Permit Issuance Procedures for New Facilities, Initial Permits, Renewals and Significant Modifications.	11/20/1993	8/4/2016 [Insert **Federal Register** citation].	The SIP does not include LAC 33:III.519.C.
Section 521	Administrative Amendments	5/20/2005	8/4/2016 [Insert **Federal Register** citation].	
Section 523	Procedures for Incorporating Test Results.	4/20/2011	8/4/2016 [Insert **Federal Register** citation].	
Chapter 6—Regulations on Control of Emissions Reduction Credits Banking				
Section 601	Purpose	11/20/2012	8/4/2016 [Insert **Federal Register** citation].	
Section 603	Applicability	11/20/2012	8/4/2016 [Insert **Federal Register** citation].	
Section 605	Definitions	11/20/2012	8/4/2016 [Insert **Federal Register** citation].	
Section 607	Determination of Creditable Emission Reductions.	11/20/2012	8/4/2016 [Insert **Federal Register** citation].	
*	* *	*	*	* *
Section 615	Schedule for Submitting Applications.	11/20/2012	8/4/2016 [Insert **Federal Register** citation].	
*	* *	*	*	* *
Section 619	Emission Reduction Credit Bank.	11/20/2012	8/4/2016 [Insert **Federal Register** citation].	
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SURFACE TRANSPORTATION BOARD

49 CFR Part 1040

[Docket No. EP 726]

On-Time Performance Under Section 213 of the Passenger Rail Investment and Improvement Act of 2008

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (STB or Board) is adopting a final rule to define ''on time'' and specify the formula for calculating ''on-time performance'' for purposes of Section 213 of the Passenger Rail Investment and Improvement Act of 2008. The Board will use these regulations only for the purpose of determining whether the ''less than 80 percent'' threshold that Congress set for bringing an on-time performance complaint has been met. In light of comments received on the Board's notice of proposed rulemaking issued on December 28, 2015, the proposed rule has been modified to deem a train's arrival at, or departure from, a given station ''on time'' if it occurs no later than 15 minutes after its scheduled time and to adopt an ''all-stations'' calculation of ''on-time performance.''

DATES: This rule is effective on August 27, 2016.

FOR FURTHER INFORMATION CONTACT: Scott M. Zimmerman at (202) 245–0386. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The National Railroad Passenger Corporation (Amtrak) was established by Congress in 1970 to preserve passenger services and routes on the Nation's railroads. *See Lebron* v. *Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 383–384 (1995); *Nat'l R.R. Passenger Corp.* v. *Atchison, Topeka, & Santa Fe R.R.*, 470 U.S. 451, 454 (1985); *see also Rail Passenger Serv. Act of 1970,* Public Law 91–518, 84 Stat. 1328

(1970). As a condition of relieving the railroad companies of their common carrier obligation to provide passenger service, Congress required them to permit Amtrak to operate over their tracks and use their facilities. *See* 45 U.S.C. 561, 562 (1970 ed.). Since 1973, Congress has required railroads to give Amtrak trains preference over freight service when using their lines and facilities: ''Except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing . . . .'' 49 U.S.C. 24308(c); *see* Amtrak Improvement Act of 1973, Public Law 93–146, section 10(2), 87 Stat. 552 (initial version).

Prior to 2008, the Board was not involved in the adjudication of Amtrak's preference rights. The only way that Amtrak could enforce its preference rights was by asking the Attorney General to bring a civil action for equitable relief. 49 U.S.C. 24103. Further, the Secretary of Transportation had the authority under section 24308(c) to grant a host rail carrier relief from the preference obligation and to establish the usage rights between Amtrak and the host carrier if the Secretary found that Amtrak's preference materially lessened the quality of freight transportation provided to shippers. In 2008, Congress enacted Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), 49 U.S.C. 24308(f), to address, among other things, the concern that one cause of Amtrak's inability to achieve reliable on-time performance was the failure of host railroads to honor Amtrak's right to preference. *See Passenger Rail Inv. & Improvement Act*, Public Law 110–432, Div. B, 122 Stat. 4907 (2008); S. Rep. No. 67, 110th Cong., 1st Sess. 25–26 (2007). Section 207 of PRIIA, 49 U.S.C. 24101 note, charged Amtrak and the Federal Railroad Administration (FRA) with ''jointly'' developing new, or improving existing, metrics and standards for measuring the performance of intercity passenger rail operations, including on-time performance and train delays incurred on host railroads.

PRIIA also transferred from the Secretary of Transportation to the Board the administration and enforcement of Amtrak's preference rights. Thus, PRIIA amended 49 U.S.C. 24308(c) to provide that: ''Except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing unless *the Board* orders otherwise under this subsection'' (emphasis added). Congress likewise transferred to the Board the authority under section 24308(c) to determine if ''preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers'' on a freight carrier's line, and, if so, to ''establish the rights of the carrier and Amtrak on reasonable terms.''

Under Section 213(a) of PRIIA, 49 U.S.C. 24308(f)(1), if the ''on-time performance'' (OTP) of any intercity passenger train averages less than 80% for any two consecutive calendar quarters, the Board may initiate an investigation, or upon complaint by Amtrak or another eligible complainant, the Board ''shall'' do so. The purpose of such an investigation is to determine whether and to what extent delays are due to causes that could reasonably be addressed by the passenger rail operator or the host railroad. Following the investigation, should the Board determine that Amtrak's substandard performance is ''attributable to'' the rail carrier's ''failure to provide preference to Amtrak over freight transportation as required'' by 49 U.S.C. 24308(c), the Board may ''award damages'' or other appropriate relief from a host railroad to Amtrak. 49 U.S.C. 24308(f)(2). If the Board finds it appropriate to award damages to Amtrak, Amtrak must use the award ''for capital or operating expenditures on the routes over which delays'' were the result of the host railroad's failure to grant the statutorily required preference to passenger transportation. 49 U.S.C. 24308(f)(4).

Thus, 49 U.S.C. 24308(f) sets up a two-stage process involving, first, a ''less than 80 percent'' threshold to indicate whether a train's OTP allows for an investigation; and second, if this prerequisite is satisfied, the Board may investigate (or on complaint, shall investigate) the causes of the deficient OTP, which could lead to findings, recommendations, and other possible relief as detailed in the statute.

On May 15, 2015, the Board instituted this rulemaking proceeding in response to a petition filed by the Association of American Railroads (AAR). *See On-Time Performance Under Sec. 213 of the Passenger Rail Inv. & Improvement Act of 2008*, EP 726 (STB served May 15, 2015). In that decision, the Board stated that a rulemaking would provide clarity regarding the ''less than 80 percent'' OTP threshold in all applicable cases and allow the Board to obtain the full range of stakeholder perspectives in one docket and avoid the potential relitigation of the issue in each case, thereby conserving party and agency resources.[1]

On December 28, 2015, the Board issued a Notice of Proposed Rulemaking (NPRM) that proposed a definition for OTP derived from a previous definition used by our predecessor, the Interstate Commerce Commission (ICC).[2] The Board's proposed rule read: ''A train is 'on time' if it arrives at its final terminus no more than five minutes after its scheduled arrival time per 100 miles of operation, or 30 minutes after its scheduled arrival time, whichever is less.'' NPRM, slip op. at 4–9. The Board sought comments on this definition but also encouraged the public to propose other alternatives, including the alternative adopted here: factoring into the calculation a train's punctuality at intermediate stops rather than the final terminus only. *See* NPRM, slip op. at 6. The Board also established a procedural schedule providing for comments and replies.

The Board received 121 comments and replies on its proposed rule from the railroad industry (both passenger and freight), states, the U.S. Department of Transportation, elected officials at all levels of government, individual members of the traveling public, and various stakeholder groups.

Shortly after the comment period in this docket closed, in *Association of American Railroads* v. *Department of Transportation*, 821 F.3d 19 (D.C. Cir. 2016), the United States Court of Appeals for the District of Columbia Circuit held that the structure of Section 207 of PRIIA violates the Due Process Clause of the U.S. Constitution because, in the court's view, it authorized Amtrak, ''an economically self-interested actor,'' to ''regulate its competitors''—that is, the railroads that host Amtrak passenger trains outside the Northeast Corridor. Accordingly, the FRA and Amtrak metrics are currently invalid.

Discussion of Issues Raised in Response to the NPRM.

The Board's Authority. Several freight rail interests argue that—even though section 24308(f)(1) allows, and in some

[1] By that point Amtrak had filed two complaints (both pending, but in abeyance based on this rulemaking) requesting that the Board initiate an investigation pursuant to section 24308(f), and claiming that host Class I carriers have not given Amtrak preference as required under section 24308(c). *See Nat'l R.R. Passenger Corp.—Sec. 213 Investigation of Substandard Performance on Rail Lines of Canadian Nat'l Ry.*, NOR 42134; *Nat'l R.R. Passenger Corp.—Investigation of Substandard Performance of the Capitol Ltd.*, NOR 42141.

[2] The NPRM contains additional background on the court and agency litigation and controversies that led the Board to initiate the rulemaking.

circumstances requires, the Board to investigate the causes of poor ''on time performance,'' including whether a host rail carrier has failed to provide preference to Amtrak over its rail line as required by section 24308(c)—the Board lacks authority to give meaning to the term ''on-time performance.'' They argue this even though PRIIA provides that if the on-time performance of an Amtrak passenger train falls below 80% for two consecutive quarters, such performance may warrant an investigation by the Board.

Although regulatory agencies like the Board typically have the authority to define the terms in provisions of the statutes that they administer, AAR and freight railroad commenters (Canadian National Railway Company (CN), CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NS)) argue that the Board does not have the authority to define on-time performance because Congress gave that responsibility jointly to Amtrak and FRA in Section 207 of PRIIA. We disagree.

In *National Railroad Passenger Corp.—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway* (*Illini/Saluki*), NOR 42134, slip op. at 2 (STB served Dec. 19, 2014), the Board concluded that the unconstitutionality of Section 207 of PRIIA does not prevent the Board from initiating investigations of on-time performance problems under section 24308(c). Indeed, the only way for the Board now to fulfill its responsibilities under 49 U.S.C. 24308(f) is to define OTP as a threshold for such investigations.

CN and AAR in their initial comments (*see* CN Feb. 8 Comment 4; AAR Feb. 8 Comment 6) raise concerns that host freight railroads may be faced with two inconsistent sets of regulations (*i.e.*, issued by (1) FRA/Amtrak and (2) the Board) if section 24308(f) investigations are instituted using the OTP definition established in this final rule and the courts ultimately uphold the validity of the PRIIA Section 207 metrics and standards. However, at present there are not two different operative standards, and there may never be. We will, therefore, address the issue of conflicting OTP definitions if and when the issue should arise.

CN and AAR argue that the issue is not whether section 24308(f) survives if Section 207 of PRIIA is unconstitutional, but whether Congress delegated to the Board in section 24308(f)(1) the authority to define on-time performance. They contend that because Congress explicitly delegated the authority to define on-time performance to FRA and Amtrak in Section 207 of PRIIA, the Board lacks that authority even if FRA and Amtrak are found not to have the legal authority to meet the statutory command.[3]

An agency has implied authority to implement ''a particular statutory provision . . . when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority.'' *United States* v. *Mead Corp.*, 533 U.S. 218, 226–27 (2001).[4] ''Sometimes, the legislative delegation to an agency on a particular question is implicit rather than explicit.'' *Chevron U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984). Several federal courts of appeals have held that an administrative agency with rulemaking authority has implicit authority to fill a gap exposed by the Supreme Court's invalidation of a portion of a statute. *See Pittston Co.* v. *United States*, 368 F.3d 385, 403–04 (4th Cir. 2004); *Sidney Coal Co.* v. *Social Security Admin.*, 427 F.3d 336, 346 (6th Cir. 2005).[5]

Here, as in *Pittston* and *Sidney Coal*, the invalidation of Section 207 of PRIIA leaves a gap that the Board has the delegated authority to fill by virtue of its authority to adjudicate complaints brought by Amtrak against host freight railroads for violations of Amtrak's statutory preference and to award damages where a preference violation is found. Any other result would gut the remedial scheme, a result that Congress clearly did not intend.

All-Stations OTP. As summarized below, the Board's NPRM proposed to calculate OTP solely on the basis of train arrivals at endpoint termini (Endpoint OTP). The Board proposed Endpoint OTP as an appropriate threshold for bringing OTP cases under 49 U.S.C. 24308(f)(1) because it would be ''clear and relatively easy to apply,'' *i.e.*, comprehensible to the traveling public and simple to describe and implement. In addition, Amtrak's public OTP data[6] suggest that under either an Endpoint OTP or All-Stations OTP standard, the threshold for initiating a case could be triggered in a comparable number of cases, if long-established trends continue. Nevertheless, many commenters perceived that in proposing an Endpoint OTP threshold, the Board was devoting insufficient attention to intermediate stations, their passengers, and even the states in which the intermediate stations are located. That was not the Board's intent; rather, the intent was solely to set a threshold for accepting cases.

Except for the freight railroad industry, virtually all commenters urge the Board to define ''on time'' based on train punctuality at all stations, rather than just at the endpoints (as originally proposed), because the majority of the traveling public are destined for intermediate rather than endpoint stations. (*See, e.g.*, Amtrak Feb. 8 Comment 7.) Moreover, the examples provided by individual passengers—*e.g.*, of waiting for hours at unattended stations in remote or unsecured locations at night for late trains that would be deemed ''on time'' at their endpoints—convince us that an ''all-stations'' definition will more appropriately reflect the principle that rail passengers destined for every station along a line, regardless of its

[3] In support, they cite *National Railroad Passenger Corp.* v. *National Association of Railroad Passengers*, 414 U.S. 453, 458 (1974) (''When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode.'') and *Bayou Lawn & Landscape Services* v. *Secretary of Labor*, 713 F.3d 1080 (11th Cir. 2013). But neither case has any bearing on the Board's authority to fill the definitional gap exposed by the invalidation of a statutory provision. *National Railroad Passenger Corp.* did not involve agency delegation; that case addressed the question whether the predecessor to 49 U.S.C. 24103, which allows the Attorney General to bring suit against Amtrak or host freight railroads to enforce obligations related to Amtrak, created a private right of action to allow third parties to sue to prevent what they regarded as the unlawful discontinuance of certain passenger trains. In *Bayou Lawn*, the court held that the Department of Labor's general rulemaking authority did not give it delegated authority to issue legislative rules for visa applications for non-agricultural workers where Congress had expressly delegated that authority to the Department of Homeland Security. There was no suggestion there that the express delegation to Homeland Security had been invalidated, or that Homeland Security was otherwise incapable of carrying out the Congressional delegation.

[4] *See ICC* v. *Am. Trucking Assns.*, 467 U.S. 354, 364–67 (1984) (agency may ''modify express remedies in order to achieve specific statutory purposes'' if the ''discretionary power . . . further[s] a specific statutory mandate [and] the exercise of that power [is] directly and closely tied to that mandate''); *W. Coal Traffic League* v. *STB*, 216 F.3d 1168 (D.C. Cir. 2000).

[5] CN argues that the Fifth Circuit held in *Texas* v. *United States*, 497 F.3d 491, 504 (5th Cir. 2007) that a later court decision cannot affect or create ambiguity for purposes of *Chevron* delegation. But Chief Judge Jones' opinion cited by CN is not the majority opinion on the issue of implicit delegation. Both Judge King, who concurred in the result, and Judge Denis, who dissented, agreed that a court decision invalidating a portion of a statute creates implicit authority to the agency administering the statute to engage in gap-filling. 497 F.3d at 511–12, 513–14. Judge King and Judge Denis disagreed over whether the agency's authority to fill gaps included overriding portions of the statute that remained in effect. There is no such problem here because the Board is simply defining the term ''on-time performance,'' which remains in effect.

[6] *See* Amtrak's Monthly Performance Reports on Amtrak.com, as well as the quarterly OTP statistics published by the Federal Railroad Administration (*http://www.fra.dot.gov/Page/P0532*).

size, should have the same expectation of punctuality. This principle underlies the Congressional aspiration that ''Amtrak shall . . . operate Amtrak trains, to the maximum extent feasible, *to all station stops* within 15 minutes of the time established in public timetables.'' 49 U.S.C. 24101(c)(4) (emphasis added).[7] We therefore will incorporate an all-stations calculation in the threshold for bringing cases to the Board under 49 U.S.C. 24308(f).

As the freight railroads point out, and as FRA and Amtrak themselves acknowledged in their final metrics and standards under PRIIA Section 207 (in which they deferred application of an all-stations test for OTP for two years to allow for schedule adjustments), some schedules, particularly for long-distance trains, may need to be modified to more realistically distribute recovery time in light of an all-stations threshold. (*See* CN Mar. 30 Reply 3–4; AAR Mar. 30 Reply 6–7.) For example, as CSXT notes, considerable care must be exercised in distributing recovery time along a route, to avoid site-specific operational concerns. (*See* CSXT Mar. 30 Reply 10.) Moreover, a number of current passenger rail schedules insert a very large share of recovery time between the last stations on a route. To support all stations OTP on such a route could require a reevaluation and potential reallocation of recovery time across the entire route. We are confident, however, that following adoption of an all-stations approach to OTP in this rulemaking, rail operations planners from all affected parties will be able to devise appropriate, realistic, and up-to-date modifications to published schedules that are consistent both with all-stations OTP and with Congress' explicit intent in PRIIA to improve intercity passenger rail service. Furthermore, considerations regarding the published schedules may enter into the investigation stage of the two-stage process contemplated in the statute.

The 15-Minute Allowance. In the NPRM, the Board proposed that an Amtrak train would be considered on-time if it arrives at its final terminus no more than five minutes after its scheduled arrival time per 100 miles of operation, or 30 minutes after its scheduled arrival time, whichever is less. Based on the comments received,[8] the Board has decided to deem a train's arrival or departure ''on time'' if it occurs no later than 15 minutes after its scheduled time. In our view, this 15-minute allowance has several advantages. First, it is consistent with the Congressional goal set forth in 49 U.S.C. 24101(c)(4).[9] Second, in comparison with the tiered proposal, it is simple and easy to apply. Third, it treats all stations and all passengers equally. Finally, Amtrak has long been calculating All-Stations OTP with a constant 15-minute allowance at each station,[10] so the data needed to apply this final rule are readily available to the public and stakeholders.

Contract On-Time Performance Versus Published Schedules. The freight railroads generally argue that OTP should be measured in accordance with the criteria contained in their private contracts with Amtrak (contract OTP) rather than the published Amtrak timetables. (*See* Union Pac. R.R. (UP) Feb. 8 Comment 3; AAR Feb. 8 Comment 10; CN Feb. 8 Comment 5.) However, the Congressional goal at 49 U.S.C. 24101(c)(4) refers to the ''time established in public timetables.'' In addition to being consistent with the Congressional goal, a comparison of publicly scheduled train timings with actual train timings is also the simplest and most transparent way to compare a train's OTP, as experienced by the traveling public, with the ''less than 80 percent'' threshold mandated in 49 U.S.C. 24308(f)(1). Although the private contracts between Amtrak and its host carriers will not enter into the threshold stage of an OTP case, such contracts could be relevant in the investigation stage.

Several freight railroads and AAR claim that if the Board does not account for the problems with the schedules and simply relies on the published schedules as they are, it could result in an avalanche of complaints and ''false positives''—trains that technically fall below the OTP threshold but are not necessarily poor performers because the schedules are allegedly ''unrealistic.'' (*See* AAR Mar. 30 Reply; CN Mar. 30 Reply; UP Mar. 30 Reply; NS Mar. 30 Reply; CSXT Mar. 30 Reply.) Because the complainant has the primary burden of proving its case and litigation is resource intensive, the adopted approach is not expected to result in an overwhelming number of claims.

Finally, some commenters (*e.g.,* Virginia DOT, Michigan DOT, States for Passenger Rail Coalition) argue that the Board should set standards for the development of route schedules or conduct further study of the schedules prior to adopting rules. However, while section 24308(f) permits the Board, in conducting a particular investigation, to review the extent to which scheduling may contribute to the delays being investigated and to identify reasonable measures to improve OTP, the statute does not include generalized authority, outside a particular investigation, for the Board to set standards for the development of schedules. Thus, what these commenters are asking the Board to do is beyond the scope of our authority and this rulemaking.

Third-Party (State) Agreements. A number of states and others expressed concern that the Board's OTP rule could undermine or preempt separate agreements entered into between states, operators, hosts, and others for the improvement of passenger rail service in specific corridors—for example, service outcomes agreements under FRA's High-Speed Intercity Passenger Rail (HSIPR) Program. (*See* States for Passenger Rail Coalition, Inc. Feb. 8 Comment 3; Cal. State Transp. Agency Feb. 8 Comment 3.) We reiterate, however, that the Board is defining ''on time'' and describing the calculation of OTP only for the purpose of determining whether the ''less than 80 percent'' threshold for bringing an OTP complaint has been met. The Board neither intends nor expects that its OTP definition here will have any applicability beyond that limited purpose.

Multicarrier Routes. Several commenters, including freight railroad interests, argue that for routes where there are multiple host carriers, OTP should not be measured for the entire route, but for each host carrier's segment. The commenters argue that this would allow the Board to determine if the delays are occurring on one carrier's segment and, if so, to properly narrow the investigation solely to that carrier's conduct. The commenters argue that if the Board does not do so, a carrier that is meeting its statutory duty could be unfairly drawn into an investigation.

Although the Board understands that concern, the attribution of delays to hosts and specific causes more properly pertains to—indeed, would likely be among the initial topics addressed in—the investigatory phase of a case. Moreover, the statutory mandate (49 U.S.C. 24308(f)) specifically refers to the ''on-time performance of any intercity passenger train,'' irrespective of the number of host carriers involved in the

[7] *See also Adequacy of Intercity Rail Passenger Serv.,* 351 I.C.C. 883 (1976).

[8] *See, e.g.,* Capital Corridor Joint Powers Authority March 30 Reply 4 n.3; Amtrak February 8 Comment 8; Virginia Rail Policy Institute February 8 Comment 1.

[9] ''Amtrak shall . . . operate Amtrak trains, to the maximum extent feasible, to all station stops within 15 minutes of the time established in public timetables.''

[10] The only exception is Amtrak's Acela service in the Northeast Corridor, to which Amtrak applies a 10-minute lateness allowance.

train's operation. Therefore, the adopted approach is consistent with the statute.

Calculation of OTP. Two individuals take issue with the Board's proposal to exclude from the OTP analysis any train that does not operate ''from its scheduled origin to its scheduled destination.'' The commenters argue that these trains should be accounted for, because they might represent instances of the most severe service failures.

The changes adopted in this final rule will lessen the potential impact of this issue. Endpoint OTP, as proposed in the NPRM, would not have included any train that does not serve both its scheduled endpoints. By contrast, under the all-stations calculation method, every departure from origin and every arrival at subsequent stations that actually occurs—regardless of whether the train originates at its scheduled origin or completes its run to its scheduled destination—will enter into the denominator. The Board will exclude, from its prescribed calculation method, only trains that do not operate at all, or stations on a curtailed train's route that do not actually receive service. This is consistent with the statute, which provides that Congressionally-mandated investigations in 49 U.S.C. 24308(f)(1) should analyze ''delays'' (not cancellations). In addition, in a train operation that does not take place, there typically would be no practical way to determine whether preference (the focus of 49 U.S.C. 24308(f)(2)) was granted or withheld. Finally, because Amtrak generally cancels or curtails its services only in the event of emergencies or extreme weather events (such as the severe flooding in South Carolina in the Fall of 2015), it is doubtful that inclusion of such incidents in the denominator of the calculation would shed light on what is taking place under typical operating conditions for a particular train. To clarify this point, language is being added to the final rule making clear that the OTP calculation includes only ''actual'' arrivals and departures.

Additional issues, including the following, were raised by certain commenters, but the issues are beyond the scope of this rulemaking.

Per-Train vs. Per-Route Calculation. Some railroad interests argue that the Board should not calculate OTP for all trains on the route, but rather, for each individual train that operates on that route. This argument goes to the question of what constitutes a ''train,'' an issue that this rulemaking does not address and was not intended to address.

International Service. Some commenters note that the proposed OTP standard rule does not provide any guidance for cross-border routes (*i.e.,* those that go into Canada). No such issue has arisen in a case brought to the Board, and this issue goes to the question of what constitutes a ''train,'' an issue that, again, this rulemaking does not address and was not intended to address.

Eligible Complainants. The Michigan Association of Railroad Passengers argues that the Board should expand the pool of the parties that can file complaints to include passengers. However, the parties eligible to bring complaints under section 24308(f) are specified by that statute, and we are not at liberty to expand it in this rulemaking.

Time Limits on Data. Some freight railroad commenters also state that without a time limit on the period during which the OTP deficiency at issue is alleged to have occurred (*e.g.,* the most recent four quarters), outdated and unnecessary claims could be filed regarding a train that is currently performing well. (*See* CN Feb. 8 Comment 6; AAR Feb. 8 Comment 14.) This issue, too, is beyond the scope of this rulemaking, which was intended solely to define ''on time'' and specify the formula for calculating OTP for purposes of 49 U.S.C. 24308(f).

Summary of the Final Rule

For the reasons discussed above, we are modifying the rule as initially proposed and adopting the all-stations approach. This approach will be codified at 49 CFR 1040. The final regulations are attached at the end of this decision.

Section 1040.1 makes explicit the strictly limited purpose of the rulemaking, as discussed above: To define ''on time'' and specify the formula for calculating OTP so as to trigger implementation of 49 U.S.C. 24308(f).

Section 1040.2 states that a train's arrival at or departure from a particular station is ''on time'' if it occurs no later than 15 minutes after its scheduled time. This section embodies the 15-minute allowance contained in the longstanding Congressional goal for Amtrak at 49 U.S.C. 24101(c)(4).

Section 1040.3 implements the ''all-stations'' option that was suggested as an alternative to endpoint OTP in the NPRM. Pursuant to 49 U.S.C. 24308(f)(1), which states that a train can be the subject of an OTP complaint if its OTP ''averages less than 80 percent for any two consecutive calendar quarters,'' Section 1040.3 describes the method for calculating a train's OTP in each quarter. Specifically, OTP is the percentage equivalent to the fraction (1) whose denominator is the total number of the train's actual (a) departures from its origin station, (b) arrivals at all intermediate stations, and (c) arrivals at its destination station, during that calendar quarter, and (2) whose numerator is the total number of such actual departures and arrivals that are ''on time'' under § 1040.2—*i.e.,* that occur no later than 15 minutes after their scheduled time.

Regulatory Flexibility Act Statement

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. 5 U.S.C. 601–604. Under section 605(b), an agency is not required to perform an initial or final regulatory flexibility analysis if it certifies that the proposed or final rules will not have a ''significant impact on a substantial number of small entities.''

Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop. Ass'n* v. *Conner,* 553 F.3d 467, 478, 480 (7th Cir. 2009). An agency has no obligation to conduct a small entity impact analysis of effects on entities that it does not regulate. *United Distrib. Cos.* v. *FERC,* 88 F.3d 1105, 1170 (D.C. Cir. 1996).

In the NPRM, the Board already certified under 5 U.S.C. 605(b) that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. The Board explained that the proposed rule would not place any additional burden on small entities, but rather clarify an existing obligation. The Board further explained that, even assuming for the sake of argument that the proposed regulation were to create an impact on small entities, which it would not, the number of small entities so affected would not be substantial. A copy of the

NPRM was served on the U.S. Small Business Administration (SBA).

The final rule adopted here uses a different measure of ''on time'' and ''on-time performance'' for purposes of Section 213 of PRIIA than those proposed in the NPRM. However, the same basis for the Board's certification of the proposed rule applies to the final rule adopted here. The final rule would not create a significant impact on a substantial number of small entities. Host carriers have been required to allow Amtrak to operate over their rail lines since the 1970s. Moreover, an investigation concerning delays to intercity passenger traffic is a function of Section 213 of PRIIA rather than this rulemaking. The final rule only defines ''on-time performance'' for the purpose of implementing the rights and obligations already established in Section 213 of PRIIA. Thus, the rule does not place any additional burden on small entities, but rather clarifies an existing obligation. Moreover, even assuming, for the sake of argument, that the final rule were to create an impact on small entities, which it does not, the number of small entities so affected would not be substantial. The final rule applies in proceedings involving Amtrak, currently the only provider of intercity passenger rail transportation subject to PRIIA, and its host railroads. For almost all of its operations, Amtrak's host carriers are Class I rail carriers, which are not small businesses under the Board's new definition for RFA purposes.[11] Currently, out of the several hundred Class III railroads (''small businesses'' under the Board's new definition) nationwide, only approximately 10 host Amtrak traffic.[12] Therefore, the Board certifies under 5 U.S.C. 605(b) that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

The final rule is categorically excluded from environmental review under 49 CFR 1105.6(c).

List of Subjects in 49 CFR Part 1040

On-time performance of intercity passenger rail service.

It is ordered:

1. The final rule set forth below is adopted and will be effective on August 27, 2016. Notice of the rule adopted here will be published in the **Federal Register**.

2. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

3. This decision is effective on the date of service.

Decided: July 28, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Kenyatta Clay,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board amends title 49, chapter X, subchapter A, of the Code of Federal Regulations by adding part 1040 as follows:

PART 1040: ON-TIME PERFORMANCE OF INTERCITY PASSENGER RAIL SERVICE

Sec.

1040.1 Purpose.
1040.2 Definition of ''on time''.
1040.3 Calculation of quarterly on-time performance.

Authority: 49 U.S.C. 1321 and 24308(f).

§ 1040.1. Purpose.

This part defines ''on time'' and specifies the formula for calculating on-time performance for the purpose of implementing Section 213 of the Passenger Rail Investment and Improvement Act of 2008, 49 U.S.C. 24308(f).

§ 1040.2. Definition of ''on time.''

An intercity passenger train's arrival at, or departure from, a given station is on time if it occurs no later than 15 minutes after its scheduled time.

§ 1040.3. Calculation of quarterly on-time performance.

In any given calendar quarter, an intercity passenger train's on-time performance shall be the percentage equivalent to the fraction calculated using the following formula:

(a) The denominator shall be the total number of the train's actual: Departures from its origin station, arrivals at all intermediate stations, and arrivals at its destination station, during that calendar quarter; and

(b) The numerator shall be the total number of the train's actual: Departures from its origin station, arrivals at all intermediate stations, and arrivals at its destination station, during that calendar quarter, that are on time as defined in § 1040.2.

[FR Doc. 2016–18256 Filed 8–3–16; 8:45 am]

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[11] At the time the Board issued the NPRM, the Board used the SBA's size standard for rail transportation, which is based on number of employees. *See* 13 CFR 121.201 (industry subsector 482). Subsequently, however, pursuant to 5 U.S.C. 601(3) and after consultation with SBA, the Board (with Commissioner Begeman dissenting) established a new definition of ''small business'' for the purpose of RFA analysis. Under that new definition, the Board defines a small business as a rail carrier classified as a Class III rail carrier under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regulatory Flexibility Act,* EP 719 (STB served June 30, 2016).

[12] This number is derived from Amtrak's Monthly Performance Report for May 2015, historical on-time performance records, and system timetable, all of which are available on Amtrak's Web site.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2015–0070; 4500030114]

RIN 1018–BA91

Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Marbled Murrelet

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final determination.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine the critical habitat for the marbled murrelet (*Brachyramphus marmoratus*), as designated in 1996 and revised in 2011, meets the statutory definition of critical habitat under the Endangered Species Act of 1973, as amended (Act). The current designation includes approximately 3,698,100 acres (1,497,000 hectares) of critical habitat in the States of Washington, Oregon, and California.

DATES: This final determination confirms the effective date of the final rule published at 61 FR 26256 and effective on June 24, 1996, as revised at 76 FR 61599, and effective on November 4, 2011.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* and *http://www.fws.gov/wafwo.* Comments and materials we received, as well as some of the supporting documentation we used in preparing this final rule, are available for public inspection at *http://www.regulations.gov.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive SE., Suite 102,

Lacey, WA 98503–1273 (telephone 360–753–9440; facsimile 360–753–9008). The critical habitat designation for the marbled murrelet as affirmed by this final determination is in the Code of Federal Regulations at 50 CFR 17.95(b). The coordinates for this critical habitat rule were provided in the **Federal Register** in 1996 and 2011 and can be found at 61 FR 26256 and 76 FR 61599.

FOR FURTHER INFORMATION CONTACT: Eric V. Rickerson, State Supervisor, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive SE., Suite 102, Lacey, WA 98503–1273 (telephone 360–753–9440, facsimile 360–753–9008); Paul Henson, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266, telephone 503–231–6179, facsimile 503–231–6195; Bruce Bingham, Field Supervisor, U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521, telephone 707–822–7201, facsimile 707–822–8411; Jennifer Norris, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825, telephone 916–414–6700, facsimile 916–414–6713; or Stephen P. Henry, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003, telephone 805–644–1766, facsimile 805–644–3958. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of this document. On May 24, 1996, we published in the **Federal Register** a final rule designating 3,887,800 acres (ac) (1,573,340 hectares (ha)) of critical habitat for the marbled murrelet in the States of Washington, Oregon, and California (61 FR 26256). On October 5, 2011, we published in the **Federal Register** a final rule revising critical habitat for the marbled murrelet (76 FR 61599), resulting in the removal of approximately 189,671 ac (76,757 ha) of critical habitat in the States of Oregon and California. In a proposed rule published in the **Federal Register** August 25, 2015 (80 FR 51506), we reconsidered the 1996 final rule, as revised in 2011, for the purpose of assessing whether all of the designated areas meet the statutory definition of critical habitat. We did not propose any changes to the boundaries of the specific areas identified as critical habitat.

Why we needed to reconsider the rule. In 2012, the American Forest Resource Council (AFRC) and other parties filed suit against the Service, challenging the designation of critical habitat for the marbled murrelet, among other things. After this suit was filed, the Service concluded that the 1996 rule that first designated critical habitat for the marbled murrelet, as well as the 2011 rule that revised that designation, did not comport with recent case law holding that the Service should specify which areas were occupied at the time of listing, and should further explain why unoccupied areas are essential for conservation of the species. Hence, the Service moved for a voluntary remand of the critical habitat rule, requesting until September 30, 2015, to issue a proposed rule, and until September 30, 2016, to issue a final rule. On September 5, 2013, the court granted the Service's motion, leaving the current critical habitat rule in effect pending completion of the remand.

The basis for our action. Under the Act, any species that is determined to be an endangered or threatened species shall, to the maximum extent prudent and determinable, have habitat designated that is considered to be critical habitat. Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best scientific data available after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. Section 4 of the Act and its implementing regulations in part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for designating or revising critical habitat for listed species.

We considered the economic impacts of the proposed rule. We provided our evaluation of the potential economic impacts of the proposed determination regarding critical habitat for the marbled murrelet in the proposed rule. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of the proposed determination. We have incorporated the comments into this final determination.

Public comment. The comment period on our proposed rule and our evaluation of probable economic impacts of the proposed rule was open for 60 days, beginning with the publication of the proposed rule on August 25, 2015 (80 FR 51506), through October 26, 2015. We considered all substantive and relevant comments and information received from the public during the comment period.

Previous Federal Actions

For additional information on previous Federal actions concerning the marbled murrelet, refer to the final listing rule published in the **Federal Register** on October 1, 1992 (57 FR 45328), the final rule designating critical habitat published in the **Federal Register** on May 24, 1996 (61 FR 26256), and the final revised critical habitat rule published in the **Federal Register** on October 5, 2011 (76 FR 61599). In the 1996 final critical habitat rule, we designated 3,887,800 ac (1,573,340 ha) of critical habitat in 32 units on Federal and non-Federal lands. On September 24, 1997, we completed a recovery plan for the marbled murrelet in Washington, Oregon, and California (USFWS 1997, entire). On January 13, 2003, we entered into a settlement agreement with AFRC and the Western Council of Industrial Workers, whereby we agreed to review the marbled murrelet critical habitat designation and make any revisions deemed appropriate after a revised consideration of economic and any other relevant impacts of designation. On April 21, 2003, we published in the **Federal Register** a notice initiating a 5-year review of the marbled murrelet (68 FR 19569) and published a second information request for the 5-year review on July 25, 2003 (68 FR 44093). The 5-year review evaluation report was finished in March 2004 (McShane *et al.* 2004), and the 5-year review was completed on August 31, 2004.

On September 12, 2006, we published in the **Federal Register** a proposed revision to critical habitat for the marbled murrelet, which included adjustments to the original designation and proposed several exclusions under section 4(b)(2) of the Act (71 FR 53838). On June 26, 2007, we published in the **Federal Register** a document announcing the availability of a draft economic analysis (72 FR 35025) related to the September 12, 2006, proposed critical habitat revision (71 FR 53838). On March 6, 2008, we published a document in the **Federal Register** (73 FR 12067) stating that the critical habitat for marbled murrelet should not be revised due to uncertainties regarding U.S. Bureau of Land Management (BLM) revisions to its District Resource Management Plans in western Oregon, and that document fulfilled our obligations under the settlement agreement.

On July 31, 2008, we published in the **Federal Register** a proposed rule to revise currently designated critical habitat for the marbled murrelet by removing approximately 254,070 ac (102,820 ha) in northern California and Oregon from the 1996 designation (73 FR 44678). A second 5-year review was completed on June 12, 2009. On January 21, 2010, in response to a May 28, 2008, petition to delist the California/Oregon/Washington distinct population segment (DPS) of the marbled murrelet and our subsequent October 2, 2008, 90-day finding concluding that the petition presented substantial information (73 FR 57314; October 2, 2008), we published a 12-month finding notice in the **Federal Register** (75 FR 3424) determining that removing the marbled murrelet from the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11) was not warranted. We also found that the Washington/Oregon/California population of the marbled murrelet is a valid DPS in accordance with the discreteness and significance criteria in our 1996 DPS policy (February 7, 1996; 61 FR 4722) and concluded that the DPS continues to meet the definition of a threatened species under the Act.

On October 5, 2011, we published in the **Federal Register** a final rule revising the critical habitat designation for the marbled murrelet (76 FR 61599). This final rule removed approximately 189,671 ac (76,757 ha) in northern California and southern Oregon from the 1996 designation, based on new information indicating these areas did not meet the definition of critical habitat for the marbled murrelet; this action resulted in a final revised designation of approximately 3,698,100 ac (1,497,000 ha) of critical habitat in Washington, Oregon, and California.

On January 24, 2012, AFRC filed suit against the Service to delist the marbled murrelet and vacate critical habitat. On March 30, 2013, the U.S. District Court for the District of Columbia granted in part AFRC's motion for summary judgment and denied a joint motion for vacatur of critical habitat pending completion of a voluntary remand. Following this ruling, the Service moved for a remand of the critical habitat rule, without vacatur, in light of recent case law setting more stringent requirements on the Service for specifying how designated areas meet the definition of critical habitat. On September 5, 2013, the district court ordered the voluntary remand without vacatur of the critical habitat rule, and set deadlines of September 30, 2015, for a proposed rule and September 30, 2016, for a final rule. The court ruled in favor of the Service regarding the Service's denial of plaintiffs' petition to delist the species, and that ruling was affirmed on appeal. See *American Forest Resource Council* v. *Ashe,* 946 F. Supp. 2d 1 (D.D.C. 2013), aff'd 2015 U.S. App. LEXIS 6205 (D.C. Cir., Feb. 27, 2015).

The Service, in conjunction with the National Marine Fisheries Service, published a rule revising 50 CFR 424.12, the criteria for designating critical habitat, on February 11, 2016 (81 FR 7413); the rule became effective on March 14, 2016. The revised regulations clarify, interpret, and implement portions of the Act concerning the procedures and criteria used for adding species to the Lists of Endangered and Threatened Wildlife and Plants and designating and revising critical habitat. Specifically, the amendments make minor edits to the scope and purpose, add and remove some definitions, and clarify the criteria and procedures for designating critical habitat. These amendments are intended to clarify expectations regarding critical habitat and provide for a more predictable and transparent critical habitat designation process.

As stated in the revised version of § 424.12, the regulatory provisions in that section apply only to rulemaking actions for which the proposed rule is published after that effective date. Thus, the prior version of § 424.12 will continue to apply to any rulemaking actions for which a proposed rule was published before that date. Since the proposed rule for marbled murrelet critical habitat was published on August 25, 2015, this final rule follows the version of § 424.12 that was in effect prior to March 14, 2016.

Summary of Changes From Proposed Rule

Based upon our evaluation of the best scientific data available and considering all information and comments received during the public comment period, we conclude that our evaluation and description of how all areas currently designated as critical habitat for the marbled murrelet meet the statutory definition under the Act is accurate as described in the proposed rule. Furthermore, we conclude that our description of the probable incremental impacts of our proposed rulemaking is accurate as described in the proposed rule. Therefore, there are no changes from the proposed rule in this final rule.

Background

A final rule designating critical habitat for the marbled murrelet was published in the **Federal Register** on May 24, 1996 (61 FR 26256). A final rule revising the 1996 designation of critical habitat for the marbled murrelet was published in the **Federal Register** on October 5, 2011 (76 FR 61599). Both of these rules are available under the ''Supporting Documents'' section for this docket in the Federal eRulemaking Portal: *http://www.regulations.gov* at Docket Number FWS–R1–ES–2015–0070. It is our intent to discuss only those topics directly relevant to the 1996 and revised 2011 designations of critical habitat for the marbled murrelet. A complete description of the marbled murrelet, including a discussion of its life history, distribution, ecology, and habitat, can be found in the May 24, 1996, final rule (61 FR 26256) and the final recovery plan (USFWS 1997).

In this document, we have reconsidered our previous critical habitat designation for the marbled murrelet (May 24, 1996; 61 FR 26256, as revised on October 5, 2011; 76 FR 61599). The current designation consists of approximately 3,698,100 ac (1,497,000 ha) of critical habitat in Washington, Oregon, and California. The critical habitat consists of 101 subunits: 37 in Washington, 33 in Oregon, and 31 in California. We have reconsidered the final rule for the purpose of evaluating whether all areas currently designated meet the definition of critical habitat under the Act. We have described and assessed each of the elements of the definition of critical habitat, and evaluated whether these statutory criteria apply to the current designation of critical habitat for the marbled murrelet. Here we present the following information relevant to our evaluation:

I. The statutory definition of critical habitat.

II. A description of the physical or biological features essential to the conservation of the marbled murrelet, for the purpose of evaluating whether the areas designated as critical habitat provide these essential features.

III. The primary constituent elements for the marbled murrelet.

IV. A description of why those primary constituent elements may require special management considerations or protection.

V. Our standard for defining the geographical areas occupied by the species at the time of listing.

VI. The evaluation of those specific areas within the geographical area occupied at the time of listing for the purpose of determining whether designated critical habitat meets the definition under section 3(5)(A)(i) of the Act.

VII. An additional evaluation of all critical habitat to determine whether the designated units meet the standard of being essential to the conservation of the species, under section 3(5)(A)(ii) of the Act. We conducted this analysis to assess whether all areas of critical habitat meet the statutory definition under either of the definition's prongs, regardless of occupancy. This approach is consistent with the ruling in *Home Builders Ass'n of Northern California* v. *U.S. Fish and Wildlife Service,* 616 F.3d 983 (9th Cir.), *cert. denied* 131 S.Ct. 1475 (2011), in which the court upheld a critical habitat rule in which the Service had determined that the areas designated, whether occupied or not, met the more demanding standard of being essential for conservation.

VIII. Restated correction to preamble language in 1996 critical habitat rule.

IX. Effects of critical habitat designation under section 7 of the Act.

X. As required by section 4(b)(2) of the Act, consideration of the potential economic impacts of the rule.

XI. Final determination that all areas currently designated as critical habitat for the marbled murrelet meet the statutory definition under the Act.

XII. Summary of Comments and Responses

I. Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features.

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Under the first prong of the Act's definition of critical habitat in section 3(5)(a)(i), areas within the geographical area occupied by the species at the time it was listed may be included in critical habitat if they contain physical or biological features: (1) Which are essential to the conservation of the species; and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the primary biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements (PCEs) are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat in section 3(5)(A)(ii), we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon the Secretary's determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential for the conservation of the species and may be included in the critical habitat designation. In addition, if critical habitat is designated or revised subsequent to listing, we may designate areas as critical habitat that may currently be unoccupied but that were occupied at the time of listing. We designate critical habitat in areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.

II. Physical or Biological Features

We identified the specific physical or biological features essential for the conservation of the marbled murrelet from studies of this species' habitat, ecology, and life history as described below. Additional information can be found in the final listing rule published in the **Federal Register** on October 1, 1992 (57 FR 45328), and the Recovery Plan for the Marbled Murrelet (USFWS 1997). In the 1996 final critical habitat rule (May 24, 1996; 61 FR 26256), we relied on the best available scientific information to describe the terrestrial habitat used for nesting by the marbled murrelet. For this 2016 rule reconsideration, the majority of the following information is taken directly from the 1996 final critical habitat rule, where the fundamental physical or biological features essential to the marbled murrelet as described therein (in the section titled *Ecological Considerations*) remain valid (May 24, 1996; 61 FR 26256).

Where newer scientific information is available that refutes or validates the information presented in the 1996 final critical habitat rule, that information is provided here and is so noted. However, this final rule does not constitute a complete summary of all new scientific information on the biology of the marbled murrelet since 1996. Because this rule reconsideration addresses the 1996 final critical habitat, as revised in 2011 (October 5, 2011; 76 FR 61599), which designated critical habitat only in the terrestrial environment, the following section will solely focus on the terrestrial nesting habitat features. Forested areas with conditions that are capable of supporting nesting marbled murrelets are referred to as ''suitable nesting habitat.'' Loss of such nesting habitat was the primary basis for listing the marbled murrelet as threatened; hence protection of such habitat is essential to the conservation of the species. We consider the information provided here to represent the best available scientific data with regard to the physical or biological features essential for the marbled murrelet's use of terrestrial habitat.

Throughout the forested portion of the species' range, marbled murrelets typically nest in forested areas containing characteristics of older forests (Binford *et al.* 1975, p. 305; Quinlan and Hughes 1990, entire; Hamer and Cummins 1991, pp. 9–13; Kuletz 1991, p. 2; Singer *et al.* 1991, pp. 332–335; Singer *et al.* 1992, entire; Hamer *et al.* 1994, entire; Hamer and Nelson 1995, pp. 72–75; Ralph *et al.* 1995a, p. 4). The marbled murrelet population in Washington, Oregon, and California nests in most of the major types of coniferous forests (Hamer and Nelson 1995, p. 75) in the western portions of these States, wherever older forests remain inland of the coast. Although marbled murrelet nesting habitat characteristics may vary throughout the range of the species, some general habitat attributes are characteristic throughout its range, including the presence of nesting platforms, adequate canopy cover over the nest, landscape condition, and distance to the marine environment (Binford *et al.* 1975, pp. 315–316; Hamer and Nelson 1995, pp. 72–75; Ralph *et al.* 1995b, p. 4; McShane *et al.* 2004, p. 4–39).

Individual tree attributes that provide conditions suitable for nesting (*i.e.,* provide a nesting platform) include large branches (ranging from 4 to 32 inches (in) (10 to 81 centimeters (cm)), with an average of 13 in (32 cm) in Washington, Oregon, and California) or forked branches, deformities (*e.g.,*

broken tops), dwarf mistletoe infections, witches' brooms, and growth of moss or other structures large enough to provide a platform for a nesting adult marbled murrelet (Hamer and Cummins 1991, p. 15; Singer *et al.* 1991, pp. 332–335; Singer *et al.* 1992, entire; Hamer and Nelson 1995, p. 79). These nesting platforms are generally located greater or equal to 33 feet (ft) (10 meters (m)) above ground (reviewed in Burger 2002, pp. 41–42 and McShane *et al.* 2004, pp. 4–55–4–56). These structures are typically found in old-growth and mature forests, but may be found in a variety of forest types including younger forests containing remnant large trees. Since 1996, research has confirmed that the presence of platforms is considered the most important characteristic of marbled murrelet nesting habitat (Nelson 1997, p. 6; reviewed in Burger 2002, pp. 40, 43; McShane *et al.* 2004, pp. 4–45–4–51, 4–53, 4–55, 4–56, 4–59; Huff *et al.* 2006, pp. 12–13, 18). Platform presence is more important than the size of the nest tree because tree size alone may not be a good indicator of the presence and abundance of platforms (Evans Mack *et al.* 2003, p. 3). Tree diameter and height can be positively correlated with the size and abundance of platforms, but the relationship may change depending on the variety of tree species and forest types that marbled murrelets use for nesting (Huff *et al.* 2006, p. 12). Overall, nest trees in Washington, Oregon, and northern California have been greater than 19 in (48 cm) diameter at breast height (dbh) and greater than 98 ft (30 m) tall (Hamer and Nelson 1995, p. 81; Hamer and Meekins 1999, p. 10; Nelson and Wilson 2002, p. 27).

Northwestern forests and trees typically require 200 to 250 years to attain the attributes necessary to support marbled murrelet nesting, although characteristics of nesting habitat sometimes develop in younger coastal redwood (*Sequoia sempervirens*) and western hemlock (*Tsuga heterophylla*) forests. Forests with older residual trees remaining from previous forest stands may also develop into nesting habitat more quickly than those without residual trees. These remnant attributes can be products of fire, windstorms, or previous logging operations that did not remove all of the trees (Hansen *et al.* 1991, p. 383; McComb *et al.* 1993, pp. 32–36). Other factors that may affect the time required to develop suitable nesting habitat characteristics include site productivity and microclimate.

Through the 1995 nesting season, 59 active or previously used tree nests had been located in Washington (9 nests), Oregon (36 nests), and California (14 nests) (Hamer and Nelson 1995, pp. 70–71; Nelson and Wilson 2002, p. 134; Washington Department of Fish and Wildlife murrelet database; California Department of Fish and Game murrelet database). All of the nests for which data were available in 1996 in Washington, Oregon, and California were in large trees that were more than 32 in (81 cm) dbh (Hamer and Nelson 1995, p. 74). Of the 33 nests for which data were available, 73 percent were on a moss substrate and 27 percent were on litter, such as bark pieces, conifer needles, small twigs, or duff (Hamer and Nelson 1995, p. 74). The majority of nest platforms were created by large or deformed branches (Hamer and Nelson 1995, p. 79). Nests found subsequently have characteristics generally consistent with these tree diameter and platform sources (McShane *et al.* 2004, pp. 4–50 to 4–59; Bloxton and Raphael 2009, p. 8). However, in Oregon, nests were found in smaller diameter trees (as small as 19 in (49 cm)) that were distinguished by platforms provided by mistletoe infections (Nelson and Wilson 2002, p. 27). In Washington, one nest was found on a cliff (*i.e.,* ground nest) that exhibited features similar to a tree platform, such as vertical and horizontal cover (Bloxton and Raphael 2009, pp. 8 and 33). In central California, nest platforms were located on large limbs and broken tops with 32.3 percent mean moss cover on nest limbs (Baker *et al.* 2006, p. 944).

More than 94 percent of the nests for which data were available in 1996 were in the top half of the nest trees, which may allow easy nest access and provide shelter from potential predators and weather. Canopy cover directly over the nests was typically high (average 84 percent; range 5 to 100 percent) in Washington, Oregon, and California (Hamer and Nelson 1995, p. 74). This cover may provide protection from predators and weather. Such canopy cover may be provided by trees adjacent to the nest tree, or by the nest tree itself. Canopy closure of the nest stand/site varied between 12 and 99 percent and averaged 48 percent (Hamer and Nelson 1995, p. 73). Information gathered subsequent to 1996 confirms that additional attributes of the platform are important including both vertical and horizontal cover and substrate. Known nest sites have platforms that are generally protected by branches above (vertical cover) or to the side (horizontal cover) (Huff *et al.* 2006, p. 14). Marbled murrelets appear to select limbs and platforms that provide protection from predation (Marzluff *et al.* 2000, p. 1135; Luginbuhl *et al* 2001, p. 558; Raphael *et al.* 2002a, pp. 226, 228) and inclement weather (Huff *et al.* 2006, p. 14). Substrate, such as moss, duff, or needles on the nest limb is important for protecting the egg and preventing it from falling (Huff *et al.* 2006, p. 13).

Nests have been located in forested areas dominated by coastal redwood, Douglas-fir (*Pseudotsuga menziesii*), mountain hemlock (*Tsuga mertensiana*), Sitka spruce (*Picea sitchensis*), western hemlock, and western red cedar (*Thuja plicata*) (Binford *et al.* 1975, p. 305; Quinlan and Hughes 1990, entire; Hamer and Cummins 1991, p. 15; Singer *et al.* 1991, p. 332, Singer *et al.*1992, p. 2; Hamer and Nelson 1995, p. 75). Individual nests in Washington, Oregon, and California have been located in Douglas-fir, coastal redwood, western hemlock, western red cedar, and Sitka spruce trees (Hamer and Nelson 1995, p. 74).

For nesting habitat to be accessible to marbled murrelets, it must occur close enough to the marine environment for marbled murrelets to fly back and forth. The farthest inland distance for a site with nesting behavior detections is 52 mi (84 km) in Washington. The farthest known inland sites with nesting behavior detections in Oregon and California are 40 and 24 mi (65 and 39 km), respectively (Evans Mack *et al.* 2003, p. 4). Additionally, as noted below in the section titled Definition of Geographical Area Occupied at the Time of Listing, presence detections have been documented farther inland in Washington, Oregon, and California (Evans Mack *et al.* 2003, p. 4).

Prior to Euroamerican settlement in the Pacific Northwest, nesting habitat for the marbled murrelet was well distributed, particularly in the wetter portions of its range in Washington, Oregon, and California. This habitat was generally found in large, contiguous blocks of forest (Ripple 1994, p. 47) as described under the *Management Considerations* section of the 1996 final critical habitat rule (May 24, 1996; 61 FR 26256).

Areas where marbled murrelets are concentrated at sea during the breeding season are likely determined by a combination of terrestrial and marine conditions. However, nesting habitat appears to be the most important factor affecting marbled murrelet distribution and numbers. Marine survey data confirmed conclusions made in the supplemental proposed critical habitat rule (August 10, 1995; 60 FR 40892) that marine observations of marbled murrelets during the nesting season generally correspond to the largest remaining blocks of suitable forest nesting habitat (Nelson *et al.* 1992, p.

64; Varoujean *et al.* 1994, entire; Ralph *et al.* 1995b, pp. 5–6; Ralph and Miller 1995, p. 358).

Consistent with Varoujean *et al.*'s (1994) 1993 and 1994 aerial surveys, Thompson (1996, p. 11) found marbled murrelets to be more numerous along Washington's northern outer coast and less abundant along the southern coast. Thompson reported that this distribution appears to be correlated with: (1) Proximity of old-growth forest, (2) the distribution of rocky shoreline/substrate versus sandy shoreline/substrate, and (3) abundance of kelp (Thompson 1996, p. 11). In British Columbia, Canada, Rodway *et al.* (1995, pp. 83, 85, 86) observed marbled murrelets aggregating on the water close to breeding areas at the beginning of the breeding season and, for one of their two study areas, again in July as young were fledging. Burger (1995, pp. 305–306) reported that the highest at-sea marbled murrelet densities in both 1991 and 1993 were seen immediately adjacent to two tracts of old-growth forest, while areas with very low densities of marbled murrelets were adjacent to heavily logged watersheds. More recent evidence supports that detections of marbled murrelets at inland sites and densities offshore were higher in or adjacent to areas with large patches of old-growth, and in areas of low fragmentation and low isolation of old-growth patches (Raphael *et al.* 1995, pp. 188–189; Burger 2002, p. 54; Meyer and Miller 2002, pp. 763–764; Meyer *et al.* 2002, pp. 109–112; Miller *et al.* 2002, p. 100; Raphael *et al.* 2002a, p. 221; Raphael *et al.* 2002b, p. 337). Overall, landscapes with detections indicative of nesting behavior tended to have large core areas of old-growth and low amounts of overall edge (Meyer and Miller 2002, pp. 763–764; Raphael *et al.* 2002b, p. 331).

In contrast, where nesting habitat is limited in southwest Washington, northwest Oregon, and portions of California, few marbled murrelets are found at sea during the nesting season (Ralph and Miller 1995, p. 358; Varoujean and Williams 1995, p. 336; Thompson 1996, p. 11). For instance, as of 1996, the area between the Olympic Peninsula in Washington and Tillamook County in Oregon (100 mi (160 km)) had few sites with detections indicative of nesting behavior or sightings at sea of marbled murrelets. In California, approximately 300 mi (480 km) separate the large breeding populations to the north in Humboldt and Del Norte Counties from the southern breeding population in San Mateo and Santa Cruz Counties. This reach contained few marbled murrelets during the breeding season; however, the area likely contained significant numbers of marbled murrelets before extensive logging (Paton and Ralph 1988, p. 11, Larsen 1991, pp. 15–17). More recent at-sea surveys confirm the low numbers of marbled murrelets in marine areas adjacent to inland areas that have limited nesting habitat (Miller *et al.* 2012, p. 775; Raphael *et al.* 2015, p. 21).

Dispersal mechanisms of marbled murrelets are not well understood; however, social interactions may play an important role. The presence of marbled murrelets in a forest stand may attract other pairs to currently unused habitat within the vicinity. This may be one of the reasons marbled murrelets have been observed in habitat not currently suitable for nesting, but in close proximity to known nesting sites (Hamer and Cummins 1990, p. 14; Hamer *et al.* 1994, entire). Although marbled murrelets appear to be solitary in their nesting habits (Nelson and Peck 1995, entire), they are frequently detected in groups above the forest, especially later in the breeding season (USFWS 1995, pp. 14–16). Two active nests discovered in Washington during 1990 were located within 150 ft (46 m) of each other (Hamer and Cummins 1990, p. 47), and two nests discovered in Oregon during 1994 were located within 100 ft (33 m) of each other (USFWS 1995, p. 14). Therefore, unused habitat in the vicinity of known nesting habitat may be more important for recovering the species than suitable habitat isolated from known nesting habitat (USFWS 1995; USFWS 1997, p. 20). Similarly, marbled murrelets are more likely to discover newly developing habitat in proximity to sites with documented nesting behaviors. Because the presence of marbled murrelets in a forest stand may attract other pairs to currently unused habitat within the vicinity, the potential use of these areas may depend on how close the new habitat is to known nesting habitat, as well as distance to the marine environment, population size, and other factors (McShane *et al.* 2004, p. 4–78).

Marbled murrelets are believed to be highly vulnerable to predation when on the nesting grounds, and the species has evolved a variety of morphological and behavioral characteristics indicative of selection pressures from predation (Ralph *et al.* 1995b, p. 13). For example, plumage and eggshells exhibit cryptic coloration, and adults fly to and from nests by indirect routes and often under low-light conditions (Nelson and Hamer 1995a, p. 66). Potential nest predators include the great horned owl (*Bubo virginianus*), Cooper's hawk (*Accipiter cooperii*), barred owl (*Strix varia*), northwestern crow (*Corvus caurinus*), American crow (*Corvus brachyrhynchos*), and gray jay (*Perisoreus canadensis*) (Nelson and Hamer 1995b, p. 93; Marzluff *et al.* 1996, p. 22; McShane *et al.* 2004, p. 2–17). The common raven (*Corvus corax*), Steller's jay (*Cyanocitta stelleri*), and sharp-shinned hawk (*Accipiter striatus*) are known predators of eggs or chicks (Nelson and Hamer 1995b, p. 93, McShane *et al.* 2004, pp. 2–16–2–17). Based on experimental work with artificial nests, predation on eggs and chicks by squirrels and mice may also occur (Luginbuhl *et al.* 2001, p. 563; Bradley and Marzluff 2003, pp. 1183–1184). In addition, a squirrel has been documented rolling a recently abandoned egg off a nest (Malt and Lank 2007, p. 170).

From 1974 through 1993, of those marbled murrelet nests in Washington, Oregon, and California where nest success or failure was documented, approximately 64 percent of the nests failed. Of those nests, 57 percent failed due to predation (Nelson and Hamer 1995b, p. 93). Continuing research further supports predation as a significant cause of nest failure (McShane *et al.* 2004, pp. 2–16 to 2–19; Peery *et al.* 2004, pp. 1093–1094; Hebert and Golightly 2006, pp. 98–99; Hebert and Golightly 2007, pp. 222–223; Malt and Lank 2007, p. 165). The relatively high predation rate could be biased because nests near forest edges may be more easily located by observers and also more susceptible to predation, and because observers may attract predators. However, Nelson and Hamer (1995b, p. 94) believed that researchers had minimal impacts on predation in most cases because the nests were monitored from a distance and relatively infrequently, and precautions were implemented to minimize predator attraction. More recent research has relied on remotely operated cameras for observing nests, rather than people, in order to reduce the possible effects of human attraction (Hebert and Golightly 2006, p. 12; Hebert and Golightly 2007, p. 222).

Several possible reasons exist for the high observed predation rates of marbled murrelet nests. One possibility is that these high predation rates are normal, although it is unlikely that a stable population could have been maintained historically under the predation rates observed (Beissinger 1995, p. 390).

In the 1996 rule we hypothesized that populations of marbled murrelet predators such as corvids (jays, crows, and ravens) and great horned owls are increasing in the western United States,

largely in response to habitat changes and food sources provided by humans (Robbins *et al.* 1986, pp. 43–46; Johnson 1993, pp. 58–60; Marzluff *et al.* 1994, pp. 214–216; National Biological Service 1996, entire), resulting in increased predation rates on marbled murrelets. Subsequent to the 1996 rule, surveys have confirmed that corvid populations are indeed increasing in western North America as a result of land use and urbanization (Marzluff *et al.* 2001, pp. 332–333; McShane *et al.* 2004, pp. 6–11; Sauer *et al.* 2013, pp. 18–19). However, breeding bird surveys in North America indicate that great horned owls are declining in 40 percent of the areas included in the surveys (Sauer *et al.* 2013, p. 17). Barred owls (*Strix varia*), foraging generalists that may prey on marbled murrelets, were not considered in 1996, but have subsequently been shown to be significantly increasing in numbers and distribution (Sauer *et al.* 2013, p. 17).

In the 1996 rule, we also posited that creation of greater amounts of forest edge habitat may increase the vulnerability of marbled murrelet nests to predation and ultimately lead to higher rates of predation. Edge effects have been implicated in increased forest bird nest predation rates for other species of birds (Chasko and Gates 1982, pp. 21–23; Yahner and Scott 1988, p. 160). In a comprehensive review of the many studies on the potential relationship between forest fragmentation, edge, and adverse effects on forest nesting birds, Paton (1994, p. 25) concluded that ''strong evidence exists that avian nest success declines near edges.'' Small patches of habitat have a greater proportion of edge than do large patches of the same shape. However, many of the studies Paton (1994, entire) reviewed involved lands where forests and agricultural or urban areas interface, or they involved experiments with ground nests that are not readily applicable to canopy nesters such as marbled murrelets. Paton (1994, p. 25), therefore, stressed the need for studies specific to forests fragmented by timber harvest in the Pacific Northwest and elsewhere.

Some research on this topic has been conducted in areas dominated by timber production and using nests located off the ground (Ratti and Reese 1988, entire; Rudnicky and Hunter 1993, entire; Marzluff *et al.* 1996, entire; Vander Haegen and DeGraaf in press, entire). Vander Haegen and DeGraaf (in press, p. 8; 1996, pp. 175–176) found that nests in shrubs less than 75 m (246 ft) from an edge were three times as likely to be depredated than nests greater than 75 m (264 ft) from an edge. Likewise, Rudnicky and Hunter (1993, p. 360) found that shrub nests on the forest edge were depredated almost twice as much as shrub nests located in the forest interior. They also observed that shrub nests were taken primarily by avian predators such as crows and jays, which is consistent with the predators believed to be impacting marbled murrelets, while ground nests were taken by large mammals such as raccoons and skunks. Ratti and Reese (1988, entire) did not find the edge relationship documented by Rudnicky and Hunter (1993, entire), Vander Haegen and DeGraaf (in press), and others cited in Paton (1994, entire). However, Ratti and Reese (1988, p. 488) did observe lower rates of predation near ''feathered'' edges compared to ''abrupt'' edges (*e.g.,* clearcut or field edges), and suggested that the vegetative complexity of the feathered edge may better simulate natural edge conditions than do abrupt edges. These authors also concluded that their observations were consistent with Gates and Gysel's (1978, p. 881) hypothesis that birds are poorly adapted to predator pressure near abrupt artificial edge zones.

Studies of artificial and natural nests conducted in Pacific Northwest forests also indicate that predation of forest bird nests may be affected by habitat fragmentation, forest management, and land development (Hansen *et al.* 1991, p. 388; Vega 1993, pp. 57–61; Bryant 1994, pp. 14–16; Nelson and Hamer 1995b, pp. 95–97; Marzluff *et al.* 1996, pp. 31–35). Nelson and Hamer (1995b, p. 96) found that successful marbled murrelet nests were further from edge than unsuccessful nests. Marzluff *et al.* (1996, entire) conducted experimental predation studies that used simulated marbled murrelet nests, and more recent research documented predation of artificial marbled murrelet nests by birds and arboreal mammals (Luginbuhl *et al.* 2001, pp. 562–563; Bradley and Marzluff 2003, pp. 1183–1884; Marzluff and Neatherlin 2006, p. 310; Malt and Lank 2007, p. 165). Additionally, more recent research indicates proximity to human activity and landscape contiguity may interact to determine rate of predation (Marzluff *et al.* 2000, pp. 1136–1138, Raphael *et al.* 2002a, entire; Zharikov *et al.* 2006, p. 117; Malt and Lank 2007, p. 165). Interior forest nests in contiguous stands far from human activity appear to experience the least predation (Marzluff *et al.* 1996, p. 29; Raphael *et al.* 2002a, pp. 229–231).

More recent information indicates that marbled murrelets locate their nests throughout forest stands and fragments, including along various types of natural and human-made edges (Hamer and Meekins 1999, p. 1; Manley 1999, p. 66; Bradley 2002, pp. 42, 44; Burger 2002, p. 48; Nelson and Wilson 2002, p. 98). In California and southern Oregon, areas with abundant numbers of marbled murrelets were farther from roads, occurred more often in parks protected from logging, and were less likely to occupy old-growth habitat if they were isolated (greater than 3 mi (5 km)) from other nesting marbled murrelets (Meyer *et al.* 2002, pp. 95, 102–103). Marbled murrelets no longer occur in areas without suitable forested habitat, and they appear to abandon highly fragmented areas over time (areas highly fragmented before the late 1980s generally did not support marbled murrelets by the early 1990s) (Meyer *et al.* 2002, p. 103).

The conversion of large tracts of native forest to small, isolated forest patches with large edge can create changes in microclimate, vegetation species, and predator–prey dynamics—such changes are often collectively referred to as ''edge effects.'' Unfragmented, older-aged forests have lower temperatures and solar radiation and higher humidity compared to clearcuts and other open areas (*e.g.,* Chen *et al.* 1993, p. 219; Chen *et al.* 1995, p. 74). Edge habitat is also exposed to increased temperatures and light, high evaporative heat loss, increased wind, and decreased moisture. Fundamental changes in the microclimate of a stand have been recorded at least as far as 787 ft (240 m) from the forest edge (Chen *et al.* 1995, p. 74). The changes in microclimate regimes with forest fragmentation can stress an old-growth associate species, especially a cold-water adapted seabird such as the marbled murrelet (Meyer and Miller 2002, p. 764), and can affect the distribution of epiphytes that marbled murrelets use for nesting. Branch epiphytes or substrate have been identified as a key component of marbled murrelet nests (Nelson *et al.* 2003, p. 52; McShane *et al.* 2004, pp. 4–48, 4–89, 4–104). While there are no data on the specific effects of microclimate changes on the availability of marbled murrelet nesting habitat at the scale of branches and trees, as discussed in the references above, the penetration of solar radiation and warm temperatures into the forest could change the distribution of epiphytes, and wind could blow moss off nesting platforms.

A large body of research indicates that marbled murrelet productivity is greatest in large, complex-structured forests far from human activity due to the reduced levels of predation present in such landscapes. Marbled murrelet productivity is lowest in fragmented

landscapes; therefore, marbled murrelet nesting stands may be more productive if surrounded by simple-structured forests, and minimal human recreation and settlement. Human activities can significantly compromise the effectiveness of the forested areas surrounding nests to protect the birds and/or eggs from predation (Huhta *et al.* 1998, p. 464; Marzluff *et al.* 1999, pp. 3–4; Marzluff and Restani 1999, pp. 7–9, 11; Marzluff *et al.* 2000, pp. 1136–1138; De Santo and Willson 2001, pp. 145–147; Raphael *et al.* 2002a, p. 221; Ripple *et al.* 2003, p. 80).

In addition to studies of edge effects, some research initiated prior to 1996 looked at the importance of stand size. Among all Pacific Northwest birds, the marbled murrelet is considered to be one of the most sensitive to forest fragmentation (Hansen and Urban 1992, p. 168). Marbled murrelet nest stand size in Washington, Oregon, and California varied between 7 and 2,717 ac (3 and 1,100 ha) and averaged 509 ac (206 ha) (Hamer and Nelson 1995, p. 73). Nelson and Hamer (1995b, p. 96) found that successful marbled murrelets tended to nest in larger stands than did unsuccessful marbled murrelets, but these results were not statistically significant. Miller and Ralph (1995, entire) compared marbled murrelet survey detection rates among four stand size classes in California. Recording a relatively consistent trend, they observed that a higher percentage of large stands (33.3 percent) had nesting behavior detections when compared to smaller stands (19.8 percent), while a greater percentage of the smallest stands (63.9 percent) had no presence or nesting behavior detections when compared to the largest stands (52.4 percent) (Miller and Ralph 1995, pp. 210–212). However, these results were not statistically significant, and the authors did not conclude that marbled murrelets preferentially select or use larger stands. The authors suggested the effects of stand size on marbled murrelet presence and use may be masked by other factors such as stand history and proximity of a stand to other old-growth stands. Rodway *et al.* (1993, p. 846) recommended caution when interpreting marbled murrelet detection data, such as that used by Miller and Ralph (1995), because numbers of detections at different sites may be affected by variation caused by weather, visibility, and temporal shifts.

In addition to stand size, general landscape condition may influence the degree to which marbled murrelets nest in an area. In Washington, marbled murrelet detections increased when old-growth/mature forests make up more than 30 percent of the landscape (Hamer and Cummins 1990, p. 43). Hamer and Cummins (1990, p. 43) found that detections of marbled murrelets decreased in Washington when the percentage of clear-cut/meadow in the landscape increased above 25 percent. Additionally, Raphael *et al.* (1995, p. 177) found that the percentage of old-growth forest and large sawtimber was significantly greater within 0.5 mi (0.8 km) of sites (501-ac (203-ha) circles) that were used by nesting marbled murrelets than at sites where they were not detected. Raphael *et al.* (1995, p. 189) suggested tentative guidelines based on this analysis that sites with 35 percent old-growth and large sawtimber in the landscape are more likely to be used for nesting. In California, Miller and Ralph (1995, pp. 210–211) found that the density of old-growth cover and the presence of coastal redwood were the strongest predictors of marbled murrelet presence.

In summary, the best scientific information available strongly suggests that marbled murrelet reproductive success may be adversely affected by forest fragmentation associated with either natural disturbances, such as severe fire or windthrow, or certain land management practices, generally associated with timber harvest or clearing of forest. Based on this information, the Service concluded that the maintenance and development of suitable habitat in relatively large contiguous blocks as described in the 1996 rule and the draft Marbled Murrelet (Washington, Oregon, and California Population) Recovery Plan (draft recovery plan) (USFWS 1995, pp. 70–71, finalized in 1997) would contribute to the recovery of the marbled murrelet. These blocks of habitat should contain the structural features and spatial heterogeneity naturally found at the landscape level, the stand level, and the individual tree level in Pacific Northwest forest ecosystems (Hansen *et al.* 1991, pp. 389–390; Hansen and Urban 1992, pp. 171–172; Ripple 1994, p. 48; Bunnell 1995, p. 641; Raphael *et al.* 1995, p. 189). Newer information further supports the conclusion that the maintenance of suitable nesting habitat in relatively large, contiguous blocks will be needed to recover the marbled murrelet (Meyer and Miller 2002, pp. 763–764; Meyer *et al.* 2002, p. 95; Miller *et al.* 2002, pp. 105–107; Raphael *et al.* 2011, p. 44).

Summary of Physical or Biological Features Essential to the Conservation of the Marbled Murrelet

Therefore, based on the information presented in the 1996 final critical habitat rule and more recent data that continue to confirm the conclusions drawn in that rule, we consider the physical or biological features essential to the conservation of the marbled murrelet to include forests that are capable of providing the characteristics required for successful nesting by marbled murrelets. Such forests are typically coniferous forests in contiguous stands with large core areas of old-growth or trees with old-growth characteristics and a low ratio of edge to interior. However, due to timber harvest history we recognize that, in some areas, such as south of Cape Mendocino in California, coniferous forests with relatively smaller core areas of old-growth or trees with old-growth characteristics are essential for the conservation of the marbled murrelet because they are all that remain on the landscape. Forests capable of providing for successful nesting throughout the range of the listed DPS are typically dominated by coastal redwood, Douglas-fir, mountain hemlock, Sitka spruce, western hemlock, or western red cedar, and must be within flight distance to marine foraging areas for marbled murrelets.

The most important characteristic of marbled murrelet nesting habitat is the presence of nest platforms. These structures are typically found in old-growth and mature forests, but can also be found in a variety of forest types including younger forests containing remnant large trees. Potential nesting areas may contain fewer than one suitable nesting tree per acre and nest trees may be scattered or clumped throughout the area. Large areas of unfragmented forest are necessary to minimize edge effects and reduce the impacts of nest predators to increase the probability of nest success. Forests are dynamic systems that occur on the landscape in a mosaic of successional stages, both as the result of natural disturbances (fire, windthrow) or anthropogenic management (timber harvest). On a landscape basis, forests with a canopy height of at least one-half the site-potential tree height in proximity to potential nest trees contribute to the conservation of the marbled murrelet. Trees of at least one-half the site-potential height are tall enough to reach up into the lower canopy of nest trees, which provides nesting murrelets more cover from predation. The site-potential tree height

is the average maximum height for trees given the local growing conditions, and is based on species-specific site index tables. The earlier successional stages of forest also play an essential role in providing suitable nesting habitat for the marbled murrelet, as they proceed through successional stages and develop into the relatively large, unfragmented blocks of suitable nesting habitat needed for the conservation of the species.

III. Primary Constituent Elements for the Marbled Murrelet

As stated above under Previous Federal Actions, the rule revising 50 CFR 424.12 was published on February 11, 2016 (81 FR 7413), and became effective on March 14, 2016, and the revised version of § 424.12 applies only to rulemakings for which the proposed rule is published after that date. Thus, the prior version of § 424.12 will continue to apply to any rulemakings for which a proposed rule was published before that date. Because the proposed rule for marbled murrelet critical habitat was published on August 25, 2015, this final rule follows the version of § 424.12 that was in effect prior to March 14, 2016.

According to 50 CFR 424.12(b), we are required to identify the physical or biological features essential to the conservation of the marbled murrelet within the geographical area occupied at the time of listing, focusing on the ''primary constituent elements'' (PCEs) of those features. We consider PCEs to be those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species. For the marbled murrelet, those life-history processes associated with terrestrial habitat are specifically related to nesting. Therefore, as previously described in our designation of critical habitat for the marbled murrelet (61 FR 26256; May 24, 1996), and further supported by more recent information, our designation of critical habitat focused on the following PCEs specific to the marbled murrelet:

(1) Individual trees with potential nesting platforms, and

(2) forested areas within 0.5 mile (0.8 kilometer) of individual trees with potential nesting platforms, and with a canopy height of at least one-half the site-potential tree height. This includes all such forest, regardless of contiguity.

These PCEs are essential to provide and support suitable nesting habitat for successful reproduction of the marbled murrelet.

IV. Special Management Considerations or Protection

In our evaluation of whether the current designation meets the statutory definition of critical habitat, we assessed not only whether the specific areas within the geographical area occupied by the species at the time of listing contain the physical or biological features essential to the conservation of the species, but also whether those features may require special management considerations or protection. Here we describe the special management considerations or protections that apply to the physical or biological features and PCEs identified for the marbled murrelet.

As discussed above and in the 1996 final rule designating critical habitat (May 24, 1996; 61 FR 26261–26263), marbled murrelets are found in forests containing a variety of forest structure, which is in part the result of varied management practices and natural disturbance (Hansen *et al.* 1991, p. 383; McComb *et al.* 1993, pp. 32–36). In many areas, management practices have resulted in fragmentation of the remaining older forests and creation of large areas of younger forests that have yet to develop habitat characteristics suitable for marbled murrelet nesting (Hansen *et al.* 1991, p. 387). Past and current forest management practices have also resulted in a forest age distribution skewed toward younger even-aged stands at a landscape scale (Hansen *et al.* 1991, p. 387; McComb *et al.* 1993, p. 31). Bolsinger and Waddell (1993, p. 2) estimated that old-growth forest in Washington, Oregon, and California had declined by two-thirds statewide during the previous five decades.

Current and historical loss of marbled murrelet nesting habitat is generally attributed to timber harvest and land conversion practices, although, in some areas, natural catastrophic disturbances such as forest fires have caused losses (Hansen *et al.* 1991, pp. 383, 387; Ripple 1994, p. 47; Bunnell 1995, pp. 638–639; Raphael *et al.* 2011, pp. 34–39; Raphael *et al.* 2015 in prep, pp. 94–96). Reduction of the remaining older forest has not been evenly distributed in western Washington, Oregon, and California. Timber harvest has been concentrated at lower elevations and in the Coast Ranges (Thomas *et al.* 1990, p. 63), generally overlapping the range of the marbled murrelet. In California today, more than 95 percent of the original old-growth redwood forest has been logged, and 95 percent of the remaining old-growth is now in parks or reserves (Roa 2007, p. 169).

Some of the forests that were affected by past natural disturbances, such as forest fires and windthrow, currently provide suitable nesting habitat for marbled murrelets because they retain scattered individual or clumps of large trees that provide structure for nesting (Hansen *et al.* 1991, 383; McComb *et al.* 1993, p. 31; Bunnell 1995, p. 640). This is particularly true in coastal Oregon where extensive fires occurred historically. Marbled murrelet nests have been found in remnant old-growth trees in mature and young forests in Oregon. Forests providing suitable nesting habitat and nest trees generally require 200 to 250 years to develop characteristics that supply adequate nest platforms for marbled murrelets. This time period may be shorter in redwood and western hemlock forests and in areas where significant remnants of the previous stand remain. Intensively managed forests in Washington, Oregon, and California have been managed on average cutting rotations of 70 to 120 years (USDI 1984, p. 10). Cutting rotations of 40 to 50 years are common for some private lands. Timber harvest strategies on Federal lands and some private lands have emphasized dispersed clear-cut patches and even-aged management. Forest lands that are intensively managed for wood fiber production are generally prevented from developing the characteristics required for marbled murrelet nesting. In addition, suitable nesting habitat that remains under these harvest patterns is highly fragmented.

Within the range of the marbled murrelet on Federal lands, the Northwest Forest Plan (NWFP) (USDA and USDI 1994, entire) designated a system of Late Successional Reserves (LSRs), which provides large areas expected to eventually develop into contiguous, unfragmented forest. In addition to LSRs, the NWFP designated a system of Adaptive Management Areas, where efforts focus on answering management questions, and matrix areas, where most forest production occurs. Administratively withdrawn lands, as described in the individual National Forest or BLM land use plans, are also part of the NWFP.

In the 1996 final rule, we acknowledged the value of implementation of the NWFP as an integral role in marbled murrelet conservation. As a result, designated critical habitat on lands within the NWFP area administered by the National Forests and BLM was congruent with LSRs. These areas, as managed under the NWFP, should develop into large blocks of suitable murrelet nesting habitat given sufficient

time. However, LSRs are plan-level designations with less assurance of long-term persistence than areas designated by Congress. Designation of LSRs as critical habitat complements and supports the NWFP and helps to ensure persistence of this management directive over time. These lands managed under the NWFP require special management considerations or protection to allow the full development of the essential physical or biological features as represented by large blocks of forest with the old-growth characteristics that will provide suitable nesting habitat for marbled murrelets.

In some areas, the large blocks of Federal land under the NWFP are presently capable of providing the necessary contribution for recovery of the species. However, the marbled murrelet's range includes areas that are south of the range of the northern spotted owl (the focus of the NWFP), where Federal lands are subject to timber harvest. Therefore, the critical habitat designated on Federal lands outside of the NWFP also require special management considerations or protection to enhance or restore the old-growth characteristics required for nesting by marbled murrelets, and to attain the large blocks of contiguous habitat necessary to reduce edge effects and predation.

In the 1996 critical habitat rule (May 24, 1996; 61 FR 26256), the Service designated selected non-Federal lands that met the requirements identified in the Criteria for Identifying Critical Habitat section, in those areas where Federal lands alone were insufficient to provide suitable nesting habitat for the recovery of the species. For example, State lands were considered to be particularly important in southwestern Washington, northwestern Oregon, and in California south of Cape Mendocino. Small segments of county lands were also included in northwestern Oregon and central California. Some private lands were designated as critical habitat because they provided essential elements and occurred where Federal lands were, and continue to be, very limited, although suitable habitat on private land is typically much more limited than on public lands. In California, south of Cape Mendocino, State, county, city, and private lands contain the last remnants of nesting habitat for the southernmost population of murrelets, which is the smallest, most isolated, and most susceptible to extirpation. All of the non-Federal lands have been and continue to be subject to some amount of timber harvest and habitat fragmentation and lower habitat effectiveness due to human activity. Therefore, all non-Federal lands within the designation require special management considerations or protection to preserve suitable nesting habitat where it is already present, and to provide for the development of suitable nesting habitat in areas currently in early successional stages.

In summary, areas that provide the essential physical or biological features and PCEs for the marbled murrelet may require special management considerations or protection. Because succession has been set back or fragmentation has occurred due to either natural or anthropogenic disturbance, those essential features may require special management considerations or protections to promote the development of the large, contiguous blocks of unfragmented, undisturbed coniferous forest with old-growth characteristics (*i.e.,* nest platforms) required by marbled murrelets. Areas with these characteristics provide the marbled murrelet with suitable nesting habitat, and reduce edge effects, such as increased predation, resulting in greater nest success for the species. Areas that currently provide suitable nesting habitat for the marbled murrelet may require protection to preserve those essential characteristics, as the development of old-growth characteristics may take hundreds of years and thus cannot be easily replaced once lost.

V. Definition of Geographical Area Occupied at the Time of Listing

Critical habitat is defined as ''the specific areas within the geographical area occupied by the species, at the time it is listed'' under section (3)(5)(A)(i) of the Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection. For the purposes of critical habitat, the Service must first determine what constitutes the geographical area occupied by the species at the time of listing. We consider this to be a relatively broad-scale determination, as the wording of the Act clearly indicates that the specific areas that constitute critical habitat will be found within some larger geographical area. We consider the ''geographical area occupied by the species'' at the time of listing, for the purposes of section 3(5)(A)(i), to be the area that may be broadly delineated around the occurrences of a species, or generally equivalent to what is commonly understood as the ''range'' of the species. We consider a species occurrence to be a particular location in which individuals of the species are found throughout all or part of their life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals). Because the ''geographical area occupied by the species'' can, depending on the species at issue and the relevant data available, be defined on a relatively broad, coarse scale, individuals of the species may or may not be present within each area at a smaller scale within the geographical area occupied by the species. For the purposes of critical habitat, then, we consider an area to be ''occupied'' (within the geographical area occupied by the species) if it falls within the broader area delineated by the species' occurrences, *i.e.,* its range.

Within the listed DPS, at-sea observations indicate marbled murrelets use the marine environment along the Pacific Coast from the British Columbia, Canada/Washington border south to the Mexico/California border. Because they must fly back and forth to the nest from their marine foraging areas, marbled murrelets use inland areas for nesting that are nearby to those areas used by the species offshore. The inland extent of terrestrial habitat use varies from north to south and depends upon the presence of nesting structures in relation to marine foraging areas. Marbled murrelets have been detected as far inland as 70 miles (mi) (113 kilometers (km)) in Washington, but the inland extent narrows going south, where marbled murrelets generally occur within 25 mi (40 km) of the coast in California. At a broad scale, the geographical area occupied by the listed DPS of the marbled murrelet at the time of listing includes the west coast from the British Columbia, Canada/Washington border south to the Mexico/California border, ranging inland from approximately 70 mi (113 km) in Washington to roughly 25 mi (40 km) of the coast in California. However, the inland nesting habitat extends southward in California only to just south of Monterey Bay. Occurrence data that supports this geographic range includes at-sea surveys, radar detections, radio-telemetry studies, and audiovisual surveys.

At the time the marbled murrelet was listed (October 1, 1992; 57 FR 45328), occurrence data were very limited. However, the geographic range was generally known at that time, with the exception of the exact inland extent.

We now describe what is known about marbled murrelet use of the critical habitat subunits that were designated in 1996, as revised in 2011. In 1996, only terrestrial areas were

designated as critical habitat. Terrestrial habitat is used by the marbled murrelet only for the purpose of nesting; therefore, we focus on those specific areas used for nesting by the species. Because we did not designate critical habitat in the marine environment, that aspect of the species' life history or available data will not be discussed further, unless it is pertinent to the terrestrial habitat.

At the landscape scale, marbled murrelets show fidelity to marine foraging areas and may return to specific watersheds for nesting (Nelson 1997, pp. 13, 16–17, 20; Cam *et al.* 2003, p. 1123). For example, marbled murrelets have been observed to return to the same specific nest branches or sites (Hebert and Golightly 2006, p. 270; Bloxton and Raphael 2009, p. 11). Repeated surveys in nesting stands have revealed site tenacity similar to that of other birds in the alcid family (Huff *et al.* 2006, p. 12) in that marbled murrelets have been observed in the same suitable habitat areas for more than 20 years in California and Washington. Based on the high site tenacity exhibited by marbled murrelets, it is highly likely that areas found to be used by marbled murrelets since listing in 1992 were also being used at the time of listing. Therefore, in order to determine whether any particular area was being used at the time the marbled murrelet was listed, we used all years of survey data available to us (for example, through 2013 in Washington, and some data through 2014 for California).

Not all survey data are indicative of nesting. The specific types of data that we relied upon include audiovisual surveys and specific nest locations, which may have been located through radio-telemetry studies, tree climbing, chicks on the ground, or eggshell fragments. Audiovisual surveys result in a variety of detections, only some of which are specific indicators of nesting behavior tied to the area being surveyed. The types of behaviors that are indicative of nesting include: sub-canopy behaviors, circling above the canopy, and stationary calling. Other types of detections, such as radar and fly-overs observed during audiovisual surveys, provide information regarding the general use of an area, but generally do not tie the observed individual(s) to a specific forested area (Evans Mack *et al.* 2003, pp. 20–23).

There continue to be gaps in our knowledge of marbled murrelet use in the terrestrial environment. Surveys are site/project specific and generally have been conducted for the purposes of allowing timber harvest. Surveys not conducted in adherence to the strict protocol may have missed nesting behaviors due to the cryptic nature of marbled murrelets and their nests. For example, a single visit to a location where marbled murrelets are present has only a 55 percent chance of detecting marbled murrelets (Evans Mack *et al.* 2003, p. 39). In addition, on some lands, such as Federal LSRs, our history of consultation under section 7 of the Act demonstrates that, in general, land managers choose not to conduct surveys to determine site ''presence''; rather they consider the suitable habitat to be used by nesting murrelets and adjust their projects accordingly. Therefore, we recognize that our information regarding marbled murrelet use of the terrestrial landscape is incomplete; however, we have determined that the information used in this document is the best scientific data available.

We consider the geographical area occupied by the species at the time of listing for the purposes of critical habitat to be equivalent to the nesting range of the marbled murrelet, for the reasons described above. However, it is important to note that, at the time of listing, we may not have had data that definitively demonstrated the presence of nesting murrelets within each specific area designated as critical habitat. Some of these areas still lack adequate survey information. Yet because these areas fall within the broader nesting range of the species, we consider them to have been occupied at the time of listing. For the purposes of clarity, we further evaluated the specific areas within that broader geographic range to determine whether we have documented detections of behaviors indicative of nesting by the marbled murrelet at the scale of each subunit. The following types of data are indicative of the marbled murrelet's use of forested areas for nesting and will be relied upon to make the determination of whether we have documentation of nesting behavior by critical habitat subunit:

(a) *Data indicative of nesting behavior.* A subunit with any of the following data will be considered to have a documented detection of nesting behavior. We consider one detection in a subunit sufficient to support a positive nesting behavior determination for the entire subunit.

(1) Audiovisual surveys conducted according to the Pacific Seabird Group (PSG) survey protocol (Evans Mack *et al.* 2003 or earlier versions). Detection types that are indicative of nesting include: sub-canopy behaviors (such as flying through the canopy or landing), circling above the canopy, and stationary calling.

(2) Nest locations obtained through radio-telemetry tracking, tree climbing, eggshell fragments, and chicks on the ground.

(b) *Contiguity of forested areas within which nesting behaviors have been observed.* According to the PSG protocol (Evans Mack *et al.* 2003), a contiguously forested area with detections indicative of nesting behavior is deemed to be used by nesting marbled murrelets throughout its entirety. Therefore, any subunits where there were no detections of behaviors indicative of nesting or possibly no surveys, but the forested areas in the subunit are contiguous with forested areas extending outside of the subunit within which there are documented nesting behaviors, will be deemed to be positive in terms of a nesting behavior detection.

Radar-based marbled murrelet detections and presence-only detections (such as flying over or heard only) resulting from audiovisual surveys were not used to classify a subunit as positive in terms of nesting behavior detections. Even though these detections indicate use of an area by marbled murrelets, these types of detections do not link murrelet nesting to specific areas of forested habitat.

In Washington and California, occurrence data, including nest locations and audiovisual survey data, are maintained in State wildlife agency databases. The Washington Department of Fish and Wildlife marbled murrelet data was obtained by the Service on June 19, 2014, and includes data collected through 2013. The California Department of Fish and Wildlife's marbled murrelet occurrence database, as currently maintained by the Arcata Fish and Wildlife Office, was accessed on February 5, 2015. The database includes information on some surveys conducted through 2006, with one observation from 2014, but is incomplete for the State. Audiovisual surveys in Oregon are not maintained in a centralized database. The Service, through a cooperative agreement, provided funds to the Oregon State University to obtain and collate Oregon survey data. The data provided to the Service included surveys through 2003, mainly on Federal lands. Additionally, the BLM and Oregon Department of Forestry provided a summary of current survey data, as of March 2015, within critical habitat in Oregon. Survey data for private lands in Oregon were not available.

VI. Specific Areas Occupied at the Time of Listing

We have determined that all 101 subunits designated as critical habitat in 1996, as revised in 2011, are within the geographical range occupied by the species at the time of listing, and all 101 subunits contain the physical or biological features and PCEs essential to the conservation of the species. Evidence of the presence of PCEs is based on nests located within a subunit, nesting behavior detections, audiovisual survey station placements (generally surveys are conducted only if there are nesting platforms present in the forested area), and specific forest inventory data. All of these forms of evidence point to the presence of PCE 1, nesting platforms, within the subunit, as well as the presence of PCE 2. In addition, within all 101 subunits, the essential physical or biological features and PCEs may require special management considerations or protection, as described above, because these subunits have received or continue to receive some level of timber harvest, fragmentation of the forested landscape, and reduced habitat effectiveness from human activity. Therefore, all 101 subunits meet the definition of critical habitat under section 3(5)(A)(i) of the Act.

Of the 101 subunits, 78 (all critical habitat subunits except for those identified in Table 1, below) have either specific nesting behavior detection data within the subunit or forested areas within the subunit that are contiguous with forested areas within which nesting behaviors have been observed. In total, the 78 subunits with nesting behavior detections account for 3,335,400 ac (1,349,800 ha), or 90 percent of the total designation. These 78 subunits all contain the physical or biological features and PCEs essential to the conservation of the species, which may require special management considerations or protection, as described above, because these subunits have received or continue to receive some level of timber harvest, fragmentation of the forested landscape, and reduced habitat effectiveness from human activity. Therefore, we conclude that these 78 subunits meet the definition of critical habitat under section 3(5)(A)(i) of the Act.

TABLE 1—MARBLED MURRELET CRITICAL HABITAT SUBUNITS WITHOUT DETECTIONS INDICATIVE OF NESTING BEHAVIOR

Subunit
WA–04a
WA–11d
OR–01d
OR–06a
OR–06c
OR–07f
OR–07g
CA–01d
CA–01e
CA–04b
CA–05a
CA–05b
CA–06a
CA–06b
CA–07b
CA–07c
CA–08a
CA–08b
CA–09a
CA–09b
CA–11b
CA–13
CA–14c

There are 23 subunits that did not have data indicating marbled murrelet nesting behaviors at the time of listing (Table 1). All of these subunits, however, are within the range of the species at the time of listing, and, hence, we consider them to be occupied. Of these 23 subunits, 2 are in Washington, 5 are in Oregon, and 16 are in California, totaling up to 362,600 ac (145,800 ha) or 10 percent of the designation. We have determined that all 23 subunits contain the essential physical or biological features and PCEs based on specific forest inventory data and audiovisual survey station placements. Only 7 of these 23 subunits have received partial or complete surveys to determine use by marbled murrelets. Very limited inland distribution information was available when the species was listed (1992) and in 1996 when critical habitat was designated (May 24, 1996; 61 FR 26256, pp. 26269–26270). However, continued survey efforts have filled in gaps in the distribution that were not known at the time of listing. For example, as of June 2014, the Washington Department of Fish and Wildlife murrelet detection database contained 5,225 nesting behavior detections. Of these 5,225 detections, only 254 were from surveys before 1992, and only 2,149 were prior to 1996. Therefore, our opinion is that, had surveys been conducted in many of these 23 subunits, nesting behaviors would likely have been detected.

Even if these 23 subunits were considered unoccupied at the time of listing because we do not have specific documentation of nesting behaviors, the Act permits designation of such areas as critical habitat if they are essential for the conservation of the species. We evaluated whether each of these 23 subunits are essential for the conservation of the species. In this evaluation we considered: (1) The importance of the areas to the future recovery of the species; (2) whether the areas have or are capable of providing the essential physical or biological features; and (3) whether the areas provide connectivity between marine and terrestrial habitats. As stated above, we determined that all 23 subunits contain the physical or biological features and PCEs for the marbled murrelet; therefore, all 23 subunits provide essential nesting habitat that is currently limited on the landscape. In particular, 13 subunits in California that are south of Cape Mendocino contain the last remnants of nesting habitat in that part of California. All 101 designated subunits work together to create a distribution of essential nesting habitat from north to south and inland from marine foraging areas. All of the designated critical habitat units occur within areas identified in the draft and final recovery plans for the marbled murrelet (USFWS 1995 and 1997, entire) as essential for the conservation of the species. Maintaining and increasing suitable nesting habitat for the marbled murrelet is a key objective for the conservation and recovery of the species, by providing for increases in nest success and productivity needed to attain long-term population viability. Based upon this information, we have determined that all of the 23 subunits where nesting behaviors have not been documented are, nonetheless, essential for the conservation of the species. Therefore, even if these 23 subunits were considered unoccupied, we conclude that they meet the definition of critical habitat under section 3(5)(A)(ii) of the Act.

VII. All Critical Habitat Is Essential to the Conservation of the Marbled Murrelet

As described above, all areas designated as critical habitat for the marbled murrelet (101 subunits) contain the physical or biological features and PCEs essential to the conservation of the species, which may require special management considerations or protection. We recognize that the physical or biological features and PCEs may not be uniformly distributed throughout these 101 subunits because historical harvest patterns and natural disturbances have created a mosaic of

multiple-aged forests. Replacement of essential physical or biological features and PCEs for the marbled murrelet can take centuries to grow.

We have additionally evaluated all currently designated critical habitat for the marbled murrelet applying the standard under section 3(5)(A)(ii) of the Act, and have determined that all 101 subunits included in this designation are essential for the conservation of the species. As detailed above, we have determined that all areas of critical habitat, whether known to be occupied at the time of listing or not, contain the physical or biological features and PCEs for the marbled murrelet. All 101 designated subunits work together to create a distribution of essential nesting habitat from north to south and inland from marine foraging areas, and occur within areas identified in the draft and final recovery plans for the marbled murrelet (USFWS 1995 and 1997, entire) as essential for the conservation of the species. All areas designated as critical habitat are essential for the conservation and recovery of the marbled murrelet by maintaining and increasing suitable nesting habitat and limiting forest fragmentation, thereby providing for increases in nest success and productivity to attain long-term population viability of the species. Therefore, we have determined that all areas currently identified as critical habitat for the marbled murrelet, whether confirmed to be occupied at the time of listing or not, are essential for the conservation of the species and meet the definition of critical habitat under section 3(5)(A)(ii) of the Act. Recent population and suitable habitat research confirms that these areas continue to be essential because the marbled murrelet population has declined since listing (Miller *et al.* 2012, entire) and continues to decline in Washington (Lance and Pearson 2015, pp. 4–5), hence suitable nesting areas are of increased importance to provide recovery potential for the marbled murrelet. In addition, while habitat loss has slowed since adoption of the NWFP, suitable nesting habitat continues to be lost to timber harvest (Raphael *et al.* 2015 in prep, pp. 94–95).

VIII. Restated Correction

The preamble to the 1996 final critical habitat rule (May 24, 1996; 61 FR 26265) stated that, within the boundaries of designated critical habitat, only those areas that contain one or more PCEs are, by definition, critical habitat, and areas without any PCEs are excluded by definition. This statement was in error; we clarified this language in the revised critical habitat rule published in 2011 (October 5, 2011; 76 FR 61599, p. 61604), and we reemphasize this correction here. By introducing some ambiguity in our delineation of critical habitat, this language was inconsistent with the requirement that each critical habitat unit be delineated by specific limits using reference points and lines (50 CFR 424.12(c)). The Service does its best not to include areas that obviously cannot attain PCEs, such as alpine areas, water bodies, serpentine meadows, lava flows, airports, buildings, parking lots, etc. (May 24, 1996; 61 FR 26256, p. 26269). However, the scale at which mapping is done for publication in the Code of Federal Regulations does not allow precise identification of these features, and, therefore, some may fall within the critical habitat boundaries. Hence, all lands within the mapped critical habitat boundaries for the marbled murrelet are critical habitat.

IX. Effects of Critical Habitat Designation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species.

We published a final regulation with a new definition of destruction or adverse modification on February 11, 2016 (81 FR 7214), which became effective on March 14, 2016. Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect

subsequently listed species or designated critical habitat.

We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that result in a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of the marbled murrelet. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of the species or that preclude or significantly delay development of such features. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the marbled murrelet. A detailed explanation of the regulatory effects of critical habitat in terms of consultation under section 7 of the Act and application of the adverse modification standard is provided in the October 5, 2011, final rule revising critical habitat for the marbled murrelet (76 FR 61599).

X. Economic Considerations

As required by section 4(b)(2) of the Act and its implementing regulations, we fully considered the economic impact that may result from specifying any particular area as critical habitat. If critical habitat has not been previously designated, the probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, and includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). In this case the baseline represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. These are the conservation efforts and associated impacts that would not be expected but for the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These incremental costs represent the potential economic impacts we consider in association with a designation or revision of critical habitat, as required by the Act.

Baseline protections as a result of the listed status of the marbled murrelet include sections 7, 9, and 10 of the Act, and any economic impacts resulting from these protections to the extent they are expected to occur absent the designation of critical habitat:

- Section 7 of the Act, even absent critical habitat designation, requires Federal agencies to consult with the Service to ensure that any action authorized, funded, or carried out will not likely jeopardize the continued existence of any endangered or threatened species. Consultations under the jeopardy standard result in administrative costs, as well as impacts of conservation efforts resulting from consideration of this standard.
- Section 9 defines the actions that are prohibited by the Act. In particular, it prohibits the ''take'' of endangered wildlife, where ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The economic impacts associated with this section manifest themselves in sections 7 and 10.
- Under section 10(a)(1)(B) of the Act, an entity (*e.g.,* a landowner or local government) may develop an HCP for a listed animal species in order to meet the conditions for issuance of an incidental take permit in connection with a land or water use activity or project. The requirements posed by the HCP may have economic impacts associated with the goal of ensuring that the effects of incidental take are adequately avoided or minimized. The development and implementation of HCPs is considered a baseline protection for the species and habitat unless the HCP is determined to be precipitated by the designation of critical habitat, or the designation influences stipulated conservation efforts under HCPs.

In the present rulemaking, we are not starting from a ''without critical habitat'' baseline. In this particular case, critical habitat has been in place for the marbled murrelet since May 24, 1996 (61 FR 26256), and was most recently revised on October 5, 2011 (76 FR 61599). Because the 2011 revision resulted only in the removal of some areas of critical habitat, all areas remaining in the current designation have been critical habitat for the marbled murrelet since 1996. This current critical habitat designation formed the baseline for our consideration of the potential economic impacts of the proposed rule.

In the proposed rule, we described our evaluation and conclusion that all of the currently designated areas meet the statutory definition of critical habitat for the marbled murrelet. Specifically, we clarified that all areas are within the range of the marbled murrelet and,

therefore, occupied by the species at the time of listing, and contain the physical or biological features essential to the conservation of the species, which may require special management consideration or protection. Furthermore, although all areas are considered to have been occupied at the time of listing, all areas do not necessarily have specific data indicating known detections of nesting murrelets at the time of listing. Upon further evaluation, we determined that all critical habitat, regardless of whether we have information indicating definitive use by nesting murrelets at the time of listing, is essential for the conservation of the species. As a result of our evaluation, we did not propose any modification to the boundaries of critical habitat for the marbled murrelet, nor did we propose any changes to the definition of the PCEs (May 24, 1996; 61 FR 26256). We fully considered all substantive comments and relevant information received on our proposed determination of critical habitat for the marbled murrelet; our consideration of this information did not lead to any changes from our proposed rule in this final rule.

We considered the probable incremental economic impacts of the proposed rule with regard to critical habitat for the marbled murrelet. As described in our proposed rule, critical habitat has already been in place for the marbled murrelet for 20 years; as we are not changing any of the critical habitat boundaries or PCEs, and as Federal action agencies consult on the effects to the PCEs rather than the species itself with regard to actions in critical habitat, we do not anticipate any additional costs as a result of the clarification of areas occupied at the time of listing. Our evaluation of the probable economic impacts of our proposed determination of critical habitat for the marbled murrelet was available for public review during the comment period on our proposed rule from August 25, 2015, through October 26, 2015 (August 25, 2015; 80 FR 51506). Following the close of the comment period, we reviewed and evaluated all information submitted that may pertain to our consideration of the probable incremental economic impacts of this critical habitat rule. We fully considered public comment on our evaluation, as well as information supplied by the action agencies with whom we regularly consult with regard to marbled murrelet critical habitat (details below). Those action agencies confirmed our conclusion that our clarification of how the areas currently designated as critical habitat meet the statutory definition under the Act is unlikely to result in any additional costs, regardless of occupancy status.

Our conclusion that this critical habitat rule will not result in incremental economic impacts is based upon the following evaluation. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat affects only activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the marbled murrelet is present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. In this particular case, because all areas that we have considered are already designated as critical habitat for the marbled murrelet, where a Federal nexus occurs, consultations to avoid the destruction or adverse modification of critical habitat have been incorporated into the existing consultation process. Federal agencies have been consulting under section 7 of the Act on critical habitat for the marbled murrelet for approximately 20 years. As our proposed rule did not include the addition of any new areas as critical habitat, any probable economic impacts resulting from the proposed rule would result solely from our clarification of how all of the areas currently designated meet the statutory definition of critical habitat. The incremental economic impacts of our rulemaking would, therefore, be equal to any additional costs incurred as the result of a difference between the outcome of consultations as they are currently conducted and consultations as they would be conducted if the proposed rule were to become final.

Based upon our evaluation and as described in our proposed rule, we do not anticipate changes to the consultation process or effect determinations made for critical habitat as a result of our evaluation and conclusion that all areas meet the definition of critical habitat under the Act. In addition, we do not anticipate requiring additional or different project modifications than are currently requested when an action ''may affect'' critical habitat. Therefore, it is the Service's expectation that this final rule clarifying the 1996 critical habitat designation, as revised in 2011, which explains how all areas within the boundaries of the current designation meet the definition of critical habitat under the Act, will result in no additional (incremental) economic impacts.

In order to confirm the accuracy of our assessment of the potential economic impacts of the proposed rule, we asked those Federal action agencies that manage lands that are critical habitat or with whom we have consulted over the past 20 years on marbled murrelet critical habitat to review our evaluation and characterization of the changes, if any, to consultation under section 7 that may be anticipated as a consequence of the proposed rule. We specifically asked each agency whether our proposed rule would be likely to result in any additional economic impacts on their agency (incremental impacts), above and beyond those already incurred as a result of the current critical habitat designation for the marbled murrelet (baseline impacts). Based on our consultation history with Federal agencies, it is our understanding that action agencies currently consult on effects to marbled murrelet critical habitat through an analysis of the effects to the PCEs. We asked the action agencies to confirm or correct this understanding, and to verify our characterization of how these consultations take place under the current designation, which we described as follows:

- If an action will take place within designated critical habitat, the action agency considers the action area to be critical habitat, irrelevant of the presence of PCEs. The action agency then determines whether there are PCEs within the action area. If the action agency determines there are no PCEs within the action area, the agency makes a ''no effect'' determination and the Service is not consulted.
- If the action agency determines there are PCEs within the action area, they analyze the action's potential effects on the PCEs, which may result in a ''no effect'' or ''may effect'' determination. If the action agency determines the action ''may affect'' the PCEs, they undergo section 7 consultation with the Service.

Whether the critical habitat subunit or action area is considered to be ''occupied'' by the species is irrelevant to the effect determination made for critical habitat. Rather, the determination of ''occupancy'' is relevant to the effect determination for the species and any minimization measures that may be implemented (such as project timing).

In the proposed rule we clarified that we consider all areas to have been occupied by the species at the time of listing, and that all of these areas have the PCEs. Because occupancy of the critical habitat subunit or action area is

considered irrelevant to the effect determination made for critical habitat, the Service does not anticipate changes to the consultation process or effect determinations made for critical habitat as a result of this determination. In addition, the Service does not anticipate requiring additional or different project modifications than are currently requested when an action ''may affect'' critical habitat. Therefore, we conclude that this final rule clarifying the 1996 critical habitat designation, as revised in 2011, which is limited to explaining how all areas within the boundaries of the current designation meet the definition of critical habitat under the Act, will not result in additional (incremental) costs to the Federal agencies.

As noted above, we solicited review and comment on our draft summary of the anticipated economic impacts of the proposed rule from seven Federal agencies with whom we regularly consult on marbled murrelet critical habitat (the U.S. Forest Service (USFS), U.S. Bureau of Land Management (BLM), National Park Service (NPS), Bureau of Indian Affairs (BIA), U.S. Army Corps of Engineers, Federal Highway Administration, and Federal Energy Regulatory Commission). We received responses from four of these agencies: The USFS representing multiple national forests, the BLM representing multiple districts, the NPS representing Redwood National Park and State Parks partnership, and the BIA. All responses agreed with our evaluation of the potential incremental effects of the proposed rule, and confirmed that they did not anticipate any additional costs as a result of the clarification of areas occupied at the time of listing. Our initial letter of inquiry and all responses received from the action agencies are available for review in the Supplemental Materials folder at *http://www.regulations.gov,* Docket No. FWS–R1–ES–2015–0070.

We additionally considered any potential economic impacts on non-Federal entities as a result of the proposed rule. In our experience, any economic impacts to non-Federal parties are generally associated with the development of HCPs under section 10(a)(1)(B) of the Act. However, as described above, in most cases the incentive for the development of an HCP is the potential issuance of an incidental take permit in connection with an activity or project in an area where a listed animal species occurs. HCPs are seldom undertaken in response to a critical habitat designation, but in such a case the costs associated with the development of an HCP prompted by the designation of critical habitat would be considered an incremental impact of that designation. In this particular situation, because we did not propose any changes to the boundaries of critical habitat, we did not anticipate the initiation of any new HCPs in response to the proposed rule; therefore, we did not anticipate any costs to non-Federal parties associated with HCP development. We did not receive any information during the public comment period that suggested this conclusion was in error.

Other potential costs to non-Federal entities as a result of critical habitat designation might include costs to third-party private applicants in association with Federal activities. In most cases, consultations under section 7 of the Act involve only the Service and other Federal agencies, such as the U.S. Army Corps of Engineers. Sometimes, however, consultations may include a third party involved in projects that involve a permitted entity, such as the recipient of a Clean Water Act section 404 permit. In such cases, these private parties may incur some costs, such as the cost of applying for the permit in question, or the time spent gathering and providing information for a permit. These costs and administrative effort on the part of third-party applicants, if attributable solely to critical habitat, would be incremental impacts of the designation. In this particular case, however, because we did not propose any boundary changes to the current critical habitat designation, we did not anticipate any change from the current baseline conditions in terms of potential costs to third parties; therefore, we expected any incremental impacts to non-Federal parties associated with the proposed rule to be minimal. Again, we did not receive any information during the public comment period that would suggest this conclusion is in error.

Based on our evaluation, the information provided to us by the Federal action agencies within the critical habitat area under consideration, and the information received during the public comment period on our proposed rule, we conclude that this final rule will result in little if any additional economic impact above baseline costs.

XI. Determination

We have examined all areas designated as critical habitat for the marbled murrelet in 1996 (May 24, 1996; 61 FR 26256), as revised in 2011 (October 5, 2011; 76 FR 61599), and evaluated whether all areas meet the definition of critical habitat under section 3(5)(A) of the Act. Based upon our evaluation, we have determined that all 101 subunits designated as critical habitat are within the geographical area occupied by the species at the time of listing, and each of these subunits provides the physical or biological features and PCEs essential to the conservation of the species, which may require special management considerations or protections. Therefore, we conclude that all areas designated as critical habitat for the marbled murrelet meet the definition of critical habitat under section 3(5)(A)(i) of the Act. Of the 101 subunits, 78 of those subunits had documented detections of nesting behavior at the time of listing. We have determined that we do not have sufficient data to definitively document nesting behavior within the other 23 subunits at the time of listing. However, even if these 23 subunits were considered unoccupied, the Secretary has determined that they are essential for the conservation of the species, as they contribute to the maintenance or increase of suitable nesting habitat required to achieve the conservation and recovery of the marbled murrelet; therefore, we conclude that they meet the definition of critical habitat under section 3(5)(A)(ii) of the Act.

In addition, recognizing that the detection of nesting behaviors or the presence of essential physical or biological features or PCEs within a subunit may be evaluated on multiple scales, such that at some finer scales some subset of the subunit may be considered unoccupied or lacking in PCEs, we evaluated the designation in its entirety as if it were unoccupied under section 3(5)(A)(ii) of the Act, and found that all areas of critical habitat are essential for the conservation of the species. We have here clarified that we have evaluated all critical habitat for the marbled murrelet, and have concluded that in all cases the areas designated as critical habitat for the marbled murrelet meet the definition of critical habitat under section 3(5)(A) of the Act. In addition, as required by section 4(b)(2) of the Act, we have considered the potential economic impact of this clarification, and we have concluded that any potential economic effects resulting from this rulemaking are negligible.

Therefore, we conclude that, under the Act, critical habitat as currently designated for the marbled murrelet in the Code of Federal Regulations remains valid.

XII. Summary of Comments and Responses

We requested written comments from the public on the proposed determination of critical habitat for the

marbled murrelet in a proposed rule published on August 25, 2015 (80 FR 51506). As described in that proposed rule, our purpose was to reconsider the final rule designating critical habitat for the marbled murrelet (May 24, 1996; 61 FR 26256, as revised on October 5, 2011; 76 FR 61599) for the purpose of evaluating whether all areas currently designated meet the definition of critical habitat under the Act. To that end, we specifically sought comments concerning: (1) What areas within the currently designated critical habitat for the marbled murrelet were occupied at the time of listing and contain features essential to the conservation of the species; (2) special management considerations or protection that may be needed in critical habitat areas, including managing for the potential effects of climate change; (3) what areas within the currently designated critical habitat are essential for the conservation of the species and why; and (4) information on the extent to which the description of economic impacts is a reasonable estimate of the likely economic impacts of the proposed determination. During the comment period, which closed on October 26, 2015, we received 16 comment letters from organizations or individuals directly addressing the proposed critical habitat designation.

Eleven of these letters provided substantive comments (beyond a succinct expression of agreement or opposition) on the proposed rule. Five of the comment letters expressed support of our 1996 designation, one opposed the 1996 designation, and five did not express a particular opinion regarding the 1996 designation and whether it meets the statutory definition, but offered other suggestions or information regarding critical habitat for the marbled murrelet.

Several comments we received were outside the scope of the proposed rule, which was limited to the specific purpose for which the court remanded this rule, which was to assess whether all of the designated areas meet the statutory definition of critical habitat. Examples of comments outside of the scope of the proposed rule included:

(a) Requests that we designate additional critical habitat;

(b) A request that we apply the Service's proposed policy for excluding lands included in Habitat Conservation Plans (*See* 79 FR 27052 (May 12, 2014) at 27055);

(c) Requests that we designate marine areas as critical habitat;

(d) A request that surrounding encumbered lands be freed up as a more available revenue source; and

(e) A request to complete a 5-year review.

These comments are beyond the scope of the proposed rule, and some would require separate rulemaking to be considered. Accordingly, we have not specifically responded to these comments in this final rule.

All substantive information provided during the comment period has either been incorporated directly into this final determination or addressed below. Comments received were grouped into general issues specifically relating to the proposed critical habitat determination, and are addressed in the following summary and incorporated into the final rule as appropriate.

Comments From States

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' Comments received from the State regarding the determination of critical habitat for the marbled murrelet are addressed below.

(1) *Comment:* The Oregon Department of Forestry stated they have not experienced impacts, positive or negative, associated with the designation of critical habitat. Critical habitat has not been an obstacle to the effective implementation of their forest management plans.

Our response: Thank you for the information.

(2) *Comment:* The Oregon Department of Forestry and one private organization expressed the opinion that we relied heavily on technical information associated with the 1996 designation and largely or completely ignored newer scientific literature. In particular they pointed out that all the referenced nest site data is decades old.

Our response: The sole purpose of our proposed rule was to evaluate whether all areas currently designated as critical habitat for the marbled murrelet meet the statutory definition of critical habitat; we did not propose to revise critical habitat as a whole. In doing so, we did not ignore or discount any available relevant literature, including publications made available after the 1996 designation of critical habitat. In fact, many of the publications the commenters indicate we ignored, such as McShane *et al.* 2004, are cited in the proposed rule (see, for example, citations on pp. 51509–51512 of 80 FR 51506; August 25, 2015). If our review of the best available scientific data as reflected in the more recently published literature had indicated a change in our understanding of the essential habitat features for the marbled murrelet, we might have proposed further revision. However, we reviewed all available scientific data relevant to this question and found that it did not indicate that such a change was appropriate. Rather, the more recently published literature continues to support the physical or biological factors and primary constituent elements (PCEs) as described in the 1996 critical habitat final rule and is, therefore, consistent with both our proposed and final rules.

The commenters also indicate that the nest and occupancy data we relied upon were outdated. We disagree. On page 51516 of the proposed rule (80 FR 51506; August 25, 2015), we denote the years of survey data that we relied upon, which included all available nests, occupied behaviors, and presence behaviors within the analysis area. In Washington, the information included data collected through 2013. In Oregon, some survey data was as recent as 2014. In California, most of the available data was collected through 2006, with one data point from 2014. These data present the most recent and best data available for us to use in our reconsideration.

(3) *Comment:* The Oregon Department of Forestry commented that the boundaries of critical habitat follow ownerships rather than habitat.

Our response: Our implementing regulations at 50 CFR 424.12(c), in effect at the time of our designation, specify that ''Each critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area. . . . Ephemeral reference points (*e.g.,* trees, sand bars) shall not be used in defining critical habitat.'' Although by definition the foundation of our critical habitat designation is based on habitat characteristics (the presence of essential physical or biological features, or areas otherwise determined to be essential for the conservation of the species), to be useful those specific areas that fall within the designation must be identifiable ''on the ground.'' Characteristics such as the location of forest edges, for example, which might serve as a habitat-based boundary for marbled murrelets, are expected to vary over space and time and thus are not useful in this regard. For this reason, we utilized ownership and administrative boundaries, which are relatively more stable, to define the boundaries of our critical habitat units, after reliance on the habitat characteristics to define critical habitat for the marbled murrelet located within those administrative boundaries.

(4) *Comment:* The Oregon Department of Forestry recommended that critical habitat should be focused on older, high-quality habitat rather than younger stands.

Our response: We agree with the basic principle of this recommendation, and in fact the critical habitat does focus on older, high-quality habitat, which is likely to equate to forested areas that contain trees with suitable nesting structures (PCE 1). However, limiting the critical habitat designation to areas that only contain PCE 1 would not be sufficient to achieve the conservation of the species because marbled murrelets need large contiguous blocks of forested areas (Recovery Plan for the Marbled Murrelet, USFWS 1997). It is not necessary that the entirety of these large, contiguous blocks of forest is represented by trees with characteristics associated with late-successional old growth; a large block of forested area may be constituted of trees with suitable nesting structures surrounded by areas of younger forest. Marbled murrelet critical habitat, therefore, comprises two PCEs, which serve separate, but intertwined, purposes. Forested areas within 0.5 mile (0.8 kilometer) of individual trees with potential nesting platforms with a canopy height of at least one-half the site-potential tree height (PCE 2) provide the larger forested areas that are necessary to minimize edge effects and reduce the impacts of nest predators to increase the probability of nest success, in addition to providing forest cohesion around suitable nesting trees (PCE 1), which has been associated with murrelet use and to provide for the development of suitable nesting trees. Because these younger stands may provide this essential feature, critical habitat for the marbled murrelet is not strictly limited to only older stands of forest.

(5) *Comment:* The Washington Department of Natural Resources (WDNR) requested that the critical habitat unit descriptions, tables, and maps be updated to remove the lands excluded because of inclusion in the Department's Habitat Conservation Plan (HCP).

Our response: The 1996 critical habitat designation for the marbled murrelet stipulates by text that ''Critical habitat units do not include non-federal lands covered by a legally operative incidental take permit for marbled murrelets issued under section 10(a) of the Act.'' However, the WDNR HCP for the marbled murrelet was not completed until 1997, after critical habitat designation; therefore, all WDNR lands were mapped in the final critical habitat. Once the WDNR obtained a legally operative incidental take permit for marbled murrelets issued under section 10(a) of the Act in 1997, the HCP lands designated as critical habitat were excluded by the text referenced above. As long as WDNR has a legally operative incidental take permit for marbled murrelets, their lands remain excluded by text from critical habitat. However, should their permit be revoked, terminated, or expire, WDNR lands would revert back to critical habitat. WDNR lands, therefore, continue to remain mapped and accounted for in the total designation acreage.

Further, as noted above, the purpose of this proposed action was to consider whether our 1996 designation meets the statutory definition of critical habitat; we did not propose revision of critical habitat as a whole. Therefore, we did not propose to reconsider or reevaluate any of the exclusions contained in the 1996 final designation for consistency with our current exclusion policies.

Public Comments

(6) *Comment:* One private organization stated that our proposed rule did not contain a finding that areas not occupied at the time of the listing are essential for the conservation of the species. At the same time, this organization also contends that our determination that all 101 subunits would qualify for designation under 16 U.S.C. 1532 (5)(A)(ii) as ''essential to the conservation of the species'' has no legal bearing on a designation under 16 U.S.C. 1532 (5)(A)(i) for the geographical area occupied at the time of listing. The comment letter suggests that the subsection (ii) standard applies only to areas that are outside the geographical area occupied at the time of listing, and that the ''Service has determined that all designated critical habitat is within the geographical area occupied at the time of listing. For such areas, they suggest critical habitat can only be designated under subsection (i), and only if the physical or biological features (PCEs) ''are found'' on those areas.''

Our response: We refer the commenter to section VII on pages 51517–51518 of the proposed rule (80 FR 51506; August 25, 2015), which provides our finding that all currently designated critical habitat is essential to the conservation of the marbled murrelet. As stated there, we first determined that all areas designated as critical habitat are within the geographical area occupied by the species at the time of listing and contain the physical or biological features and PCEs essential to the conservation of the species, which may require special management considerations or protection. However, we acknowledged that the physical or biological features and PCEs may not be uniformly distributed throughout the subunits, and, therefore, we additionally conducted an evaluation of all subunits under the standards of section 3(5)(A)(ii) of the Act. While this evaluation was not technically necessary, we determined it to be a conscientious application of all methods of designating critical habitat, regardless of occupancy, differing interpretations of occupancy, or differing scales of analysis. We expressly stated in our determination that all areas currently identified as critical habitat for the marbled murrelet, whether confirmed to be occupied at the time of listing or not, are essential for the conservation of the species and meet the definition of critical habitat under section 3(5)(A)(ii) of the Act (see section XI, Determination, on page 51520 of the proposed rule, 80 FR 51506; August 25, 2015). This approach is consistent with the ruling in *Home Builders Ass'n of Northern California* v. *U.S. Fish and Wildlife Service,* 616 F.3d 983 (9th Cir.), *cert. denied* 131 S.Ct. 1475 (2011), in which the court upheld a critical habitat rule in which the Service had determined that the areas designated, whether occupied or not, met the more demanding standard of being essential for conservation. See also our response to Comment (7).

(7) *Comment:* The same private organization stated that the Service cannot designate areas within the geographical area occupied at the time of listing that lack any of the physical or biological features simply by combining those areas in a large ''subunit'' consisting of thousands of acres including some other areas that do contain the features. If the presence of physical and biological features anywhere within a large critical habitat unit was sufficient to find the presence of physical and biological features everywhere within the unit, nothing would prevent the administrative creation of a single multimillion-acre critical habitat ''unit'' and finding every acre to contain physical and biological features because a single small area contains such features. This interpretation would render the statutory terms meaningless. In particular, the commenting organization noted that the designation included lands delineated as Late Successional Reserves under the Northwest Forest Plan, which they contend does not meet the statutory standard because the physical or biological features and PCEs

may not be uniformly distributed throughout a subunit.

Our response: We agree with the commenter that an interpretation of the statute that would lead to the creation of a single multimillion-acre critical habitat unit and declaring every acre within that unit to contain physical and biological features on the basis of a small subset of the unit containing such features would not be reasonable. However, we disagree that such an interpretation reflects our designation of critical habitat for the marbled murrelet. Marbled murrelets require forested habitats for nesting, particularly trees with nesting platforms (which are typically found in forests with late seral characteristics) embedded within larger areas of contiguous forest that may serve as a ''buffer'' area to insulate nesting murrelets from edge effects, such as invasion by corvid predators (crows or ravens) or negative microclimatic conditions (also noting that the beneficial effects of these surrounding areas may be provided by younger forest stands). In addition, as noted in our proposed rule, trees with suitable nesting platforms may also be found in areas of younger forest containing remnant large trees.

Forests are dynamic systems, and cannot be expected to remain static on the landscape; the progression of forest habitats through a series of seral stages is a fundamental principle of forest ecology. As a result of both natural disturbance and anthropogenic activities, forests occur in a mosaic of age-structured conditions. It is, therefore, to be expected that the designation of critical habitat for a wide-ranging forest species requiring nest trees with mature or old-growth characteristics will additionally include surrounding forests in a mosaic of both old and younger forests; this simply reflects how forest patches of varying ages and structural condition are distributed across the landscape.

Our implementing regulations at 50 CFR 424.12(b)(5)(d) state: ''When several habitats, each satisfying the requirements for designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat.'' In this case, our designation of critical habitat for the marbled murrelet is focused primarily on areas of forest with late-successional characteristics that provide suitable nesting habitat (PCE 1), surrounded by areas of potentially younger forest (PCE 2). Because marbled murrelets require large blocks of contiguous forest habitat for successful nesting, we have noted that special management considerations may be required to provide for the development of suitable nesting habitat for those areas currently in early successional stages.

Taking all of these factors into consideration, we considered the best available scientific information and concluded that the 101 subunits of critical habitat designated here for the marbled murrelet contain the essential physical or biological features and PCEs at a scale appropriate for the conservation of the species and representative of the natural distribution of these features on the landscape. It is not biologically reasonable to expect the PCEs to be found on every acre of each subunit of a critical habitat designation for a wide-ranging species that requires large blocks of contiguous forest habitat for successful nesting. Furthermore, because of the fundamental dynamic nature of successional forests, we do not expect such features to be distributed uniformly across critical habitat. We dispute the commenter's argument that areas within the critical habitat designation do not meet the statutory standard because the physical or biological features and PCEs are not uniformly distributed throughout the subunits. There is no statutory or regulatory requirement that the physical or biological features or PCEs be ''uniformly distributed'' throughout critical habitat. Section 3(5)(A)(i) of the Act requires in plain language only that the physical or biological features essential to the conservation of the species ''are found'' on those specific areas identified as critical habitat within the geographical area occupied by the species at the time it is listed. Our designation of critical habitat for the marbled murrelet clearly meets the statutory standard. We note that the U.S. Court of Appeals for the Ninth Circuit recently affirmed a similar interpretation of the Act in *Alaska Oil and Gas Association* v. *Jewell,* 2016 U.S. App. LEXIS 3624 (9th Cir., Feb. 29, 2016), in which the court upheld the Service's designation of critical habitat for the polar bear. The court held that, in its designation of denning habitat, the Service was not required to identify specifically where all elements of the denning habitat PCE were located within each 5-mile increment of the designated area, and the Service adequately explained why it adopted a method designed to capture a ''robust'' estimation of inland den use.

Finally, we recognize that there may be different approaches to defining the ''geographical area occupied by the species at the time it is listed,'' depending largely on the scale at which the area occupied is considered. Here we have defined that area on a relatively large scale, essentially equivalent to the range of the species, such that all critical habitat is considered occupied by the species. We have further determined, as described in this document, that the physical or biological features essential to the conservation of the species, and which may require special management considerations or protection, are found in each of the 101 subunits within the geographical area occupied by the species at the time it was listed, as identified in this designation of critical habitat. All critical habitat for the marbled murrelet therefore meets the definition of critical habitat under section (3)(5)(A)(i) of the Act.

This commenter asserted that the proposal includes ''millions of acres that were not occupied at the time of listing.'' In the proposed rule, we explained why this assertion is incorrect, in light of our interpretation of ''occupied'' as being equivalent to the range of the species. But, even if some areas of the critical habitat designation were considered unoccupied at the time of listing, we have determined that all critical habitat for the marbled murrelet, as currently designated, is essential for the conservation of the species (see section VII of the proposed rule). Hence, the designated areas meet the definition of critical habitat set forth in section 3(5)(A)(ii) of the Act. That alternative definition does not require that PCEs be present.

In this case, regardless of the scale at which the geographical area occupied by the species at the time it was listed is considered, we have determined that all areas currently designated as critical habitat for the marbled murrelet meet the definition of critical habitat whether evaluated under the standards of subsection (i) or (ii) of section 3(5)(A) of the Act. This approach is consistent with the ruling in *Home Builders Ass'n of Northern California* v. *U.S. Fish and Wildlife Service,* 616 F.3d 983, 990 (9th Cir.), *cert. denied* 131 S.Ct. 1475 (2011), in which the court held that, where the Service had determined in a critical habitat rule that all areas met the more demanding standard under section 3(5)(A)(ii) for unoccupied areas, there was no need to classify particular areas as occupied or unoccupied, and any possible overlap with occupied areas ''poses no problem.'' The court observed that ''Courts routinely apply similar reasoning in cases where a standard is unclear yet the result is the same under even the highest standard.'' *Id.* The court also held that its prior ruling in *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th

Cir. 2004), ''requires FWS to be *more* generous in defining area as part of a critical habitat designation.'' *Id.* at 989 (emphasis in original).

(8) *Comment:* The same private organization stated that an area can only be designated as critical habitat under section 3(5)(A)(i) of the Act if it meets two separate requirements with two different temporal bounds: (1) The area must be within the geographic area occupied by the species *at the time it is listed,* and (2) the area must *currently* contain (''on which *are* found'') physical or biological features that are ''essential to the conservation of the species'' [emphasis added by commenter].

Our response: In our designation of critical habitat in 1996, as revised in 2011, we determined that the physical or biological features essential to the conservation of the marbled murrelet were found on all areas occupied by the species at the time of listing. In the analysis presented in this document, we have reevaluated all designated critical habitat for the marbled murrelet, and have additionally determined that the physical or biological features essential to the conservation of the species are currently found in all critical habitat subunits as well, whether considered occupied at the time of listing or not. Therefore, whether considered at the time of listing, at designation, or at present, we conclude that all critical habitat for the marbled murrelet meets the definition of critical habitat under section 3(5)(A)(i) of the Act. Furthermore, we note that, since we have additionally evaluated all critical habitat as if it were unoccupied at the time of listing and determined that all designated areas meet the ''essential for conservation'' standard of section 3(5)(A)(ii), the presence of the essential physical or biological features or PCEs is not determinative.

(9) *Comment:* The same private organization stated that designation of non-habitat younger forest stands as critical habitat has a substantial economic impact, because, absent such designation, consultation under the jeopardy standard would not be required for actions limited to non-habitat younger forest stands, since those actions would be ''no effect'' on the marbled murrelet. By requiring consultation on actions limited to non-habitat younger forest stands that would not otherwise occur, there is a substantial risk that some of those actions would run afoul of the adverse modification standard, and impose a substantial administrative cost on the consulting agencies.

Our response: Section 4(b)(2) of the Act requires that we consider the potential economic impacts of a critical habitat designation. We consider the economic impacts of critical habitat to be those impacts that would not occur but for the designation of critical habitat; that is, those costs that are attributable solely to the proposed critical habitat, above and beyond the ''baseline'' costs already incurred for the species. As fully described in our proposed rule (pp. 51518–51519, 80 FR 51506; August 24, 2015), in this case the baseline for our analysis is the critical habitat that has been in place for the marbled murrelet since 1996, as revised in 2011. Our proposed rule focused solely on evaluating this existing critical habitat for the purpose of determining whether all areas meet the statutory definition under the Act; we did not propose any changes to the critical habitat designation already in place beyond the clarification of areas considered occupied or unoccupied at the time of listing, and a detailed description of how those areas meet the statutory definition of critical habitat. In considering the potential economic impacts of our proposed rule, we, therefore, contemplated a possible change in occupancy status of some areas of critical habitat as a result of our assessment. That is, we evaluated whether there would be any additional costs incurred as a result of our proposed rule, should we determine that some areas of critical habitat currently considered to be occupied by the marbled murrelet would change to ''unoccupied'' or vice versa.

Whether a subunit or action area is considered ''occupied'' by the species is irrelevant to the effect determination for critical habitat analysis, because the analysis is based on impacts to the PCEs, not impacts to the species. For this reason we did not anticipate any incremental economic impacts from our proposed rule. Federal agencies have been consulting under section 7 of the Act on impacts to PCE 1 and PCE 2 for marbled murrelet critical habitat since 1996. As described in detail in our proposed rule (p. 51520, 80 FR 51506; August 25, 2015), we contacted all Federal agencies with whom we have consulted on marbled murrelet critical habitat over the past 20 years to confirm our understanding that they consult on effects to critical habitat through an analysis of the effects to PCEs. Furthermore, we specifically inquired whether our proposed rule would be likely to result in any additional economic impacts on their agencies, should any areas change in occupancy status. All of the agencies that responded confirmed that they did not anticipate any additional costs as a result of the clarification of critical habitat subunits occupied at the time of listing.

(10) *Comment:* The same private organization stated that the Service incorrectly determined that critical habitat designation will not affect activities that do not have Federal agency involvement because, in Washington and California, the designation triggers legal obligations under State laws. Therefore, the Service should account for additional costs sustained by private landowners and revise the determination that designating critical habitat will result in no additional (incremental) economic impacts.

Our response: As required by section 4(b)(2) of the Act, we considered the potential economic impacts that could result as a consequence of our proposed rule. As described on pages 51518–51520 of the proposed rule (80 FR 51506; August 25, 2015), the baseline for this analysis is the critical habitat designation in place today. The proposed rulemaking was focused solely on evaluating the current critical habitat designation—those areas designated in 1996, as revised in 2011—for the purposes of determining whether all of those areas meet the statutory definition of critical habitat.

We are not proposing any changes to the critical habitat designation that is already in place beyond this clarification of areas considered occupied or unoccupied at the time of listing, and a detailed description of how those areas meet the statutory definition of critical habitat. We evaluated whether there would be any incremental costs incurred if there was a change in status of a critical habitat subunit from unoccupied to occupied (see our response to Comment 9, above). Incremental costs are those costs that are solely attributable to the proposed critical habitat rulemaking, over and above costs incurred for the conservation of the species absent the proposed critical habitat action. In this case, because there is no change in the geographic areas designated as critical habitat, the current designation would not trigger any additional obligations under State laws that had not already been triggered by the initial 1996 designation; therefore, there would be no indirect incremental impacts of this rulemaking in relation to State laws as suggested by the commenter. In addition, for the most part, private lands in Washington and California that were included in the final 1996 designation

were known to be used by marbled murrelets; therefore, any legal obligations of the landowners would be primarily associated with the presence of the listed species, and would not be attributable solely to the designation of critical habitat (in other words, those obligations would have been realized regardless of critical habitat designation).

Under the Regulatory Flexibility Act, Federal agencies (including the Service) are required to evaluate the potential incremental impacts of a rulemaking only on directly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the Agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement imposed by critical habitat designation (avoiding destruction or adverse modification of critical habitat). Under these circumstances, it is the Service's position that only Federal action agencies will be directly regulated by this designation.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

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

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

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are required to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself and are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the Agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7 only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Consequently, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. Our consideration of potential economic impacts finds that none of these criteria are relevant to this analysis, thus, energy-related impacts associated with marbled murrelet conservation activities within critical habitat are not expected. This final rule only clarifies how the designated critical habitat meets the definition of critical habitat under the Act. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a

significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because this final rule only clarifies how the designated critical habitat meets the definition of critical habitat under the Act. The rule does not change the boundaries of the current critical habitat; therefore, landownership within critical habitat does not change, and a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we analyzed the potential takings implications of the proposed determination of critical habitat for the marbled murrelet. This final rule clarifies whether and how the designated critical habitat meets the definition of critical habitat under the Act; there are no changes to the boundaries of the current critical habitat, so landownership within critical habitat does not change. Thus, we conclude that this final rule does not pose additional takings implications for lands within or affected by the original 1996 designation. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. Therefore, based on the best available information, as described above, we confirm the conclusions we reached in 1996 that the final determination of critical habitat for the marbled murrelet does not pose significant takings implications.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. From a Federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have reconsidered designated critical habitat for the marbled murrelet for the purpose of assessing whether all of the areas meet the statutory definition of critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the final rule identifies the elements of physical or biological features essential to the conservation of the marbled murrelet.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501

et seq.). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

There are no tribal lands designated as critical habitat for the marbled murrelet.

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov,* at Docket No. FWS–R1–ES–2015–0070. In addition, a complete list of all references cited herein, as well as others, is available upon request from the Washington Fish and Wildlife Office (see **ADDRESSES**).

Authors

The primary authors of this document are the staff members of the Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 5, 2016.

Karen Hyun,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016–18376 Filed 8–3–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151130999–6594–02]

RIN 0648–XE336

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2016–2018 Atlantic Bluefish Specifications

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

ACTION: Final rule.

SUMMARY: NMFS is implementing final specifications for the 2016–2018 bluefish fishery, including catch restrictions for commercial and recreational fisheries. This action is necessary to comply with the implementing regulations for the Bluefish Fishery Management Plan that require us to publish specifications. The intent of this action is to implement specifications necessary to constrain harvest of this species within scientifically sound recommendations to prevent overfishing.

DATES: The final specifications for the 2016–2018 bluefish fishery are effective August 1, 2016, through December 31, 2018.

ADDRESSES: Copies of the specifications document, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications, are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. These documents are also accessible via the Internet at *www.mafmc.org* and *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Scheimer, Fishery Management Specialist, (978) 281–9236.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic Bluefish fishery is jointly managed by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission. The management unit for bluefish specified in the Atlantic Bluefish Fishery Management Plan is U.S. waters of the western Atlantic Ocean. Regulations implementing the FMP appear at 50 CFR part 648, subparts A and J. The regulations requiring annual specifications are found at § 648.162, and are described in the proposed rule. The proposed rule for this action published in the **Federal Register** on March 31, 2016 (81 FR 18559), and comments were accepted through April 15, 2016.

Final Specifications

A description of the process used to estimate bluefish stock status and fishing mortality, as well as the process for deriving the annual catch limit (ACL) and associated quotas and harvest limits, is provided in the proposed rule and in the bluefish regulations at § 648.160 through 162, and are not repeated here. The stock is not overfished or experiencing overfishing, and the specifications described below reflect the best available scientific information for bluefish. The final 2016–2018 bluefish specifications are shown in Table 1.

TABLE 1—FINAL 2016–2018 BLUEFISH SPECIFICATIONS

	2016		2017		2018	
	lb	mt	lb	mt	lb	mt
OFL	25,763,220	11,686	26,444,448	11,995	27,972,252	12,688
ABC	19,455,796	8,825	20,641,883	9,363	21,814,742	9,895
ACL	19,455,796	8,825	20,641,883	9,363	21,814,742	9,895
Management Uncertainty	0	0	0	0	0	0
Commercial ACT	3,307,485	1,500	3,509,120	1,592	3,708,506	1,682
Recreational ACT	16,148,311	7,325	17,132,763	7,770	18,106,236	8,213
Commercial Discards	0	0	0	0	0	0
Recreational Discards	2,989,468	1,356	2,989,468	1,356	2,989,468	1,356
Commercial TAL	3,307,485	1,500	3,509,120	1,592	3,708,506	1,682
Recreational TAL	13,158,843	5,969	14,143,295	6,414	15,116,768	6,857
Combined TAL	16,466,328	7,469	17,652,415	8,006	18,825,274	8,539
Expected Recreational Landings	11,581,548	5,253	11,581,548	5,253	11,581,548	5,253
Transfer	1,577,295	715	2,561,747	1,161	3,535,220	1,604
Commercial Quota	4,884,780	2,215	6,070,867	2,753	7,243,726	3,286
Recreational Harvest Limit	13,158,843	1,500	14,143,295	6,414	15,116,768	6,857

A transfer of quota from the recreational fishery to the commercial sector is permitted under the FMP up to a commercial fishery quota of 10.50 million lb (4,763 mt), provided the combined expected recreational landings and the commercial quota does not exceed the total TAL. The proposed rule for this action contained a sector quota transfer based on preliminary 2015 recreational landings data. In the interim between the proposed rule and now, the final 2015 Marine Recreational Information Program (MRIP) estimates were released in June and subsequently revised in July. The final bluefish catch estimate is higher than the preliminary value used to calculate the proposed measures, but notably lower than the MRIP information provided in June. Using these updated recreational landings to project 2016 catch allows a transfer of quota from the recreational sector to the commercial fishery (1.57 million lb (715 mt)) and results in a final commercial quota of 4,884,780 lb (2,215 mt).

Consistent with Council recommendations, these final specifications do not allocate research set-aside quota for 2016 through 2018; therefore, no additional adjustments to commercial or recreational allocations are needed.

Given historical landings, the reduced commercial quota could be constraining to the fishery. Even though the commercial quota is reduced, the bluefish quota management system has been timely and effective at constraining catch in the past, and NMFS does not expect any state to exceed their quota.

Final Recreational Possession Limit

Consistent with the recommendation of the Council, this final rule maintains the status quo daily recreational possession limit of up to 15 fish per person for 2016.

Final State Commercial Allocations

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan, which was published in the **Federal Register** on July 26, 2000 (65 FR 45844), provided a mechanism for bluefish quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Greater Atlantic Region, NMFS (Regional Administrator), can transfer or combine bluefish commercial quota under § 648.162(e). The Regional Administrator is required to consider the criteria in § 648.162(e)(1) in the evaluation of requests for quota transfers or combinations.

During the processing of this final rule, the Commonwealth of Virginia agreed to transfer 50,000 lb (22,680 kg) of bluefish quota to the State of Rhode Island and 30,000 lb (13,607 kg) to the State of New York, and the State of Florida agreed to transfer 50,000 lb (22,680 kg) to the State of Rhode Island. The state commercial transfers will not preclude the overall annual quota from being fully harvested, and will address contingencies in the fishery. In addition, the transfers are consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). These transfers have been approved and are incorporated within this final rule and the individual state quota allocations have been adjusted to reflect the transfer. The final state commercial allocations for 2016–2018 are shown in Table 2. The initial quotas are based on percentages specified in the FMP. No states exceeded their quota in 2015, therefore, no accountability measures are being implemented for the 2016 fishing year.

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Table 2. Bluefish Commercial State-by-State Allocations for 2016-2018

State	FMP Percent Share	2016 Initial Quota		transfer		2016 Final Quota		2017 Initial Quota		2018 Initial Quota	
		kg	lb	kg	lb	kg	lb	kg	lb	kg	lb
ME	0.6685	14,812	32,655			14,812	32,655	18,408	40,584	21,965	48,424
NH	0.4145	9,184	20,247			9,184	20,247	11,414	25,164	13,619	30,025
MA	6.7167	148,822	328,096			148,822	328,096	184,958	407,762	220,691	486,539
RI	6.8081	150,847	332,561	45,359	100,000	196,206	432,561	187,475	413,311	223,694	493,160
CT	1.2663	28,057	61,856			28,057	61,856	34,870	76,875	41,607	91,727
NY	10.3851	230,103	507,289	13,608	30,000	243,710	537,289	285,974	630,466	341,223	752,268
NJ	14.8162	328,282	723,739			328,282	723,739	407,994	899,472	486,816	1,073,245
DE	1.8782	41,615	91,746			41,615	91,746	51,720	114,023	61,712	136,052
MD	3.0018	66,511	146,631			66,511	146,631	82,661	182,235	98,630	217,442
VA	11.8795	263,214	580,287	-36,287	-80,000	226,926	500,287	327,126	721,189	390,325	860,518
NC	32.0608	710,371	1,566,100			710,371	1,566,100	882,858	1,946,369	1,053,421	2,322,397
SC	0.0352	780	1,719			780	1,719	969	2,137	1,157	2,550
GA	0.0095	210	464			210	464	262	577	312	688
FL	10.0597	222,893	491,394	-22,680	-50,000	200,213	441,394	277,014	610,711	330,531	728,697
Total	100.0001	2,215,699	4,884,780			2,215,699	4,884,780	2,753,699	6,070,867	3,285,699	7,243,726

Changes From the Proposed Rule

The 2015 recreational catch for bluefish for was previously projected to be 10,980,469 lb (4.980 mt), which would have allowed for a transfer of 2,178,374 lb (984 mt) from the recreational sector to the commercial fishery. As previously noted, the 2015 MRIP estimate changed on two occasions when information was finalized. The final recreational catch for 2015 is now known to be 11,581,548 lb (5,253 mt), which results in a smaller commercial quota of 4,884,780 lb (2,215 mt) than was outlined in the proposed rule.

Comments and Responses

The public comment period for the proposed rule ended on April 15, 2016. There were four comments received from the public, including recreational and commercial fishermen.

Comment 1: One commenter criticized the data used to estimate recreational catch, stating that the catch estimate was arbitrary and capricious, and requested to know where the numbers come from. The commenter did not suggest other data or approaches that might be better suited for establishing specifications.

Response: NMFS disagrees that the recreational catch estimate is arbitrary and capricious. Recreational catch was estimated using data from MRIP, and a newly peer-reviewed and approved methodology that improved the incorporation of small sample sizes was used to generate the final estimates. A publically searchable database and information about the program are available at *http://www.st.nmfs.noaa.gov/recreational-fisheries.* The most up-to-date stock assessment and recreational and commercial catch data were used. Consistent with National Standard 2 of the Magnuson-Stevens Act, NMFS used the best scientific information available and is approving specifications for the bluefish fishery. The final specifications in this rule are consistent with the FMP and recommendations of the Council.

Comment 2: Two commenters were unclear why we proposed to reduce harvest by 10 percent if there was no overfishing, and were unclear how the 10-percent reduction would be achieved. One of the commenters gave anecdotal evidence that bluefish stock was declining and suggested that the reason could be overfishing or a decline in the forage fish that bluefish eat.

Response: The 10-percent reduction is the cumulative result of new stock assessment information that indicates the spawning stock biomass for bluefish is lower than previously believed, changes in overall stock productivity as reflected by updated biological reference points, and application of the Council's risk policy. The commenter is correct that Atlantic bluefish stock biomass was higher in the 1980's and overfishing occurred in the 1990's, but this trend has not continued. The species was declared overfished in 1999 and managed under a rebuilding plan until 2009, when it was declared rebuilt. Using data from the new 2015 benchmark stock assessment, bluefish were not overfished and overfishing was not occurring in 2014. The assessment also changed the biological reference points for Atlantic bluefish to better model sources of uncertainty. The peer-reviewed model captures the dynamics of the bluefish stock well and accurately reflects trends in spawning stock biomass and fishing mortality. We are approving a 10-percent reduction in catch limits because, while the spawning stock biomass estimate is greater than the overfished threshold, it is less than the biomass target, and shows a decrease from the estimate in 2013, the last year a full assessment was conducted. Further, these specifications were developed using the Council's Risk Policy.

Comment 3: One commenter suggested that NMFS was showing preference to the commercial fishery by increasing commercial quota at the expense of the stock and suggested reducing commercial quota 5-percent.

Response: NMFS disagrees. NMFS is implementing final specifications, including the commercial quota, using the best available scientific information and following the formula outlined in the FMP, as recommended by the Council. Reducing commercial quota by 5-percent would be insufficient to achieve the necessary reduction in total landings. Through this process there is no explicit preference by NMFS for the commercial or recreational fishery and specifications are derived as outlined by the FMP. The Council could, at its discretion, revise the FMP through an amendment; however, at this time there are no pending bluefish actions that would change the commercial and recreational allocations or the specification process.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule is exempt from review under Executive Order 12866.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

The Assistant Administrator for Fisheries finds there is a need to implement these measures as soon as possible in order to help achieve conservation objectives for the bluefish fishery. The bluefish fishing year began on January 1, 2016, and has been operating without an established bluefish quota. Currently landings data show that some states may soon approach their quotas. Development of this final rule was undertaken as quickly as possible; however, analyzing and incorporating the most up-to-date MRIP data necessarily created a delay. Until this final rule becomes effective, there will be no bluefish quota for 2016 and therefore no authority to close a fishery that is approaching a quota limit. A 30-day delay in implementing this final rule would delay the setting of a quota, which is necessary to properly manage and monitor bluefish stocks at the state and federal level. The need to implement these measures as soon as possible constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness and to make the 2016–2018 Atlantic bluefish specifications effective immediately upon filing with the Office of the Federal Register.

Final Regulatory Flexibility Analysis

The FRFA included in this final rule was prepared pursuant to 5 U.S.C. 604(a), and incorporates the IRFA and a summary of analyses completed to support the action. A public copy of the EA/IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

The comments NMFS received did not raise specific issues regarding the economic analyses summarized in the IRFA. Refer to the ''Comments and Responses'' section of this preamble for more detail. No changes to the proposed rule were required to be made as a result of public comment.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

On December 29, 2015, the National Marine Fisheries Service (NMFS) issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The $11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the Regulatory Flexibility Act after July 1, 2016.

Pursuant to the Regulatory Flexibility Act, and prior to July 1, 2016, an initial regulatory flexibility analysis was developed for this regulatory action using SBA's former size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are commercial finfish fishing businesses. The new standard could result in 13 fewer commercial finfish businesses being considered small.

Taking this change into consideration, NMFS has identified no additional significant alternatives that accomplish statutory objectives and minimize any significant economic impacts of the proposed rule on small entities. Other options considered by the Council, including those that could have less of an impact on small entities, fail to meet one or more of these statutory objectives and therefore cannot be implemented. Further, the new size standard does not affect the decision to prepare a FRFA as opposed to a certification for this regulatory action

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

Specification of commercial quota, recreational harvest levels, and possession limits is constrained by the conservation objectives and derivation formula set forth in the FMP and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Act. Furthermore, specifications must be based on the best available scientific information, consistent with National Standard 2 of the Magnuson-Stevens Act. With the specification options considered, the measures in this final rule are the only measures that both satisfy these overarching regulatory and statutory requirements while minimizing, to the extent possible, impacts on small entities. This rule implements the specifications outlined in Table 1. The impacts of the specifications, as implemented by this final rule, are not expected to disproportionately impact large or small entities.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the Atlantic bluefish fishery.

In addition, copies of this final rule and guide (*i.e.,* permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following Web site: *www.greateratlantic.fisheries.noaa.gov.*

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

Dated: July 29, 2016.

Samuel D. Rauch III,

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

[FR Doc. 2016–18424 Filed 8–1–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160301167–6658–02]

RIN 0648–BF89

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2016

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

ACTION: Final rule.

SUMMARY: NMFS is implementing management measures for the 2016 summer flounder, scup, and black sea bass recreational fisheries, changes to the commercial scup incidental possession limit, and two minor corrections to the summer flounder commercial fishery minimum mesh size regulations. The implementing regulations for these fisheries require NMFS to publish recreational measures for the fishing year. The intent of these measures is to constrain recreational catch to established limits and prevent overfishing of the summer flounder, scup, and black sea bass resources, to reduce unnecessary commercial discards by allowing more incidentally caught scup to be retained by vessels, and to correct inaccuracies within the summer flounder mesh regulations.

DATES: Effective August 4, 2016.

ADDRESSES: Copies of the Supplemental Information Report (SIR) and other supporting documents for the recreational harvest measures are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The recreational harvest measures document is also accessible via the Internet at: *http://www.greateratlantic.fisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Scheimer, Fisheries Management Specialist, (978) 281–9236.

SUPPLEMENTARY INFORMATION:

General Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Mid-Atlantic

Fishery Management Council and the Atlantic States Marine Fisheries Commission, in consultation with the New England and South Atlantic Fishery Management Councils. States manage these three species within 3 nautical miles (4.83 km) of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The applicable species-specific Federal regulations govern vessels and individual fishermen fishing in Federal waters of the exclusive economic zone (EEZ), as well as vessels possessing a Federal summer flounder, scup, or black sea bass charter/party vessel permit, regardless of where they fish.

A proposed rule to implement the 2016 Federal recreational management measures (minimum fish size, season, and possession limit) for the summer flounder, scup, and black sea bass fisheries, scup commercial possession limit change, and summer flounder mesh requirement clarifications was published in the **Federal Register** on May 23, 2016 (81 FR 32269), with a 15-day comment period that ended on June 7, 2016. Comments received on the proposed rule are summarized and responded to in the Comments and Responses section found later in this rule. Additional background and information on the process to develop the measures described is provided in the preamble to the proposed rule and is not repeated here.

2016 Recreational Management Measures

NMFS is implementing the following measures that would apply in the Federal waters of the EEZ:

TABLE 1—SUMMARY OF 2016 SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS FEDERAL RECREATIONAL MANAGEMENT MEASURES

	Minimum size	Per-angler possession limit	Season
Summer Flounder, through December 31, 2016	Conservation equivalency—specific management measures determined by state of landing (*see Table 2*)		
Summer Flounder, beginning January 1, 2017	18 inches (45.7 cm)	4 fish	May 1–September 30.
Scup	9 inches (22.9 cm)	50 fish	January 1–December 31.
Black Sea Bass	12.5 inches (31.8 cm)	15 fish	May 15–September 21, October 22–December 31.

These measures apply to all federally permitted party/charter vessels with applicable summer flounder, scup, or black sea bass permits, regardless of where they fish, unless the state in which they land implements measures that are more restrictive. These measures are intended to achieve, but not exceed, the previously-established recreational harvest limits for these fisheries. See 80 FR 80689, published December 28, 2015, for background information on 2016 harvest limits. Additional detail on the measures for each species is provided below.

Summer Flounder Recreational Management Measures

NMFS is implementing conservation equivalency to manage the 2016 summer flounder recreational fishery, as recommended by the Council and Commission. The 2016 recreational harvest limit for summer flounder is 5.42 million lb (2,214 mt) and final landings for 2015, as estimated by the Marine Recreational Information Program (MRIP), were 4.88 million lb (2,096 mt). Maintaining the 2015 management measures is expected to effectively constrain 2016 summer flounder recreational landings and prevent the recreational harvest limit from being exceeded.

Conservation equivalency, as established by Framework Adjustment 2 (July 29, 2001; 66 FR 36208), allows each state to establish its own recreational management measures (per-angler possession limits, minimum fish size, and fishing seasons) to achieve its state harvest limit partitioned by the Commission from the coastwide recreational harvest limit, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures. Framework Adjustment 6 (July 26, 2006; 71 FR 42315) allowed states to form regions for conservation equivalency in order to minimize regulation differences for anglers fishing in adjacent waters.

The Commission implemented Addendum XXVII to its Summer Flounder FMP to continue regional conservation equivalency for fishing year 2016. The Commission has adopted the following mix of stand-alone state and regions for summer flounder measures: (1) Massachusetts; (2) Rhode Island; (3) Connecticut and New York; (4) New Jersey; (4) Delaware, Maryland, and Virginia; and (5) North Carolina. In order to provide the maximum amount of flexibility and to continue to adequately address the state-by-state differences in fish availability, each state in a region is required by the Council and Commission to establish fishing seasons of the same length, with identical minimum fish sizes and possession limits. The Commission certified, by letter dated June 7, 2016, that the Addendum XXVII measures implemented by individual states and regions, when combined, are the conservation equivalent of coastwide measures that would be expected to result in the recreational harvest limit being achieved, but not exceeded. More information on this addendum is available from the Commission (*www.asmfc.org*).

Based on the recommendation of the Commission, we find that the recreational summer flounder fishing measures implemented for 2016 in state waters are, collectively, the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106(a). According to § 648.107(a)(1), vessels subject to the recreational fishing measures are not subject to Federal measures, and instead are subject to the recreational fishing measures implemented by the state in which they land. Section 648.107(a) is amended through this rule to recognize state-implemented measures as conservation equivalent of the coastwide recreational management measures for 2016. The 2016 summer flounder management measures adopted by the individual states vary according to the state of landing, as specified in Table 2.

TABLE 2—2016 COMMISSION-APPROVED CONSERVATION EQUIVALENT RECREATIONAL MANAGEMENT MEASURES FOR SUMMER FLOUNDER

State	Minimum size (inches)	Possession limit	Open season
Massachusetts	16	5 fish	May 22–September 23.
Rhode Island	18	8 fish	May 1–December 31.
Connecticut	18	5 fish	May 17–September 21.
CT shore program (46 designed shore sites)	16		
New York	18	5 fish	May 17–September 21.
New Jersey:			
Coastal waters, east of Cape May COLREGS	18	5 fish	May 21–September 25.
1 shore program site	16	2 fish	May 21–September 25.
Delaware Bay, west of Cape May COLREGS	17	4 fish	May 21–September 25.
Delaware	16	4 fish	January 1–December 31.
Maryland	16	4 fish	January 1–December 31.
PRFC	16	4 fish	January 1–December 31.
Virginia	16	4 fish	January 1–December 31.
North Carolina	15	6 fish	January 1–December 31.

In addition, this action maintains the current default coastwide measures (an 18-inch (45.7-cm) minimum size, 4-fish possession limit, and May 1–September 30 open fishing season), that become effective January 1, 2017, when the 2016 conservation equivalency program expires. These measures will remain effective until replaced by the 2017 recreational management measures in the spring of next year.

Scup Recreational Management Measures

This rule maintains status quo scup measures for the 2016 fishery: A 9-inch (22.9-cm) minimum fish size, 50-fish per person possession limit, and year-round season. The 2016 scup recreational harvest limit is 6.09 million lb (2,763 mt) and 2015 recreational landings were 5.11 million lb (2,318 mt). Based on this, no changes in measures are needed to ensure the 2016 recreational harvest limit is not exceeded, and further liberalization of the management measures was not requested by the Council or Commission.

Black Sea Bass Recreational Management Measures

This rule implements a 12.5-inch (31.8-cm) minimum size, 15-fish possession limit, and open seasons of May 15–September 21 and October 22–December 31 in Federal waters. The states of Maryland, Delaware, Virginia and North Carolina have also adopted these measures for state waters. New Jersey, New York, Connecticut, Rhode Island, and Massachusetts have adopted different, more restrictive measures for their state waters, as required by the Commission's Addendum XXVII to the FMP. The Commission certified, by letter dated June 7, 2016, that the northern states (Massachusetts to New Jersey) have implemented measures consistent with Addendum XXVII.

The Council and the Commission made use of the preliminary MRIP estimates when developing 2016 management measures. It was, at the time of the development process, the best available information. In some years, the final MRIP estimates that are typically available in April have been slightly different than the preliminary year-end estimates available in February. The final 2015 MRIP estimates, delayed until June 13, 2016, are substantially different than the preliminary information used by the Council and Commission. The 2015 landings estimate increased from 3.62 (1,642 mt) to 3.97 million lb (1,801 mt)—a 350,000-lb (159-mt) increase. This would necessitate a 30.2-percent reduction from 2015 landings to constrain 2016 catch to the 2.82 million lb (1,279 mt) recreational harvest limit. The preliminary information used by the Council and Commission indicated a 22.1-percent reduction in landings was necessary.

The majority of black sea bass are caught inside state waters from New Jersey north. The Council and Commission recommend maintaining the 2015 management measures (12.5-inch (31.8-cm) minimum fish size, 15-fish possession limit with an open season of May 15–September 21 and October 22–December 31) in Federal waters and for state waters in Delaware, Maryland, Virginia, and North Carolina. Because catch from Federal waters and state waters from Delaware to North Carolina is generally less than 8 percent of the total catch, recreational measures must necessarily focus on state waters from New Jersey north. The Council and Commission's recommendations were contingent on the northern states (New Jersey north) implementing at least a 23-percent reduction to their state waters measures through a Commission Addendum. This approach also used the accountability measure methods developed for 2015. The accountability measure has been triggered again for 2016; however, because the previously developed and implemented approach (*i.e.,* maintaining Federal measures and applying them in states from Delaware south while states from New Jersey north reduce landings to constrain catch) is being maintained, no additional measures are required for 2016.

The Council recommended a backup coastwide measure of a 14-inch (35.56-cm) minimum fish size and a 3-fish possession limit with an open season of July 15–September 15 to be implemented in Federal waters and for southern states *only* if the northern states did not comply with the landings-reduction requirements of the Commission's Addendum. NMFS received a letter from the Commission on June 7, 2016, before the final MRIP estimates were available, stating that the northern states had developed and implemented black sea bass measures designed to achieve the required 23-percent reduction in 2016 recreational landings.

In response to the unexpected change in the final MRIP estimates for black sea bass, the Commission's Black Sea Bass Management Board held an emergency teleconference on July 6, 2016, to discuss the new MRIP estimates and to consider additional management action. In the discussion, Board members spoke about challenges in making any additional changes. They cited administrative burdens and timing complications of both receiving new information so late in the fishing year and difficulties implementing regulatory changes quickly mid-season. Many

reiterated that the backup coastwide measures were intended to ensure states complied with the addendum requirements and were never envisioned for implementation under any other scenario. That is, backup measures were only designed as an incentive to ensure state compliance and would only be used in the event that states failed to implement the addendum-required measures. Some cited the potential for additional angler and public disillusionment if additional reductions were implemented mid-year. Others stated that it is possible, given the upcoming stock assessment, that catches may be increased next or, at a minimum, any regulatory changes could be developed next year in response to 2016 catch and whatever information results from the assessment. Ultimately, the Board elected not to take any action at this time. The existing measures adopted under Addendum XXVII, when evaluated with the final 2015 MRIP estimates indicates that landings reductions may be in the 24- to 25-percent range as the new data changed the effective reductions on a state-by-state basis. Some state measures are now more restrictive than previously believed, others are now more liberal.

NMFS is implementing the Council recommended original suite of measures, for the following reasons:

1. The Council and Commission developed appropriate measures on what was considered the best available information at the time of their decisionmaking processes. The backup coastwide provisions (*i.e.,* a 14-inch (35.56-cm) minimum fish size and a 3-fish possession limit with an open season of July 15-September 15) developed by the Council as a backstop provision was designed for use only if northern states did not develop measures to achieve the required 23-percent reduction in landings based on the preliminary MRIP information. Acting in good faith, the northern states did comply with the provisions of Addendum XXVII to the Commission's FMP. Using the coastwide provisions would disproportionally affect the southern states that adopt Federal measures for their state waters while doing little, if anything, to constrain overall catch. The actual reduction in landings from using the backstop would not achieve a 30-percent reduction in 2016 landings.

2. The final MRIP data were released substantially later than is normal and were considerably different than the preliminary estimates. It could not be foreseen that final information would increase 2015 landing estimates by nearly 10 percent, nor could it be anticipated that final estimates would be available much later than normal. Final MRIP estimates for black sea bass, usually released in mid-April, generally vary 1–2 percent from the preliminary estimates and in many years have been lower than preliminary estimates, not higher.

3. The 2016 recreational black sea bass fishery is well underway. Even acting quickly, several states indicated during the July 6 Board teleconference that they would be unable to implement regulatory changes before the end of summer. For many states, the fishery is effectively over by mid-September. Similarly, it is unlikely that an emergency action by NMFS could be implemented much more quickly. Federal measures alone would be insufficient to effectively reduce landings because the majority of catch occurs in northern state's waters.

4. A comprehensive stock assessment is scheduled for December 2016. Work has already begun on this assessment. NMFS is prepared to work quickly with the Council and Commission to react to new stock information as soon as it becomes available in early 2017.

5. Further delay to implement management measures would affect not only black sea bass management, but also scup and summer flounder. The latter species, summer flounder, currently lacks the conservation equivalency determination for Federal waters until a final rule is published in the **Federal Register**. This would create inconsistent measures in Federal and state waters, confusion for the public, and could lead to enforcement problems.

Commercial Scup Incidental Possession Limit Change

This rule increases the incidental winter season (November 1–April 30) scup commercial possession limit for vessels using mesh smaller than 5.0 inches (12.7 cm) from 500 lb (227 kg) to 1,000 lb (454 kg). This change is expected to allow vessels using small mesh that take scup incidental to other target species to convert some scup that would otherwise be discarded to landings. Vessels using mesh larger than 5 inches (12.7 cm) may continue to land up to the targeted commercial fishery possession limit according to the applicable Federal and state rules.

Additional Regulatory Changes

This rule also corrects two errors in the commercial summer flounder regulations. The summer flounder minimum mesh size regulations at § 648.108(a)(1) require that any vessel landing or possessing more than 100 lb (45 kg) of summer flounder from May 1 through October 31, or 200 lb (91 kg) of summer flounder from November 1 through April 30, use at least 5.5-inch (14-cm) diamond or 6.0-inch (15-cm) square mesh ''throughout the body, extension(s), and codend portion of the net.'' However, the turtle excluding device (TED) regulations require summer flounder trawls fishing in the sea turtle protection area to have a TED extension with webbing no larger than 3.5 inches (9 cm). This rule eliminates the conflict between these two regulations by specifying that the minimum mesh size restrictions do not apply to extensions needed to comply with the TED regulations.

This rule also corrects an erroneous reference to the Regional Administrator's authority to terminate the fly net exemption after review. This authority has been incorrectly listed at § 648.108(b)(3) and is corrected in this rule to reference § 648.108(b)(2)(iv).

Comments and Responses

Three comments were received on measures outlined in the May 23, 2016 (81 FR 32269), proposed rule. Two comments received supported the scup incidental trip limit increase contained in this rule. Both noted this change will assist fishermen in reducing regulatory discards in small-mesh fisheries during the November to April timeframe. NMFS agrees and is implementing this change as proposed.

The other comment received raised no issues with any of the proposed measures. Rather, the individual wanted more information in the final rule about what outreach and/or inclusion of commercial and recreational fishermen's input occurred during the development of the measures in this rule.

As outlined in the SIR prepared by the Council, the public had the opportunity to provide comments during the development of the 2016 catch limits, the 2016 recreational management measures, and the scup incidental trawl possession limits. Opportunities for public participation, including recreational and commercial fishermen, occurred as part the following meetings:

- Summer Flounder, Scup, and Black Sea Bass Monitoring Committee Meetings; September 23, 2015, and November 7–10, 2015;
- Summer Flounder, Scup, and Black Sea Bass Advisory Panel Meetings; October 22, 2015, and November 17, 2015;
- Council meeting; December 8–10, 2015.

Furthermore, the measures of this rule have been subject to public comment through proposed rulemaking, as required under the Administrative Procedure Act.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that the 2016 recreational management measures and other specification measures of this rule for the Summer Flounder, Scup, and Black Sea Bass FMP are necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries and that the measures are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement for a 30-day delay in effectiveness under the provisions of section 553(d) of the Administrative Procedure Act because a delay in its effectiveness would not serve any legitimate purpose, while unfairly prejudicing federally permitted charter/party vessels. Recreational fisheries are already underway for summer flounder, scup, and black sea bass. Rulemaking has been delayed while final information from the MRIP program, provided many weeks later than is typical, has been evaluated. The Commission's Black Sea Bass Management Board met on July 6, 2016, to discuss the updated MRIP estimates. NMFS could not issue a final rule for black sea bass measures until the outcome of this meeting was known.

Because summer flounder fisheries are already open prior to the publication of this rule, additional delay will disadvantage federally permitted charter/party vessels that would be restricted to the existing summer flounder coastwide regulations (18-inch (45.7-cm) minimum size and a 4-fish per person possession limit) until the Federal regulations implementing conservation equivalency are effective. This would unnecessarily disadvantage federally permitted vessels, which would be subject to the more restrictive measures while state-licensed vessels could be engaged in fishing activities under this year's management measures. If this final rule were delayed for 30 days, the fishery would likely forego some amount of landings and revenues during the delay period. While these restrictions would be alleviated after this rule becomes effective, fishermen may be not able to recoup the lost economic opportunity of foregone trips that would result from delaying the effectiveness of this action.

Finally, requiring a 30-day delay before the final rule becomes effective would not provide any benefit to the regulated parties. Unlike actions that require an adjustment period to comply with new rules, charter/party operators will not have to purchase new equipment or otherwise expend time or money to comply with these management measures. Rather, complying with this final rule simply means adhering to the published management measures for each relevant species of fish while the charter/party operators are engaged in fishing activities.

For these reasons, the Assistant Administrator finds good cause to waive the 30-day delay and to implement this rule upon publication in the **Federal Register**.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

On December 29, 2015, the National Marine Fisheries Service (NMFS) issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The $11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016.

Pursuant to the Regulatory Flexibility Act, and prior to July 1, 2016, a certification was developed for this regulatory action using SBA's former size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are commercial finfish fishing businesses. The new standard could result in fewer commercial finfish businesses being considered small. However, NMFS has determined that the new size standard does not affect its decision to certify this regulatory action. The action results in essentially status quo measures for all three fisheries and would have a minimal, potentially slightly positive, impact on all regulated entities regardless of size.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 29, 2016.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.107, paragraph (a) introductory text is revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2016 are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

* * * * *

■ 3. In § 648.108, paragraph (a)(1) is revised and paragraph (b)(3) is redesignated as paragraph (b)(2)(iv).

The revision reads as follows:

§ 648.108 Summer flounder gear restrictions.

(a) *General.* (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 lb (45.4 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.7 kg) or more of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square mesh applied throughout the body, extension(s), and codend portion of the net, except as required in a TED extension, in accordance with § 223.206(d)(2)(iii) of this title.

* * * * *

■ 4. In § 648.125, paragraph (a)(1) is revised to read as follows:

§ 648.125 Scup gear restrictions.

(a) *Trawl vessel gear restrictions*—(1) *Minimum mesh size.* No owner or operator of an otter trawl vessel that is

issued a scup moratorium permit may possess more than 1,000 lb (454 kg) of scup from November 1 through April 30, or more than 200 lb (91 kg) of scup from May 1 through October 31, unless fishing with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, and all other nets are stowed and not available for immediate use as defined in § 648.2.

* * * * *

[FR Doc. 2016–18485 Filed 8–1–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150818742–6210–02]

RIN 0648–XE708

Fisheries of the Exclusive Economic Zone Off Alaska; Dusky Rockfish in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for dusky rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2016 total allowable catch of dusky rockfish in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), August 1, 2016, through 2400 hours, A.l.t., December 31, 2016.

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

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

The 2016 total allowable catch (TAC) of dusky rockfish in the Western Regulatory Area of the GOA is 173 metric tons (mt) as established by the final 2016 and 2017 harvest specifications for groundfish of the Gulf of Alaska (81 FR 14740, March 18, 2016).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2016 TAC of dusky rockfish in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 100 mt, and is setting aside the remaining 73 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for dusky rockfish in the Western Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for dusky rockfish in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 29, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

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

Dated: August 1, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–18524 Filed 8–1–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150818742–6210–02]

RIN 0648–XE706

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2016 total allowable catch of Pacific ocean perch in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), August 1, 2016, through 2400 hours, A.l.t., December 31, 2016.

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

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

The 2016 total allowable catch (TAC) of Pacific ocean perch in the Western Regulatory Area of the GOA is 2,737 metric tons (mt) as established by the final 2016 and 2017 harvest specifications for groundfish of the Gulf of Alaska (81 FR 14740, March 18, 2016).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2016 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,637 mt, and is setting aside 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the

Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 29, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

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

Dated: August 1, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–18522 Filed 8–1–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150818742–6210–02]

RIN 0648–XE707

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2016 total allowable catch of northern rockfish in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), August 1, 2016, through 2400 hours, A.l.t., December 31, 2016.

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

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

The 2016 total allowable catch (TAC) of northern rockfish in the Western Regulatory Area of the GOA is 457 metric tons (mt) as established by the final 2016 and 2017 harvest specifications for groundfish of the Gulf of Alaska (81 FR 14740, March 18, 2016).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2016 TAC of northern rockfish in the Western Regulatory Area of the GOA will be soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 50 mt, and is setting aside 407 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for northern rockfish in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 29, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

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

Dated: August 1, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–18523 Filed 8–1–16; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 150
Thursday, August 4, 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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2016–0026]

RIN 0579–AE25

Importation of Fresh Mango Fruit From Vietnam Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations to allow the importation of fresh mango fruit from Vietnam into the continental United States. As a condition of entry, fresh mango fruit from Vietnam would be subject to a systems approach that would include orchard requirements, irradiation treatment, and port of entry inspection. The fruit would also be required to be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the national plant protection organization of Vietnam with an additional declaration stating that the consignment was inspected and found free of *Macrophoma mangiferae* and *Xanthomonas campestris* pv. *mangiferaeindicae.* This action would allow for the importation of fresh mango fruit from Vietnam while continuing to provide protection against the introduction of plant pests into the continental United States.

DATES: We will consider all comments that we receive on or before October 3, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0026.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2016–0026, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0026* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Román, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2242.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–75, referred to below as the regulations or the fruits and vegetables regulations), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

APHIS received a request from the national plant protection organization (NPPO) of Vietnam to amend the regulations to allow the importation of commercially produced fresh mango (*Mangifera indica* L.) fruit from Vietnam into the continental United States. In evaluating Vietnam's request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). Copies of the PRA and the RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

The PRA, titled ''Importation of Fresh Mango Fruit, *Mangifera indica* L., from Vietnam into the Continental United States'' (September 2012), analyzes the potential pest risk associated with the importation of fresh mango fruit into the continental United States from Vietnam.

The PRA identifies 18 quarantine pests that could be introduced into the United States in consignments of fresh mango fruit from Vietnam. A quarantine pest is defined in § 319.56–2 as ''a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.'' The pests listed in the PRA are:

- Carambola fruit fly, *Bactrocera carambolae* Drew & Hancock
- Guava fruit fly, *Bactrocera correcta* (Bezzi)
- Melon fly, *Bactrocera cucurbitae* Coquillett
- Oriental fruit fly, *Bactrocera dorsalis* Hendel
- Pumpkin fruit fly, *Bactrocera tau* Walker
- Peach fruit fly, *Bactrocera zonata* (Saunders)
- Yellow peach moth, *Conogethes punctiferalis*
- Mango seed borer, *Deanolis albizonalis*
- Old World bollworm, *Helicoverpa armigera*
- Pink hibiscus mealybug, *Maconellicoccus hirsutus*
- The fungus *Macrophoma mangiferae*
- Spherical mealybug, *Nipaecoccus viridis*
- Coffee mealybug, *Planococcus lilacinus*
- Citriculus mealybug, *Pseudococcus cryptus*
- Fruit tree mealybug, *Rastrococcus invadens*
- Chili thrips, *Scirtothrips dorsalis*
- Mango pulp weevil, *Sternochetus frigidus*
- Mango black spot, *Xanthomonas campestris* pv. *mangiferaeindicae*

Based on the findings of the PRA, APHIS has determined that measures beyond standard port-of-entry inspection are needed to mitigate the risks posed by these pests. These measures are identified in the RMD and are used as the basis for the requirements included in this proposed rule. We are therefore proposing to allow the importation of fresh mango fruit from Vietnam into the continental United States if it is produced under a systems approach, which is described below. Requirements of the systems approach would be added to the regulations as a new § 319.56–76.

Commercial Consignments

Only commercial consignments of fresh mango fruit from Vietnam would be allowed to be imported into the continental United States. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packing, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

Treatments

Under this proposed rule, fresh mango fruit from Vietnam would be required to be treated with a minimum absorbed irradiation dose of 400 gray in accordance with § 305.9 of the phytosanitary treatment regulations in 7 CFR part 305. This is the established generic dose for all insect pests except pupae and adults of the order Lepidoptera. While it is true that three of the pests associated with fresh mango fruit from Vietnam are Lepidopteran (yellow peach moth, mango seed borer, and Old World bollworm), irradiation is unique among quarantine treatments insofar as sublethal doses are effective in providing phytosanitary protection against Lepidopteran pests in the following ways:

- While the treatment is not lethal to pupae and adults of the order Lepidoptera it is lethal to larvae. Larvae are of greatest phytosanitary concern given that they are internal feeders and may therefore be overlooked upon inspection;
- Irradiation prevents normal adult emergence from the pupal stage;
- Irradiation also causes sterility in pupae and emerged adults, preventing further larval reproduction.

Shipments of fresh mango fruit from Vietnam would also have to meet all other relevant requirements in 7 CFR part 305, including monitoring of treatment by APHIS inspectors.

In order to mitigate the risks posed by *Macrophoma mangiferae,* we are proposing three options: (1) The mangoes be treated with a broad-spectrum post-harvest fungicidal dip, (2) the orchard of origin be inspected at a time prior to the beginning of harvest and be found free of *Macrophoma mangiferae,* or (3) fruit must originate from an orchard that was treated with a broad-spectrum fungicide during the growing season.

Symptoms of this plant pathogen can be easily seen and detected in the field on mango leaves and fruit during pre-harvest inspection. Post-harvest diseases do not occur without the presence of symptoms on leaves in the field. Orchard application of broad spectrum fungicide sprays protects fruit from infection by aerial spores produced on leaves or stems.

Phytosanitary Certificate

Each consignment of fruit would have to be accompanied by a phytosanitary certificate issued by the NPPO of Vietnam that contains an additional declaration stating that the fruit in the consignment was inspected and found free of *Macrophoma mangiferae* and *Xanthomonas campestris* pv. *mangiferaeindicae.*

Inspection would mitigate the risks posed by *Xanthomonas campestris* pv. *mangiferaeindicae* since symptoms of *Xanthomonas campestris* pv. *mangiferaeindicae* are easily discernible to the naked eye. The bacterium is not generally considered a post-harvest disease. Infection occurs most often through wounds which would cause the fruit to be culled during harvest or processing.

Requiring a phytosanitary certificate would ensure that the NPPO of Vietnam has inspected the fruit and certified that the fruit meets our requirements for export to the continental United States.

Port of Entry Inspection

Shipments of fresh mango fruit from Vietnam would be subject to inspection at the port of entry. This will provide an additional layer of phytosanitary protection in order to prevent the dissemination of plant pests into the continental United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

This proposed rule is in response to a request from Vietnam to be allowed to export fresh mango fruit to the continental United States. The annual quantity that Vietnam expects to export to the United States, 3,000 metric tons, represents less than 1 percent of U.S. fresh mango fruit imports, which averaged 396,070 metric tons per year, 2012 to 2015, primarily from Mexico, Peru, Ecuador, Brazil, and Guatemala. While mangoes are grown in Florida and Hawaii, and in smaller quantities in California and Texas, U.S. annual production totals only about 3,000 metric tons.

Most if not all U.S. mango farms and wholesalers are small entities. However, given the small quantity expected to be imported from Vietnam relative to current imports, the proposed rule would not have a significant impact on U.S. mango producers. While Vietnam's mango season runs from February to September, encompassing that of the United States (Florida's season is May to September), U.S. importers may benefit marginally in having Vietnam as another source of fresh mango fruit that would help meet demand.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow fresh mango fruit to be imported into the continental United States from Vietnam under a systems approach. If this proposed rule is adopted, State and local laws and regulations regarding fresh mango fruit imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments

refer to Docket No. APHIS–2016–0026. Please send a copy of your comments to: (1) APHIS, using one of the methods described under **ADDRESSES** at the beginning of this document, and (2) Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

This action would allow for the importation of fresh mango fruit from Vietnam while continuing to provide protection against the introduction of plant pests into the continental United States.

Implementing this rule will require irradiation facility requirements, orchard inspections, phytosanitary treatments, port of entry inspections, and phytosanitary certificates.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.02183 hours per response.

Respondents: Foreign businesses and the NPPO of Vietnam.

Estimated annual number of respondents: 2.

Estimated annual number of responses per respondent: 6,617.

Estimated annual number of responses: 13,233.

Estimated total annual burden on respondents: 289 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Add § 319.56–76 to read as follows:

§ 319.56–76 Fresh Mango from Vietnam.

Fresh mango (*Mangifera indica* L.) fruit may be imported into the continental United States under the following conditions:

(a) The fresh mango fruit may be imported in commercial consignments only.

(b) The fresh mango fruit must be treated for plant pests of the class Insecta, except pupae and adults of the order Lepidoptera, with irradiation in accordance with part 305 of this chapter.

(c) The risks presented by *Macrophoma mangiferae* must be addressed in one of the following ways:

(1) The mangoes are treated with a broad-spectrum post-harvest fungicidal dip; or

(2) The orchard of origin is inspected prior to the beginning of harvest and found free of *Macrophoma mangiferae;* or

(3) Fruit must originate from an orchard that was treated with a broad-spectrum fungicide during the growing season.

(d) Each consignment of fresh mango fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Vietnam that contains an additional declaration stating that the fruit in the consignment was inspected and found free of *Macrophoma mangiferae* and *Xanthomonas campestris* pv. *mangiferaeindicae* and has been produced in accordance with the requirements of the systems approach in 7 CFR 319.56–76.

(e) The fruit is subject to inspection at the port of entry for all quarantine pests of concern.

Done in Washington, DC, this 29th day of July 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–18439 Filed 8–3–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Doc. No. AMS–SC–16–0041; SC16–929–1 PR]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Proposed Amendment to Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a proposed amendment to Marketing Orders, which regulates the handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The Cranberry Marketing Committee (Committee), which is responsible for the local administration of the order and is comprised of growers of cranberries operating within the production area, recommended adding authority to accept donations from domestic contributors. Contributed funds would be used solely for research and development activities authorized under the regulation of the order and would be free from any encumbrances as to their usage by the donor.

DATES: Comments must be received by October 3, 2016.

ADDRESSES: Written comments should be submitted to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence

Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. All comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the record and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Abdullah Orozco, Marketing Specialist, or Michelle P. Sharrow, Rulemaking Branch Chief, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Abdullah.Orozco@ams.usda.gov* or *Michelle.Sharrow@ams.usda.gov*.

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

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order and Agreement No. 929, as amended (7 CFR part 929), regulating the handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' Section 608c(17) of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorizes amendment of the order through this informal rulemaking action. AMS will consider comments received in response to this rule, and based on all the information available, will determine if order amendment is warranted. If AMS determines amendment of the order is warranted, a subsequent proposed rule and referendum order would be issued, and producers of cranberries regulated within the production area would be allowed to vote for or against the proposed amendment. AMS would then issue a final rule effectuating the amendment if it is approved by producers in the referendum.

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State program covering cranberries in the production area.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246) amended section 18c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 18c(17) of the Act and additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that this proposed amendment is not unduly complex and its nature is appropriate for utilizing the informal rulemaking process to amend the order. A discussion of the potential regulatory and economic impacts on affected entities is discussed later in the ''Initial Regulatory Flexibility Analysis'' section of this rule.

The proposed amendment was unanimously recommended by the Committee following deliberations at a public meeting held August 17–18, 2015. The proposed amendment would give the Committee authority to receive and expend voluntary contributions from domestic sources to fund production research, marketing research, and market development projects, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption or efficient production of cranberries, as authorized under § 929.45, Research and development.

Currently, program operations are solely financed through assessments collected from handlers regulated under the order. Sources not subject to the order have expressed an interest in supporting many of the research and development projects currently funded by the order. However, without the ability to accept financial contributions, the Committee has had to decline these offers. This proposal would provide authority to accept financial contributions. With the potential for additional funding, more research and development projects could be undertaken.

This proposal would add a new section, § 929.43, Contributions, to the order. If implemented, this section would authorize the Committee to accept voluntary financial contributions. Such contributions could only be accepted from domestic sources and would be free from any encumbrances or restrictions on their use by the donor. When received, the Committee would retain complete control of their use. The use of contributed funds would be limited to funding program activities authorized under § 929.45, Research and development.

Initial Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,200 cranberry growers in the regulated area and approximately 45 cranberry handlers who are subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $7,500,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), grower prices were $30.90 per barrel for cranberries during the 2014–15 marketing year. NASS also reported total bearing acres at 40,600 and average yield per acre at 10.3 tons for the 2014–15 marketing year.

Based on the total bearing acres provided by NASS and the approximate number of cranberry growers (1,200 growers), the average acreage per grower is 33.8 acres. Multiplying the average acreage per grower (33.8 acres) by the average yield per acre (10.3 tons) results in an average production of 348.5 tons. To convert the average production from tons to barrels, 348.5 tons is multiplied by 2,000 pounds (one ton equals 2,000 pounds) to equal 696,966.7 pounds and is then divided by 100 (100 pounds equals 1 barrel), resulting in an average production per growers of 6,969.7 barrels.

Multiplying the average production (6,967.7 barrels) by the grower price ($30.90 per barrel), provided by NASS, equals an average grower revenue of $215,301.90. Based on this calculation, the average annual grower revenue for the 2014–15 marketing year was below $750,000.

Using Committee information and shipment data, the majority of cranberry handlers could also be considered small businesses under SBA's definition. Therefore, the majority of cranberry growers and handlers may be classified as small entities under SBA definitions.

The amendment proposed by the Committee would add a new section, § 929.43, Contributions, to the order. If implemented, this section would authorize the Committee to accept voluntary financial contributions. Such contributions could only be accepted from domestic sources and would be free from any encumbrances or restrictions on their use by the donor. When received, the Committee would retain complete control of their use. The use of contributed funds would be limited to funding program activities authorized under § 929.45, Research and development.

The Committee's proposed amendment was unanimously recommended at a public meeting on August 17–18, 2015. If the proposal is approved in referendum, there would be no direct financial effect on growers or handlers. This proposal would provide authority to accept additional funding. With the potential for additional funding, more research and promotional projects could be undertaken. Therefore, it is anticipated that both small and large producer and handler businesses would benefit from its implementation.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, ''Generic Fruit Crops.'' No changes in those requirements as a result of this action would be necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large cranberry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Committee's meeting was widely publicized throughout the cranberry production area. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the August 17–18, 2015, meeting was public, and all entities, both large and small, were encouraged to express their views on these proposals. Finally, interested persons are invited to submit comments on the proposed amendments to the order, including comments on the regulatory and informational impacts of this action on small businesses.

Following analysis of any comments received on the amendments proposed in this rule, AMS will evaluate all available information and determine whether to proceed. If appropriate, a proposed rule and referendum order would be issued, and producers would be provided the opportunity to vote for or against the proposed amendment. Information about the referendum, including dates and voter eligibility requirements, would be published in a future issue of the **Federal Register**. A final rule would then be issued to effectuate the amendment, if favored by producers participating in the referendum.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action. A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The marketing order as hereby proposed to be amended and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. The marketing order as hereby proposed to be amended regulates the handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order;

3. The marketing order as hereby proposed to be amended is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The marketing order as hereby proposed to be amended prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of cranberries produced or handled in the production area; and

5. All handling of cranberries produced in the production area as defined in the order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 60-day comment period is provided to allow interested persons to respond to these proposals. Any comments received on the amendments proposed in this rule will be analyzed, and if AMS determines to proceed based on all the information presented, a producer referendum would be conducted to determine producer support for the proposed amendments. If appropriate, a final rule would then be issued to effectuate the amendment favored by producers participating in the referendum.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is proposed to be amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

■ 1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Add a new § 929.43 to read as follows:

§ 929.43 Contributions.

The Committee may accept voluntary contributions to pay expenses incurred pursuant to § 929.45, Research and development. Such contributions may only be accepted if they are sourced from domestic contributors and are free from any encumbrances or restrictions on their use by the donor. The Cranberry Marketing Committee shall retain complete control of their use.

* * * * *

Dated: July 27, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–18115 Filed 8–3–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 3

[Docket No. APHIS–2014–0059]

RIN 0579–AD99

Thresholds for De Minimis Activity and Exemptions From Licensing Under the Animal Welfare Act

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Animal Welfare Act (AWA) regulations in response to a 2014 Farm Bill amendment to the Act that provides the Secretary of Agriculture with the authority to determine that animal dealers and exhibitors are not required to obtain a license under the Act and regulations if the size of the business conducting AWA-related activities is determined to be *de minimis* by the Secretary. The Animal and Plant Health Inspection Service has reviewed past compliance with the Animal Welfare Act of currently-regulated facilities and has determined that *de minimis* businesses, as defined in the rule are capable of providing adequate care and treatment of the animals involved in regulated business activities. We also propose amending the regulations in response to a 2013 amendment to the Act that excludes from the definition of ''exhibitor'' some owners of household pets that are exhibited occasionally, generate less than a substantial portion of income, and reside exclusively with the owner. Dealers and exhibitors operating at or below the thresholds determined for their particular AWA-related business activity would be exempted from Federal licensing requirements established under the Act and regulations. Our proposed actions would amend the regulations to be consistent with the Act while continuing to ensure the humane care and treatment of animals covered under the AWA.

DATES: We will consider all comments that we receive on or before November 2, 2016.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0059.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2014–0059, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0059* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Kay Carter-Corker, DVM, Director, National Policy Staff, USDA-APHIS-Animal Care, 4700 River Road, Unit 84, Riverdale, MD 20737; (301) 851–3748.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA or the Act, 7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Administrator of U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the AWA has been delegated to the Deputy Administrator for Animal Care. Regulations and standards established under the AWA are contained in the Code of Federal Regulations (CFR) in 9 CFR parts 1, 2, and 3 (referred to below as the regulations). Part 1 contains definitions for terms used in parts 2 and 3; part 2 provides administrative requirements and sets forth institutional responsibilities for regulated parties; and part 3 contains specifications for the humane handling, care, treatment, and transportation of animals covered by the AWA.

The AWA seeks to ensure the humane handling, care, treatment, and transportation of animals intended for use by dealers, research facilities, and exhibitors, operators of auction sales, and carriers and intermediate handlers. Dealers (including breeders meeting the definition of ''dealer'') and exhibitors of such animals must obtain licenses and comply with AWA regulations and standards, and their facilities are inspected by APHIS for compliance.

Exclusions and Exemptions in the Act

The Act defines ''animal'' in § 2132(g) specifically as any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as pets; but such term excludes birds, rats of the genus *Rattus,* and mice of the genus *Mus,* bred for use in research; horses not used for research purposes; and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber; for improving animal nutrition, breeding, management, or production efficiency; or for improving the quality of food or fiber. With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes. Animals that do not fall under the definition of ''animal'' in the Act are excluded from regulation and licensing.

In addition to the exclusions provided to persons under the definition of ''animal,'' the Act contains exclusions for certain persons who buy, sell, transport, or exhibit animals that are covered under the Act. Under the definition of ''dealer'' in § 2132, the Act excludes retail pet stores that do not sell any animals to a research facility, an exhibitor, or a dealer. Prior to its amendment by the 2014 Farm Bill,[1] the Act also excluded from the definition of ''dealer'' any person who does not sell or negotiate the purchase of any wild animal, dog, or cat and who derives no more than $500 gross income from the sale of other animals during any calendar year.

The definition of ''exhibitor'' under § 2132(h) of the Act excludes retail pet stores, an owner of a common, domesticated household pet who derives less than a substantial portion of income from a nonprimary source (as determined by the Secretary) for exhibiting an animal that exclusively resides at the residence of the pet owner, organizations sponsoring and all persons participating in State and county fairs, livestock shows, rodeos, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary.

Section 2133 of the Act establishes a requirement for licensing of dealers and exhibitors but excludes retail pet stores from the licensing requirement. Prior to its amendment by the 2014 Farm Bill, the Act also specifically excluded from licensing any person ''who derives less than a substantial portion of income (as determined by the Secretary) from the breeding and raising of dogs or cats on his own premises and sells any such dog or cat to a dealer or research facility.''

Business Size-Based Exemptions in the AWA Regulations

The current regulations include, among others, licensing exemptions based on the size of the business with respect to the number of breeding female animals maintained or gross income from the sale of animals. These exemptions are explained below.

Retail Exemptions

Reflecting what is stated in § 2132 of the Act, § 2.1(a)(3)(i) of the AWA regulations affirms that retail pet stores are exempt from the licensing requirements. However, the Act itself provides no specific definition for the term ''retail pet store.'' In a 2013 final rule,[2] we defined a retail pet store to mean ''a place of business or residence at which the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal prior to purchasing and/or taking custody of that animal after purchase, and where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchillas, domestic ferrets, domestic farm animals, birds, and coldblooded species.'' Prior to this change, the regulations referred to ''retail pet store'' as simply an ''outlet'' where the animals listed above were sold at retail, with no specific requirement that customers personally observe the animal prior to purchasing or taking custody of it. As a consequence, many large Internet-based retailers claiming the exemption were able to sell and ship pets to buyers sight unseen without the benefit of public or APHIS oversight to ensure humane treatment of their animals. The business model practiced by such Internet-based retailers selling pets bore no resemblance to a retail pet store in existence at the time the provision was originally promulgated in the Act.

Our intent in amending the definition of ''retail pet store'' was to narrow the scope of the exemption to apply only to retailers who sell exclusively in face-to-face transactions so that pets sold by exempted retailers continue to be monitored for their humane care and treatment by the buying public. We made these changes to ensure that the definition of ''retail pet store'' was consistent with the original intent of the Act and to bring more pet animals sold at retail under its protection.

In the rulemaking to define ''retail pet store,'' we also preserved an exemption in § 2.1(a)(3)(vii) for purebred dog and cat fanciers with four or fewer breeding female dogs, cats, and/or small exotic or wild mammals who sell only the offspring of these animals and who, because of the size of their businesses, are capable of providing adequate care and treatment for the animals involved in regulated business activities without Federal licensing and inspection requirements to ensure animal welfare.

Wholesale Exemption

Section 2.1(a)(3)(iii) exempts from licensing any person maintaining four or fewer breeding female dogs, cats, and/or small exotic or wild mammals, and who sells, at wholesale,[3] only the offspring of those animals born and raised on his or her premises, for use as pets or exhibition. As was the case with retailers, we determined that wholesalers with four or fewer breeding females who sell only the offspring are capable of providing adequate care and treatment for the animals involved in regulated business activities without Federal licensing and inspection requirements to ensure animal welfare.

Income-Based Exemption

The current AWA regulations also include the income-based exemption from licensing that was in § 2132(f)(ii) of the Act prior to its amendment by Congress in the 2014 Farm Bill. The $500 gross income limit for persons who sell animals other than wild or exotic animals, dogs, or cats excludes such persons from the definition of ''dealer'' in § 1.1 of the regulations and therefore exempts them from the licensing requirement in § 2.1(a)(3)(ii). The rationale for establishing this exemption was to conform the regulations to the 1970 statutory amendment to the Act.

2014 Farm Bill Amendments to the Act

In the 2014 Farm Bill, Congress amended § 2133 of the Act by giving the Secretary the authority to set thresholds for regulated activities involving animals under which businesses could be exempted from licensure as a dealer or exhibitor ''if the size of business is determined by the Secretary to be *de minimis*.'' The amendment provides APHIS with greater authority to exempt small businesses conducting AWA-

[1] The Agricultural Act of 2014: *http://www.gpo.gov/fdsys/pkg/BILLS-113hr2642enr/pdf/BILLS-113hr2642enr.pdf.*

[2] September 18, 2013; 78 FR 57227–57250 (Docket No. APHIS–2011–0003).

[3] ''Wholesale'' means the sale of animals to other persons for resale.

related activities from licensing and inspection, allowing us to direct our oversight and enforcement efforts on larger businesses conducting regulated activities.

Congress noted in its Conference Report [4] that this legislation codifies the exemption we made to the regulations [5] in § 2.1(a)(3)(vii) for purebred dog and cat fanciers, and/or breeders of small exotic or wild mammals, who maintain four or fewer breeding females and sell the offspring at retail for pets or exhibition. Dealers qualifying for this licensing exemption are capable of providing adequate care and treatment for the animals involved in regulated business activities without Federal licensing and inspection requirements to ensure animal welfare. We made this same determination for wholesalers with four or fewer breeding females, who are exempted under § 2.1(a)(3)(iii). We therefore intend to retain these exemptions, with four or fewer breeding female dogs, cats, and small exotic or wild mammals sold at wholesale.

We emphasize that the thresholds in the current exemptions for dealers are based on the total number of breeding females of all species combined on a premises, not four breeding female animals per each species. For example, if a breeder selling AWA-covered species at retail or wholesale has a total of three breeding female dogs and two breeding female guinea pigs, that breeder could not claim an exemption, as the total number of AWA-covered breeding females the person maintains is five breeding females and exceeds the threshold of four breeding females. We would apply the same provision to any person seeking a *de minimis* exemption for breeding females under our proposed changes. We expect, however, that most wholesale and retail dealers eligible for a *de minimis* exemption under this proposal are already eligible for the current licensing exemptions in § 2.1(a)(3) of the regulations.

In addition to dealers, in section 12308 of the 2014 Farm Bill, Congress amended the Act (7 U.S.C. 2132) to provide the Secretary with the authority to establish a *de minimis* exemption from licensing for exhibitors. In determining *de minimis* thresholds for such businesses, we would consider the risk to the humane care and treatment of animals, the total number of AWA-regulated animals maintained, the type of activity for which the animals are being used, and/or the number of days per year the animals are exhibited.

Contingency Plans Rule

On December 31, 2012, we published a final rule [6] establishing regulations under which research facilities, dealers, exhibitors, intermediate handlers, and carriers must meet certain requirements for contingency planning and training of personnel. However, on July 31, 2013, we issued a stay [7] of those regulations so that we could further consider the impact of plan requirements on regulated entities, taking into account different needs according to the type and size of their AWA-regulated business activities.

One issue that warranted further review was the impact of contingency planning and other licensing requirements on exhibitors whose businesses involve small numbers of animals. While these exhibitors do not typically pose risks to animal welfare, there was no legal mechanism for exempting them from licensing and contingency planning requirements as *de minimis* businesses. The amendment to the Act makes it possible to lift the stay on the Agency's contingency plan rule by allowing APHIS to determine certain exhibitors to be *de minimis* based on the size of their AWA-regulated business activities. We will review the impact of the AWA amendment on the contingency plan rulemaking and consider lifting the stay pending the final outcome of this rulemaking.

Proposed Changes to the Regulations

Definitions

In response to the amendments made to the Act, we propose to amend the definitions of *dealer* and *exhibitor* in § 1.1, ''Definitions.''

Dealer

In § 1.1 of the regulations, *dealer* is defined as any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog at the wholesale level for hunting, security, or breeding purpose. The term excludes retail pet stores, as defined in the regulations, any retail outlet where dogs are sold for hunting, breeding, or security purposes; or any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than $500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats during any calendar year.

The 2014 Farm Bill amended the definition of ''dealer'' in § 2132(f) of the Act by striking language from the definition that excluded ''any person who does not sell, or negotiate the purchase or sale of any wild animal, dog, or cat, and who derives no more than $500 gross income from the sale of other animals during any calendar year.''

We propose to make the definition of *dealer* in § 1.1 of the regulations consistent with the Act. We would do so by striking the statement that excludes as a dealer ''any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than $500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats during any calendar year.''

Exhibitor

In 2013, Congress amended [8] the Act to exclude from the definition of ''exhibitor'' ''an owner of a common, domesticated household pet who derives less than a substantial portion of income from a nonprimary source (as determined by the Secretary) for exhibiting an animal that exclusively resides at the residence of the pet owner.'' We propose to amend the definition of *exhibitor* in § 1.1 of the regulations by adding this exclusion to it, thereby making it consistent with the definition in the Act. While we have not defined ''substantial portion of income'' in the proposed regulation, we interpret this to mean that the income generated from exhibition is the main source of the person's income. We interpret less-than-substantial income to mean the exhibition generates a minimal amount of money and does not constitute a main source of the person's income. We seek comment on this interpretation and whether we should add it to the regulatory text.

De Minimis Exemptions to Licensing

We propose to make changes and additions to the licensing exemptions in § 2.1(a)(3) so that the AWA regulations are consistent with the Act, as amended. These changes include adding *de minimis* exemption requirements in new paragraphs § 2.1(a)(3)(ix) through § 2.1(a)(3)(xii) and including a table summarizing the *de minimis* exemption

[4] See pg. 562: *http://www.gpo.gov/fdsys/pkg/CRPT-113hrpt333/pdf/CRPT-113hrpt333.pdf.*

[5] See footnote 2.

[6] Docket No. APHIS–2006–0159 (77 FR 76815–76824).

[7] 78 FR 46255.

[8] S. 3666; Public Law: 112–261.

thresholds in a new paragraph § 2.1(a)(3)(xiii).

The *de minimis* exemptions would apply only to the activities of those dealers and exhibitors that fall under the scope of the Act and are not already excluded or exempted from APHIS licensing and inspection. We note that the Act excludes from regulation farm animals that are used or intended for use as food or fiber, or for improving animal nutrition, breeding, management, or production efficiency. Accordingly, the AWA regulations exclude farm animals used under certain circumstances from the definition of ''animal'' in § 1.1 and exempt other animals used for food and fiber in § 2.1(a)(3)(vi). None of these regulations would be changed by this proposal. However, farm animals used or exhibited for regulated purposes, such as petting zoos, would continue to fall under the scope of the Act unless they otherwise qualify for a *de minimis* exemption from licensing.

As noted previously, we propose no changes to the current retail licensing exemptions in § 2.1(a)(3)(i) and (a)(3)(iii) or the exemption in § 2.1(a)(3)(vii), and persons exempted under these provisions would not be affected by this proposal. Retailers exempted under the retail pet store licensing exemption who sell the offspring of their breeding females solely in face-to-face customer transactions would not be affected by the proposed *de minimis* requirements, regardless of the number of breeding females they maintain. However, to make the regulations consistent with the amended Act, we are proposing to remove in its entirety the $500 gross income exemption from licensing currently in § 2.1(a)(3)(ii). This exemption parallels the exclusion we are proposing to remove from the definition of dealer in § 1.1. In its place, we would add language that exempts from licensing any person whose business is determined by APHIS to be *de minimis* in accordance with the proposed regulations in § 2.1(a)(3).

We propose in a new § 2.1(a)(3)(ix) to establish a *de minimis* exemption for any person who maintains a total of four or fewer breeding female dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, and who sells, at retail or wholesale, only the offspring of these animals, which were born and raised on his or her premises, and is not otherwise required to obtain a license. As is the case with the current licensing exemptions, this *de minimis* exemption from licensing as a dealer would not extend to any person residing in a household that collectively maintains a total of more than four such breeding female animals, regardless of ownership, nor to any person maintaining such breeding female animals on premises on which more than four such breeding female animals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than four such breeding female animals, regardless of ownership. The animals listed as eligible for the proposed *de minimis* exemption were chosen because they are common domesticated animals with a well-established history of known welfare standards. Again, businesses already exempted under current licensing exemptions would not be affected by this proposed exemption, nor would sales of farm animals be affected if they are sold for the purpose of improving animal nutrition, breeding, management, or production efficiency, or for food or fiber.

Exhibitor Exemptions

As indicated above, we also propose to establish *de minimis* thresholds for some businesses engaged in AWA-covered exhibition activities. This action would exempt exhibitors considered to be *de minimis* from licensing if they meet the proposed thresholds and relieve them of the requirement to perform the reporting and recordkeeping activities associated with licensing.

The *de minimis* thresholds we propose to include for exhibitors would be based on the size of their AWA-related business activity as measured by the total number of animals maintained, the type of exhibitor activity, and/or the duration of exhibition (as measured in days). However, there are situations that preclude *de minimis* consideration for certain exhibitors. In the Conference Report accompanying the 2014 Farm Bill amendments to the Act, Congress indicated that ''an exhibitor's business must not be considered *de minimis* merely because the facility operates as a non-profit corporation, nor is the exhibition of a small number of dangerous animals (including, but not limited to, big cats, bears, wolves, nonhuman primates, or elephants) *de minimis*.''

In a new § 2.1(a)(3)(x), we would establish a *de minimis* licensing exemption for people in a household who in total maintain four or fewer dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, for exhibition and who houses the animals at a site for year-round exhibition, and is not otherwise required to obtain a license. This exemption for a license as an exhibitor would not extend to any person residing in a household that collectively maintains a total of more than four such animals, regardless of ownership, nor to any person maintaining such animals on premises on which more than four such animals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than four such animals, regardless of ownership.

Based on our extensive knowledge and experience of animals used for year-round exhibition purposes, we determined the threshold for this exemption to be four, as exhibitors with a small number of common, domesticated, non-dangerous animals are capable of providing adequate care and treatment for the animals involved in regulated business activities, based on compliance data on currently licensed exhibitors.

In a new § 2.1(a)(3)(xi), we would also include *de minimis* licensing exemptions for certain persons using animals in seasonal exhibitions. The exemption would apply to any person who maintains a total of eight or fewer dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, for seasonal exhibition only, and who exhibits any or all of the animals for no more than 30 days per calendar year, and is not otherwise required to obtain a license. This exemption would not extend to any person residing in a household that collectively maintains a total of more than eight such animals, regardless of ownership, nor to any person maintaining eight such animals on premises on which more than eight such animals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than eight such animals, regardless of ownership.

We determined the *de minimis* threshold for seasonal exhibition to be eight common, domesticated, non-dangerous animals based on the fact that, unlike animals exhibited year-round, animals exhibited seasonally are displayed to the public for a minimal period of time (30 days or less each year) during holiday seasons such as Easter, Halloween, Thanksgiving, and Christmas.[9]

[9] Thirty days or less is consistent with the average number of days when many exhibitors are displaying animals intermittently or infrequently for limited duration (as measured in days). Examples of such exhibitions include, but are not limited to, seasonal petting zoos (*e.g.* exhibits open for Halloween or from Thanksgiving to Christmas), college game mascots, magic shows, rabbits used for photo shoots during Easter season (half hour sessions over a 2–3 week period; petting zoos with farm animals during pumpkin harvest season

Continued

We based our determination of 30 or fewer days for this exemption on our experience with inspecting seasonal exhibitors holding a small number of common, domesticated, non-dangerous animals, which indicates that exhibitors with animals displayed to the public for 30 days or less annually are capable of providing adequate care and treatment for the animals involved in the exhibition.

Persons exhibiting regulated animals not included in the proposed thresholds table would not be eligible for a *de minimis* exemption, regardless of the duration (as measured in days) for which the animals are exhibited. For example, camels, bison, and reindeer are sometimes included in seasonal holiday exhibits, but their behavior and size set them apart from common, non-dangerous domestic livestock displayed in such exhibits, and under the regulations they are considered to be wild or exotic species.

In 2013, Congress amended [10] the definition of ''exhibitor'' in the Act to exclude certain persons as exhibitors, namely ''any owner of a common, domesticated household pet who derives less than a substantial portion of income from a nonprimary source (as determined by the Secretary) for exhibiting an animal that exclusively resides at the residence of the pet owner.'' In order to make the regulations consistent with the Act, we propose to add this amendment to the list of exclusions under the definition of ''exhibitor'' in § 1.1 of the regulations.

The exclusion from the definition of ''exhibitor'' under the Act is only applicable to persons meeting all the criteria listed in the amendment. Similarly, under our proposed revision of ''exhibitor'' in the regulations, a person exhibiting other than a ''common, domesticated household pet'' would not be eligible for the exclusion. Also, persons who derive their primary source of income from exhibiting the animals, or who generate a substantial amount of money from such exhibition as determined by APHIS, would not be eligible for the exclusion. We interpret ''less than a substantial portion of income'' in the Act to mean a minimal amount of money that the owner makes from exhibiting animals. We interpret ''a nonprimary source'' to mean the activity is not a full-time job or primary source of income.

Many persons eligible for this exclusion employ one or more common, domesticated household pets in intermittent or infrequent exhibition, such as brief film and television appearances. Based on the industry pay rates for pet animal film work [11] and on our experience from working with small exhibitors, we determined that persons with four or fewer common domesticated household pet animals that are exhibited infrequently or intermittently generate a less than substantial portion of income and therefore meet the requirements for the exclusion. By being excluded from the definition of ''exhibitor'', they are not required to be licensed.

Therefore, we propose to include a regulatory licensing exemption in a new § 2.1(a)(3)(xii) for any person who maintains a total of four or fewer common, domesticated household pet animals, who uses them for intermittent or infrequent exhibition for no more than 30 days per calendar year, who derives less than a substantial portion of income from a nonprimary source for exhibiting such animals, whose animals reside exclusively at the residence of the owner, and who is not otherwise required to obtain a license. This exemption would not extend to any person residing in a household that collectively maintains a total of more than four pet animals, regardless of ownership, nor to any person maintaining pet animals on premises on which more than four pet animals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than four pet animals, regardless of ownership.

We determined the total number of animals for this exemption to be four because our experience indicates that exhibitors who maintain and exhibit four or fewer animals and those who exhibit resident pet animals infrequently or intermittently (*i.e.,* no more than 30 days per year) for minimal amounts of money are capable of providing adequate care and treatment for the animals involved in the regulated business activities without Federal licensing and inspection requirements to ensure animal welfare. Additionally, exhibitors with four or fewer animals are less likely to generate a substantial income as a primary source from exhibiting such animals compared to persons exhibiting with larger numbers of animals as the primary source of income.

For easier reference, we also propose adding to the regulations a new § 2.1(a)(3)(xiii) that includes a summary table of the *de minimis* threshold requirements included in paragraphs (a)(3)(ix) through (a)(3)(xii).

The proposed thresholds are ultimately based on our experience that businesses conducting AWA-regulated activities with the animals indicated for each threshold present a minimal risk to animal welfare and therefore do not require APHIS licensing and inspection. However, the list of animals eligible for *de minimis* consideration is not intended to be exhaustive. We encourage public comment on the proposed exemption thresholds as they pertain to animal welfare and effects on businesses engaged in the breeding, dealing, or exhibition of animals. We also invite comments on the types of exhibition proposed in the table, particularly with regard to types of animals and exhibition business models that may not be represented here.

Miscellaneous

We are also proposing to amend the regulations to remove a redundant provision. We would remove from § 2.1(c)(2) the phrase ''and, in the case of a license renewal, the annual license fee has been received by the appropriate Animal Care regional office on or before the expiration date of the license.'' This phrase is unnecessary because the same provision is repeated in paragraph (d)(1) of that section. In addition, we are proposing to remove §§ 3.28(b), 3.53(b), and 3.80(b)(1). These sections contain obsolete sheltering and minimum space requirements for dogs, cats, guinea pigs, hamsters, rabbits, and nonhuman primates that have been since replaced by updated sheltering and minimum space requirements. Removal of the obsolete requirements will minimize confusion with the current regulatory requirements and will have no impact on facilities and animal welfare. Similarly, we are revising § 3.6(a)(2)(xii) to remove phase-in dates which are no longer needed regarding primary enclosures for dogs and cats.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, and an initial regulatory flexibility analysis that examines the

(lasting less than 30 days), and nativity scenes during the Christmas season (usually 21–30 days).

[10] See footnote 8.

[11] According to the Screen Actors Guild-American Federation of Television and Radio Artists 2013 pay rate scale for background actors, the average pay per background appearance in a film or television production ranges from $39 to $224.

potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

A 2014 Farm Bill amendment to the Animal Welfare Act provides the Secretary of Agriculture with the authority to determine when animal dealers and exhibitors are not required to obtain a license under the Act if the size of the business conducting AWA-related activities is determined by the Secretary to be *de minimis.* Businesses considered to be *de minimis* are capable of providing adequate care and treatment to the animals involved in the regulated business activities without Federal licensing and inspection requirements to ensure animal welfare. This proposal would establish *de minimis* thresholds for businesses engaged in breeding, selling, or exhibiting certain regulated animals and include the thresholds in the regulations. We would measure business size using various criteria, including number of breeding female animals maintained, number of animals exhibited, and the duration of exhibition (as measured in days). We are also amending the AWA regulations in response to a 2013 amendment to the Act excluding from the statutory definition of ''exhibitor'' owners of household pets that are exhibited infrequently or intermittently, generate less than a substantial portion of income, and reside exclusively with the owner. Dealers and exhibitors operating at or below the thresholds determined for their particular business activity would be exempted from Federal licensing requirements established under the Animal Welfare Act. These proposed actions would amend the regulations to be consistent with the Act while continuing to ensure the humane care and treatment of animals.

APHIS' experience indicates that exhibitors who maintain or infrequently exhibit a small number of certain common non-dangerous animals are capable of providing adequate care and treatment to the animals involved in regulated business activities without Federal licensing and inspection requirements to ensure animal welfare. Because of the size of the business and their ability to provide adequate care and treatment, we consider such businesses to be engaged in a *de minimis* level of regulated activities. Establishing *de minimis* thresholds for exclusion or exemption from the AWA licensing requirements outlined in this proposal would allow APHIS to direct inspection and enforcement efforts on larger businesses conducting such activities.

By the very nature of this proposal, all entities that would be affected are considered small. The entities most likely to be affected by this proposal are businesses engaged in AWA-related exhibition activities that have small numbers of regulated animals. This proposed rule would relieve regulatory responsibilities for some currently licensed entities and reduce the cost of business for those entities. Those currently licensed exhibitors and dealers (including breeders meeting the definition of ''dealer'') who are under the proposed *de minimis* thresholds would no longer be subject to licensing, animal identification, and recordkeeping requirements.

The cost of a license for the smallest entities is between $40 and $85 annually. Identification tags for dogs and cats cost from $1.12 to $2.50 each. Other covered animals can be identified by a label attached to the primary enclosure containing a description of the animals in the enclosure at negligible cost. We estimate that the average currently licensed entity potentially affected by this proposal spends about 10 hours annually to comply with the licensing paperwork and recordkeeping requirements. All of the currently licensed entities that would be considered *de minimis* under this proposal would benefit from reduced costs for licensing, identification, and recordkeeping. We estimate that approximately 212 currently licensed exhibitors, breeders, and dealers would no longer require licensing following implementation of this proposal (See the economic analysis for more detail on how we estimated this). We estimate that the cost savings for all these entities could total about $41,400 annually.

Based on our review of available information, APHIS does not expect the proposed rule to have a significant economic impact on small entities. We have prepared the initial regulatory flexibility analysis because we need public input to help establish the total number of entities that will be affected. While we have yet to determine the total number of entities that would fall below the thresholds we propose, those entities that do fall below the thresholds would benefit from the rule. Those currently licensed entities that do not fall below the thresholds would see no additional economic impact as a result of this rule. In the absence of apparent significant economic impacts, we have not identified alternatives that would minimize such impacts.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Executive Order 13175

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

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

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Parts 1, 2, and 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, we propose to amend 9 CFR parts 1, 2, and 3 as follows:

PART 1—DEFINITION OF TERMS

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

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 2. Section 1.1 is amended as follows:
■ a. By revising the definition of *dealer.*
■ b. By revising the definition of *exhibitor.*

The revisions read as follows:

§ 1.1 Definitions.

* * * * *

Dealer means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog at the wholesale level for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section; or any retail outlet where dogs are sold for hunting, breeding, or security purposes.

* * * * *

Exhibitor means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary, and such term includes carnivals, circuses, and zoos exhibiting such animals whether operated for profit or not; but such term excludes retail pet stores, an owner of a common, domesticated household pet who derives less than a substantial portion of income from a nonprimary source (as determined by the Secretary) for exhibiting an animal that exclusively resides at the residence of the pet owner, organizations sponsoring and all persons participating in State and country fairs, livestock shows, rodeos, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary.

* * * * *

PART 2—REGULATIONS

■ 3. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 4. Section 2.1 is amended as follows:
■ a. By revising paragraph (a)(3)(ii).
■ b. By adding paragraphs (a)(3)(ix) through (a)(3)(xiii).
■ c. By revising paragraph (c)(2).

The revisions and additions read as follows:

§ 2.1 Requirements and application.

(a) * * *

(3) * * *

(ii) Any person whose AWA-related business activity is determined by APHIS to be *de minimis* in accordance with the regulations in this section;

* * * * *

(ix) Any person who maintains a total of four or fewer breeding female dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, and who sells, at retail or wholesale, only the offspring of these dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, which were born and raised on his or her premises, and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively maintains a total of more than four breeding female dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, regardless of ownership, nor to any person maintaining breeding female dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep on premises on which more than four breeding female dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than four breeding female dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, regardless of ownership.

(x) Any person who maintains a total of four or fewer dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, for exhibition and houses the animals permanently at the site where they are exhibited year-round, and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively maintains a total of more than four dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, regardless of ownership, nor to any person maintaining dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep on premises on which more than four dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than four dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, regardless of ownership.

(xi) Any person who maintains a total of eight or fewer dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, for seasonal exhibition and exhibits any or all of the animals for no more than 30 days per calendar year, and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively maintains a total of more than eight dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, regardless of ownership, nor to any person maintaining eight dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep on premises on which more than eight dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than eight dogs, cats, rabbits, hamsters, guinea pigs, chinchillas, cows, goats, pigs, and sheep, regardless of ownership.

(xii) Any person who maintains a total of four or fewer common, domesticated, non-dangerous household pet animals for infrequent or intermittent exhibition for no more than 30 days per calendar year, who derives less than a substantial portion of income from a nonprimary source for exhibiting such animals, whose animals reside exclusively at the residence of the owner, and who is not otherwise be required to obtain a license. This exemption would not extend to any person residing in a household that collectively maintains a total of more than four pet animals, regardless of ownership, nor to any person maintaining pet animals on premises on which more than four pet animals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than four pet animals, regardless of ownership.

(xiii) Following is a summary of the *de minimis* exemption requirements for paragraphs (ix) to (xii) of this section:

TABLE 1—DE MINIMIS THRESHOLDS FOR EXEMPTION FROM LICENSING

Animals	Activity	De minimis thresholds (exempt from licensing if at or below all indicated thresholds)		
		Number of breeding females	Number of total animals	Maximum number of days exhibited per year (any or all animals exhibited)
Dogs, Cats, Rabbits, Hamsters, Guinea pigs, Chinchillas, Cows, Goats, Pigs, Sheep.	Breeding/selling retail (unless covered by another exemption [1]).	4	.....	NA.
	Breeding/selling wholesale (unless covered by another exemption [2]).	4	.....	NA.
	Exhibition of all types (unless listed below)	.....	4	No maximum.
	Seasonal exhibition (for example nativity scenes and petting zoos operating part of the year).	.....	8	30 days.
Common, domesticated pet animals living in owner's residence.	Infrequent or intermittent exhibitions (for example, film and television appearances, team mascots, canine disc competitions, magic shows) from which less than a substantial portion of income from a nonprimary source is derived.	.....	4	30 days.

Farm animals bred, sold, exhibited, or otherwise used solely for agricultural purposes and animals used solely for food or fiber are exempt from the licensing requirements of this section.

[1] Includes retail businesses exempted under paragraphs (a)(3)(i) and (a)(3)(vii) of this section.

[2] Includes wholesale businesses exempted under paragraph (a)(3)(iii) of this section.

* * * * *

(c) * * *

(2) The applicant has paid the application fee of $10 and the annual license fee indicated in § 2.6 to the appropriate Animal Care regional office for an initial license.

* * * * *

PART 3—STANDARDS

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

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 6. Section 3.6 is amended as follows:

■ a. By revising paragraph (a)(2)(xii).

■ b. By removing paragraph (b)(1)(i).

■ c. By removing paragraph (b)(1)(ii) introductory text.

■ d. By redesignating paragraphs (b)(1)(iii) and (b)(1)(iv) as paragraphs (b)(1)(iv) and b)(1)(v) respectively.

■ e. By redesignating paragraphs (b)(1)(ii)(A), (b)(1)(ii)(B), and (b)(1)(ii)(C) as paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) respectively.

The revision reads as follows:

§ 3.6 Primary enclosures.

* * * * *

(a) * * *

(2) * * *

(xii) If the suspended floor of a primary enclosure is constructed of metal strands, the strands must either be greater than ⅛ of an inch in diameter (9 gauge) or coated with a material such as plastic or fiberglass. The suspended floor of any primary enclosure must be strong enough so that the floor does not sag or bend between the structural supports.

* * * * *

§ 3.28 [Amended]

■ 7. Section 3.28 is amended as follows:

■ a. By removing paragraph (b).

■ b. By redesignating paragraph (c) as paragraph (b).

■ c. In the heading of newly redesignated paragraph (b), by removing the words ''acquired on or after August 15, 1990''.

■ d. In newly redesignated paragraph (b)(2)(iii), by removing the words ''paragraph (c)(2)(iv)'' and adding the words ''paragraph (b)(2)(iv)'' in their place.

■ e. In newly redesignated paragraph (b)(3), by removing the words ''paragraph (c)(1) or (c)(2)'' and adding the words ''paragraph (b)(1) or (b)(2)'' in their place.

§ 3.53 [Amended]

■ 8. Section 3.53 is amended as follows:

■ a. By removing paragraph (b).

■ b. By redesignating paragraph (c) as paragraph (b).

■ c. In the heading of newly redesignated paragraph (b), by removing the words ''acquired on or after August 15, 1990''.

■ d. In newly redesignated paragraph (b)(3), by removing the words ''paragraph (c)(2)'' and adding the words ''paragraph (b)(2)'' in their place.

■ 9. Section 3.80 is amended as follows:

■ a. By removing paragraph (b)(1).

■ b. By removing the paragraph (b)(2) introductory text.

■ c. By redesignating paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii), and (b)(2)(iv), as paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) respectively.

■ d. In newly redesignated paragraph (b)(1), footnote 4, by removing the words ''paragraph (b)(2)(ii)'' and adding the words ''paragraph (b)(2)'' in their place.

■ e. In newly redesignated paragraph (b)(2), by removing the words ''paragraph (b)(2)(i)'' and adding the words ''paragraph (b)(1)'' in their place.

■ f. In newly redesignated paragraph (b)(4), by removing the words ''paragraph (b)(2)(i)'' and adding the words ''paragraph (b)(1)'' in their place.

■ g. By revising paragraph (c).

The revision reads as follows:

§ 3.80 Primary enclosures.

* * * * *

(c) Innovative primary enclosures not precisely meeting the floor area and height requirements provided in paragraph (b) of this section, but that do provide nonhuman primates with a sufficient volume of space and the opportunity to express species-typical behavior, may be used at research facilities when approved by the Committee, and by dealers and exhibitors when approved by the Administrator.

* * * * *

Done in Washington, DC, this 29th day of July 2016.

Edward Avalos,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2016–18452 Filed 8–3–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. OCC–2015–0021]

RIN 1557–AD99

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R–1443]

RIN 7100–AD 90

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2016–0035]

RIN 3170–AA11

Appraisals for Higher-Priced Mortgage Loans Exemption Threshold

AGENCY: Board of Governors of the Federal Reserve System (Board); Bureau of Consumer Financial Protection (Bureau); and Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Proposed rule; request for public comment.

SUMMARY: The OCC, the Board and the Bureau are publishing proposed rules amending the official interpretations for their regulations that implement section 129H of the Truth in Lending Act (TILA). Section 129H of TILA establishes special appraisal requirements for ''higher-risk mortgages,'' termed ''higher-priced mortgage loans'' or ''HPMLs'' in the agencies' regulations. The OCC, the Board, the Bureau, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA) and the Federal Housing Finance Agency (FHFA) (collectively, the Agencies) issued joint final rules implementing these requirements, effective January 18, 2014. The Agencies' rules exempted, among other loan types, transactions of $25,000 or less, and required that this loan amount be adjusted annually based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). If there is no annual percentage increase in the CPI–W, the OCC, the Board and the Bureau will not adjust this exemption threshold from the prior year. The proposal would memorialize this as well as the agencies' calculation method for determining the adjustment in years following a year in which there is no annual percentage increase in the CPI–W.

DATES: Comments must be received on or before September 6, 2016.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to the OCC, the Board, and the Bureau. Commenters are encouraged to use the title ''Appraisals for Higher-Priced Mortgage Loans'' to facilitate the organization and distribution of comments among the agencies. Interested parties are invited to submit written comments to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Appraisals for Higher-Priced Mortgage Loans'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''regulations.gov'':* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2015–0021'' in the Search box and click ''Search.'' Results can be filtered using the filtering tools on the left side of the screen. Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, 400 7th Street SW., suite 3E–218, mail stop 9W–11, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW., suite 3E–218, mail stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2015–0021'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the *Regulations.gov* Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice of proposed rulemaking by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2015–0021'' in the Search box and click ''Search.'' Comments can be filtered by Agency using the filtering tools on the left side of the screen.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Docket: You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R–1443 or RIN 7100 AD–90, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Bureau: You may submit comments, identified by Docket No. CFPB–2016–0035 or RIN 3170–AA11, by any of the following methods:

- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2016–0035 or RIN 3170–AA11 in the subject line of the email.
- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT:

OCC: MaryAnn Nash, Counsel, Legislative and Regulatory Affairs Division, (202) 649–6287; for persons who are deaf and hard of hearing TTY, (202) 649–5597. *Board:* Lorna M. Neill, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

Bureau: Shaakira Gold-Ramirez, Paralegal Specialist, Jaclyn Maier, Counsel, Office of Regulations, Consumer Financial Protection Bureau, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amended the Truth in Lending Act (TILA) to add special appraisal requirements for ''higher-risk mortgages.'' [1] In January 2013, the Agencies issued a joint final rule implementing these requirements and adopted the term ''higher-priced mortgage loan'' (HPML) instead of ''higher-risk mortgage'' (the January 2013 Final Rule).[2] In July 2013, the Agencies proposed additional exemptions from the January 2013 Final Rule (the 2013 Supplemental Proposed Rule).[3] In December 2013, the Agencies issued a supplemental final rule with additional exemptions from the January 2013 Final Rule (the December 2013 Supplemental Final Rule).[4] Among other exemptions, the Agencies adopted an exemption from the new HPML appraisal rules for transactions of $25,000 or less, to be adjusted annually for inflation.

The Bureau's, the OCC's, and the Board's versions of the January 2013 Final Rule and December 2013 Supplemental Final Rule and corresponding official interpretations are substantively identical. The FDIC, NCUA, and FHFA adopted the Bureau's version of the regulations under the January 2013 Final Rule and December 2013 Supplemental Final Rule.[5]

Section 34.203(b)(2) of subpart G of part 34 of the OCC's regulations, § 226.43(b)(2) of the Board's Regulation Z, and § 1026.35(c)(2)(ii) of the Bureau's Regulation Z, and their accompanying interpretations,[6] provide that the exemption threshold for smaller loans will be adjusted effective January 1 of each year based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If there is no annual percentage increase in the CPI–W, the OCC, the Board, and the Bureau will not adjust the threshold amounts from the prior year.[7]

II. Commentary Revision

The OCC, the Board and the Bureau are proposing new commentary to memorialize the calculation method used by the agencies each year to adjust the exemption threshold. The new commentary is substantively identical for § 34.203(b)(2) of subpart G of part 34 of the OCC's regulations, § 226.43(b)(2) of the Board's Regulation Z, and § 1026.35(c)(2)(ii) of the Bureau's Regulation Z. For ease of reference, the ''Commentary Revision'' refers only to the section numbers of the commentary that will published in the Bureau's Regulation Z at 12 CFR part 1026, Supplement I.

Comment 35(c)(2)(ii)–1 to the Bureau's Regulation Z currently provides the threshold amount in effect during a particular period and details the rules the agencies use for rounding the threshold calculation to the nearest $100 or $1,000 increment, as discussed above in part I, ''Background.'' The OCC, the Board and the Bureau are proposing to revise comment 35(c)(2)(ii)–1 by moving the text regarding the threshold amount that is in effect during a particular period to a new proposed comment 35(c)(2)(ii)–3. The discussion of how the agencies round the threshold calculation would remain in comment 35(c)(2)(ii)–1. Current comments 35(c)(2)(ii)–2 and 35(c)(2)(ii)–3 would be renumbered as proposed comments 35(c)(2)(ii)–5 and 35(c)(2)(ii)–6, respectively.

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[1] Public Law 111–203 section 1471, 124 Stat. 1376 (2010), codified at TILA section 129H, 15 U.S.C. 1639h.

[2] 78 FR 10368 (Feb. 13, 2013).

[3] 78 FR 48548 (Aug. 8, 2013).

[4] 78 FR 78520 (Dec. 26, 2013).

[5] *See* NCUA: 12 CFR 722.3; FHFA: 12 CFR part 1222. Although the FDIC adopted the Bureau's version of the regulation, the FDIC did not issue its own regulation containing a cross-reference to the Bureau's version. *See* 78 FR 10368, 10370 (Feb. 13, 2013).

[6] *See* 12 CFR part 34, Appendix C to Subpart G, comment 203(b)(2)–1 (OCC); 12 CFR part 226, Supplement I, comment 43(b)(2)–1 (Board); and 12 CFR part 1026, Supplement I, comment 35(c)(2)(ii)–1 (Bureau).

[7] *See* 78 FR 48548, 48565 (Aug. 8, 2013) (''Thus, under the proposal, if the CPI–W decreases in an annual period, the percentage increase would be zero, and the dollar amount threshold for the exemption would not change.'').

As the Agencies have stated previously,[8] if there is no annual percentage increase in the CPI–W, the OCC, the Board, and the Bureau will not adjust the exemption threshold from the prior year. This position is consistent with the Board's and the Bureau's approach in adjusting the coverage thresholds for the Consumer Leasing Act (CLA) and TILA, based on Section 1100E(b) of the Dodd-Frank Act, which states that the threshold must be adjusted by the ''annual percentage *increase*'' in the CPI–W (emphasis added). The Board and the Bureau are publishing similar amendments to the commentaries to each of their respective regulations implementing the CLA (Regulation M) and TILA (Regulation Z) elsewhere in the **Federal Register**.[9]

For the HPML appraisal rule exemption for smaller loans, the OCC, the Board, and the Bureau are proposing to memorialize this concept in proposed comment 35(c)(2)(ii)–2, which would provide that if the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. For example, if the threshold in effect from January 1, 2019, through December 31, 2019, is $27,500 and the CPI–W in effect on June 1 of 2019, indicates a 1.1 percent decrease from the CPI–W in effect on June 1, 2018, the threshold in effect for January 1, 2020, through December 31, 2020, will remain $27,500.

Proposed comment 35(c)(2)(ii)–2 would further set forth the calculation method the agencies would use in years following a year in which the exemption threshold was not adjusted because there was no increase in the CPI–W from the previous year. Specifically, as set forth under proposed comment 35(c)(2)(ii)–2, for the years after a year in which the threshold did not change because the CPI–W in effect on June 1 decreased from the CPI–W in effect on June 1 of the previous year, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted if the decreases and any subsequent increases in the CPI–W had been taken into account. Proposed comment 35(c)(2)(ii)–2.i further states that, if the resulting amount is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

For example, assume that the threshold in effect from January 1, 2019, through December 31, 2019, is $27,500 and that, due to a 1.1 percent decrease from the CPI–W in effect on June 1, 2018, to the CPI–W in effect on June 1, 2019, the threshold in effect from January 1, 2020, through December 31, 2020, remains at $27,500. If, however, the threshold had been adjusted downward to reflect the decrease in the CPI–W over that time period, the threshold in effect from January 1, 2020, through December 31, 2020, would have been $27,200. Further assume that the CPI–W in effect on June 1, 2020, increased by 1.6 percent from the CPI–W in effect on June 1, 2019. The calculation for the threshold that will be in effect from January 1, 2021, through December 31, 2021, is based on the impact of a 1.6 percent increase in the CPI–W on $27,200, rather than $27,500, resulting in a 2021 threshold of $27,600.

Furthermore, comment 35(c)(2)(ii)–2.ii states that, if the resulting amount calculated is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted. To illustrate, assume in the example above that the CPI–W in effect on June 1, 2020, increased by only 0.6 percent from the CPI–W in effect on June 1, 2019. The calculation for the threshold that will be in effect from January 1, 2021, through December 31, 2021, is based on the impact of a 0.6 percent increase in the CPI–W on $27,200. The resulting amount is $27,400, which is lower than $27,500, the threshold in effect from January 1, 2020, through December 31, 2020. Therefore, the threshold in effect from January 1, 2021, through December 31, 2021, will remain $27,500. However, the calculation for the threshold that will be in effect from January 1, 2022, through December 31, 2022, will apply the percentage change in the CPI–W to $27,400, the amount that would have resulted based on the 0.6 percent change from the CPI–W in effect on June 1, 2019, to the CPI–W in effect on June 1, 2020.

The agencies request comment on all aspects of the proposed rule.

III. Regulatory Analysis

Bureau's Dodd-Frank Act Section 1022(b)(2) Analysis

In developing this proposal, the Bureau has considered potential benefits, costs, and impacts.[10] In addition, the Bureau has consulted, or offered to consult with, the prudential regulators, the Securities and Exchange Commission, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The Bureau has chosen to evaluate the benefits, costs and impacts of the proposed commentary against the current state of the world, which takes into account the current regulatory regime. The Bureau is not aware of any significant benefits or costs to consumers or covered persons associated with the proposal relative to the baseline. The OCC, the Board, and the Bureau previously stated that if there is no annual percentage increase in the CPI–W, then the agencies will not adjust the exemption threshold from the prior year.[11] The proposal memorializes this in official commentary. The proposal also clarifies how the threshold would be calculated for years after a year in which the threshold did not change. The Bureau believes that this clarification memorializes the method that the Bureau would be expected to use: This method holds the threshold fixed until a notional threshold calculated using the Bureau's methodology, but taking into account both decreases and increases in the CPI–W, exceeds the actual threshold. The Bureau requests comment on this point. Thus, the Bureau believes that the proposed rule does not change the regulatory regime relative to the baseline and creates no significant benefits, costs, or impacts.

The proposed rule will have no unique impact on depository institutions or credit unions with $10 billion or less in assets as described in section 1026(a) of the Dodd-Frank Act or on rural consumers. The Bureau does not expect this final rule to affect consumers' access to credit.

Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA) requires an agency, in connection with a proposed

[8] *See* 78 FR 48548, 48565 (Aug. 8, 2013) and 80 FR 73943, 73944 (Nov. 27, 2015).

[9] 76 FR 18354, 18355 n.1 (Apr. 4, 2011) (''[A]n annual period of deflation or no inflation would not require a change in the threshold amount.'').

[10] Specifically, section 1022(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Act; and the impact on consumers in rural areas.

[11] 78 FR 48547, 48565 (Aug. 8, 2013) and 80 FR 73943, 73944 (Nov. 27, 2015).

rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the proposed rule on small entities (defined by the Small Business Administration for purposes of the RFA to include banking entities with total assets of $550 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

As explained in the Commentary Revision section of the preamble, this proposed rule memorializes the calculation method used by the OCC, the Board, and the Bureau each year to adjust the threshold for exemption from the special appraisal requirements for HPMLs and clarifies the agencies' calculation method for determining the adjustment in the years following a year in which there is no annual percentage increase in the CPI–W. The economic impact of this proposed rule on national banks and Federal savings associations, regardless of size, is not expected to be significant. Accordingly, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

Board: The Regulatory Flexibility Act (RFA) requires an agency to publish an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.[12] Based on its analysis, and for the reasons stated below, the Board believes that the rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis and requests public comment on all aspects of its analysis. The Board will, if necessary, conduct a final regulatory flexibility analysis after considering the comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed rule.* The proposed rule would memorialize the calculation method used by the Board each year to adjust the exemption threshold in accordance with Regulation Z, 12 CFR 226.43(b)(2).

2. *Small entities affected by the proposed rule.* The Board invites comment on the effect of the proposed rule on small entities. For purposes of the RFA, the Small Business Administration defines small entities to include banking entities with total assets of $550 million or less. Of Board supervised institutions with an asset size of $550 million or less as of March 2016, 223 reported making 5,135 higher-priced mortgage loans in 2015.[13]

3. *Recordkeeping, reporting, and compliance requirements.* The proposed rule would not impose any recordkeeping, reporting, or compliance requirements.

4. *Other Federal rules.* The Board has not identified any likely duplication, overlap and/or potential conflict between the proposed rule and any Federal rule.

5. *Significant alternatives to the proposed revisions.* The Board solicits comment on any significant alternatives that would reduce the regulatory burden on small entities associated with this proposed rule.

Bureau: The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements.[14] These analyses must ''describe the impact of the proposed rule on small entities''.[15] An IRFA or FRFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[16] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[17]

An IRFA is not required for this proposal because if adopted it would not have a significant economic impact on a substantial number of small entities. As discussed in the Bureau's Section 1022(b)(2) Analysis above, this proposal does not introduce costs or benefits to covered persons because the proposal seeks only to clarify the method of threshold adjustment which has already been established in previous Agency rules. Therefore this proposed rule would not have a significant impact on small entities.

Certification

Accordingly, the Bureau Director, by signing below, certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[18] the agencies reviewed this proposed rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

Unfunded Mandates Reform Act

The OCC has analyzed the notice of proposed rulemaking under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation).

The proposed rule memorializes the calculation method used by the OCC, the Board, and the Bureau each year to adjust the threshold for exemption from the special appraisal requirements for HPMLs and clarifies the agencies' calculation method for determining the adjustment in the years following a year in which there is no annual percentage increase in the CPI–W. Because the proposed rule is designed to clarify existing rules, and does not introduce any new requirements, the OCC has determined that it would not result in expenditures by State, local, and Tribal governments or by the private sector, of $100 million or more. Accordingly, the OCC has not prepared a written statement to accompany its proposed rule.

List of Subjects

12 CFR Part 34

Appraisal, Appraiser, Banks, Banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

12 CFR Part 226

Advertising, Appraisal, Appraiser, Consumer protection, Credit, Federal

[12] *See* 5 U.S.C. 601 *et seq.*

[13] Board supervised institutions include State Member Banks, uninsured state branches and agencies of foreign banks. The number of institutions making higher-priced mortgage loans and the number of higher-priced mortgage loans is based on data reported pursuant to the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 *et seq.*

[14] 5 U.S.C. 601 *et seq.*

[15] *Id.* at 603(a). For purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. *Id.* at 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. *Id.* at 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' *Id.* at 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. *Id.* at 601(5).

[16] *Id.* at 605(b).

[17] *Id.* at 609.

[18] 44 U.S.C. 3506; 5 CFR 1320.

Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Department of the Treasury

Office of the Comptroller of the Currency

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend 12 CFR part 34 as set forth below:

PART 34—REAL ESTATE LENDING AND APPRAISALS

■ 1. The authority citation for part 34 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 93a, 371, 1463, 1464, 1465, 1701j–3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* 5412(b)(2)(B) and 15 U.S.C. 1639h.

Subpart G—Appraisals for Higher-Priced Mortgage Loans

■ 2. In Appendix C to Subpart G, under *Section 34.203—Appraisals for Higher-Priced Mortgage Loans,* under paragraph (b)(2):

■ i. Paragraph 1 is revised;

■ ii. Paragraphs 2 and 3 are re-designated as paragraphs 4 and 5, respectively; and

■ iii. Paragraphs 2 and 3 are added.

The additions and revisions read as follows:

Appendix C to Subpart G—OCC Interpretations

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Section 34.203—Appraisals for Higher-Priced Mortgage Loans

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34.203(b) Exemptions

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Paragraph 34.203(b)(2)

1. *Threshold amount.* For purposes of § 34.203(b)(2), the threshold amount in effect during a particular period is the amount stated in comment 203(b)(2)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 203(b)(2)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 34.203(b)(2), the threshold amount in effect during a particular period is the amount stated below for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016 through December 31, 2016, the threshold amount is $25,500.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 34.203(b)(2) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 34.203(b)(2) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 34.203(b)(2) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 34.203 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 34.203 applies. See § 34.203(b) and (d)(7).

* * * * *

Board of Governors of the Federal Reserve System

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 3. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), 1639(l), and 1639h; Pub. L. 111–24, section 2, 123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

■ 4. In Supplement I to part 226, under *Section 226.43—Appraisals for Higher-Risk Mortgage Loans,* under paragraph 43(b)(2), paragraph 1 is revised, paragraphs 2 and 3 are re-numbered paragraphs 4 and 5, respectively, and new paragraphs 2 and 3 are added, to read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

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Section 226.43—Appraisals for Higher-Risk Mortgage Loans

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43(b) Exemptions

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Paragraph 43(b)(2)

1. *Threshold amount.* For purposes of § 226.43(b)(2), the threshold amount in effect during a particular period is the amount stated in comment 43(b)(2)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban

Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 43(b)(2)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 226.43(b)(2), the threshold amount in effect during a particular period is the amount stated below for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016 through December 31, 2016, the threshold amount is $25,500.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 226.43(b)(2) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 226.43(b)(2) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.43(b)(2) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 226.43 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 226.43 applies. See § 226.43(b) and (d)(7).

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Bureau of Consumer Financial Protection

Authority and Issuance

For the reasons set forth in the preamble, the Bureau proposes to amend Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 5. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 6. In Supplement I to part 1026, under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans,* under paragraph 35(c)(2)(ii), paragraphs 1 through 3 are revised, and paragraphs 4 and 5 are added, to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

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35(c) Appraisals

* * * * *

35(c)(2) Exemptions

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Paragraph 35(c)(2)(ii)

1. *Threshold amount.* For purposes of § 1026.35(c)(2)(ii), the threshold amount in effect during a particular period is the amount stated in comment 35(c)(2)(ii)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 35(c)(2)(ii)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 1026.35(c)(2)(ii), the threshold amount in effect during a particular period is the amount stated below for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016 through December 31, 2016, the threshold amount is $25,500.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 1026.35(c)(2)(ii) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 1026.35(c)(2)(ii) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 1026.35(c)(2)(ii) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 1026.35(c) with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 1026.35(c) applies. See § 1026.35(c)(2) and (c)(4)(vii).

* * * * *

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 19, 2016.

Robert deV. Frierson,

Secretary of the Board.

Dated: July 13, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2016–18058 Filed 8–3–16; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 4810–AM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Docket No. R–1545]

RIN 7100 AE–56

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1013

[Docket No. CFPB–2016–0036]

Consumer Leasing (Regulation M)

AGENCY: Board of Governors of the Federal Reserve System (Board); and Bureau of Consumer Financial Protection (Bureau).

ACTION: Proposed rule; official interpretations.

SUMMARY: The Board and the Bureau are proposing to amend the official interpretations and commentary for the agencies' regulations that implement the Consumer Leasing Act (CLA). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the CLA by requiring that the dollar threshold for exempt consumer credit transactions be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). If there is no annual percentage increase in the CPI–W, the Board and Bureau will not adjust this exemption threshold from the prior year. The proposal would memorialize this as well as the agencies' calculation method for determining the adjustment in years following a year in which there is no annual percentage increase in the CPI–W.

Because the Dodd-Frank Act also requires similar adjustments in the Truth in Lending Act's threshold for exempt consumer credit transactions, the Board and the Bureau are proposing similar amendments to the commentaries to each of their respective regulations implementing the Truth in Lending Act elsewhere in the **Federal Register**.

DATES: Comments must be received on or before September 6, 2016.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to the Board and the Bureau. Commenters are encouraged to use the title ''Consumer Leasing (Regulation M)'' to facilitate the organization and distribution of comments among the agencies. Interested parties are invited to submit written comments to:

Board: You may submit comments, identified by Docket No. R–1545 or RIN 7100 AE–56, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.,) between 9:00 a.m. and 5:00 p.m. on weekdays.

Bureau: You may submit comments, identified by Docket No. CFPB–2016–0036 by any of the following methods:

- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2016–0036 in the subject line of the email.
- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: *Board:* Vivian W. Wong, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

Bureau: Shaakira Gold-Ramirez, Paralegal Specialist, Jaclyn Maier, Counsel, Office of Regulations, Consumer Financial Protection Bureau, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) increased the threshold in the Consumer Leasing Act (CLA) for exempt consumer leases from $25,000 to $50,000, effective July 21, 2011.[1] In addition, the Dodd-Frank Act requires that, on and after December 31, 2011, this threshold be adjusted annually for inflation by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W), as published by the Bureau of Labor Statistics. In April 2011, the Board issued a final rule amending Regulation M (which implements the CLA) consistent with these provisions of the Dodd-Frank Act along with a similar final rule amending Regulation Z (which implements the Truth in Lending Act) (collectively, the Board Final Threshold Rules).[2]

Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Board to the Bureau, effective July 21, 2011. In connection with this transfer of rulemaking authority, the Bureau issued its own Regulation M implementing the CLA in an interim final rule, 12 CFR part 1013 (Bureau Interim Final Rule).[3] The Bureau Interim Final Rule substantially duplicated the Board's Regulation M, including the revisions to the threshold for exempt transactions made by the Board in April 2011. In April 2016, the Bureau adopted the Bureau Interim Final Rule as final, subject to intervening final rules published by the Bureau.[4] Although the Bureau has the authority to issue rules to implement the CLA for most entities, the Board retains authority to issue rules under the CLA for certain motor vehicle dealers covered by section 1029(a) of the Dodd-Frank Act, and the Board's Regulation M continues to apply to those entities.[5]

Section 213.2(e)(1) of the Board's Regulation M and § 1013.2(e)(1) of the Bureau's Regulation M, and their accompanying commentaries, provide that the exemption threshold will be adjusted annually effective January 1 of each year based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.[6] If there is no annual percentage increase in the CPI–W, the Board and Bureau will not adjust the exemption threshold from the prior year.

Since 2011, the Board and the Bureau have adjusted the Regulation M exemption threshold annually, consistent with these rules. The Board and the Bureau last published final rules implementing the exemption threshold in effect for January 1, 2016, through December 31, 2016, in November 2015.[7]

II. Commentary Revision

The Board and the Bureau are proposing new commentary to memorialize the calculation method used by the agencies each year to adjust the exemption threshold. Comment 2(e)–9 to the Board's and Bureau's Regulation M currently provides the threshold amount in effect during a particular period and details the rules the agencies use for rounding the threshold calculation to the nearest $100 or $1,000 increment, as discussed above in part I, ''Background.''

The Board and the Bureau are proposing to revise comment 2(e)–9 by moving the text regarding the threshold amount that is in effect during a particular period to a new proposed comment 2(e)–11. The discussion of how the agencies round the threshold calculation would remain in comment 2(e)–9.

As stated in the Board Final Threshold Rules, if there is no annual percentage increase in the CPI–W, the Board and Bureau will not adjust the exemption threshold from the prior year.[8] This position is consistent with Section 1100E(b) of the Dodd-Frank Act, which states that the threshold must be adjusted by the ''annual percentage *increase*'' in the CPI–W (emphasis added). The Board and the Bureau are proposing to memorialize this concept in proposed comment 2(e)–10, which would provide that if the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. For example, if the threshold in effect from January 1, 2019, through December 31, 2019, is $55,500 and the CPI–W in effect on June 1 of 2019, indicates a 1.1 percent decrease from the CPI–W in effect on June 1, 2018, the threshold in effect for January 1, 2020, through December 31, 2020, will remain $55,500.

Proposed comment 2(e)–10 would further set forth the calculation method the agencies would use in years following a year in which the exemption threshold was not adjusted because there was no increase in the CPI–W from the previous year. The proposed calculation method would ensure that the values for the exemption threshold keep pace with the CPI–W as contemplated by Section 1100E(b) of the Dodd-Frank Act.

Specifically, as set forth under proposed comment 2(e)–10, for the years after a year in which the threshold did not change because the CPI–W in effect on June 1 decreased from the CPI–W in effect on June 1 of the previous year, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted if the decreases and any subsequent increases in the CPI–W had been taken into account. Proposed comment 2(e)–10.i further states that, if the resulting amount is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

For example, assume that the threshold in effect from January 1, 2019, through December 31, 2019, is $55,500 and that, due to a 1.1 percent decrease from the CPI–W in effect on June 1,

[1] Public Law 111–203, section 1100E, 124 Stat. 1376 (2010).

[2] 76 FR 18349 (Apr. 4, 2011); 76 FR 18354 (Apr. 4, 2011).

[3] 76 FR 78500 (Dec. 19, 2011).

[4] 81 FR 25323 (April 28, 2016).

[5] Section 1029(a) of the Dodd-Frank Act states: ''Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority * * * over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.'' 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act states: ''Subsection (a) shall not apply to any person, to the extent that such person (1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property; (2) operates a line of business (A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which (i) the extension of retail credit or retail leases are provided directly to consumers; and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.'' 12 U.S.C. 5519(b).

[6] *See* comments 2(e)–9 in Supplements I of 12 CFR part 213 and 12 CFR part 1013.

[7] 80 FR 73945 (Nov. 27, 2015).

[8] 76 FR 18354, 18355 n.1 (Apr. 4, 2011) (''[A]n annual period of deflation or no inflation would not require a change in the threshold amount.'').

2018, to the CPI–W in effect on June 1, 2019, the threshold in effect from January 1, 2020, through December 31, 2020, remains at $55,500. If, however, the threshold had been adjusted downward to reflect the decrease in the CPI–W over that time period, the threshold in effect from January 1, 2020, through December 31, 2020, would have been $54,900. Further assume that the CPI–W in effect on June 1, 2020, increased by 1.6 percent from the CPI–W in effect on June 1, 2019. The calculation for the threshold that will be in effect from January 1, 2021, through December 31, 2021, is based on the impact of a 1.6 percent increase in the CPI–W on $54,900, rather than $55,500, resulting in a 2021 threshold of $55,800.

Furthermore, comment 2(e)–10.ii states that, if the resulting amount calculated is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted. To illustrate, assume in the example above that the CPI–W in effect on June 1, 2020, increased by only 0.6 percent from the CPI–W in effect on June 1, 2019. The calculation for the threshold that will be in effect from January 1, 2021, through December 31, 2021, is based on the impact of a 0.6 percent increase in the CPI–W on $54,900. The resulting amount is $55,200, which is lower than $55,500, the threshold in effect from January 1, 2020, through December 31, 2020. Therefore, the threshold in effect from January 1, 2021, through December 31, 2021, will remain $55,500. However, the calculation for the threshold that will be in effect from January 1, 2022, through December 31, 2022, will apply the percentage change in the CPI–W to $55,200, the amount that would have resulted based on the 0.6 percent change from the CPI–W in effect on June 1, 2019, to the CPI–W in effect on June 1, 2020.

The agencies request comment on all aspects of the proposed rule.

III. Regulatory Analysis

Bureau's Dodd-Frank Act Section 1022(b)(2) Analysis

In developing this proposal, the Bureau has considered potential benefits, costs, and impacts.[9] In addition, the Bureau has consulted, or offered to consult with, the prudential regulators, the Securities and Exchange Commission, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The Bureau has chosen to evaluate the benefits, costs and impacts of the proposed commentary against the current state of the world, which takes into account the current regulatory regime. The Bureau is not aware of any significant benefits or costs to consumers or covered persons associated with the proposal relative to the baseline. The Board previously stated that if there is no annual percentage increase in the CPI–W, then the Board (and now the Bureau) will not adjust the exemption threshold from the prior year.[10] The proposal memorializes this in official commentary. The proposal also clarifies how the threshold would be calculated for years after a year in which the threshold did not change. The Bureau believes that this clarification memorializes the method that the Bureau would be expected to use: This method holds the threshold fixed until a notional threshold calculated using the Bureau's methodology, but taking into account both decreases and increases in the CPI–W, exceeds the actual threshold. The Bureau requests comment on this point. Thus, the Bureau believes that the proposed rule does not change the regulatory regime relative to the baseline and creates no significant benefits, costs, or impacts.

The proposed rule will have no unique impact on depository institutions or credit unions with $10 billion or less in assets as described in section 1026(a) of the Dodd-Frank Act or on rural consumers. The Bureau does not expect this final rule to affect consumers' access to credit.

Regulatory Flexibility Act

Board: The Regulatory Flexibility Act (RFA) requires an agency to publish an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.[11] Based on its analysis, and for the reasons stated below, the Board believes that the rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis and requests public comment on all aspects of its analysis. The Board will, if necessary, conduct a final regulatory flexibility analysis after considering the comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed rule.* The proposed rule would memorialize the calculation method used by the Board each year to adjust the exemption threshold in accordance with Section 1100E of the Dodd-Frank Act.

2. *Small entities affected by the proposed rule.* Motor vehicle dealers that are subject to the Board's Regulation M and offer consumer leases that may be exempt from Regulation M under 12 CFR 213.2(e) would be affected. While the total number of small entities likely to be affected by the proposed rule is unknown, the Board does not believe the proposed rule will have a significant economic impact on the entities that it affects. The Board invites comment on the effect of the proposed rule on small entities.

3. *Recordkeeping, reporting, and compliance requirements.* The proposed rule would not impose any recordkeeping, reporting, or compliance requirements.

4. *Other Federal rules.* The Board has not identified any likely duplication, overlap and/or potential conflict between the proposed rule and any Federal rule.

5. *Significant alternatives to the proposed revisions.* The Board solicits comment on any significant alternatives that would reduce the regulatory burden associated on small entities with this proposed rule.

Bureau: The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements.[12] These analyses must ''describe the impact of the proposed rule on small entities''.[13] An IRFA or

[9] Specifically, section 1022(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Act; and the impact on consumers in rural areas.

[10] 76 FR 18354, 18355 n.1 (Apr. 4, 2011) (''[A]n annual period of deflation or no inflation would not require a change in the threshold amount.'').

[11] *See* 5 U.S.C. 601 *et seq.*

[12] 5 U.S.C. 601 *et seq.*

[13] *Id.* at 603(a). For purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. *Id.* at 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. *Id.* at 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' *Id.* at 601(4). A ''small

FRFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[14] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[15]

An IRFA is not required for this proposal because if adopted it would not have a significant economic impact on a substantial number of small entities. As discussed in the Bureau's Section 1022(b)(2) Analysis above, this proposal does not introduce costs or benefits to covered persons because the proposal seeks only to clarify the method of threshold adjustment which has already been established in previous Agency rules. Therefore this proposed rule would not have a significant impact on small entities.

Certification

Accordingly, the Bureau Director, by signing below, certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[16] the agencies reviewed this proposed rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

List of Subjects

12 CFR Part 213

Advertising, Consumer leasing, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements.

12 CFR Part 1013

Advertising, Consumer leasing, Reporting and recordkeeping requirements, Truth in Lending.

Board of Governors of the Federal Reserve System

Text of Proposed Revisions

For the reasons set forth in the preamble, the Board proposes to amend Regulation M, 12 CFR part 213, as set forth below:

governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. *Id.* at 601(5).

[14] *Id.* at 605(b).

[15] *Id.* at 609.

[16] 44 U.S.C. 3506; 5 CFR 1320.

PART 213—CONSUMER LEASING (REGULATION M)

■ 1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604 and 1667f; Pub. L. 111–203 § 1100E, 124 Stat. 1376.

■ 2. In Supplement I to Part 213, under *Section 213.2—Definitions,* under *2(e) Consumer Lease,* paragraph 9. is revised, and paragraphs 10. and 11. are added, to read as follows:

Supplement I to Part 213—Official Staff Interpretations

* * * * *

§ 213.2 Definitions.

* * * * *

2(e) Consumer Lease

* * * * *

9. *Threshold amount.* A consumer lease is exempt from the requirements of this Part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. The threshold amount in effect during a particular time period is the amount stated in comment 2(e)–11 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 2(e)–11 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If a consumer lease is exempt from the requirements of this Part because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount.

10. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

11. *Threshold.* For purposes of § 213.2(e)(1), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is $54,600.

Bureau of Consumer Financial Protection

Authority and Issuance

For the reasons set forth in the preamble, the Bureau proposes to amend Regulation M, 12 CFR part 1013, as set forth below:

PART 1013—CONSUMER LEASING (REGULATION M)

■ 3. The authority citation for part 1013 continues to read as follows:

Authority: 15 U.S.C. 1604 and 1667f; Pub. L. 111–203 § 1100E, 124 Stat. 1376.

■ 4. In Supplement I to part 1013, under *Section 1013.2—Definitions,* under *2(e)—Consumer Lease,* paragraph 9 is revised, and paragraphs 10 and 11 are added, to read as follows:

Supplement I to Part 1013—Official Interpretations

* * * * *

§ 1013.2 Definitions.

* * * * *

2(e) Consumer Lease

* * * * *

9. *Threshold amount.* A consumer lease is exempt from the requirements of this part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. The threshold amount in effect during a particular time period is the amount stated in comment 2(e)–11 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 2(e)–11 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If a consumer lease is exempt from the requirements of this part because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount.

10. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

11. *Threshold.* For purposes of § 1013.2(e)(1), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is $54,600.

By order of the Board of Governors of the Federal Reserve System, July 19, 2016.

Robert deV. Frierson,

Secretary of the Board.

Dated: July 13, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2016–18059 Filed 8–3–16; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R–1546]

RIN 7100 AE–57

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2016–0037]

Truth in Lending (Regulation Z)

AGENCY: Board of Governors of the Federal Reserve System (Board); and Bureau of Consumer Financial Protection (Bureau).

ACTION: Proposed rule; official interpretations.

SUMMARY: The Board and the Bureau are proposing to amend the official interpretations and commentary for the agencies' regulations that implement the Truth in Lending Act (TILA). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended TILA by requiring that the dollar threshold for exempt consumer credit transactions be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). If there is no annual percentage increase in the CPI–W, the Board and Bureau will not adjust this exemption threshold from the prior year. The proposal would memorialize this as well as the agencies' calculation method for determining the adjustment in years following a year in which there is no annual percentage increase in the CPI–W.

Because the Dodd-Frank Act also requires similar adjustments in the Consumer Leasing Act's threshold for exempt consumer leases, the Board and the Bureau are proposing similar amendments to the commentaries to each of their respective regulations implementing the Consumer Leasing Act elsewhere in the **Federal Register**.

DATES: Comments must be received on or before September 6, 2016.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to the Board and the Bureau. Commenters are encouraged to use the title ''Truth in Lending (Regulation Z)'' to facilitate the organization and distribution of comments among the agencies. Interested parties are invited to submit written comments to:

Board: You may submit comments, identified by Docket No. R–7100 or RIN 7100 AE–57, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Bureau: You may submit comments, identified by Docket No. CFPB–2016–0037 by any of the following methods:

- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2016–0037 in the subject line of the email.
- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT:

Board: Vivian W. Wong, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

Bureau: Shaakira Gold-Ramirez, Paralegal Specialist, Jaclyn Maier, Counsel, Office of Regulations, Consumer Financial Protection Bureau, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) increased the threshold in the Truth in Lending Act (TILA) for exempt consumer credit transactions [1] from $25,000 to $50,000, effective July 21, 2011.[2] In addition, the Dodd-Frank Act requires that, on and after December 31, 2011, this threshold be adjusted annually for inflation by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W), as published by the Bureau of Labor Statistics. In April 2011, the Board issued a final rule amending Regulation Z (which implements TILA) consistent with these provisions of the Dodd-Frank Act along with a similar final rule amending Regulation M (which implements the Consumer Leasing Act) (collectively, the Board Final Threshold Rules).[3]

Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Board to the Bureau, effective July 21, 2011. In connection with this transfer of rulemaking authority, the Bureau issued its own Regulation Z implementing TILA in an interim final rule, 12 CFR part 1026 (Bureau Interim Final Rule).[4] The Bureau Interim Final Rule substantially duplicated the Board's Regulation Z, including the revisions to the threshold for exempt transactions made by the Board in April 2011. In April 2016, the Bureau adopted the Bureau Interim Final Rule as final, subject to intervening final rules published by the Bureau.[5] Although the Bureau has the authority to issue rules to implement TILA for most entities, the Board retains authority to issue rules under TILA for certain motor vehicle dealers covered by section 1029(a) of the Dodd-Frank Act, and the Board's Regulation Z continues to apply to those entities.[6]

Section 226.3(b)(1)(ii) of the Board's Regulation Z and § 1026.3(b)(1)(ii) of the Bureau's Regulation Z, and their accompanying commentaries, provide that the exemption threshold will be adjusted annually effective January 1 of each year based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.[7] If there is no annual percentage increase in the CPI–W, the Board and Bureau will not adjust the exemption threshold from the prior year.

Since 2011, the Board and the Bureau have adjusted the Regulation Z exemption threshold annually, consistent with these rules. The Board and the Bureau last published final rules implementing the exemption threshold in effect for January 1, 2016, through December 31, 2016, in November 2015.[8]

II. Commentary Revision

The Board and the Bureau are proposing new commentary to memorialize the calculation method used by the agencies each year to adjust the exemption threshold. Comment 3(b)–1 to the Board's and Bureau's Regulation Z currently provides the threshold amount in effect during a particular period and details the rules the agencies use for rounding the threshold calculation to the nearest $100 or $1,000 increment, as discussed above in part I, ''Background.''

The Board and the Bureau are proposing to revise comment 3(b)–1 by moving the text regarding the threshold amount that is in effect during a particular period to a new proposed comment 3(b)–3. The discussion of how

[1] Although consumer credit transactions above the threshold are generally exempt, loans secured by real property or by personal property used or expected to be used as the principal dwelling of a consumer and private education loans are covered by TILA regardless of the loan amount. *See* 12 CFR 226.3(b)(1)(i) (Board) and 12 CFR 1026.3(b)(1)(i) (Bureau).

[2] Public Law 111–203, section 1100E, 124 Stat. 1376 (2010).

[3] 76 FR 18354 (Apr. 4, 2011); 76 FR 18349 (Apr. 4, 2011).

[4] 76 FR 79768 (Dec. 22, 2011).

[5] 81 FR 25323 (April 28, 2016).

[6] Section 1029(a) of the Dodd-Frank Act states: ''Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority . . . over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.'' 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act states: ''Subsection (a) shall not apply to any person, to the extent that such person (1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property; (2) operates a line of business (A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which (i) the extension of retail credit or retail leases are provided directly to consumers; and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.'' 12 U.S.C. 5519(b).

[7] *See* comments 3(b)–1 in Supplements I of 12 CFR part 226 and 12 CFR part 1026.

[8] 80 FR 73947 (Nov. 27, 2015).

the agencies round the threshold calculation would remain in comment 3(b)–1. Current comments 3(b)–2, 3(b)–3, 3(b)–4, 3(b)–5, and 3(b)–6 would be renumbered as proposed comments 3(b)–4, 3(b)–5, 3(b)–6, 3(b)–7, and 3(b)–8, respectively. Cross-references to these comments would also be renumbered accordingly.

As stated in the Board Final Threshold Rules, if there is no annual percentage increase in the CPI–W, the Board and Bureau will not adjust the exemption threshold from the prior year.[9] This position is consistent with Section 1100E(b) of the Dodd-Frank Act, which states that the threshold must be adjusted by the ''annual percentage *increase*'' in the CPI–W (emphasis added). The Board and the Bureau are proposing to memorialize this concept in proposed comment 3(b)–2, which would provide that if the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. For example, if the threshold in effect from January 1, 2019, through December 31, 2019, is $55,500 and the CPI–W in effect on June 1 of 2019, indicates a 1.1 percent decrease from the CPI–W in effect on June 1, 2018, the threshold in effect for January 1, 2020, through December 31, 2020, will remain $55,500.

Proposed comment 3(b)–2 would further set forth the calculation method the agencies would use in years following a year in which the exemption threshold was not adjusted because there was no increase in the CPI–W from the previous year. The proposed calculation method would ensure that the values for the exemption threshold keep pace with the CPI–W as contemplated by Section 1100E(b) of the Dodd-Frank Act.

Specifically, as set forth under proposed comment 3(b)–2, for the years after a year in which the threshold did not change because the CPI–W in effect on June 1 decreased from the CPI–W in effect on June 1 of the previous year, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted if the decreases and any subsequent increases in the CPI–W had been taken into account. Proposed comment 3(b)–2.i further states that, if the resulting amount is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

For example, assume that the threshold in effect from January 1, 2019, through December 31, 2019, is $55,500 and that, due to a 1.1 percent decrease from the CPI–W in effect on June 1, 2018, to the CPI–W in effect on June 1, 2019, the threshold in effect from January 1, 2020, through December 31, 2020, remains at $55,500. If, however, the threshold had been adjusted downward to reflect the decrease in the CPI–W over that time period, the threshold in effect from January 1, 2020, through December 31, 2020, would have been $54,900. Further assume that the CPI–W in effect on June 1, 2020, increased by 1.6 percent from the CPI–W in effect on June 1, 2019. The calculation for the threshold that will be in effect from January 1, 2021, through December 31, 2021, is based on the impact of a 1.6 percent increase in the CPI–W on $54,900, rather than $55,500, resulting in a 2021 threshold of $55,800.

Furthermore, comment 3(b)–2.ii states that, if the resulting amount calculated is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted. To illustrate, assume in the example above that the CPI–W in effect on June 1, 2020, increased by only 0.6 percent from the CPI–W in effect on June 1, 2019. The calculation for the threshold that will be in effect from January 1, 2021, through December 31, 2021, is based on the impact of a 0.6 percent increase in the CPI–W on $54,900. The resulting amount is $55,200, which is lower than $55,500, the threshold in effect from January 1, 2020, through December 31, 2020. Therefore, the threshold in effect from January 1, 2021, through December 31, 2021, will remain $55,500. However, the calculation for the threshold that will be in effect from January 1, 2022, through December 31, 2022, will apply the percentage change in the CPI–W to $55,200, the amount that would have resulted based on the 0.6 percent change from the CPI–W in effect on June 1, 2019, to the CPI–W in effect on June 1, 2020.

The agencies request comment on all aspects of the proposed rule.

III. Regulatory Analysis

Bureau's Dodd-Frank Act Section 1022(b)(2) Analysis

In developing this proposal, the Bureau has considered potential benefits, costs, and impacts.[10] In addition, the Bureau has consulted, or offered to consult with, the prudential regulators, the Securities and Exchange Commission, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The Bureau has chosen to evaluate the benefits, costs and impacts of the proposed commentary against the current state of the world, which takes into account the current regulatory regime. The Bureau is not aware of any significant benefits or costs to consumers or covered persons associated with the proposal relative to the baseline. The Board previously stated that if there is no annual percentage increase in the CPI–W, then the Board (and now the Bureau) will not adjust the exemption threshold from the prior year.[11] The proposal memorializes this in official commentary. The proposal also clarifies how the threshold would be calculated for years after a year in which the threshold did not change. The Bureau believes that this clarification memorializes the method that the Bureau would be expected to use: This method holds the threshold fixed until a notional threshold calculated using the Bureau's methodology, but taking into account both decreases and increases in the CPI–W, exceeds the actual threshold. The Bureau requests comment on this point. Thus, the Bureau believes that the proposed rule does not change the regulatory regime relative to the baseline and creates no significant benefits, costs, or impacts.

The proposed rule will have no unique impact on depository institutions or credit unions with $10 billion or less in assets as described in section 1026(a) of the Dodd-Frank Act or on rural consumers. The Bureau does not expect this final rule to affect consumers' access to credit.

Regulatory Flexibility Act

Board: The Regulatory Flexibility Act (RFA) requires an agency to publish an

[9] 76 FR 18354, 18355 n.1 (Apr. 4, 2011) (''[A]n annual period of deflation or no inflation would not require a change in the threshold amount.'').

[10] Specifically, section 1022(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Act; and the impact on consumers in rural areas.

[11] 76 FR 18354, 18355 n.1 (Apr. 4, 2011) (''[A]n annual period of deflation or no inflation would not require a change in the threshold amount.'').

initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.[12] Based on its analysis, and for the reasons stated below, the Board believes that the rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis and requests public comment on all aspects of its analysis. The Board will, if necessary, conduct a final regulatory flexibility analysis after considering the comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed rule.* The proposed rule would memorialize the calculation method used by the Board each year to adjust the exemption threshold in accordance with Section 1100E of the Dodd-Frank Act.

2. *Small entities affected by the proposed rule.* Motor vehicle dealers that are subject to the Board's Regulation Z and offer closed-end or open-end credit that may be exempt from Regulation Z under 12 CFR 226.3(b) would be affected. While the total number of small entities likely to be affected by the proposed rule is unknown, the Board does not believe the proposed rule will have a significant economic impact on the entities that it affects. The Board invites comment on the effect of the proposed rule on small entities.

3. *Recordkeeping, reporting, and compliance requirements.* The proposed rule would not impose any recordkeeping, reporting, or compliance requirements.

4. *Other Federal rules.* The Board has not identified any likely duplication, overlap and/or potential conflict between the proposed rule and any Federal rule.

5. *Significant alternatives to the proposed revisions.* The Board solicits comment on any significant alternatives that would reduce the regulatory burden on small entities associated with this proposed rule.

Bureau: The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements.[13] These analyses must ''describe the impact of the proposed rule on small entities''.[14] An IRFA or FRFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[15] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[16]

An IRFA is not required for this proposal because if adopted it would not have a significant economic impact on a substantial number of small entities. As discussed in the Bureau's Section 1022(b)(2) Analysis above, this proposal does not introduce costs or benefits to covered persons because the proposal seeks only to clarify the method of threshold adjustment which has already been established in previous Agency rules. Therefore this proposed rule would not have a significant impact on small entities.

Certification

Accordingly, the Bureau Director, by signing below, certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[17] the agencies reviewed this proposed rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

List of Subjects

12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in Lending.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Text of Proposed Revisions

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Pub. L. 111–24 § 2, 123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

Subpart A—General

■ 2. In Supplement I to part 226, under *Section 226.3—Exempt Transactions*, under *3(b) Credit over applicable threshold amount*, paragraphs 1 through 6 are revised, and paragraphs 7 and 8 are added, to read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

Section 226.3—Exempt Transactions

* * * * *

3(b) Credit Over Applicable Threshold Amount

1. *Threshold amount.* For purposes of section 226.3(b), the threshold amount in effect during a particular period is the amount stated in comment 3(b)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 3(b)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

[12] *See* 5 U.S.C. 601 *et seq.*

[13] 5 U.S.C. 601 *et seq.*

[14] *Id.* at 603(a). For purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. *Id.* at 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. *Id.* at 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' *Id.* at 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. *Id.* at 601(5).

[15] *Id.* at 605(b).

[16] *Id.* at 609.

[17] 44 U.S.C. 3506; 5 CFR 1320.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 226.3(b), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is $54,600.

4. *Open-end credit.*

i. *Qualifying for exemption.* An open-end account is exempt under § 226.3(b) (unless secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes an initial extension of credit at or after account opening that exceeds the threshold amount in effect at the time the initial extension is made. If a creditor makes an initial extension of credit after account opening that does not exceed the threshold amount in effect at the time the extension is made, the creditor must have satisfied all of the applicable requirements of this Part from the date the account was opened (or earlier, if applicable), including but not limited to the requirements of § 226.6 (account-opening disclosures), § 226.7 (periodic statements), § 226.52 (limitations on fees), and § 226.55 (limitations on increasing annual percentage rates, fees, and charges). For example:

(1) Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $60,000. In this circumstance, no requirements of this Part apply to the account.

(2) Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $50,000 or less. In this circumstance, the account is not exempt and the creditor must have satisfied all of the applicable requirements of this Part from the date the account was opened (or earlier, if applicable).

B. The creditor makes a firm written commitment at account opening to extend a total amount of credit in excess of the threshold amount in effect at the time the account is opened with no requirement of additional credit information for any advances on the account (except as permitted from time to time with respect to open-end accounts pursuant to § 226.2(a)(20)).

ii. *Subsequent changes generally.* Subsequent changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 226.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of this Part within a reasonable period of time after the account ceases to be exempt. Once an account ceases to be exempt, the requirements of this Part apply to any balances on the account. The creditor, however, is not required to comply with the requirements of this Part with respect to the period of time during which the account was exempt. For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 226.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 226.7. However, the creditor is not required to disclose fees or charges imposed while the account was exempt. Furthermore, if the creditor provided disclosures consistent with the requirements of this Part while the account was exempt, it is not required to provide disclosures required by § 226.6 reflecting the current terms of the account. See also comment 3(b)–6.

iii. *Subsequent changes when exemption is based on initial extension of credit.* If a creditor makes an initial extension of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount, including an increase pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. However, if the initial extension of credit on an account does not exceed the threshold amount in effect at the time of the extension, the account is not exempt under § 226.3(b) even if a subsequent extension exceeds the threshold amount or if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

iv. *Subsequent changes when exemption is based on firm commitment.*

A. *General.* If a creditor makes a firm written commitment at account opening to extend a total amount of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. However, see comment 3(b)–8 with respect to the increase in the threshold amount from $25,000 to $50,000. If an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit, the account remains exempt even if the amount of credit actually extended does not exceed the threshold amount. In contrast, if the firm commitment does not exceed the threshold amount at account opening, the account is not exempt under § 226.3(b) even if the account balance later exceeds the threshold amount. In addition, if a creditor reduces a firm commitment, the account ceases to be exempt unless the reduced firm commitment exceeds the threshold amount in effect at the time of the reduction. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If during year one the creditor reduces its firm commitment to $53,000, the account remains exempt under § 226.3(b). However, if during year one the creditor reduces its firm commitment to $40,000, the account is no longer exempt under § 226.3(b).

(2) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If the threshold amount is $56,000 on January 1 of year six as a result of increases in the CPI–W, the account remains exempt. However, if the creditor reduces its firm commitment to $54,000 on July 1 of year six, the account ceases to be exempt under § 226.3(b).

B. *Initial extension of credit.* If an open-end account qualifies for a § 226.3(b) exemption at account opening based on a firm commitment, that account may also subsequently qualify for a § 226.3(b) exemption based on an initial extension of credit. However, that initial extension must be a single advance in excess of the threshold amount in effect at the time the extension is made. In addition, the account must continue to qualify for an exemption based on the firm commitment until the initial extension of credit is made. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. The account is not used for an extension of credit during year one. On January 1 of year two, the threshold amount is increased to $51,000 pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. On July 1 of year two, the consumer uses the account for an initial extension of $52,000. As a result of this extension of credit, the account remains exempt under § 226.3(b) even if, after July 1 of year two, the creditor reduces the firm commitment to $51,000 or less.

(2) Same facts as in paragraph iv.B(1) above except that the consumer uses the account for an initial extension of $30,000 on July 1 of year two and for an extension of $22,000 on July 15 of year two. In these circumstances, the account is not exempt under § 226.3(b) based on the $30,000 initial extension of credit because that extension did not exceed the applicable threshold amount ($51,000), although the account remains exempt based on the firm commitment to extend $55,000 in credit.

(3) Same facts as in paragraph iv.B(1) above except that, on April 1 of year two, the creditor reduces the firm commitment to $50,000, which is below the $51,000 threshold then in effect. Because the account ceases to qualify for a § 226.3(b) exemption on April 1 of year two, the account does not qualify for a § 226.3(b) exemption based on a $52,000 initial extension of credit on July 1 of year two.

5. *Closed-end credit.*

i. *Qualifying for exemption.* A closed-end loan is exempt under § 226.3(b) (unless the extension of credit is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 226.46(b)(5)), if either of the following conditions is met

A. The creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the amount owed is subsequently reduced below the threshold amount (such as through repayment of the loan).

B. The creditor makes a commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the total amount of credit extended does not exceed the threshold amount.

ii. *Subsequent changes.* If a creditor makes a closed-end extension of credit or commitment to extend closed-end credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount. However, a closed-end loan is not exempt under § 226.3(b) merely because it is used to satisfy and replace an existing exempt loan, unless the new extension of credit is itself exempt under the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.3(b) exemption at consummation in year one is refinanced in year ten and that the new loan amount is less than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of this Part with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, which is not exempt under § 226.3(b). See also comment 3(b)–6.

6. *Addition of a security interest in real property or a dwelling after account opening or consummation.*

i. *Open-end credit.* For open-end accounts, if, after account opening, a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, a previously exempt account ceases to be exempt under § 226.3(b) and the creditor must begin to comply with all of the applicable requirements of this Part within a reasonable period of time. See comment 3(b)–4.ii. If a security interest is taken in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest consistent with § 226.15.

ii. *Closed-end credit.* For closed-end loans, if, after consummation, a security interest is taken in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, an exempt loan remains exempt under § 226.3(b). However, the addition of a security interest in the consumer's principal dwelling is a transaction for purposes of § 226.23, and the creditor must give the consumer the right to rescind the security interest consistent with that section. See § 226.23(a)(1) and the accompanying commentary. In contrast, if a closed-end loan that is exempt under § 226.3(b) is satisfied and replaced by a loan that is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling, the new loan is not exempt under § 226.3(b) and the creditor must comply with all of the applicable requirements of this Part. See comment 3(b)–5.

7. *Application to extensions secured by mobile homes.* Because a mobile home can be a dwelling under § 226.2(a)(19), the exemption in § 226.3(b) does not apply to a credit extension secured by a mobile home that is used or expected to be used as the principal dwelling of the consumer. See comment 3(b)–6.

8. *Transition rule for open-end accounts exempt prior to July 21, 2011.* Section 226.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 226.3(b)(2) does not apply if a security interest is taken by the creditor in any real property, or in personal property used or expected to be used as the consumer's principal dwelling. If, on July 20, 2011, an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit in excess of $25,000, the account remains exempt under § 226.3(b)(2) until December 31, 2011 (unless the

firm commitment is reduced to $25,000 or less). If the firm commitment is increased on or before December 31, 2011 to an amount in excess of $50,000, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W. If the firm commitment is not increased on or before December 31, 2011 to an amount in excess of $50,000, the account ceases to be exempt under § 226.3(b) based on a firm commitment to extend credit. For example:

i. Assume that, on July 20, 2011, the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $30,000 in credit. On November 1, 2011, the creditor increases the firm commitment on the account to $55,000. In these circumstances, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W.

ii. Same facts as paragraph i. above except, on November 1, 2011, the creditor increases the firm commitment on the account to $40,000. In these circumstances, the account ceases to be exempt under § 226.3(b)(2) after December 31, 2011, and the creditor must begin to comply with the applicable requirements of this Part.

BUREAU OF CONSUMER FINANCIAL PROTECTION

Authority and Issuance

For the reasons set forth in the preamble, the Bureau proposes to amend Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 3. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 4. In Supplement I to part 1026, under *Section 1026.3—Exempt Transactions,* under *3(b)—Credit Over Applicable Threshold Amount,* paragraphs 1 through 6 are revised, and paragraphs 7 and 8 are added, to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart A—General

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Section 1026.3—Exempt Transactions

* * * * *

3(b) Credit Over Applicable Threshold Amount

1. *Threshold amount.* For purposes of § 1026.3(b), the threshold amount in effect during a particular period is the amount stated in comment 3(b)–4 below for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 3(b)–4 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting threshold calculated is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the threshold that would have resulted.

3. *Threshold.* For purposes of § 1026.3(b), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is $54,600.

4. *Open-end credit.* i. *Qualifying for exemption.* An open-end account is exempt under § 1026.3(b) (unless secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes an initial extension of credit at or after account opening that exceeds the threshold amount in effect at the time the initial extension is made. If a creditor makes an initial extension of credit after account opening that does not exceed the threshold amount in effect at the time the extension is made, the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable), including but not limited to the requirements of § 1026.6 (account-opening disclosures), § 1026.7 (periodic statements), § 1026.52 (limitations on fees), and § 1026.55 (limitations on increasing annual percentages rates, fees, and charges). For example:

1. Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $60,000. In this circumstance, no requirements of this part apply to the account.

2. Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $50,000 or less. In this circumstance, the account is not exempt and the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable).

B. The creditor makes a firm written commitment at account opening to extend a total amount of credit in excess of the threshold amount in effect at the time the account is opened with no requirement of additional credit information for any advances on the account (except as permitted from time

to time with respect to open-end accounts pursuant to § 1026.2(a)(20)).

ii. *Subsequent changes generally.* Subsequent changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 1026.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time after the account ceases to be exempt. Once an account ceases to be exempt, the requirements of this part apply to any balances on the account. The creditor, however, is not required to comply with the requirements of this part with respect to the period of time during which the account was exempt. For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 1026.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 1026.7. However, the creditor is not required to disclose fees or charges imposed while the account was exempt. Furthermore, if the creditor provided disclosures consistent with the requirements of this part while the account was exempt, it is not required to provide disclosures required by § 1026.6 reflecting the current terms of the account. *See also* comment 3(b)–6.

iii. *Subsequent changes when exemption is based on initial extension of credit.* If a creditor makes an initial extension of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount, including an increase pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. However, if the initial extension of credit on an account does not exceed the threshold amount in effect at the time of the extension, the account is not exempt under § 1026.3(b) even if a subsequent extension exceeds the threshold amount or if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

iv. *Subsequent changes when exemption is based on firm commitment.* A. *General.* If a creditor makes a firm written commitment at account opening to extend a total amount of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. However, see comment 3(b)–9 with respect to the increase in the threshold amount from $25,000 to $50,000. If an open-end account is exempt under § 1026.3(b) based on a firm commitment to extend credit, the account remains exempt even if the amount of credit actually extended does not exceed the threshold amount. In contrast, if the firm commitment does not exceed the threshold amount at account opening, the account is not exempt under § 1026.3(b) even if the account balance later exceeds the threshold amount. In addition, if a creditor reduces a firm commitment, the account ceases to be exempt unless the reduced firm commitment exceeds the threshold amount in effect at the time of the reduction. For example:

1. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If during year one the creditor reduces its firm commitment to $53,000, the account remains exempt under § 1026.3(b). However, if during year one the creditor reduces its firm commitment to $40,000, the account is no longer exempt under § 1026.3(b).

2. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If the threshold amount is $56,000 on January 1 of year six as a result of increases in the CPI–W, the account remains exempt. However, if the creditor reduces its firm commitment to $54,000 on July 1 of year six, the account ceases to be exempt under § 1026.3(b).

B. *Initial extension of credit.* If an open-end account qualifies for a § 1026.3(b) exemption at account opening based on a firm commitment, that account may also subsequently qualify for a § 1026.3(b) exemption based on an initial extension of credit. However, that initial extension must be a single advance in excess of the threshold amount in effect at the time the extension is made. In addition, the account must continue to qualify for an exemption based on the firm commitment until the initial extension of credit is made. For example:

1. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. The account is not used for an extension of credit during year one. On January 1 of year two, the threshold amount is increased to $51,000 pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. On July 1 of year two, the consumer uses the account for an initial extension of $52,000. As a result of this extension of credit, the account remains exempt under § 1026.3(b) even if, after July 1 of year two, the creditor reduces the firm commitment to $51,000 or less.

2. Same facts as in paragraph iv.B.*1* above except that the consumer uses the account for an initial extension of $30,000 on July 1 of year two and for an extension of $22,000 on July 15 of year two. In these circumstances, the account is not exempt under § 1026.3(b) based on the $30,000 initial extension of credit because that extension did not exceed the applicable threshold amount ($51,000), although the account remains exempt based on the firm commitment to extend $55,000 in credit.

3. Same facts as in paragraph iv.B.*1* above except that, on April 1 of year two, the creditor reduces the firm commitment to $50,000, which is below the $51,000 threshold then in effect. Because the account ceases to qualify for a § 1026.3(b) exemption on April 1 of year two, the account does not qualify for a § 1026.3(b) exemption based on a $52,000 initial extension of credit on July 1 of year two.

5. *Closed-end credit.* i. *Qualifying for exemption.* A closed-end loan is exempt under § 1026.3(b) (unless the extension of credit is secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 1026.46(b)(5)), if either of the following conditions is met:

A. The creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 1026.3(b) even if the amount owed is subsequently reduced below the threshold amount (such as through repayment of the loan).

B. The creditor makes a commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 1026.3(b) even if the total amount of

credit extended does not exceed the threshold amount.

ii. *Subsequent changes.* If a creditor makes a closed-end extension of credit or commitment to extend closed-end credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount. However, a closed-end loan is not exempt under § 1026.3(b) merely because it is used to satisfy and replace an existing exempt loan, unless the new extension of credit is itself exempt under the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 1026.3(b) exemption at consummation in year one is refinanced in year ten and that the new loan amount is less than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of this part with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, which is not exempt under § 1026.3(b). *See also* comment 3(b)–6.

6. *Addition of a security interest in real property or a dwelling after account opening or consummation.* i. *Open-end credit.* For open-end accounts, if after account opening a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, a previously exempt account ceases to be exempt under § 1026.3(b) and the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time. *See* comment 3(b)–4.ii. If a security interest is taken in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest consistent with § 1026.15.

ii. *Closed-end credit.* For closed-end loans, if after consummation a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, an exempt loan remains exempt under § 1026.3(b). However, the addition of a security interest in the consumer's principal dwelling is a transaction for purposes of § 1026.23, and the creditor must give the consumer the right to rescind the security interest consistent with that section. *See* § 1026.23(a)(1) and its commentary. In contrast, if a closed-end loan that is exempt under § 1026.3(b) is satisfied and replaced by a loan that is secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling, the new loan is not exempt under § 1026.3(b), and the creditor must comply with all of the applicable requirements of this part. *See* comment 3(b)–5.

7. *Application to extensions secured by mobile homes.* Because a mobile home can be a dwelling under § 1026.2(a)(19), the exemption in § 1026.3(b) does not apply to a credit extension secured by a mobile home that is used or expected to be used as the principal dwelling of the consumer. *See* comment 3(b)–6.

8. *Transition rule for open-end accounts exempt prior to July 21, 2011.* Section 1026.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 1026.3(b)(2) does not apply if a security interest is taken by the creditor in real property, or in personal property used or expected to be used as the consumer's principal dwelling. If, on July 20, 2011, an open-end account is exempt under § 1026.3(b) based on a firm commitment to extend credit in excess of $25,000, the account remains exempt under § 1026.3(b)(2) until December 31, 2011 (unless the firm commitment is reduced to $25,000 or less). If the firm commitment is increased on or before December 31, 2011 to an amount in excess of $50,000, the account remains exempt under § 1026.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W. If the firm commitment is not increased on or before December 31, 2011 to an amount in excess of $50,000, the account ceases to be exempt under § 1026.3(b) based on a firm commitment to extend credit. For example:

i. Assume that, on July 20, 2011, the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $30,000 in credit. On November 1, 2011, the creditor increases the firm commitment on the account to $55,000. In these circumstances, the account remains exempt under § 1026.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W.

ii. Same facts as paragraph i above except, on November 1, 2011, the creditor increases the firm commitment on the account to $40,000. In these circumstances, the account ceases to be exempt under § 1026.3(b)(2) after December 31, 2011, and the creditor must begin to comply with the applicable requirements of this part.

By order of the Board of Governors of the Federal Reserve System, July 19, 2016.

Robert deV. Frierson,

Secretary of the Board.

Dated: July 13, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2016–18062 Filed 8–3–16; 8:45 am]

BILLING CODE 6210–01–P; 4810–AM–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2014–0052]

RIN 0960–AH71

Ensuring Program Uniformity at the Hearing and Appeals Council Levels of the Administrative Review Process

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking (NPRM); reopening of the comment period.

SUMMARY: On July 12, 2016, we published in the **Federal Register** a notice of proposed rulemaking (NPRM) for Ensuring Program Uniformity at the Hearing and Appeals Council Levels of the Administrative Review Process. We provided a 30-day comment period ending on August 11, 2016. We are extending the comment period for 15 days.

DATES: The comment period for the NPRM published on July 12, 2016 (81 FR 45079), is extended by 15 days and thus will end on August 26, 2016.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2014–0052 so that we may associate your comments with the correct rule.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov*. Use the ''Search'' function to find docket number SSA–2014–0052. The system will issue a tracking number to confirm your

submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Maren Weight, Office of Appellate Operations, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041, (703) 605–7100. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: This document extends to August 26, 2016, the comment period for the NPRM that we published on July 12, 2016. We are extending the comment period in response to comments we received requesting additional time to review and comment on the proposed rules. If you have already provided comments on the proposed rules, we will consider your comments and you do not need to resubmit them.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

[FR Doc. 2016–18367 Filed 8–3–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–123854–12]

RIN 1545–BL25

Application of Section 409A to Nonqualified Deferred Compensation Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a partial withdrawal of notice of proposed rulemaking; notice of proposed rulemaking.

SUMMARY: This document contains corrections to a partial withdrawal of notice of proposed rulemaking; notice of proposed rulemaking (REG–123854–12) that was published in the **Federal Register** on Wednesday, June 22, 2016 (81 FR 40569). The proposed regulations are to clarify or modify certain specific provisions of the final regulations under section 409A (TD 9321, 72 FR 19234).

DATES: Written or electronic comments and requests for a public hearing for the notice of proposed rulemaking published at 81 FR 40569, June 22, 2016 are still being accepted and must be received by September 20, 2016.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under sections 409A, Gregory Burns at (202) 927–9639, concerning submissions or comments and/or requests for a public hearing, Regina Johnson 202–317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The partial withdrawal of notice of proposed rulemaking; notice of proposed rulemaking (REG–123854–12) that is the subject of this correction is under 409A of the Internal Revenue Code.

Need for Correction

As published, the partial withdrawal of notice of proposed rulemaking; notice of proposed rulemaking (REG–123854–12) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the partial withdrawal of notice of proposed rulemaking; notice of proposed rulemaking (REG–123854–12) that was the subject of FR Doc. 2016–14331 is corrected as follows:

§ 1.409A–3 [Corrected]

■ 1. On page 40582, first column, seventeenth line of paragraph (i)(5)(iv), the language ''described in § 1.409A–(1)(b)(ii) held'' is corrected to read ''described in § 1.409A–1(b)(5)(ii) held''.

■ 2. On page 40582, second column, in paragraph (i)(5)(iv) twenty-first line from the top of the page, the language ''§ 1.409A–(1)(b)(5)(i)(A) or (B) or a statutory stock'' is corrected to read ''§ 1.409A–1(b)(5)(i)(A) or (B) or a statutory stock''.

■ 3. On page 40582, second column, in paragraph (i)(5)(iv) twenty-third line from the top of the page, the language ''§ 1.409A–(1)(b)(5)(ii) also will not cause the stock'' is corrected to read ''§ 1.409A–1(b)(5)(ii) also will not cause the stock''.

§ 1.409A–4 [Corrected]

■ 4. On page 40584, first column, in the third and fourth line of paragraph (a)(1)(ii)(B), the language ''*substantial risk of forfeiture*—(*1*) *Risk of forfeiture disregarded*.'' is corrected to read ''*substantial risk of forfeiture.''*.

■ 5. On page 40584, first and second column of paragraphs ''(a)(1)(ii)(B)(i), (ii), and (iii)'' are renumbered as ''(a)(1)(ii)(B)(*1*), (*2*), and (*3*)'' respectively.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2016–18355 Filed 8–3–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 25

[REG–163113–02]

RIN 1545–BB71

Estate, Gift, and Generation-Skipping Transfer Taxes; Restrictions on Liquidation of an Interest

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations concerning the valuation of interests in corporations and partnerships for estate, gift, and generation-skipping transfer (GST) tax purposes. Specifically, these proposed regulations concern the treatment of certain lapsing rights and restrictions on liquidation in determining the value of the transferred interests. These proposed regulations affect certain transferors of interests in corporations and partnerships and are necessary to prevent the undervaluation of such transferred interests.

DATES: Written and electronic comments must be received by November 2, 2016. Outlines of topics to be discussed at the public hearing scheduled for December 1, 2016, must be received by November 2, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–163113–02), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions also may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:PA:LPD:PR (REG–163113–02), Courier's Desk, Internal Revenue

Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking portal at *www.regulations.gov* (IRS REG–163113–02). The public hearing will be held in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, John D. MacEachen, (202) 317–6859; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Regina L. Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 2704 of the Internal Revenue Code provides special valuation rules for purposes of subtitle B (relating to estate, gift, and GST taxes) for valuing intra-family transfers of interests in corporations and partnerships subject to lapsing voting or liquidation rights and restrictions on liquidation. Lapses of voting or liquidation rights are treated as a transfer of the excess of the fair market value of all interests held by the transferor, determined as if the voting or liquidation rights were nonlapsing, over the fair market value of such interests after the lapse. Certain restrictions on liquidation are disregarded in determining the fair market value of the transferred interest. The legislative history of section 2704 states that the provision is intended, in part, to prevent results similar to that in *Estate of Harrison* v. *Commissioner,* T.C. Memo. 1987–8. Informal S. Rep. on S. 3209, 136 Cong. Rec. S15629–4 (October 18, 1990); H.R. Conf. Rep. No. 101–964, 2374, 2842 (October 27, 1990).

In *Harrison,* the decedent and two of his children each held a general partner interest in a partnership immediately before the decedent's death. The decedent also held all of the limited partner interests in the partnership. Because any general partner could liquidate the partnership during life, each general partner could cause all partners to obtain the full value of such partner's partnership interests. A general partner's right to liquidate the partnership lapsed on the death of that partner. In determining the estate tax value of the decedent's limited partner interest, the court concluded that the right of the decedent to liquidate the partnership (and thus readily obtain the full value of the limited partner interest) could not be taken into account because that right lapsed at death. As a result, the Court determined the value for transfer tax purposes of the limited partner interest to be less than its value either in the hands of the decedent immediately before death or in the hands of his family (the other general partners) immediately after death.

Section 2704(a)(1) provides generally that, if there is a lapse of any voting or liquidation right in a corporation or a partnership and the individual holding such right immediately before the lapse and members of such individual's family hold, both before and after the lapse, control of the entity, such lapse shall be treated as a transfer by such individual by gift, or a transfer which is includible in the gross estate, whichever is applicable. The amount of the transfer is the fair market value of all interests held by the individual immediately before the lapse (determined as if the voting and liquidation rights were nonlapsing) over the fair market value of such interests after the lapse.

Section 25.2704–1(a)(2)(v) of the current Gift Tax Regulations defines a liquidation right as the right or ability, including by reason of aggregate voting power, to compel the entity to acquire all or a portion of the holder's equity interest in the entity, whether or not its exercise would result in the complete liquidation of the entity.

Section 25.2704–1(c)(1) provides a rule that a lapse of a liquidation right occurs at the time a presently exercisable liquidation right is restricted or eliminated. However, under § 25.2704–1(c)(1), a transfer of an interest that results in the lapse of a liquidation right generally is not subject to this rule if the rights with respect to the transferred interest are not restricted or eliminated. The effect of this exception is that the inter vivos transfer of a minority interest by the holder of an interest with the aggregate voting power to compel the entity to acquire the holder's interest is not treated as a lapse even though the transfer results in the loss of the transferor's presently exercisable liquidation right.

The Treasury Department and the IRS, however, believe that this exception should not apply when the inter vivos transfer that results in the loss of the power to liquidate occurs on the decedent's deathbed. *Cf. Estate of Murphy* v. *Commissioner,* T.C. Memo. 1990–472 (rejecting ''attempts to avoid taxation of the control value of stock holdings through bifurcation of the blocks''). Such transfers generally have minimal economic effects, but result in a transfer tax value that is less than the value of the interest either in the hands of the decedent prior to death or in the hands of the decedent's family immediately after death. *See Harrison, supra.* The enactment of section 2704 was intended to prevent this result. *See* Informal S. Rep. on S. 3209, *supra;* H.R. Conf. Rep. No. 101–964, *supra. See also* section 2704(a)(3) (conferring on the Secretary broad regulatory authority to apply section 2704(a) to the lapse of rights similar to voting and liquidation rights). The Treasury Department and the IRS have concluded that the regulatory exception created in § 25.2704–1(c)(1) should apply only to transfers occurring more than three years before death, where the loss of control over liquidation is likely to have a more substantive effect. A bright-line test will avoid the fact-intensive inquiry underlying a determination of a donor's subjective motive which is administratively burdensome for both taxpayers and the IRS. *Cf.* section 2035(a) (replacing the contemplation of death presumption of prior law with a bright-line, three-year test). Accordingly, the proposed regulations treat transfers occurring within three years of death that result in the lapse of a liquidation right as transfers occurring at death for purposes of section 2704(a).

Section 2704(b)(1) provides generally that, if a transferor transfers an interest in a corporation or partnership to (or for the benefit of) a member of the transferor's family, and the transferor and members of the transferor's family hold, immediately before the transfer, control of the entity, any ''applicable restriction'' is disregarded in valuing the transferred interest. Under section 2704(b)(2), an applicable restriction is defined as a restriction that effectively limits the ability of the entity to liquidate, but which, after the transfer, either in whole or in part, will lapse or may be removed by the transferor or the transferor's family, either alone or collectively. Section 2704(b)(3)(B) excepts from the definition of an applicable restriction any restriction ''imposed, or required to be imposed, by any Federal or State law.''

Section 2704(b)(4) provides that the Secretary may by regulations provide that other restrictions shall be disregarded in determining the value of any interest in a corporation or a partnership transferred to a member of the transferor's family if the restriction has the effect of reducing the value of the transferred interest for transfer tax purposes but does not ultimately reduce the value of the interest to the transferee.

Section 25.2704–2(b) provides, in part, that an applicable restriction ''is a limitation on the ability to liquidate the entity (in whole or in part) that is more restrictive than the limitations that would apply under the State law

generally applicable to the entity in the absence of the restriction.''

The Treasury Department and the IRS have determined that the current regulations have been rendered substantially ineffective in implementing the purpose and intent of the statute by changes in state laws and by other subsequent developments. First, courts have concluded that, under the current regulations, section 2704(b) applies only to restrictions on the ability to liquidate an entire entity, and not to restrictions on the ability to liquidate a transferred interest in that entity. *Kerr* v. *Commissioner,* 113 T.C. 449, 473 (1999), *aff'd,* 292 F.3rd 490 (5th Cir. 2002). Thus, a restriction on the ability to liquidate an individual interest is not an applicable restriction under the current regulations.

Second, as noted above, the current regulations except from the definition of an applicable restriction a restriction on liquidation that is no more restrictive than that of the state law that would apply in the absence of the restriction. The Tax Court viewed this as a regulatory expansion of the statutory exception to the application of section 2704(b) contained in section 2704(b)(3)(B) that excepts ''any restriction imposed, or required to be imposed, by any Federal or State law.'' *Kerr,* 113 T.C. at 472. Since the promulgation of the current regulations, many state statutes governing limited partnerships have been revised to allow liquidation of the entity only on the unanimous vote of all owners (unless provided otherwise in the partnership agreement), and to eliminate the statutory default provision that had allowed a limited partner to liquidate his or her limited partner interest. Instead, statutes in these jurisdictions typically now provide that a limited partner may not withdraw from the partnership unless the partnership agreement provides otherwise. *See, e.g.,* Tex. Bus. Orgs. Ann. § 153.110 (West 2016) (limited partner may withdraw as specified in the partnership agreement); Uniform Limited Partnership Act (2001) § 601(a), 6A U.L.A. 348, 448 (Supp. 2015) (limited partner has no right to withdraw before completion of the winding up of the partnership). Further, other state statutes have been revised to create elective restrictions on liquidation. *See, e.g.,* Nev. Rev. Stat. § 87A.427 (2016) (limited partnership electing to be restricted limited partnership may not make any distributions for a 10-year period). Each of these statutes is designed to be at least as restrictive as the maximum restriction on liquidation that could be imposed in a partnership agreement. The result is that the provisions of a partnership agreement restricting liquidation generally fall within the regulatory exception for restrictions that are no more restrictive than those under state law, and thus do not constitute applicable restrictions under the current regulations.

Third, taxpayers have attempted to avoid the application of section 2704(b) through the transfer of a partnership interest to an assignee rather than to a partner. Again relying on the regulatory exception for restrictions that are no more restrictive than those under state law, and the fact that an assignee is allocated partnership income, gain, loss, etc., but does not have (and thus may not exercise) the rights or powers of a partner, taxpayers argue that an assignee's inability to cause the partnership to liquidate his or her partnership interest is no greater a restriction than that imposed upon assignees under state law. *Kerr,* 113 T.C. at 463–64; *Estate of Jones* v. *Commissioner,* 116 T.C. 121, 129–30 (2001). Taxpayers thus argue that the assignee status of the transferred interest is not an applicable restriction.

Finally, taxpayers have avoided the application of section 2704(b) through the transfer of a nominal partnership interest to a nonfamily member, such as a charity or an employee, to ensure that the family alone does not have the power to remove a restriction. *Kerr,* 292 F.3rd at 494.

As the Tax Court noted in *Kerr,* Congress granted the Secretary broad discretion in section 2704(b)(4) to promulgate regulations identifying restrictions not covered by section 2704(b) that nevertheless should be disregarded for transfer tax valuation purposes. 113 T.C. at 474. The Treasury Department and the IRS have concluded that, as was recognized by Congress when enacting section 2704(b), there are additional restrictions that may affect adversely the transfer tax value of an interest but that do not reduce the value of the interest to the family-member transferee, and thus should be disregarded for transfer tax valuation purposes. H.R. Conf. Rep. No. 101–964, *supra,* at 1138. The Treasury Department and the IRS have determined that such restrictions include: (a) A restriction on the ability to liquidate the transferred interest; and (b) any restrictions attendant upon the nature or extent of the property to be received in exchange for the liquidated interest, or the timing of the payment of that property.

Further, the Treasury Department and the IRS have concluded that the grant of an insubstantial interest in the entity to a nonfamily member should not preclude the application of section 2704(b) because, in reality, such nonfamily member interest generally does not constrain the family's ability to remove a restriction on the liquidation of an individual interest. *Cf. Kerr,* 292 F.3rd at 494 (noting that a charity receiving a partnership interest would ''convert its interests into cash as soon as possible, so long as it believed the transaction to be in its best interest and that it would receive fair market value for its interest''). The interest of such nonfamily members does not affect the family's control of the entity, but rather, when combined with a requirement that all holders approve liquidation, is designed to reduce the transfer tax value of the family-held interests while not ultimately reducing the value of those interests to the family member transferees. The enactment of section 2704 was intended to prevent this result. See section 2704(b)(4) (conferring on the Secretary broad regulatory authority to apply section 2704(b) to other restrictions if the restriction has the effect of reducing the value of the transferred interest for transfer tax purposes but does not ultimately reduce the value of the interest to the transferee). The Treasury Department and the IRS have concluded that the presence of a nonfamily-member interest should be recognized only where the interest is an economically substantial and longstanding one that is likely to have a more substantive effect. A bright-line test will avoid the fact-intensive inquiry underlying a determination of whether the interest of the nonfamily member effectively constrains the family's ability to liquidate the entity. Accordingly, the proposed regulations disregard the interest held by a nonfamily member that has been held less than three years before the date of the transfer, that constitutes less than 10 percent of the value of all of the equity interests, that when combined with the interests of other nonfamily members constitutes less than 20 percent of the value of all of the equity interests, or that lacks a right to put the interest to the entity and receive a minimum value.

Finally, since the promulgation of §§ 301.7701–1 through 301.7701–3 of the Procedure and Administration Regulations (the check-the-box regulations), an entity's classification for federal tax purposes may differ substantially from the entity's structure or form under local law. In addition, many taxpayers now utilize a limited liability company (LLC) as the preferred entity to hold family assets or business

interests. The Treasury Department and the IRS have concluded that the regulations under section 2704 should be updated to reflect these significant developments.

Explanation of Provisions

The proposed regulations would amend § 25.2701–2 to address what constitutes control of an LLC or other entity or arrangement that is not a corporation, partnership, or limited partnership. The proposed regulations would amend § 25.2704–1 to address deathbed transfers that result in the lapse of a liquidation right and to clarify the treatment of a transfer that results in the creation of an assignee interest. The proposed regulations would amend § 25.2704–2 to refine the definition of the term ''applicable restriction'' by eliminating the comparison to the liquidation limitations of state law. Further, the proposed regulations would add a new section, § 25.2704–3, to address restrictions on the liquidation of an individual interest in an entity and the effect of insubstantial interests held by persons who are not members of the family.

Covered Entities

The proposed regulations would clarify, in §§ 25.2704–1 through 25.2704–3, that section 2704 applies to corporations, partnerships, LLC's, and other entities and arrangements that are business entities within the meaning of § 301.7701–2(a), regardless of whether the entity or arrangement is domestic or foreign, regardless of how the entity or arrangement is classified for other federal tax purposes, and regardless of whether the entity or arrangement is disregarded as an entity separate from its owner for other federal tax purposes.

Classification of the Entity

Section 2704 speaks in terms of corporations and partnerships. Under the proposed regulations, a corporation is any business entity described in § 301.7701–2(b)(1), (3), (4), (5), (6), (7), or (8), an S corporation within the meaning of section 1361(a)(1), and a qualified subchapter S subsidiary within the meaning of section 1361(b)(3)(B). For this purpose, a qualified subchapter S subsidiary is treated as a corporation that is separate from its parent owner. For most purposes under the proposed regulations, a partnership would be any other business entity within the meaning of § 301.7701–1(a), regardless of how the entity is classified for federal tax purposes.

However, these proposed regulations address two situations in which it is necessary to go beyond this division of entities into only the two categories of corporation and partnership. These situations (specifically, the test to determine control of an entity, and the test to determine whether a restriction is imposed under state law) require consideration of the differences among various types of business entities under the local law under which those entities are created and governed. As a result, for purposes of the test to determine control of an entity and to determine whether a restriction is imposed under state law, the proposed regulations would provide that in the case of any business entity or arrangement that is not a corporation, the form of the entity or arrangement would be determined under local law, regardless of how it is classified for other federal tax purposes, and regardless of whether it is disregarded as an entity separate from its owner for other federal tax purposes. For this purpose, local law is the law of the jurisdiction, whether domestic or foreign, under which the entity or arrangement is created or organized. Thus, in applying these two tests, there would be three types of entities: Corporations, partnerships (including limited partnerships), and other business entities (which would include LLCs that are not S corporations) as determined under local law.

Control of the Entity

Section 2704(c)(1) incorporates the definition of control found in section 2701(b)(2). Control of a corporation, partnership, or limited partnership is defined in sections 2701(b)(2)(A) and (B). The proposed regulations would clarify, in § 25.2701–2, that control of an LLC or of any other entity or arrangement that is not a corporation, partnership, or limited partnership would constitute the holding of at least 50 percent of either the capital or profits interests of the entity or arrangement, or the holding of any equity interest with the ability to cause the full or partial liquidation of the entity or arrangement. *Cf.* section 2701(b)(2)(B)(ii) (defining control of a limited partnership as including the holding of any interest as a general partner). Further, for purposes of determining control, under the attribution rules of existing § 25.2701–6, an individual, the individual's estate, and members of the individual's family are treated as holding interests held indirectly through a corporation, partnership, trust, or other entity.

Lapses Under Section 2704(a)

The proposed regulations would amend § 25.2704–1(a) to confirm that a transfer that results in the restriction or elimination of any of the rights or powers associated with the transferred interest (an assignee interest) is treated as a lapse within the meaning of section 2704(a). This is the case regardless of whether the right or power is exercisable by the transferor after the transfer because the statute is concerned with the lapse of rights associated with the transferred interest. Whether the lapse is of a voting or liquidation right is determined under the general rules of section 25.2704–1.

The proposed regulations also would amend § 25.2704–1(c)(1) to narrow the exception in the definition of a lapse of a liquidation right to transfers occurring three years or more before the transferor's death that do not restrict or eliminate the rights associated with the ownership of the transferred interest. In addition, the proposed regulations would amend § 25.2704–1(c)(2)(i)(B) to conform the existing provision for testing the family's ability to liquidate an interest with the proposed elimination of the comparison with local law, to clarify that the manner in which liquidation may be achieved is irrelevant, and to conform with the proposed provision for disregarding certain nonfamily-member interests in testing the family's ability to remove a restriction in proposed § 25.2704–3 regarding disregarded restrictions.

Applicable Restrictions Under Section 2704(b)

The proposed regulations would remove the exception in § 25.2704–2(b) that limits the definition of applicable restriction to limitations that are more restrictive than the limitations that would apply in the absence of the restriction under the local law generally applicable to the entity. As noted above, this exception is not consistent with section 2704(b) to the extent that the transferor and family members have the power to avoid any statutory rule. The proposed regulations also would revise § 25.2704–2(b) to provide that an applicable restriction does include a restriction that is imposed under the terms of the governing documents, as well as a restriction that is imposed under a local law regardless of whether that restriction may be superseded by or pursuant to the governing documents or otherwise. In applying this particular exception to the definition of an applicable restriction, this proposed rule is intended to ensure that a restriction that is not imposed or required to be imposed by federal or state law is disregarded without regard to its source.

Further, with regard to the exception for restrictions ''imposed, or required to

be imposed, by any Federal or State law,'' in section 2704(b)(3)(B), the proposed regulations would clarify that the terms ''federal'' and ''state'' refer only to the United States or any state (including the District of Columbia (*see* section 7701(a)(10)), but do not include any other jurisdiction.

A restriction is imposed or required to be imposed by law if the restriction cannot be removed or overridden and it is mandated by the applicable law, is required to be included in the governing documents, or otherwise is made mandatory. In addition, a restriction imposed by a state law, even if that restriction may not be removed or overridden directly or indirectly, nevertheless would constitute an applicable restriction in two situations. In each situation, although the statute itself is mandatory and cannot be overridden, another statute is available to be used for the entity's governing law that does not require the mandatory restriction, thus in effect making the purportedly mandatory provision elective. The first situation is that in which the state law is limited in its application to certain narrow classes of entities, particularly those types of entities most likely to be subject to transfers described in section 2704, that is, family-controlled entities. The second situation is that in which, although the state law under which the entity was created imposed a mandatory restriction that could not be removed or overridden, either at the time the entity was organized or at some subsequent time, that state's law also provided an optional provision or an alternative statute for the creation and governance of that same type of entity that did not mandate the restriction. Thus, an optional provision is one for the same category of entity that did not include the restriction or that allowed it to be removed or overridden, or that made the restriction optional, or permitted the restriction to be superseded, whether by the entity's governing documents or otherwise. For purposes of determining whether a restriction is imposed on an entity under state law, there would be only three types of entities, specifically, the three categories of entities described in § 25.2701–2(b)(5) of the proposed regulations: Corporations; partnerships (including limited partnerships); and other business entities. A similar proposed rule applies to the additional restrictions discussed later in this preamble.

If an applicable restriction is disregarded, the fair market value of the transferred interest is determined under generally applicable valuation principles as if the restriction does not exist (that is, as if the governing documents and the local law are silent on the question), and thus, there is deemed to be no such restriction on liquidation of the entity.

Disregarded Restrictions

A new class of restrictions is described in the proposed regulations that would be disregarded, described as ''disregarded restrictions.'' This class of restrictions is identified pursuant to the authority contained in section 2704(b)(4). Note that, although it may appear that sections 2703 and 2704(b) overlap, they do not. While section 2703 and the corresponding regulations currently address restrictions on the sale or use of individual interests in family-controlled entities, the proposed regulations would address restrictions on the liquidation or redemption of such interests.

Under § 25.2704–3 of the proposed regulations, in the case of a family-controlled entity, any restriction described below on a shareholder's, partner's, member's, or other owner's right to liquidate his or her interest in the entity will be disregarded if the restriction will lapse at any time after the transfer, or if the transferor, or the transferor and family members, without regard to certain interests held by nonfamily members, may remove or override the restriction. Under the proposed regulations, such a disregarded restriction includes one that: (a) Limits the ability of the holder of the interest to liquidate the interest; (b) limits the liquidation proceeds to an amount that is less than a minimum value; (c) defers the payment of the liquidation proceeds for more than six months; or (d) permits the payment of the liquidation proceeds in any manner other than in cash or other property, other than certain notes.

''Minimum value'' is the interest's share of the net value of the entity on the date of liquidation or redemption. The net value of the entity is the fair market value, as determined under section 2031 or 2512 and the applicable regulations, of the property held by the entity, reduced by the outstanding obligations of the entity. Solely for purposes of determining minimum value, the only outstanding obligations of the entity that may be taken into account are those that would be allowable (if paid) as deductions under section 2053 if those obligations instead were claims against an estate. For example, and subject to the foregoing limitation on outstanding obligations, if the entity holds an operating business, the rules of § 20.2031–2(f)(2) or 20.2031–3 apply in the case of a testamentary transfer and the rules of § 25.2512–2(f)(2) or 25.2512–3 apply in the case of an inter vivos transfer. The minimum value of the interest is the net value of the entity multiplied by the interest's share of the entity. For this purpose, the interest's share is determined by taking into account any capital, profits, and other rights inherent in the interest in the entity.

A disregarded restriction includes limitations on the time and manner of payment of the liquidation proceeds. Such limitations include provisions permitting deferral of full payment beyond six months or permitting payment in any manner other than in cash or property. For this purpose, the term ''property'' does not include a note or other obligation issued directly or indirectly by the entity, other holders of an interest in the entity, or persons related to either. An exception is made for the note of an entity engaged in an active trade or business to the extent that (a) the liquidation proceeds are not attributable to passive assets within the meaning of section 6166(b)(9)(B), and (b) the note is adequately secured, requires periodic payments on a non-deferred basis, is issued at market interest rates, and has a fair market value (when discounted to present value) equal to the liquidation proceeds. A fair market value determination assumes a cash sale. *See* Section 2 of Rev. Rul. 59–60, 1959–1 C.B. 237 (defining fair market value and stating that ''[c]ourt decisions frequently state in addition that the hypothetical buyer and seller are assumed to be able, as well as willing to trade . . .''). Thus, in the absence of immediate payment of the liquidation proceeds, the fair market value of any note falling within this exception must equal the fair market value of the liquidation proceeds on the date of liquidation or redemption.

Exceptions that apply to applicable restrictions under the current and these proposed regulations also apply to this new class of disregarded restrictions. One of the exceptions applicable to the definition of a disregarded restriction applies if (a) each holder of an interest in the entity has an enforceable ''put'' right to receive, on liquidation or redemption of the holder's interest, cash and/or other property with a value that is at least equal to the minimum value previously described, (b) the full amount of such cash and other property must be paid within six months after the holder gives notice to the entity of the holder's intent to liquidate any part or all of the holder's interest and/or withdraw from the entity, and (c) such other property does not include a note or other obligation issued directly or

indirectly by the entity, by one or more holders of interests in the entity, or by a person related either to the entity or to any holder of an interest in the entity. However, in the case of an entity engaged in an active trade or business, at least 60 percent of whose value consists of the non-passive assets of that trade or business, and to the extent that the liquidation proceeds are not attributable to passive assets within the meaning of section 6166(b)(9)(B), such proceeds may include a note or other obligation if such note is adequately secured, requires periodic payments on a non-deferred basis, is issued at market interest rates, and has a fair market value on the date of the liquidation or redemption equal to the liquidation proceeds. A similar exception is made to the definition of an applicable restriction in proposed § 25.2704–2(b)(4).

In determining whether the transferor and/or the transferor's family has the ability to remove a restriction included in this new class of disregarded restrictions, any interest in the entity held by a person who is not a member of the transferor's family is disregarded if, at the time of the transfer, the interest: (a) Has been held by such person for less than three years; (b) constitutes less than 10 percent of the value of all of the equity interests in a corporation, or constitutes less than 10 percent of the capital and profits interests in a business entity described in § 301.7701–2(a) other than a corporation (for example, less than a 10-percent interest in the capital and profits of a partnership); (c) when combined with the interests of all other persons who are not members of the transferor's family, constitutes less than 20 percent of the value of all of the equity interests in a corporation, or constitutes less than 20 percent of the capital and profits interests in a business entity other than a corporation (for example, less than a 20-percent interest in the capital and profits of a partnership); or (d) any such person, as the owner of an interest, does not have an enforceable right to receive in exchange for such interest, on no more than six months' prior notice, the minimum value referred to in the definition of a disregarded restriction. If an interest is disregarded, the determination of whether the family has the ability to remove the restriction will be made assuming that the remaining interests are the sole interests in the entity.

Finally, if a restriction is disregarded under proposed § 25.2704–3, the fair market value of the interest in the entity is determined assuming that the disregarded restriction did not exist, either in the governing documents or applicable law. Fair market value is determined under generally accepted valuation principles, including any appropriate discounts or premiums, subject to the assumptions described in this paragraph.

Coordination With Marital and Charitable Deductions

Section 2704(b) applies to intra-family transfers for all purposes of subtitle B relating to estate, gift and GST taxes. Therefore, to the extent that an interest qualifies for the gift or estate tax marital deduction and must be valued by taking into account the special valuation assumptions of section 2704(b), the same value generally will apply in computing the marital deduction attributable to that interest. The value of the estate tax marital deduction may be further affected, however, by other factors justifying a different value, such as the application of a control premium. *See, e.g., Estate of Chenoweth* v. *Commissioner,* 88 T.C. 1577 (1987).

Section 2704(b) does not apply to transfers to nonfamily members and thus has no application in valuing an interest passing to charity or to a person other than a family member. If part of an entity interest includible in the gross estate passes to family members and part of that interest passes to nonfamily members, and if (taking into account the proposed rules regarding the treatment of certain interests held by nonfamily members) the part passing to the decedent's family members is valued under section 2704(b), then the proposed regulations provide that the part passing to the family members is treated as a property interest separate from the part passing to nonfamily members. The fair market value of the part passing to the family members is determined taking into account the special valuation assumptions of section 2704(b), as well as any other relevant factors, such as those supporting a control premium. The fair market value of the part passing to the nonfamily member(s) is determined in a similar manner, but without the special valuation assumptions of section 2704(b). Thus, if the sole nonfamily member receiving an interest is a charity, the interest generally will have the same value for both estate tax inclusion and deduction purposes. If the interest passing to nonfamily members, however, is divided between charities and other nonfamily members, additional considerations (not prescribed by section 2704) may apply, resulting in a different value for charitable deduction purposes. *See, e.g., Ahmanson Foundation* v. *United States,* 674 F.2d 761 (9th Cir. 1981).

Effective Dates

The amendments to § 25.2701–2 are proposed to be effective on and after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. The amendments to § 25.2704–1 are proposed to apply to lapses of rights created after October 8, 1990, occurring on or after the date these regulations are published as final regulations in the **Federal Register**. The amendments to § 25.2704–2 are proposed to apply to transfers of property subject to restrictions created after October 8, 1990, occurring on or after the date these regulations are published as final regulations in the **Federal Register**. Section 25.2704–3 is proposed to apply to transfers of property subject to restrictions created after October 8, 1990, occurring 30 or more days after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The proposed regulations affect the transfer tax liability of individuals who transfer an interest in certain closely held entities and not the entities themselves. The proposed regulations do not affect the structure of such entities, but only the assumptions under which they are valued for federal transfer tax purposes. In addition, any economic impact on entities affected by section 2704, large or small, is derived from the operation of the statute, or its intended application, and not from the proposed regulations in this notice of proposed rulemaking. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8)

copies) or electronic comments that are submitted timely (in the manner described in **ADDRESSES**) to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be available at *www.regulations.gov,* or upon request.

A public hearing on these proposed regulations has been scheduled for December 1, 2016, beginning at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit comments by November 2, 2016, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 2, 2016.

A period of 10 minutes will be allotted to each person for making comments. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is John D. MacEachen, Office of the Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 25 is proposed to be amended as follows:

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

■ **Paragraph 1.** The authority citation for part 25 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Section 25.2701–2 also issued under 26 U.S.C. 2701(e).

Section 25.2704–1 also issued under 26 U.S.C. 2704(a).

Sections 25.2704–2 and 25.2704–3 also issued under 26 U.S.C. 2704(b).

* * * * *

■ **Par. 2.** Section 25.2701–2 is amended as follows:

■ 1. In paragraph (b)(5)(i), the first sentence is revised and five sentences are added before the last sentence.

■ 2. Paragraph (b)(5)(iv) is added.

The revision and additions read as follows:

§ 25.2701–2 Special valuation rules for applicable retained interests.

* * * * *

(b) * * *

(5) * * *

(i) * * * For purposes of section 2701, a controlled entity is a corporation, partnership, or any other entity or arrangement that is a business entity within the meaning of § 301.7701–2(a) of this chapter controlled, immediately before a transfer, by the transferor, applicable family members, and/or any lineal descendants of the parents of the transferor or the transferor's spouse. The form of the entity determines the applicable test for control. For purposes of determining the form of the entity, any business entity described in § 301.7701–2(b)(1), (3), (4), (5), (6), (7), or (8) of this chapter, an S corporation within the meaning of section 1361(a)(1), and a qualified subchapter S subsidiary within the meaning of section 1361(b)(3)(B) is a corporation. For this purpose, a qualified subchapter S subsidiary is treated as a corporation separate from its parent corporation. In the case of any business entity that is not a corporation under these provisions, the form of the entity is determined under local law, regardless of how the entity is classified for federal tax purposes or whether it is disregarded as an entity separate from its owner for federal tax purposes. For this purpose, local law is the law of the jurisdiction, whether domestic or foreign, under whose laws the entity is created or organized. * * *

* * * * *

(iv) *Other business entities.* In the case of any entity or arrangement that is not a corporation, partnership, or limited partnership, control means the holding of at least 50 percent of either the capital interests or the profits interests in the entity or arrangement. In addition, control means the holding of any equity interest with the ability to cause the liquidation of the entity or arrangement in whole or in part.

* * * * *

■ **Par. 3.** Section 25.2701–8 is amended as follows:

■ 1. The existing text is designated as paragraph (a).

■ 2. The first sentence of newly designated paragraph (a) is revised and paragraph (b) is added.

The revision and addition reads as follows:

§ 25.2701–8 Effective dates.

(a) Except as provided in paragraph (b) of this section, §§ 25.2701–1 through 25.2701–4 and §§ 25.2701–6 and 25.2701–7 are effective as of January 28, 1992. * * *

(b) The first six sentences of § 25.2701–2(b)(5)(i) and (iv) are effective on the date these regulations are published as final regulations in the **Federal Register**.

■ **Par. 4.** Section 25.2704–1 is amended as follows:

■ 1. In paragraph (a)(1), the first two sentences are revised and four sentences are added before the third sentence.

■ 2. In paragraph (a)(2)(i), a sentence is added at the end.

■ 3. Paragraph (a)(2)(iii) is removed.

■ 4. Paragraphs (a)(2)(iv) through (vi) are redesignated as paragraphs (a)(2)(iii) through (v), respectively.

■ 5. In newly designated paragraph (a)(2)(iii), a sentence is added before the third sentence.

■ 6. Paragraph (a)(4) is revised.

■ 7. Paragraph (a)(5) is added.

■ 8. In paragraph (c)(1), the second sentence is revised and a sentence is added at the end.

■ 9. Paragraph (c)(2)(i)(B) is revised.

■ 10. In paragraph (f) *Example 4,* the third and fourth sentences are revised and a sentence is added at the end.

■ 11. In paragraph (f) *Example 6,* the third sentence is removed.

■ 12. In paragraph (f) *Example 7,* the third and fourth sentences are revised and a sentence is added at the end.

The revisions and additions read as follows:

§ 25.2704–1 Lapse of certain rights.

(a) * * *

(1) * * * For purposes of subtitle B (relating to estate, gift, and generation-skipping transfer taxes), the lapse of a voting or a liquidation right in a corporation or a partnership (an entity), whether domestic or foreign, is a transfer by the individual directly or indirectly holding the right immediately prior to its lapse (the holder) to the extent provided in paragraphs (b) and (c) of this section. This section applies only if the entity is controlled by the holder and/or members of the holder's family immediately before and after the lapse. For purposes of this section, a

corporation is any business entity described in § 301.7701–2(b)(1), (3), (4), (5), (6), (7), or (8) of this chapter, an S corporation within the meaning of section 1361(a)(1), and a qualified subchapter S subsidiary within the meaning of section 1361(b)(3)(B). For this purpose, a qualified subchapter S subsidiary is treated as a corporation separate from its parent corporation. A partnership is any other business entity within the meaning of § 301.7701–2(a) of this chapter regardless of how that entity is classified for federal tax purposes. Thus, for example, the term partnership includes a limited liability company that is not an S corporation, whether or not it is disregarded as an entity separate from its owner for federal tax purposes. * * *

(2) * * *

(i) * * * For purposes of determining whether the group consisting of the holder, the holder's estate and members of the holder's family control the entity, a member of the group is also treated as holding any interest held indirectly by such member through a corporation, partnership, trust, or other entity under the rules contained in § 25.2701–6.

* * * * *

(iii) * * * In the case of a limited liability company, the right of a member to participate in company management is a voting right. * * *

* * * * *

(4) *Source of right or lapse.* A voting right or a liquidation right may be conferred by or lapse by reason of local law, the governing documents, an agreement, or otherwise. For this purpose, local law is the law of the jurisdiction, whether domestic or foreign, that governs voting or liquidation rights.

(5) *Assignee interests.* A transfer that results in the restriction or elimination of the transferee's ability to exercise the voting or liquidation rights that were associated with the interest while held by the transferor is a lapse of those rights. For example, the transfer of a partnership interest to an assignee that neither has nor may exercise the voting or liquidation rights of a partner is a lapse of the voting and liquidation rights associated with the transferred interest.

(c) * * *

(1) * * * Except as otherwise provided, a transfer of an interest occurring more than three years before the transferor's death that results in the lapse of a voting or liquidation right is not subject to this section if the rights with respect to the transferred interest are not restricted or eliminated. * * * The lapse of a voting or liquidation right as a result of the transfer of an interest within three years of the transferor's death is treated as a lapse occurring on the transferor's date of death, includible in the gross estate pursuant to section 2704(a).

(2) * * *

(i) * * *

(B) *Ability to liquidate.* Whether an interest can be liquidated immediately after the lapse is determined under the local law generally applicable to the entity, as modified by the governing documents of the entity, but without regard to any restriction (in the governing documents, applicable local law, or otherwise) described in section 2704(b) and the regulations thereunder. The manner in which the interest may be liquidated is irrelevant for this purpose, whether by voting, taking other action authorized by the governing documents or applicable local law, revising the governing documents, merging the entity with an entity whose governing documents permit liquidation of the interest, terminating the entity, or otherwise. For purposes of making this determination, an interest held by a person other than a member of the holder's family (a nonfamily-member interest) may be disregarded. Whether a nonfamily-member interest is disregarded is determined under § 25.2704–3(b)(4), applying that section as if, by its terms, it also applies to the question of whether the holder (or the holder's estate) and members of the holder's family may liquidate an interest immediately after the lapse.

* * * * *

(f) * * *

Example 4. * * * More than three years before D's death, D transfers one-half of D's stock in equal shares to D's three children (14 percent each). Section 2704(a) does not apply to the loss of D's ability to liquidate Y because the voting rights with respect to the transferred shares are not restricted or eliminated by reason of the transfer, and the transfer occurs more than three years before D's death. However, had the transfers occurred within three years of D's death, the transfers would have been treated as the lapse of D's liquidation right occurring at D's death.

* * * * *

Example 7. * * * More than three years before D's death, D transfers 30 shares of common stock to D's child. The transfer is not a lapse of a liquidation right with respect to the common stock because the voting rights that enabled D to liquidate prior to the transfer are not restricted or eliminated, and the transfer occurs more than three years before D's death. * * * However, had the transfer occurred within three years of D's death, the transfer would have been treated as the lapse of D's liquidation right with respect to the common stock occurring at D's death.

■ **Par. 5.** Section 25.2704–2 is amended as follows:

■ 1. Paragraphs (a) and (b) are revised.

■ 2. Paragraphs (c) and (d) are designated as paragraphs (e) and (g), respectively.

■ 3. New paragraphs (c), (d), and (f) are added.

■ 4. The first sentence of newly designated paragraph (e) is revised.

■ 5. The third sentences of newly designated paragraph (g) *Example 1.* and *Example 3.* are removed.

■ 6. The third sentence of newly designated paragraph (g) *Example 5.* is revised.

The revisions and additions read as follows:

§ 25.2704–2 Transfers subject to applicable restrictions.

(a) *In general.* For purposes of subtitle B (relating to estate, gift, and generation-skipping transfer taxes), if an interest in a corporation or a partnership (an entity), whether domestic or foreign, is transferred to or for the benefit of a member of the transferor's family, and the transferor and/or members of the transferor's family control the entity immediately before the transfer, any applicable restriction is disregarded in valuing the transferred interest. For purposes of this section, a corporation is any business entity described in § 301.7701–2(b)(1), (3), (4), (5), (6), (7), or (8) of this chapter, an S corporation within the meaning of section 1361(a)(1), and a qualified subchapter S subsidiary within the meaning of section 1361(b)(3)(B). For this purpose, a qualified subchapter S subsidiary is treated as a corporation separate from its parent corporation. A partnership is any other business entity within the meaning of § 301.7701–2(a) of this chapter, regardless of how that entity is classified for federal tax purposes. Thus, for example, the term partnership includes a limited liability company that is not an S corporation, whether or not it is disregarded as an entity separate from its owner for federal tax purposes.

(b) *Applicable restriction defined*—(1) *In general.* The term *applicable restriction* means a limitation on the ability to liquidate the entity, in whole or in part (as opposed to a particular holder's interest in the entity), if, after the transfer, that limitation either lapses or may be removed by the transferor, the transferor's estate, and/or any member of the transferor's family, either alone or collectively. See § 25.2704–3 for restrictions on the ability to liquidate a particular holder's interest in the entity.

(2) *Source of limitation.* An applicable restriction includes a restriction that is

imposed under the terms of the governing documents (for example, the corporation's by-laws, the partnership agreement, or other governing documents), a buy-sell agreement, a redemption agreement, or an assignment or deed of gift, or any other document, agreement, or arrangement; and a restriction imposed under local law regardless of whether that restriction may be superseded by or pursuant to the governing documents or otherwise. For this purpose, local law is the law of the jurisdiction, whether domestic or foreign, that governs the applicability of the restriction. For an exception for restrictions imposed or required to be imposed by federal or state law, see paragraph (b)(4)(ii) of this section.

(3) *Lapse or removal of limitation.* A restriction is an applicable restriction only to the extent that either the restriction by its terms will lapse at any time after the transfer, or the restriction may be removed after the transfer by any one or more members, either alone or collectively, of the group consisting of the transferor, the transferor's estate, and members of the transferor's family. For purposes of determining whether the ability to remove the restriction is held by any member(s) of this group, members are treated as holding the interests attributed to them under the rules contained in § 25.2701–6, in addition to interests held directly. The manner in which the restriction may be removed is irrelevant for this purpose, whether by voting, taking other action authorized by the governing documents or applicable local law, removing the restriction from the governing documents, revising the governing documents to override the restriction prescribed under local law in the absence of a contrary provision in the governing documents, merging the entity with an entity whose governing documents do not contain the restriction, terminating the entity, or otherwise.

(4) *Exceptions.* A restriction described in this paragraph (b)(4) is not an applicable restriction.

(i) *Commercially reasonable restriction.* An applicable restriction does not include a commercially reasonable restriction on liquidation imposed by an unrelated person providing capital to the entity for the entity's trade or business operations, whether in the form of debt or equity. An unrelated person is any person whose relationship to the transferor, the transferee, or any member of the family of either is not described in section 267(b), provided that for purposes of this section the term *fiduciary of a trust* as used in section 267(b) does not include a bank as defined in section 581 that is publicly held.

(ii) *Imposed by federal or state law.* An applicable restriction does not include a restriction imposed or required to be imposed by federal or state law. For this purpose, federal or state law means the laws of the United States, of any state thereof, or of the District of Columbia, but does not include the laws of any other jurisdiction. A provision of law that applies only in the absence of a contrary provision in the governing documents or that may be superseded with regard to a particular entity (whether by the shareholders, partners, members and/or managers of the entity or otherwise) is not a restriction that is imposed or required to be imposed by federal or state law. A law that is limited in its application to certain narrow classes of entities, particularly those types of entities (such as family-controlled entities) most likely to be subject to transfers described in section 2704, is not a restriction that is imposed or required to be imposed by federal or state law. For example, a law requiring a restriction that may not be removed or superseded and that applies only to family-controlled entities that otherwise would be subject to the rules of section 2704 is an applicable restriction. In addition, a restriction is not imposed or required to be imposed by federal or state law if that law also provides (either at the time the entity was organized or at some subsequent time) an optional provision that does not include the restriction or that allows it to be removed or overridden, or that provides a different statute for the creation and governance of that same type of entity that does not mandate the restriction, makes the restriction optional, or permits the restriction to be superseded, whether by the entity's governing documents or otherwise. For purposes of determining the type of entity, there are only three types of entities, specifically, the three categories of entities described in § 25.2701–2(b)(5): Corporations; partnerships (including limited partnerships); and other business entities.

(iii) *Certain rights under section 2703.* An option, right to use property, or agreement that is subject to section 2703 is not an applicable restriction.

(iv) *Put right of each holder.* Any restriction that otherwise would constitute an applicable restriction under this section will not be considered an applicable restriction if each holder of an interest in the entity has a put right as described in § 25.2704–3(b)(6).

(c) *Other definitions.* For the definition of the term *controlled entity,* see § 25.2701–2(b)(5). For the definition of the term *member of the family,* see § 25.2702–2(a)(1).

(d) *Attribution.* An individual, the individual's estate, and members of the individual's family are treated as also holding any interest held indirectly by such person through a corporation, partnership, trust, or other entity under the rules contained in § 25.2701–6.

(e) * * * If an applicable restriction is disregarded under this section, the fair market value of the transferred interest is determined under generally applicable valuation principles as if the restriction (whether in the governing documents, applicable law, or both) does not exist. * * *

(f) *Certain transfers at death to multiple persons.* Solely for purposes of section 2704(b), if part of a decedent's interest in an entity includible in the gross estate passes by reason of death to one or more members of the decedent's family and part of that includible interest passes to one or more persons who are not members of the decedent's family, and if the part passing to the members of the decedent's family is to be valued pursuant to paragraph (e) of this section, then that part is treated as a single, separate property interest. In that case, the part passing to one or more persons who are not members of the decedent's family is also treated as a single, separate property interest. See paragraph (g) *Ex. 4* of § 25.2704–3.

(g) * * *

Example 5. * * * The preferred stock carries a right to liquidate X that cannot be exercised until 1999. * * *

* * * * *

§ 25.2704–3 [Redesignated as § 25.2704–4]

■ **Par. 6.** Section 25.2704–3 is redesignated as § 25.2704–4.

■ **Par. 7.** New § 25.2704–3 is added to read as follows.

§ 25.2704–3 Transfers subject to disregarded restrictions.

(a) *In general.* For purposes of subtitle B (relating to estate, gift and generation-skipping transfer taxes), and notwithstanding any provision of § 25.2704–2, if an interest in a corporation or a partnership (an entity), whether domestic or foreign, is transferred to or for the benefit of a member of the transferor's family, and the transferor and/or members of the transferor's family control the entity immediately before the transfer, any restriction described in paragraph (b) of this section is disregarded, and the transferred interest is valued as provided in paragraph (f) of this section.

For purposes of this section, a corporation is any business entity described in § 301.7701–2(b)(1), (3), (4), (5), (6), (7), or (8) of this chapter, an S corporation within the meaning of section 1361(a)(1), and a qualified subchapter S subsidiary within the meaning of section 1361(b)(3)(B). For this purpose, a qualified subchapter S subsidiary is treated as a corporation separate from its parent corporation. A partnership is any other business entity within the meaning of § 301.7701–2(a) of this chapter, regardless of how that entity is classified for federal tax purposes. Thus, for example, the term partnership includes a limited liability company that is not an S corporation, whether or not it is disregarded as an entity separate from its owner for federal tax purposes.

(b) *Disregarded restrictions defined*—(1) *In general.* The term *disregarded restriction* means a restriction that is a limitation on the ability to redeem or liquidate an interest in an entity that is described in any one or more of paragraphs (b)(1)(i) through (iv) of this section, if the restriction, in whole or in part, either lapses after the transfer or can be removed by the transferor or any member of the transferor's family (subject to paragraph (b)(4) of this section), either alone or collectively.

(i) The provision limits or permits the limitation of the ability of the holder of the interest to compel liquidation or redemption of the interest.

(ii) The provision limits or permits the limitation of the amount that may be received by the holder of the interest on liquidation or redemption of the interest to an amount that is less than a minimum value. The term *minimum value* means the interest's share of the net value of the entity determined on the date of liquidation or redemption. The net value of the entity is the fair market value, as determined under section 2031 or 2512 and the applicable regulations, of the property held by the entity, reduced by the outstanding obligations of the entity. Solely for purposes of determining minimum value, the only outstanding obligations of the entity that may be taken into account are those that would be allowable (if paid) as deductions under section 2053 if those obligations instead were claims against an estate. For example, and subject to the foregoing limitation on outstanding obligations, if the entity holds an operating business, the rules of § 20.2031–2(f)(2) or § 20.2031–3 of this chapter apply in the case of a testamentary transfer and the rules of § 25.2512–2(f)(2) or § 25.2512–3 apply in the case of an inter vivos transfer. The minimum value of the interest is the net value of the entity multiplied by the interest's share of the entity. For this purpose, the interest's share is determined by taking into account any capital, profits, and other rights inherent in the interest in the entity. If the property held by the entity directly or indirectly includes an interest in another entity, and if a transfer of an interest in that other entity by the same transferor (had that transferor owned the interest directly) would be subject to section 2704(b), then the entity will be treated as owning a share of the property held by the other entity, determined and valued in accordance with the provisions of section 2704(b) and the regulations thereunder.

(iii) The provision defers or permits the deferral of the payment of the full amount of the liquidation or redemption proceeds for more than six months after the date the holder gives notice to the entity of the holder's intent to have the holder's interest liquidated or redeemed.

(iv) The provision authorizes or permits the payment of any portion of the full amount of the liquidation or redemption proceeds in any manner other than in cash or property. Solely for this purpose, except as provided in the following sentence, a note or other obligation issued directly or indirectly by the entity, by one or more holders of interests in the entity, or by a person related to either the entity or any holder of an interest in the entity, is deemed not to be property. In the case of an entity engaged in an active trade or business, at least 60 percent of whose value consists of the non-passive assets of that trade or business, and to the extent that the liquidation proceeds are not attributable to passive assets within the meaning of section 6166(b)(9)(B), such proceeds may include such a note or other obligation if such note or other obligation is adequately secured, requires periodic payments on a non-deferred basis, is issued at market interest rates, and has a fair market value on the date of liquidation or redemption equal to the liquidation proceeds. See § 25.2512–8. For purposes of this paragraph (b)(1)(iv), a related person is any person whose relationship to the entity or to any holder of an interest in the entity is described in section 267(b), provided that for this purpose the term *fiduciary of a trust* as used in section 267(b) does not include a bank as defined in section 581 that is publicly held.

(2) *Source of limitation.* A disregarded restriction includes a restriction that is imposed under the terms of the governing documents (for example, the corporation's by-laws, the partnership agreement, or other governing documents), a buy-sell agreement, a redemption agreement, or an assignment or deed of gift, or any other document, agreement, or arrangement; and a restriction imposed under local law regardless of whether that restriction may be superseded by or pursuant to the governing documents or otherwise. For this purpose, local law is the law of the jurisdiction, whether domestic or foreign, which governs the applicability of the restriction. For an exception for restrictions imposed or required to be imposed by federal or state law, see paragraph (b)(5)(iii) of this section.

(3) *Lapse or removal of limitation.* A restriction is a disregarded restriction only to the extent that the restriction either will lapse by its terms at any time after the transfer or may be removed after the transfer by any one or more members, either alone or collectively, of the group consisting of the transferor, the transferor's estate, and members of the transferor's family. For purposes of determining whether the ability to remove the restriction is held by any one or more members of this group, members are treated as holding interests attributed to them under the rules contained in § 25.2701–6, in addition to interests held directly. See also paragraph (b)(4) of this section. The manner in which the restriction may be removed is irrelevant for this purpose, whether by voting, taking other action authorized by the governing documents or applicable local law, removing the restriction from the governing documents, revising the governing documents to override the restriction prescribed under local law in the absence of a contrary provision in the governing documents, merging the entity with an entity whose governing documents do not contain the restriction, terminating the entity, or otherwise.

(4) *Certain interests held by nonfamily members disregarded*—(i) *In general.* In the case of a transfer to or for the benefit of a member of the transferor's family, for purposes of determining whether the transferor (or the transferor's estate) or any member of the transferor's family, either alone or collectively, may remove a restriction within the meaning of this paragraph (b), an interest held by a person other than a member of the transferor's family (a nonfamily-member interest) is disregarded unless all of the following are satisfied:

(A) The interest has been held by the nonfamily member for at least three years immediately before the transfer;

(B) On the date of the transfer, in the case of a corporation, the interest

constitutes at least 10 percent of the value of all of the equity interests in the corporation, and, in the case of a business entity within the meaning of § 301.7701–2(a) of this chapter other than a corporation, the interest constitutes at least a 10-percent interest in the business entity, for example, a 10-percent interest in the capital and profits of a partnership;

(C) On the date of the transfer, in the case of a corporation, the total of the equity interests in the corporation held by shareholders who are not members of the transferor's family constitutes at least 20 percent of the value of all of the equity interests in the corporation, and, in the case of a business entity within the meaning of § 301.7701–2(a) of this chapter other than a corporation, the total interests in the entity held by owners who are not members of the transferor's family is at least 20 percent of all the interests in the entity, for example, a 20-percent interest in the capital and profits of a partnership; and

(D) Each nonfamily member, as owner, has a put right as described in paragraph (b)(6) of this section.

(ii) *Effect of disregarding a nonfamily-member interest.* If a nonfamily-member interest is disregarded under this section, the rules of this section are applied as if all interests other than disregarded nonfamily-member interests constitute all of the interests in the entity.

(iii) *Attribution.* In applying the 10-percent and 20-percent tests when the property held by the corporation or other business entity is, in whole or in part, an interest in another entity, the attribution rules of paragraph (d) of this section apply both in determining the interest held by a nonfamily member, and in measuring the interests owned through other entities.

(5) *Exceptions.* A restriction described in this paragraph (b)(5) is not a disregarded restriction.

(i) *Applicable restriction.* A disregarded restriction does not include an applicable restriction on the liquidation of the entity as defined in and governed by § 25.2704–2.

(ii) *Commercially reasonable restriction.* A disregarded restriction does not include a commercially reasonable restriction on liquidation imposed by an unrelated person providing capital to the entity for the entity's trade or business operations whether in the form of debt or equity. An unrelated person is any person whose relationship to the transferor, the transferee, or any member of the family of either is not described in section 267(b), provided that for purposes of this section the term *fiduciary of a trust* as used in section 267(b) does not include a bank as defined in section 581 that is publicly held.

(iii) *Requirement of federal or state law.* A disregarded restriction does not include a restriction imposed or required to be imposed by federal or state law. For this purpose, federal or state law means the laws of the United States, of any state thereof, or of the District of Columbia, but does not include the laws of any other jurisdiction. A provision of law that applies only in the absence of a contrary provision in the governing documents or that may be superseded with regard to a particular entity (whether by the shareholders, partners, members and/or managers of the entity or otherwise) is not a restriction that is imposed or required to be imposed by federal or state law. A law that is limited in its application to certain narrow classes of entities, particularly those types of entities (such as family-controlled entities) most likely to be subject to transfers described in section 2704, is not a restriction that is imposed or required to be imposed by federal or state law. For example, a law requiring a restriction that may not be removed or superseded and that applies only to family-controlled entities that otherwise would be subject to the rules of section 2704 is a disregarded restriction. In addition, a restriction is not imposed or required to be imposed by federal or state law if that law also provides (either at the time the entity was organized or at some subsequent time) an optional provision that does not include the restriction or that allows it to be removed or overridden, or that provides a different statute for the creation and governance of that same type of entity that does not mandate the restriction, makes the restriction optional, or permits the restriction to be superseded, whether by the entity's governing documents or otherwise. For purposes of determining the type of entity, there are only three types of entities, specifically, the three categories of entities described in § 25.2701–2(b)(5): Corporations; partnerships (including limited partnerships); and other business entities.

(iv) *Certain rights described in section 2703.* An option, right to use property, or agreement that is subject to section 2703 is not a restriction for purposes of this paragraph (b).

(v) *Right to put interest to entity.* Any restriction that otherwise would constitute a disregarded restriction under this section will not be considered a disregarded restriction if each holder of an interest in the entity has a put right as described in paragraph (b)(6) of this section.

(6) *Put right.* The term *put right* means a right, enforceable under applicable local law, to receive from the entity or from one or more other holders, on liquidation or redemption of the holder's interest, within six months after the date the holder gives notice of the holder's intent to withdraw, cash and/or other property with a value that is at least equal to the minimum value of the interest determined as of the date of the liquidation or redemption. For this purpose, local law is the law of the jurisdiction, whether domestic or foreign, that governs liquidation or redemption rights with regard to interests in the entity. For purposes of this paragraph (b)(6), the term *other property* does not include a note or other obligation issued directly or indirectly by the entity, by one or more holders of interests in the entity, or by one or more persons related either to the entity or to any holder of an interest in the entity. However, in the case of an entity engaged in an active trade or business, at least 60 percent of whose value consists of the non-passive assets of that trade or business, and to the extent that the liquidation proceeds are not attributable to passive assets within the meaning of section 6166(b)(9)(B), the term *other property* does include a note or other obligation if such note or other obligation is adequately secured, requires periodic payments on a non-deferred basis, is issued at market interest rates, and has a fair market value on the date of liquidation or redemption equal to the liquidation proceeds. See § 25.2512–8. The minimum value of the interest is the interest's share of the net value of the entity, as defined in paragraph (b)(1)(ii) of this section.

(c) *Other definitions.* For the definition of the term *controlled entity,* see § 25.2701–2(b)(5). For the definition of the term *member of the family,* see § 25.2702–2(a)(1).

(d) *Attribution.* An individual, the individual's estate, and members of the individual's family, as well as any other person, also are treated as holding any interest held indirectly by such person through a corporation, partnership, trust, or other entity under the rules contained in § 25.2701–6.

(e) *Certain transfers at death to multiple persons.* Solely for purposes of section 2704(b), if part of a decedent's interest in an entity includible in the gross estate passes by reason of death to one or more members of the decedent's family and part of that includible interest passes to one or more persons who are nonfamily members of the

decedent, and if the part passing to the members of the decedent's family is to be valued pursuant to paragraph (f) of this section, then that part is treated as a single, separate property interest. In that case, the part passing to one or more persons who are not members of the decedent's family is also treated as a single, separate property interest. See paragraph (g) *Example 4* of this section.

(f) *Effect of disregarding a restriction.* If a restriction is disregarded under this section, the fair market value of the transferred interest is determined under generally applicable valuation principles as if the disregarded restriction does not exist in the governing documents, local law, or otherwise. For this purpose, local law is the law of the jurisdiction, whether domestic or foreign, under which the entity is created or organized.

(g) *Examples.* The following examples illustrate the provisions of this section.

Example 1. (i) D and D's children, A and B, are partners in Limited Partnership X that was created on July 1, 2016. D owns a 98 percent limited partner interest, and A and B each own a 1 percent general partner interest. The partnership agreement provides that the partnership will dissolve and liquidate on June 30, 2066, or by the earlier agreement of all the partners, but otherwise prohibits the withdrawal of a limited partner. Under applicable local law, a limited partner may withdraw from a limited partnership at the time, or on the occurrence of events, specified in the partnership agreement. Under the partnership agreement, the approval of all partners is required to amend the agreement. None of these provisions is mandated by local law. D transfers a 33 percent limited partner interest to A and a 33 percent limited partner interest to B.

(ii) By prohibiting the withdrawal of a limited partner, the partnership agreement imposes a restriction on the ability of a partner to liquidate the partner's interest in the partnership that is not required to be imposed by law and that may be removed by the transferor and members of the transferor's family, acting collectively, by agreeing to amend the partnership agreement. Therefore, under section 2704(b) and paragraph (a) of this section, the restriction on a limited partner's ability to liquidate that partner's interest is disregarded in determining the value of each transferred interest. Accordingly, the amount of each transfer is the fair market value of the 33 percent limited partner interest determined under generally applicable valuation principles taking into account all relevant factors affecting value including the rights determined under the governing documents and local law and assuming that the disregarded restriction does not exist in the governing documents, local law, or otherwise. See paragraphs (b)(1)(i) and (f) of this section.

Example 2. The facts are the same as in *Example 1,* except that, both before and after the transfer, A's partnership interests are held in an irrevocable trust of which A is the sole income beneficiary. The trustee is a publicly-held bank. A is treated as holding the interests held by the trust under the rules contained in § 25.2701–6. The result is the same as in *Example 1.*

Example 3. The facts are the same as in *Example 1,* except that, on D's subsequent death, D's remaining 32 percent limited partner interest passes outright to D's surviving spouse, S, who is a U.S. citizen. In valuing the 32 percent interest for purposes of determining both the amount includible in the gross estate and the amount allowable as a marital deduction, the analysis and result are as described in *Example 1.*

Example 4. (i) The facts are the same as in *Example 1,* except that D made no gifts and, on D's subsequent death pursuant to D's will, a 53 percent limited partner interest passes to D's surviving spouse who is a U.S. citizen, a 25 percent limited partner interest passes to C, an unrelated individual, and a 20 percent limited partner interest passes to E, a charity. The restriction on a limited partner's ability to liquidate that partner's interest is a disregarded restriction. In determining whether D's estate and/or D's family may remove the disregarded restriction after the transfer occurring on D's death, the interests of C and E are disregarded because these interests were not held by C and E for at least three years prior to D's death, nor do C and E have the right to withdraw on six months' notice and receive their respective interest's share of the minimum value of X. Thus, the 53 percent interest passing to D's surviving spouse is subject to section 2704(b). D's gross estate will be deemed to include two separate assets: A 53 percent limited partner interest subject to section 2704(b), and a 45 percent limited partner interest not subject to section 2704.

(ii) The fair market value of the 53 percent interest is determined for both inclusion and deduction purposes under generally applicable valuation principles taking into account all relevant factors affecting value, including the rights determined under the governing documents and local law, and assuming that the disregarded restriction does not exist in the governing documents, local law, or otherwise. The 45 percent interest passing to nonfamily members is not subject to section 2704(b), and will be valued as a single interest for inclusion purposes under generally applicable valuation principles, taking into account all relevant factors affecting value including the rights determined under the governing documents and local law as well as the restriction on a limited partner's ability to liquidate that partner's interest. The 20 percent passing to charity will be valued in a similar manner for purposes of determining the allowable charitable deduction. Assuming that, under the facts and circumstances, the 45 percent interest and the 20 percent interest are subject to the same discount factor, the charitable deduction will equal four-ninths of the value of the 45 percent interest.

Example 5. (i) D and D's children, A and B, are partners in Limited Partnership Y. D owns a 98 percent limited partner interest, and A and B each own a 1 percent general partner interest. The partnership agreement provides that a limited partner may withdraw from the partnership at any time by giving six months' notice to the general partner. On withdrawal, the partner is entitled to receive the fair market value of his or her partnership interest payable over a five-year period. Under the partnership agreement, the approval of all partners is required to amend the agreement. None of these provisions are mandated by local law. D transfers a 33 percent limited partner interest to A and a 33 percent limited partner interest to B. Under paragraph (b)(1)(iii) of this section, the provision requiring that a withdrawing partner give at least six months' notice before withdrawing provides a reasonable waiting period and does not cause the restriction to be disregarded in valuing the transferred interests. However, the provision limiting the amount the partner may receive on withdrawal to the fair market value of the partnership interest, and permitting that amount to be paid over a five-year period, may limit the amount the partner may receive on withdrawal to less than the minimum value described in paragraph (b)(1)(ii) of this section and allows the delay of payment beyond the period described in paragraph (b)(1)(iii) of this section. The partnership agreement imposes a restriction on the ability of a partner to liquidate the partner's interest in the partnership that is not required to be imposed by law and that may be removed by the transferor and members of the transferor's family, acting collectively, by agreeing to amend the partnership agreement.

(ii) Under section 2704(b) and paragraph (a) of this section, the restriction on a limited partner's ability to liquidate that partner's interest is disregarded in determining the value of the transferred interests. Accordingly, the amount of each transfer is the fair market value of the 33 percent limited partner interest, determined under generally applicable valuation principles taking into account all relevant factors affecting value, including the rights determined under the governing documents and local law, and assuming that the disregarded restriction does not exist in the governing documents, local law, or otherwise. See paragraph (f) of this section.

Example 6. The facts are the same as in *Example 5,* except that D sells a 33 percent limited partner interest to A and a 33 percent limited partner interest to B for fair market value (but without taking into account the special valuation assumptions of section 2704(b)). Because section 2704(b) also is relevant in determining whether a gift has been made, D has made a gift to each child of the excess of the value of the transfer to each child as determined in *Example 5* over the consideration received by D from that child.

Example 7. The facts are the same as in *Example 5,* except, in a transaction unrelated to D's prior transfers to A and B, D withdraws from the partnership and immediately receives the fair market value (but without taking into account the special valuation assumptions of section 2704(b)) of D's remaining 32 percent limited partner interest. Because a gift to a partnership is deemed to

be a gift to the other partners, D has made a gift to each child of one-half of the excess of the value of the 32 percent limited partner interest as determined in *Example 5* over the consideration received by D from the partnership.

Example 8. D and D's children, A and B, organize Limited Liability Company X under the laws of State Y. D, A, and B each contribute cash to X. Under the operating agreement, X maintains a capital account for each member. The capital accounts are adjusted to reflect each member's contributions to and distributions from X and each member's share of profits and losses of X. On liquidation, capital account balances control distributions. Profits and losses are allocated on the basis of units issued to each member, which are not in proportion to capital. D holds 98 units, A and B each hold 1 unit. D is designated in the operating agreement as the manager of X with the ability to cause the liquidation of X. X is not a corporation. Under the laws of State Y, X is neither a partnership nor a limited partnership. D and D's family have control of X because they hold at least 50 percent of the profits interests (or capital interests) of X. Further, D and D's family have control of X because D holds an interest with the ability to cause the liquidation of X.

Example 9. The facts are the same as in *Example 8,* except that, under the operating agreement, all distributions are made to members based on the units held, which in turn is based on contributions to capital. Further, X elects to be treated as a corporation for federal tax purposes. Under § 25.2701–2(b)(5), D and D's family have control of X (which is not a corporation and, under local law, is not a partnership or limited partnership) because they hold at least 50 percent of the capital interests in X. Further, D and D's family have control of X because D holds an interest with the ability to cause the liquidation of X.

Example 10. D owns a 1 percent general partner interest and a 74 percent limited partner interest in Limited Partnership X, which in turn holds a 50 percent limited partner interest in Limited Partnership Y and a 50 percent limited partner interest in Limited Partnership Z. D owns the remaining interests in partnerships Y and Z. A, an unrelated individual, has owned a 25 percent limited partner interest in partnership X for more than 3 years. The governing documents of all three partnerships permit liquidation of the entity on the agreement of the owners of 90 percent of the interests but, with the exception of A's interest, prohibit the withdrawal of a limited partner. A may withdraw on 6-months' notice and receive A's interest's share of the minimum value of partnership X as defined in paragraph (b)(1)(ii) of this section, which share includes a share of the minimum value of partnership Y and of partnership Z. Under the governing documents of all three partnerships, the approval of all partners is required to amend the documents. D transfers a 40 percent limited partner interest in partnership Y to D's children. For purposes of determining whether D and/or D's family members have the ability to remove a restriction after the transfer, A is treated as owning a 12.5 percent (.25 x.50) interest in partnership Y, thus more than a 10 percent interest, but less than a 20 percent interest, in partnership Y. Accordingly, under paragraph (b)(4)(i)(C) of this section, A's interest is disregarded for purposes of determining whether D and D's family hold the right to remove a restriction after the transfer (resulting in D and D's children being deemed to own 100 percent of Y for this purpose). However, if D instead had transferred a 40 percent limited partner interest in partnership X to D's children, A's ownership of a 25 percent interest in partnership X would not have been disregarded, with the result that D and D's family would not have had the ability to remove a restriction after the transfer.

Example 11. (i) D owns 85 of the outstanding shares of X, a corporation, and A, an unrelated individual, owns the remaining 15 shares. Under X's governing documents, the approval of the shareholders holding 75 percent of the outstanding stock is required to liquidate X. With the exception of nonfamily members, a shareholder may not withdraw from X. Nonfamily members may withdraw on six months' notice and receive their interest's share of the minimum value of X as defined in paragraph (b)(1)(ii) of this section. D transfers 10 shares to C, a charity. Four years later, D dies. D bequeaths 10 shares to B, an unrelated individual, and the remaining 65 shares to trusts for the benefit of D's family.

(ii) The prohibition on withdrawal is a restriction described in paragraph (b)(1)(i) of this section. In determining whether D's estate and/or D's family may remove the restriction after the transfer occurring on D's death, the interest of B is disregarded because it was not held by B for at least three years prior to D's death. The interests of A and C, however, are not disregarded, because each held an interest of at least 10 percent for at least three years prior to D's death, the total of those interests represents at least 20 percent of X, and each had the right to withdraw on six months' notice and receive their interest's share of the minimum value of X. As a result, D and D's family hold 65 of the deemed total of 90 shares in X, or 72 percent, which is less than the 75 percent needed to liquidate X. Thus, D and D's family do not have the ability to remove the restriction after the transfer, and section 2704(b) does not apply in valuing D's interest in X for federal estate tax purposes.

■ **Par. 8.** Newly designated § 25.2704–4 is amended as follows:

■ 1. The undesignated text is designated as paragraph (a).

■ 2. In the first and second sentences of newly designated paragraph (a), the language ''Section'' is removed and the language ''Except as provided in paragraph (b) of this section, § '' is added in its place.

■ 3. Paragraph (b) is added.

The addition reads as follows:

§ 25.2704–4 Effective date.

* * * * *

(b)(1) With respect to § 25.2704–1, the first six sentences of paragraph (a)(1), the last sentence of paragraph (a)(2)(i), the third sentence of paragraph (a)(2)(iii), the first and last sentences of paragraph (a)(4), paragraph (a)(5), the second and last sentences of paragraph (c)(1), paragraph (c)(2)(i)(B), and *Examples 4, 6* and *7* of paragraph (f), apply to lapses of rights created after October 8, 1990, occurring on or after the date these regulations are published as final regulations in the **Federal Register**.

(2) With respect to § 25.2704–2, paragraphs (a), (b), (c), (d), and (f), the first sentence of paragraph (e), and *Examples 1, 3* and *5* of paragraph (g) apply to transfers of property subject to restrictions created after October 8, 1990, occurring on or after the date these regulations are published as final regulations in the **Federal Register**.

(3) Section 25.2704–3 applies to transfers of property subject to restrictions created after October 8, 1990, occurring 30 or more days after the date these regulations are published as final regulations in the **Federal Register**.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–18370 Filed 8–2–16; 11:15 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152, 162, and 166

[EPA–HQ–OPP–2016–0103; FRL–9943–09]

RIN 2070–AK06

Notification of Submission to the Secretary of Agriculture; Procedural Rule Amendment; Required Use of Federal Register Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of submission to the Secretary of Agriculture.

SUMMARY: This document notifies the public as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that the EPA Administrator has forwarded to the Secretary of the United States Department of Agriculture (USDA) a draft regulatory document concerning a Procedural Rule Amendment; Required Use of FR Notices. The draft regulatory document is not available to the public until after it has been signed and made available by EPA.

DATES: See Unit I. under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0103, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Cameo G. Smoot, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5454; email address: *smoot.cameo@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?

Section 25(a)(2)(A) of FIFRA requires the EPA Administrator to provide the Secretary of USDA with a copy of any draft proposed rule at least 60 days before signing it in proposed form for publication in the **Federal Register**. The draft proposed rule is not available to the public until after it has been signed by EPA. If the Secretary of USDA comments in writing regarding the draft proposed rule within 30 days after receiving it, the EPA Administrator shall include the comments of the Secretary of USDA and the EPA Administrator's response to those comments with the proposed rule that publishes in the **Federal Register**. If the Secretary of USDA does not comment in writing within 30 days after receiving the draft proposed rule, the EPA Administrator may sign the proposed rule for publication in the **Federal Register** any time after the 30-day period.

II. Do any statutory and executive order reviews apply to this notification?

No. This document is merely a notification of submission to the Secretary of USDA. As such, none of the regulatory assessment requirements apply to this document.

List of Subjects in Part 40 CFR Parts 152, 162 and 166

Environmental protection, Pesticides, Registration.

Dated: July 26, 2016.

Jack E. Housenger,

Director, Office of Pesticide Programs.

[FR Doc. 2016–18393 Filed 8–3–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapters II, III, IV, V, and VI

RIN 0648–XE742

Plan for Periodic Review of Regulations

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

ACTION: Notice of regulatory review; request for comments.

SUMMARY: The Regulatory Flexibility Act (RFA) requires that NMFS periodically review existing regulations that have a significant economic impact on a substantial number of small entities, such as small businesses, small organizations, and small governmental jurisdictions. This plan describes how NMFS will perform this review and describes the regulations that are being proposed for review during the current review cycle.

DATES: Written comments must be received by NMFS by September 6, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2016–0099, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0099*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Tara Scott, National Marine Fisheries Service, NOAA, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910 (mark outside of envelope ''Comments on 610 Review'').
- *Fax:* 301–713–1193; Attn: Tara Scott.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. 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.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Tara Scott, (301) 427–8579.

SUPPLEMENTARY INFORMATION:

Background

The RFA, 5 U.S.C. 601 *et seq.*, requires that Federal agencies take into account how their regulations affect ''small entities,'' including small businesses, small Governmental jurisdictions and small organizations. For regulations proposed after January 1, 1981, the agency must either prepare a Regulatory Flexibility Analysis or certify that the regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Section 602 of the RFA requires that NMFS issue an Agenda of Regulations identifying rules the Agency is developing that are likely to have a significant economic impact on a substantial number of small entities.

Section 610 of the RFA requires Federal agencies to review existing regulations. It requires that NMFS publish a plan in the **Federal Register** explaining how it will review its existing regulations which have or will have a significant economic impact on a substantial number of small entities. Regulations that become effective after January 1, 1981, must be reviewed within 10 years of the publication date of the final rule. Section 610(c) requires that NMFS annually publish a list of final rules it will review during the succeeding 12 months in the **Federal Register**. The list must describe, explain the need for, and provide the legal basis for the rule, as well as invite public comment on the rule.

Criteria for Review of Existing Regulations

The purpose of the review is to determine whether existing rules should be left unchanged, or whether they should be revised or rescinded in order to minimize significant economic impacts on a substantial number of small entities, consistent with the

objectives of other applicable statutes. In deciding whether change is necessary, the RFA establishes five factors that NMFS must consider:

(1) Whether the rule is still needed;

(2) What type of complaints or comments were received concerning the rule from the public;

(3) The complexity of the rule;

(4) How much the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) How long it has been since the rule has been evaluated or how much the technology, economic conditions, or other factors have changed in the area affected by the rule.

Plan for Periodic Review of Rules

NMFS will ensure that all rules which have or will have a significant economic impact on a substantial number of small entities are reviewed within 10 years of the year in which they were originally issued. By December 31, 2016, NMFS will review the following rules issued during 2009:

1. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 30B. RIN 0648–AV80 (74 FR 17603; April 16, 2009). NMFS issued this final rule to implement Amendment 30B to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico prepared by the Gulf of Mexico Fishery Management Council. This final rule established annual catch limits (ACLs) and accountability measures (AMs) for commercial and recreational gag, red grouper, and shallow-water grouper (SWG); established a commercial quota for gag; adjusted the commercial quotas for red grouper and SWG; removed the commercial closed season for SWG; established an incidental bycatch allowance trip limit for commercial gag and red grouper; reduced the commercial minimum size limit for red grouper; reduced the gag bag limit and the aggregate grouper bag limit; increased the red grouper bag limit; extended the closed season for recreational SWG; eliminated the end date for the Madison-Swanson and Steamboat Lumps marine reserves; and required that federally permitted reef fish vessels comply with the more restrictive of Federal or state reef fish regulations when fishing in state waters. In addition, Amendment 30B established management targets and thresholds for gag consistent with the requirements of the Sustainable Fisheries Act (SFA); set the gag and red grouper total allowable catch (TAC); and established interim allocations for the commercial and recreational gag and red grouper fisheries. This final rule was intended to end overfishing of gag and maintain catch levels of red grouper consistent with achieving optimum yield (OY).

2. Fisheries of the Exclusive Economic Zone off Alaska; Revisions to the Pollock Trip Limit Regulations in the Gulf of Alaska. RIN 0648–AW54 (74 FR 18156; April 21, 2009). NMFS issued this final rule to prohibit a catcher vessel from landing more than 300,000 lb (136 mt) of unprocessed pollock during a calendar day, and from landing a cumulative amount of unprocessed pollock from any Gulf of Alaska reporting area that exceeds 300,000 lb multiplied by the number of calendar days the pollock fishery is open to directed fishing in a season. This prevented catcher vessels from circumventing the intent of then-current trip limit regulations when making deliveries of pollock. Amending the then-current trip limit regulation to limit a vessel to 300,000 lb of pollock caught in a day allowed for the continued dispersion of catches of pollock in a manner that is consistent with the intent of Steller sea lion protection measures in the Gulf of Alaska. This action was intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and other applicable laws.

3. Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Pelagic Longline Take Reduction Plan. RIN 0648–AV65 (74 FR 23349; May 19, 2009). NMFS determined that the pelagic longline fishery had a high level of mortality and serious injury across a number of marine mammal stocks, and issued the final Atlantic Pelagic Longline Take Reduction Plan (PLTRP) and implemented regulations to reduce serious injuries and mortalities of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery. The PLTRP was based on consensus recommendations submitted by the Atlantic Pelagic Longline Take Reduction Team. The PLTRP was intended to meet the statutory mandates and requirements of the Marine Mammal Protection Act (MMPA) through both regulatory and non-regulatory measures, including a special research area, gear modifications, outreach material, observer coverage, and captains' communications.

4. Endangered and Threatened Species; Designation of Critical Habitat for Atlantic Salmon (*Salmo Salar*) Gulf of Maine Distinct Population Segment. RIN 0648–AW77 (74 FR 29299; June 19, 2009). NMFS issued a final rule designating critical habitat for the Atlantic salmon (*Salmo salar*) Gulf of Maine Distinct Population Segment (GOM DPS). NMFS previously determined that naturally spawned and several hatchery populations of Atlantic salmon which constitute the GOM DPS warranted listing as endangered under the Endangered Species Act of 1973, as amended (ESA). NMFS was required to designate critical habitat for the GOM DPS as a result of this listing. NMFS designated critical habitat for 45 specific areas occupied by Atlantic salmon at the time of listing that comprise approximately 19,571 km of perennial river, stream, and estuary habitat and 799 square km of lake habitat within the range of the GOM DPS and in which are found those physical and biological features essential to the conservation of the species. The entire occupied range of the GOM DPS in which critical habitat is designated is within the State of Maine. NMFS excluded approximately 1,256 km of river, stream, and estuary habitat and 100 square km of lake habitat from critical habitat pursuant to section 4(b)(2) of the ESA.

5. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 16. RIN 0648–AW64 (74 FR 30964; June 29, 2009). NMFS issued the final rule to implement the approved measures of Amendment 16 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 16), as prepared and submitted by the South Atlantic Fishery Management Council. This final rule established a seasonal closure of the recreational and commercial fisheries for gag and associated shallow-water grouper species; established a seasonal closure of the recreational fishery for vermilion snapper; reduced the aggregate bag limit for grouper and tilefish; reduced the bag limit for gag or black grouper combined; reduced the bag limit for vermilion snapper; prohibited captain and crew of a vessel operating as a charter vessel or headboat from retaining any fish under the aggregate bag limit for grouper and tilefish or the vermilion snapper bag limit; established semiannual quotas for the commercial vermilion snapper fishery; established a quota for the commercial gag fishery; established restrictions on the possession, sale, and purchase of gag and associated shallow-water grouper species after the gag commercial quota is reached; and required possession of a dehooking device on board a vessel when fishing

for South Atlantic snapper-grouper and use of such device as needed to release fish with a minimum of injury. In addition, Amendment 16, for both gag and vermilion snapper, revised the definitions of maximum sustainable yield and OY, specified TAC, and established interim allocations of TACs for the recreational and commercial sectors. Amendment 16 also specified a minimum stock size threshold for gag and, based on the new assessment, for vermilion snapper. The intended effects of this final rule were to end overfishing of gag and vermilion snapper, protect shallow-water grouper during their spawning season, and reduce bycatch mortality of snapper-grouper species in the South Atlantic, pursuant to the MSA.

6. International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Restrictions and Observer Requirements in Purse Seine Fisheries for 2009–2011 and Turtle Mitigation Requirements in Purse Seine Fisheries. RIN 0648–AX60. (74 FR 38544; August 4, 2009). NMFS issued regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to implement certain decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). Those decisions required that the members of the WCPFC, including the United States, take certain measures with respect to their purse seine fisheries in the area of competence of the WCPFC, which included most of the western and central Pacific Ocean (WCPO). The regulations included limits on the number of days that may be fished, periods during which fishing may not be done on schools in association with fish aggregating devices (FADs), areas of high seas closed to fishing, requirements to retain tuna on board up to the first point of landing or transshipment, requirements to carry observers, and requirements to handle sea turtles in a specified manner. This action was necessary for the United States to satisfy its international obligations under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, to which it is a Contracting Party.

7. Fisheries of the Exclusive Economic Zone off Alaska; Bering Sea and Aleutian Islands (Amendment 92) and Gulf of Alaska License (Amendment 82) Limitation Program. RIN 0648–AX14 (74 FR 41080; August 14, 2009). NMFS issued regulations to implement Amendment 92 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 82 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. This action removed trawl gear endorsements on licenses issued under the license limitation program in specific management areas if those licenses had not been used on vessels that met minimum recent landing requirements using trawl gear. This action provided exemptions to this requirement for licenses that were used in trawl fisheries subject to certain limited access privilege programs. This action issued new area endorsements for trawl catcher vessel licenses in the Aleutian Islands if minimum recent landing requirements in the Aleutian Islands were met. This action was intended to promote the goals and objectives of the MSA, the Fishery Management Plans, and other applicable law.

8. Endangered and Threatened Species; Critical Habitat for the Endangered Distinct Population Segment of Smalltooth Sawfish. RIN 0648–AV74 (74 FR 45353; September 2, 2009). NMFS, issued a final rule to designate critical habitat for the U.S. distinct population segment (DPS) of smalltooth sawfish (*Pristis pectinata*), which was listed as endangered on April 1, 2003, under the ESA. The critical habitat consists of two units: The Charlotte Harbor Estuary Unit, which comprises approximately 221,459 acres of coastal habitat; and the Ten Thousand Islands/Everglades Unit (TTI/E), which comprises approximately 619,013 acres of coastal habitat. The two units are located along the southwestern coast of Florida between Charlotte Harbor and Florida Bay. NMFS issued this rule to satisfy requirements under the Endangered Species Act.

9. Endangered and Threatened Wildlife and Plants: Final Rulemaking to Designate Critical Habitat for the Threatened Southern Distinct Population Segment of North American Green Sturgeon. RIN 0648–AX04 (74 FR 52299; October 9, 2009). NMFS designated critical habitat for the threatened Southern distinct population segment of North American green sturgeon (Southern DPS of green sturgeon) pursuant to section 4 of the ESA. Specific areas proposed for designation included: Coastal U.S. marine waters within 60 fathoms (fm) depth from Monterey Bay, CA (including Monterey Bay), north to Cape Flattery, WA, including the Strait of Juan de Fuca, WA, to its United States boundary; the Sacramento River, lower Feather River, and lower Yuba River in California; the Sacramento-San Joaquin Delta and Suisun, San Pablo, and San Francisco bays in California; the lower Columbia River estuary; and certain coastal bays and estuaries in California (Humboldt Bay), Oregon (Coos Bay, Winchester Bay, Yaquina Bay, and Nehalem Bay), and Washington (Willapa Bay and Grays Harbor). This rule designated approximately 515 kilometers (km) (320 miles (mi)) of freshwater river habitat, 2,323 km^2 (897 mi^2) of estuarine habitat, 29,581 km^2 (11,421 mi^2) of marine habitat, 784 km (487 mi) of habitat in the Sacramento-San Joaquin Delta, and 350 km^2 (135 mi^2) of habitat within the Yolo and Sutter bypasses (Sacramento River, CA) as critical habitat for the Southern DPS of green sturgeon. This rule excluded the following areas from designation because the economic benefits of exclusion outweigh the benefits of inclusion, and exclusion would not result in the extinction of the species: Coastal U.S. marine waters within 60 fm depth from the California/Mexico border north to Monterey Bay, CA, and from the Alaska/Canada border northwest to the Bering Strait; the lower Columbia River from river kilometer 74 to the Bonneville Dam; and certain coastal bays and estuaries in California (Elkhorn Slough, Tomales Bay, Noyo Harbor, and the estuaries to the head of the tide in the Eel and Klamath/Trinity rivers), Oregon (Tillamook Bay and the estuaries to the head of the tide in the Rogue, Siuslaw, and Alsea rivers), and Washington (Puget Sound). Particular areas were also excluded based on impacts on national security and impacts on Indian lands. The areas excluded from the designation comprised approximately 0.2 km (0.1 mi) of freshwater habitat, 2,945 km^2 (1,137 mi^2) of estuarine habitat and 1,034,935 km^2 (399,590 mi^2) of marine habitat. This final rule responded to and incorporated public comments received on the proposed rule and supporting documents, as well as peer reviewer comments received on the draft biological report and draft ESA section 4(b)(2) report.

10. Fisheries of the United States Exclusive Economic Zone off Alaska; Fisheries of the Arctic Management Area; Bering Sea Subarea. RIN 0648–AX71 (74 FR 56734; November 3, 2009). NMFS issued a final rule that implements the Fishery Management Plan for Fish Resources of the Arctic Management Area (Arctic FMP) and Amendment 29 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). The Arctic FMP and

Amendment 29 to the Crab FMP established sustainable management of commercial fishing in the Arctic Management Area and moved the northern boundary of the Crab FMP out of the Arctic Management Area south to Bering Strait. This action was necessary to establish a management framework for commercial fishing and to provide consistent management of fish resources in the Arctic Management Area before the potential onset of unregulated commercial fishing in the area. This action was intended to promote the goals and objectives of the MSA, the Arctic and Crab FMPs, and other applicable laws.

11. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 15B; Reef Fish Fishery of the Gulf of Mexico. RIN 0648–AW12 (74 FR 58902; November 16, 2009). NMFS issued this final rule to implement Amendment 15B to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region, as prepared and submitted by the South Atlantic Fishery Management Council. This final rule, for South Atlantic snapper-grouper, required a private recreational vessel that fishes in the exclusive economic zone (EEZ), if selected by NMFS, to maintain and submit fishing records; required a vessel that fishes in the EEZ, if selected by NMFS, to carry an observer and install an electronic logbook and/or video monitoring equipment provided by NMFS; prohibited the sale of snapper-grouper harvested or possessed in the EEZ under the bag limits and prohibited the sale of snapper-grouper harvested or possessed under the bag limits by vessels with a Federal charter vessel/headboat permit for South Atlantic snapper-grouper regardless of where the snapper-grouper were harvested; required an owner and operator of a vessel for which a commercial or charter vessel/headboat permit has been issued and that has on board any hook-and-line gear to comply with sea turtle and smalltooth sawfish release protocols, possess on board specific gear to ensure proper release of such species, and comply with guidelines for proper care and release of such species that are incidentally caught; and expanded the allowable transfer of a commercial vessel permit under the limited access program and extended the allowable period for renewal of such a permit. Amendment 15B also revised the stock status determination criteria for golden tilefish and specified commercial/recreational allocations for snowy grouper and red porgy. In addition, NMFS removed language specifying commercial quotas for snowy grouper and red porgy that were no longer in effect and revised sea turtle bycatch mitigation requirements applicable to the Gulf reef fish fishery to add two devices that were inadvertently omitted from a prior rule. The intended effects of this final rule were to provide additional information for, and otherwise improve the effective management of, the South Atlantic snapper-grouper fishery; minimize the impacts on incidentally caught threatened and endangered sea turtles and smalltooth sawfish; and remove outdated language, all pursuant to the MSA.

12. International Fisheries Regulations; Fisheries in the Western Pacific; Pelagic Fisheries; Hawaii-Based Shallow-Set Longline Fishery. RIN 0648–AW49 (74 FR 65460; December 10, 2009). This final rule implemented the management provisions in Amendment 18 to the Pelagics Fishery Management Plan for the pelagic fisheries in the U.S. western Pacific, and made several housekeeping changes to the pelagic fishing regulations that were not related to Amendment 18. This final rule removed the annual limit on the number of fishing gear deployments (sets) for the Hawaii-based pelagic shallow-set longline fishery, and increased the annual number of allowable incidental interactions that occur between the fishery and loggerhead sea turtles. The final rule optimized yield from the fishery without jeopardizing the continued existence of sea turtles and other protected resources. This final rule also made several administrative clarifications to the regulations. The intent of this final rule was to achieve optimal yield from the fishery, pursuant to the MSA, without jeopardizing the continued existence of sea turtles and other protected resources.

Dated: August 1, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–18521 Filed 8–3–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 150
Thursday, August 4, 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.

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA

ACTION: Proposed collection, comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for a currently approved information collection in support of the Rural Cooperative Development Grants program.

DATES: Comments on this notice must be received by October 3, 2016 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Susan Horst, Management and Program Analyst, Cooperative Services, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3250, Room 4214, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250–3250. Telephone (202) 260–5952.

SUPPLEMENTARY INFORMATION:

Title: Rural Cooperative Development Grants.

OMB Number: 0570–0006.

Expiration Date of Approval: December 31, 2016.

Type of Request: Intent to extend the clearance for collection of information under RD Instruction 4284–F, Rural Cooperative Development Grants.

Abstract: The primary purpose of the RBS is to promote understanding, use, and development of the cooperative form of business as a viable option for enhancing the income of agricultural producers and other rural residents. The primary objective of the Rural Cooperative Development Grants program is to improve the economic condition of rural areas through cooperative development. Grants will be awarded on a competitive basis to nonprofit corporations and institutions of higher education based on specific selection criteria.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes to 80 hours per response.

Respondents: Nonprofit corporations and institutions of higher education.

Estimated Number of Respondents: 55.

Estimated Number of Responses per Respondent: 8.4.

Estimated Number of Responses: 462.

Estimated Total Annual Burden on Respondents: 6,182 hours.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, at (202) 692–0040.

Comments:

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of RBS functions, including whether the information will have practical utility; (b) the accuracy of RBS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information 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 may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Avenue SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: July 21, 2016.

Samuel H. Rikkers,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2016–18497 Filed 8–3–16; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Minnesota Advisory Committee for a New Committee Orientation Meeting, To Discuss Civil Rights Issues in the State, and To Plan Future Activities

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Minnesota Advisory Committee (Committee) will hold a meeting on Wednesday, August 31, 2016. The meeting will include an orientation of the Committee scope and duties for new members, a discussion of current civil rights issues in Minnesota, and a discussion of plans for the next Committee project. Members of the Advisory Committee will be presenting issues that they believe the Committee should research and issue a report to the Commission.

DATES: The meeting will be held on Wednesday, August 31, 2016, 1:00–3:00 p.m. CDT.

ADDRESSES: The meeting will be held at: City Hall, Martin Luther King Conference Room 241, 350 S. Fifth St.—Rm. 241, Minneapolis, MN 55415.

FOR FURTHER INFORMATION CONTACT: Members of the public are invited to make statements into the record at the meeting at the designated open comment period. Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60603. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Midwestern Regional Office at least ten (10) working days

before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Minnesota Advisory Committee link (*https://database.faca.gov/committee/meetings.aspx?cid=256*). Click on ''meeting details'' and then ''documents'' to download. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov*, or may contact the Midwestern Regional Office at the above email or street address.

SUPPLEMENTARY INFORMATION:

Agenda:

Welcome and Introductions

Committee Orientation

- Ethics
- Jurisdiction and Scope of Duties
- Project Process and Examples

Discussion of Current Civil Rights Issues in Minnesota

Open Comment

Future Plans and Actions

Adjournment

Dated July 29, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–18440 Filed 8–3–16; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0082]

Proposed Collection; Comment Request

AGENCY: Defense Security Service (DSS), DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Security Service (DSS) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 3, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Center for Development of Security Excellence (CDSE), Training Division, ATTN: Brian K. Miller, 938 Elkridge Landing Road, Linthicum, MD 21090–2917, or call CDSE, Training Division, at 410–689–1134.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: CDSE Training Application Survey; OMB Control Number 0704–XXXX.

Needs and Uses: The information collection requirement is necessary to obtain and record experiences and evaluations from customers of CDSE. Customers include both education and training customers, with the information collected pertaining to services and products provided by CDSE. The information collection will is a survey distributed to participants in selected CDSE learning events approximately 90–180 days after the event. Only learning events that involve a significant time commitment on the part of participants—or a financial commitment on the part of participant organizations, such as travel and time expenses—will be selected. Generally, this would entail instructor-led classes longer than a full day.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 500.

Number of Respondents: 3,000.

Responses per Respondent: 1.

Annual Responses: 3,000.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

Respondents are education and training services customers of the CDSE who are pursuing professional development in security or are required to complete courses by their employers. Burden is reported as an annual average, and the actual burden depends on the number of selected learning events attended. No personally identifiable information is requested, and anonymity of responses is maintained. Responses are used in the conduct of continuous evaluation of education and training activities required by DoDM 3115.11 (''DoD Intelligence and Security Training Standards,'' March 24, 2015), and 5 CFR 410.202 (''Responsibilities for Evaluating Training,'' December 10, 2009).

Dated: July 29, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–18458 Filed 8–3–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0083]

Proposed Collection; Comment Request

AGENCY: Defense Security Service (DSS), DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Security Service (DSS) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the

agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 3, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Center for Development of Security Excellence (CDSE), Training Division, ATTN: Brian K. Miller, 938 Elkridge Landing Road, Linthicum, MD 21090–2917, or call CDSE, Training Division, at 410–689–1134.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: CDSE Supervisor Training Evaluation Survey; OMB Control Number 0704–XXXX.

Needs and Uses: The information collection requirement is necessary to obtain and record experiences and evaluations from customers of CDSE, particularly with regard to supervisor training. Customers include both education and training customers, with the information collected pertaining to services and products provided by CDSE. The information collection is a survey distributed to participants in selected CDSE learning events, approximately 90–180 days after the event. Only learning events that involve a significant time commitment on the part of participants—or a financial commitment on the part of participant organizations, such as travel and time expenses—will be selected. Generally, this would entail instructor-led classes longer than a full day.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 80.

Number of Respondents: 400.

Responses per Respondent: 1.

Annual Responses: 400.

Average Burden per Response: 12 minutes.

Frequency: On occasion.

Respondents are supervisors of security education and training customers who are required to participate in learning events by their employers or are engaged in professional development in security disciplines. Burden is reported as an annual average, and the actual burden depends on the number of learning events attended. No personally identifiable information is requested and anonymity of responses is maintained. Responses are used in the conduct of continuous evaluation of education and training activities required by DoDM 3115.11 (''DoD Intelligence and Security Training Standards,'' March 24, 2015), and 5 CFR 410.202 (''Responsibilities for Evaluating Training,'' December 10, 2009).

Dated: July 29, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–18460 Filed 8–3–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0063]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Generic Clearance for Federal Student Aid Customer Satisfaction Surveys and Focus Groups Master Plan

AGENCY: Federal Student Aid (FSA), 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 an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 6, 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–0063. 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–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

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: Generic Clearance for Federal Student Aid Customer Satisfaction Surveys and Focus Groups Master Plan.

OMB Control Number: 1845–0045.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 200,000.

Total Estimated Number of Annual Burden Hours: 45,000.

Abstract: The Higher Education Amendments of 1998 established Federal Student Aid (FSA) as the first Performance-Based Organization (PBO). One purpose of the PBO is to improve service to students and other participants in the student financial assistance programs authorized under title IV, including making those programs more understandable to students and their parents. To do that, FSA has committed to ensuring that all people receive service that matches or exceeds the best service available in the private sector. The legislation's requirements establish an ongoing need for FSA to be engaged in an interactive process of collecting information and using it to improve program services and processes.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–18429 Filed 8–3–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0064]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Experimental Sites Data Collection Instrument

AGENCY: Federal Student Aid (FSA), 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 revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 6, 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–0064. 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–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Warren Farr, 202–377–4380.

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: Experimental Sites Data Collection Instrument.

OMB Control Number: 1845–0118.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 28.

Total Estimated Number of Annual Burden Hours: 84.

Abstract: The U.S. Department of Education Secretary selects institutions for voluntary participation in the Experimental Sites Initiative. Institutions volunteer to become an experimental site to provide recommendations on the impact and effectiveness of proposed regulations or new management initiatives. Participants are exempt from specific statutory and regulatory requirements while conducting the experiments.

The experiment for which data is being reported relates to the William D. Ford Federal Direct Loan Program and limiting unsubsidized loan amounts.

Dated: August 1, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–18481 Filed 8–3–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–93–000; Docket No. CP15–94–000; Docket No. CP15–96–000]

Rover Pipeline, LLC; Panhandle Eastern Pipe Line Company, LP; Trunkline Gas Company, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Rover Pipeline, Panhandle Backhaul, and Trunkline Backhaul Projects

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Rover Pipeline, Panhandle Backhaul, and Trunkline Backhaul Projects (Projects), proposed by Rover Pipeline, LLC (Rover), Panhandle Eastern Pipe Line Company, LP (Panhandle), and Trunkline Gas Company, LLC (Trunkline), respectively, in the above-referenced dockets. Rover requests authorization to construct, operate, and maintain certain natural gas pipeline facilities to transport about 3.25 billion cubic feet per day (Bcf/d) of stranded natural gas from Marcellus and Utica production areas in West Virginia, Pennsylvania, and Ohio to markets in the United States and Canada. Panhandle requests authorization to modify existing facilities and install an interconnection

with Rover in Defiance County, Ohio to accommodate 0.75 Bcf/d of east-to-west firm transportation service. Trunkline would modify existing facilities, including piping at the existing Panhandle-Trunkline Interconnect in Douglas County, Illinois to provide 0.75 Bcf/d of north-to-south firm transportation service.

The final EIS assesses the potential environmental effects of the construction and operation of the Projects in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the Projects would have some adverse and significant environmental impacts; however, these impacts would be reduced to acceptable levels with the implementation of Rover's, Panhandle's, and Trunkline's proposed mitigation and the additional measures recommended by staff in the final EIS.

The U.S. Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (COE), the U.S. Fish and Wildlife Service (FWS), the Ohio Environmental Protection Agency (OHEPA), and the West Virginia Department of Environmental Protection (WVDEP) participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. Although the cooperating agencies provided input to the conclusions and recommendations presented in the final EIS, the agencies will present their own conclusions and recommendations in their respective Records of Decision for the Projects.

The final EIS addresses the potential environmental effects of the construction and operation of the following project facilities:

- 510.3 miles of new 24- to 42-inch-diameter natural gas pipeline and appurtenant facilities that include 10 new compressor stations, 21 new meter stations, 6 new tie-ins, 78 mainline valves, and 11 pig launcher and receiver facilities.[1]
- modifications by Panhandle at four existing compressor stations, one interconnection, and three valve sites; and
- modifications by Trunkline at four existing compressor stations and one meter station.

The FERC staff mailed copies of the final EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. Paper copy versions of this EIS were mailed to those specifically requesting them; all others received a CD version. In addition, the final EIS is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Questions?

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP15–93, CP15–94, or CP15–96). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: July 29, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–18491 Filed 8–3–16; 8:45 am]

BILLING CODE 6717–01–P

[1] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–158–000.

Applicants: Boulder Solar Power, LLC.

Description: Application for authorization under Section 203 of the Federal Power Act and request for expedited action, confidential treatment, and waivers re Boulder Solar Power, LLC.

Filed Date: 7/27/16.

Accession Number: 20160727–0001.

Comments Due: 5 p.m. ET 8/17/16.

Docket Numbers: EC16–159–000.

Applicants: FPL Energy Marcus Hook, L.P., FPL Energy MH50 L.P., NatGas Holdings 2, L.L.C.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act and Requests for Confidential Treatment and Waivers of FPL Energy Marcus Hook, L.P., et al.

Filed Date: 7/29/16.

Accession Number: 20160729–5154.

Comments Due: 5 p.m. ET 8/19/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2331–057; ER10–2319–048; ER10–2317–048; ER13–1351–030; ER10–2330–055.

Applicants: J.P. Morgan Ventures Energy Corporation, BE Alabama LLC, BE CA LLC, Florida Power Development LLC, Utility Contract Funding, L.L.C.

Description: Notice of Non-Material Change in Status of the J.P. Morgan Sellers, et al.

Filed Date: 7/29/16.

Accession Number: 20160729–5048.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER10–2721–006.

Applicants: El Paso Electric Company.

Description: Second Supplement to December 31, 2015 Updated Market Power Analysis of El Paso Electric Company.

Filed Date: 7/29/16.

Accession Number: 20160729–5088.

Comments Due: 5 p.m. ET 9/27/16.

Docket Numbers: ER16–1023–002.

Applicants: Eversource Energy Service Company (as ag,ISO New England Inc.

Description: Compliance filing: Compliance Filing to Conform Attachment F to be effective 6/1/2016.

Filed Date: 7/29/16.

Accession Number: 20160729–5134.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–1518–001.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2016–07–25 Compliance EIM Enhancements Year One—Phase 2 to be effective 10/1/2016.

Filed Date: 7/29/16.

Accession Number: 20160729–5125.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2307–000.

Applicants: Vista Energy Marketing, L.P.

Description: Baseline eTariff Filing: Final Version of Vista MBR Filing to be effective 10/1/2016.

Filed Date: 7/28/16.

Accession Number: 20160728–5131.

Comments Due: 5 p.m. ET 8/18/16.

Docket Numbers: ER16–2308–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Amendment to Original WMPA SA No. 3915, Queue Nos. Y2–042/Z2–104 to be effective 6/19/2015.

Filed Date: 7/29/16.

Accession Number: 20160729–5039.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2309–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) Rate Filing: 3216 WAPA & City of Pierre, SD Interconnection Agreement to be effective 7/5/2016.

Filed Date: 7/29/16.

Accession Number: 20160729–5047.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2310–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Amendment to Original ISA No. 4242, Queue No. Z1–092 to be effective 7/23/2015.

Filed Date: 7/29/16.

Accession Number: 20160729–5051.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2311–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Section 205(d) Rate Filing: Dyanmic Transfer Agreement to be effective 8/1/2016.

Filed Date: 7/29/16.

Accession Number: 20160729–5052.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2312–000.

Applicants: Alabama Power Company.

Description: Section 205(d) Rate Filing: Attachment S (APCo) 2016 Updated Depreciation Rates Filing to be effective 1/1/2017.

Filed Date: 7/29/16.

Accession Number: 20160729–5057.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2313–000.

Applicants: Alabama Power Company.

Description: Section 205(d) Rate Filing: Attachment S (SEGCo) 2016 Updated Depreciation Rates Filing to be effective 1/1/2017.

Filed Date: 7/29/16.

Accession Number: 20160729–5062.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2314–000.

Applicants: Southern Electric Generating Company.

Description: Section 205(d) Rate Filing: SEGCO 2016 Updated Depreciation Rates Filing to be effective 1/1/2017.

Filed Date: 7/29/16.

Accession Number: 20160729–5065.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2315–000.

Applicants: Georgia Power Company.

Description: Section 205(d) Rate Filing: FP&L Scherer Unit 4 TSA Amendment Filing (SEGCo 2016 Updated Depreciation Rates) to be effective 1/1/2017.

Filed Date: 7/29/16.

Accession Number: 20160729–5074.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2316–000.

Applicants: Georgia Power Company.

Description: Section 205(d) Rate Filing: JEA Scherer Unit 4 TSA Amendment Filing (SEGCo 2016 Updated Depreciation Rates) to be effective 1/1/2017.

Filed Date: 7/29/16.

Accession Number: 20160729–5075.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2317–000.

Applicants: Southern California Edison Company.

Description: Section 205(d) Rate Filing: DSA Calleguas Municipal Water District Santa Rosa Project to be effective 7/2/2016.

Filed Date: 7/29/16.

Accession Number: 20160729–5087.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2318–000.

Applicants: BIF III Holtwood LLC.

Description: Section 205(d) Rate Filing: Order No. 816 Tariff Update for Hydroelectric Generator to be effective 8/1/2016.

Filed Date: 7/29/16.

Accession Number: 20160729–5095.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2319–000.

Applicants: Sabine Cogen, LP.

Description: Compliance filing: Reactive Revenue Rate Schedule of Sabine Cogen, LP to be effective 10/1/2016.

Filed Date: 7/29/16.

Accession Number: 20160729–5099.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2320–000.

Applicants: Pacific Gas and Electric Company.

Description: Section 205(d) Rate Filing: Transmission Owner Rate Case 2017 (TO18) to be effective 10/1/2016.

Filed Date: 7/29/16.

Accession Number: 20160729–5100.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2321–000.

Applicants: New England Power Pool Participants Committee.

Description: Section 205(d) Rate Filing: Aug 2016 Membership Filing to be effective 7/1/2016.

Filed Date: 7/29/16.

Accession Number: 20160729–5127.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2322–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) Rate Filing: 1518R11 Arkansas Electric Cooperative Corp NITSA NOA to be effective 7/1/2016.

Filed Date: 7/29/16.

Accession Number: 20160729–5128.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2323–000.

Applicants: Appalachian Power Company.

Description: Section 205(d) Rate Filing: OATT—Revise Attachments K & L, TCC and TNC Rate Update to be effective 12/31/9998.

Filed Date: 7/29/16.

Accession Number: 20160729–5139.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2324–000.

Applicants: ITC Midwest LLC.

Description: Section 205(d) Rate Filing: Filing of Amendments to Facilities Agreements to be effective 8/1/2016.

Filed Date: 7/29/16.

Accession Number: 20160729–5140.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2325–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) Rate Filing: 2969R1 Associated Electric Cooperative, Inc. NITSA NOA to be effective 7/1/2016.

Filed Date: 7/29/16.

Accession Number: 20160729–5141.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2326–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Revisions to the PJM/MMU Service Level Agreement to be effective 8/1/2016.

Filed Date: 7/29/16.

Accession Number: 20160729–5146.

Comments Due: 5 p.m. ET 8/19/16.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES16–47–000.

Applicants: AEP Utilities, Inc.

Description: Application Under Section 204 of the Federal Power Act for

Authorization to Issue Securities of AEP Utilities, Inc.

Filed Date: 7/29/16.

Accession Number: 20160729–5090.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ES16–48–000.

Applicants: New Hampshire Transmission, LLC.

Description: Application for Authorization of Issuance of Long-Term Debt Securities under FPA Section 204 of New Hampshire Transmission, LLC.

Filed Date: 7/29/16.

Accession Number: 20160729–5149.

Comments Due: 5 p.m. ET 8/19/16.

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: July 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–18494 Filed 8–3–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2200–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2016–07–15_RTOR Settlement Compliance Filing to be effective 1/1/2016.

Filed Date: 7/15/16.

Accession Number: 20160715–5045.

Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2287–001.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: Tariff Amendment: NMPC amendment filing SGIA 2293 between National Grid and Innovative/Colonie to be effective 4/29/2016.

Filed Date: 7/27/16.

Accession Number: 20160727–5113.

Comments Due: 5 p.m. ET 8/17/16.

Docket Numbers: ER16–2298–000.

Applicants: Duke Energy Kentucky, Inc.

Description: Section 205(d) Rate Filing: DEK Rate Schedule No. 14 Filing to be effective 10/1/2016.

Filed Date: 7/27/16.

Accession Number: 20160727–5111.

Comments Due: 5 p.m. ET 8/17/16.

Docket Numbers: ER16–2299–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Service Agreement No. 4510, Queue Position AB1–180 to be effective 6/27/2016.

Filed Date: 7/27/16.

Accession Number: 20160727–5115.

Comments Due: 5 p.m. ET 8/17/16.

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: July 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–18455 Filed 8–3–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP14–517–000; CP14–518–000]

Golden Pass Pipeline, LLC; Golden Pass Products, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Golden Pass LNG Export Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Golden Pass Liquefied Natural Gas (LNG) Export Project, proposed by Golden Pass Products, LLC and Golden Pass Pipeline, LLC (collectively referred to as Golden Pass) in the above-referenced docket. Golden Pass requests authorization to expand and modify the existing Golden Pass LNG Import Terminal to allow the export of LNG, which would require construction and operation of various liquefaction, LNG distribution, and appurtenant facilities. The Project would also include construction of approximately 2.6 miles of 24-inch pipeline, three new compressor stations, and interconnections for bi-directional transport of natural gas to and from the Golden Pass LNG Export terminal.

The final EIS assesses the potential environmental effects of the construction and operation of the Golden Pass LNG Export Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with the mitigation measures recommended in the EIS, would result in some adverse environmental impact; however, those impacts would not be significant with implementation of Golden Pass' proposed mitigation and the additional measures recommended in the draft EIS.

The U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Department of Energy, U.S. Department of Transportation, and U.S. Environmental Protection Agency participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. Although the cooperating agencies provided input to the conclusions and recommendations presented in the EIS, the agencies will present their own conclusions and recommendations in their respective Records of Decision for the project.

The final EIS addresses the potential environmental effects of the construction and operation of the following project facilities:

- Liquefaction facilities at the existing Golden Pass Export Terminal including three liquefaction trains, a truck unloading facility, refrigerant and condensate storage, safety and control systems, and associated infrastructure;
- a supply dock and alternate marine delivery facilities at the Terminal;

• three miles of a new 24-inch-diameter pipeline loop [1] adjacent to the existing Golden Pass pipeline;

• three new compressor stations;

• five new pipeline interconnections and modifications at existing pipeline interconnections; and

• miscellaneous appurtenant facilities.

The FERC staff mailed copies of the EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. Paper copy versions of this EIS were mailed to those specifically requesting them; all others received a CD version. In addition, the EIS is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP14–517 or CP14–518). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp*.

[1] A loop is a segment of pipe that is installed adjacent to an existing pipeline and connected to it at both ends. A loop generally allows more gas to move through the system.

Dated: July 29, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–18489 Filed 8–3–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2218–000]

North American Power Business, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of North American Power Business, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 17, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–18459 Filed 8–3–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2374–010; ER12–673–008; ER12–672–008.

Applicants: Puget Sound Energy, Inc., Brea Generation LLC, Brea Power II LLC.

Description: Supplement to March 9, 2016 Notice of Non-Material Change in Status of Puget Sound Energy, Inc., et al.

Filed Date: 7/27/16.

Accession Number: 20160727–5158.

Comments Due: 5 p.m. ET 8/17/16.

Docket Numbers: ER12–1995–002; ER12–199–012.

Applicants: RET Modesto Solar LLC, Coram California Development, L.P.

Description: Notice of Non-Material Change in Status and Request for Expedited Consideration of RET Modesto Solar, LLC, et al.

Filed Date: 7/28/16.

Accession Number: 20160728–5095.

Comments Due: 5 p.m. ET 8/18/16.

Docket Numbers: ER16–1051–001.

Applicants: Graphic Packaging International Inc.

Description: Report Filing: Refund Report of Graphic Packaging International, Inc. to be effective N/A.

Filed Date: 7/28/16.

Accession Number: 20160728–5118.

Comments Due: 5 p.m. ET 8/18/16.

Docket Numbers: ER16–2300–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of SA No. 4052, Queue W3–158 to be effective 9/20/2016.

Filed Date: 7/28/16.

Accession Number: 20160728–5043.
Comments Due: 5 p.m. ET 8/18/16.

Docket Numbers: ER16–2301–000.
Applicants: Chaves County Solar, LLC.
Description: Baseline eTariff Filing: Chaves County Solar, LLC, Filing of Shared Facilities Agreement to be effective 9/26/2016.
Filed Date: 7/28/16.
Accession Number: 20160728–5053.
Comments Due: 5 p.m. ET 8/18/16.

Docket Numbers: ER16–2302–000.
Applicants: NorthWestern Corporation.
Description: Section 205(d) Rate Filing: SA 784—Agreement with CHS Inc. dba CHS Big Sky re 69kV reroute to be effective 7/29/2016.
Filed Date: 7/28/16.
Accession Number: 20160728–5060.
Comments Due: 5 p.m. ET 8/18/16.

Docket Numbers: ER16–2303–000.
Applicants: Pacific Gas and Electric Company.
Description: Section 205(d) Rate Filing: Quarterly Filing of City and County of San Francisco's WDT SA 275 for Q2 2016 to be effective 6/30/2016.
Filed Date: 7/28/16.
Accession Number: 20160728–5062.
Comments Due: 5 p.m. ET 8/18/16.

Docket Numbers: ER16–2304–000.
Applicants: Duke Energy Florida, LLC.
Description: Section 205(d) Rate Filing: DEF Telogia Power and G2 Energy GIAs to be effective 9/26/2016.
Filed Date: 7/28/16.
Accession Number: 20160728–5072.
Comments Due: 5 p.m. ET 8/18/16.

Docket Numbers: ER16–2305–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) Rate Filing: Amendment to Original Service Agreement No. 3771, Queue Position Y1–033 to be effective 2/4/2014.
Filed Date: 7/28/16.
Accession Number: 20160728–5091.
Comments Due: 5 p.m. ET 8/18/16.

Docket Numbers: ER16–2306–000.
Applicants: Southern California Edison Company.
Description: Section 205(d) Rate Filing: SCE Amendments to WDAT GIP to be effective 7/29/2016.
Filed Date: 7/28/16.
Accession Number: 20160728–5116.
Comments Due: 5 p.m. ET 8/18/16.

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: July 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–18456 Filed 8–3–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10853–021]

Otter Tail Power Company; Notice of Intent To File License Application, Filing of Pre-Application Document (PAD), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the PAD and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Pre-filing Process.

b. *Project No.:* 10853–021.

c. *Date Filed:* June 3, 2016.

d. *Submitted by:* Otter Tail Power Company.

e. *Name of Project:* Otter Tail River Hydroelectric Project.

f. *Location:* The Otter Tail River Hydroelectric Project consists of five developments on the Otter Tail River that start in the Township of Friberg, Minnesota and extend downstream (south) of the City of Fergus Falls, Minnesota. The project does not occupy federal land.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Michael Olson, Principal Engineer, Otter Tail Power Company, 215 South Cascade Street, Fergus Falls, Minnesota 56537; (218) 739–8411; *mjolson@otpco.com.*

i. *FERC Contact:* Patrick Ely at (202) 502–8570 or email at *patrick.ely@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in paragraph o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Otter Tail Power Company as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Otter Tail Power Company filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for

cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov.* In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–10853–021.

All filings with the Commission must bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by October 3, 2016.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Evening Scoping Meeting

Date and Time: Tuesday, August 30, 2016 at 6:00 p.m.

Location: Bigwood Event Center, 925 Western Avenue, Fergus Falls, Minnesota 56537.

Phone Number: (218) 739–2211.

Daytime Scoping Meeting

Date and Time: Wednesday, August 31, 2016 at 9:00 a.m.

Location: Bigwood Event Center, 925 Western Avenue, Fergus Falls, Minnesota 56537.

Phone Number: (218) 739–2211.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Review

The potential applicant and Commission staff will conduct an Environmental Site Review of the project on Tuesday, August 30, 2016, starting at 9:00 a.m. All participants should meet at Otter Tail Power Company, located at 215 South Cascade Street, Fergus Falls, Minnesota 56537. All participants are responsible for their own transportation. Please notify Sarah Casey at 218–739–8694, or *scasey@otpco.com* by August 25, 2016, if you plan to attend the environmental site review.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in paragraph n of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Dated: July 29, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–18490 Filed 8–3–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–89–000]

Virginia Electric and Power Company; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On July 28, 2016, the Commission issued an order in Docket No. EL16–89–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of certain aspects of Virginia Electric and Power Company's Reactive Service rates. *Virginia Electric and Power Company,* 156 FERC ¶ 61,072 (2016).

The refund effective date in Docket No. EL16–89–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: July 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–18495 Filed 8–3–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2201–000]

Antelope DSR 1, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Antelope DSR 1, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 17, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–18457 Filed 8–3–16; 8:45 am]

BILLING CODE 6717–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

DATES: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 11, 2016, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Submit attendance requests via email to *VisitorRequest@FCA.gov*. See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- July 14, 2016

B. Reports

- The Economic Implications of Brexit

Closed Session *

- Office of Secondary Market Oversight Quarterly Report

Dated: August 1, 2016.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2016–18606 Filed 8–2–16; 11:15 am]

BILLING CODE 6705–01–P

* Session Closed-Exempt pursuant to 5 U.S.C. Section 552b(c)(8) and (9).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (3064–0070, –0079, –0103, –0139 & –0192)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995. On May 24, 2016, (81 FR 35752), the FDIC requested comment for 60 days on a proposal to renew the information collections described below. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of these collections, and again invites comment on this renewal.

DATES: Comments must be submitted on or before September 6, 2016.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Manny Cabeza, (202.898.3767), Counsel, Room MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently-approved collections of information:

1. *Title:* Application for a Bank to Establish a Branch or Move its main Office or a Branch.

OMB Number: 3064–0070.
Affected Public: Insured financial institutions.
Annual Number of Respondents: 752.
Frequency of Response: On occasion.
Estimated Time per Response: 10 hours.
Total Annual Burden: 7,520 hours.
General Description: Insured institutions must obtain the written consent of the FDIC before establishing or moving a main office or branch.

2. *Title:* Application for Consent to Reduce or Retire Capital.
OMB Number: 3064–0079.
Affected Public: Insured state nonmember banks and state savings associations.
Frequency of Response: On occasion.
Estimated Number of Respondents: 80.
Estimated Time per Response: 11 hours.
Estimated Total Annual Burden: 880 hours.
General Description: Insured state nonmember banks proposing to change their capital structure must submit an application containing information about the proposed change to obtain FDIC's consent to reduce or retire capital.

3. *Title:* Appraisals Standards.
OMB Number: 3064–01103.
Affected Public: Insured state nonmember banks and state savings associations.
Estimated Number of Respondents: 3,947.
Frequency of Response: On occasion.
Estimated Number of Responses per Respondent: 105.6.
Estimated Time per Response: .75 hours.
Estimated Total Annual Burden: 312,602 hours.
General Description: FIRREA directs the FDIC to prescribe appropriate performance standards for real estate appraisals connected with federally related transactions under its jurisdiction. This information collection is a direct consequence of the statutory requirement.

4. *Title:* CRA Sunshine.
OMB Number: 3064–0139.
Affected Public: Insured state nonmember banks and state savings associations and their affiliates and nongovernmental entities and persons.
Estimated Number of Respondents: 16.
Frequency of Response: On occasion.
Estimated Time per Response: 8.625 hours.
Estimated Total Annual Burden: 138 hours.
General Description: This collection implements a statutory requirement imposing reporting, disclosure and recordkeeping requirements on some community reinvestment-related agreements between insured depository institutions or affiliates, and nongovernmental entities or persons.

5. *Title:* Asset Sales Forms.
OMB Number: 3064–0192.
Affected Public: Insured state nonmember banks and their affiliates and nongovernmental entities and persons.
Frequency of Response: On occasion.
Estimated Number of Respondents: 600 hours.
Estimated Time per Response: .50 hours.
Estimated Total Annual Burden: 300 hours.
General Description: The FDIC uses the Purchaser Eligibility Certification form, FDIC Form No. 7300/06, to identify prospective bidders who are not eligible to purchase assets of failed institutions from the FDIC. Specifically, section 11(p) of the Federal Deposit Insurance Act prohibits the sale of assets of failed institutions to certain individuals or entities that profited or engaged in wrongdoing at the expense of those failed institutions, or seriously mismanaged those failed institutions.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 1st day of August, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–18506 Filed 8–3–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Guidelines for Appeals of Material Supervisory Determinations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice and request for comment.

SUMMARY: The Federal Deposit Insurance Corporation (''FDIC'') proposes to amend its Guidelines for Appeals of Material Supervisory Determinations (Guidelines) so that institutions have additional avenues of redress with respect to these determinations and for greater consistency with the appeals process of the other Federal banking agencies. Consistent with Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (''Riegle Act''), the FDIC, in 1995, established its Supervision Appeals Review Committee (SARC), an independent intra-agency appellate process to review appeals by institutions of ''material supervisory determinations,'' and has amended the Guidelines from time to time, as appropriate.

DATES: Written comments on the Proposal must be received by the FDIC on or before October 3, 2016 for consideration.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/* . Follow the instructions for submitting comments.
- *Email: comments@fdic.gov.* Include ''Guidelines for Appeals of Material Supervisory Determinations'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station located at the rear of the FDIC's 550 17th Street building (accessible from F Street) on business days between 7 a.m. and 5 p.m.
- *Public Inspection:* All comments received, including any personal information provided, will be posted generally without change to *https://www.fdic.gov/regulations/laws/federal/*. Comments may be inspected and photocopied in the FDIC Public Information Center, Room E–1005, 3501 North Fairfax Drive, Arlington, VA 22226 between 9 a.m. and 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Christopher Newbury, Associate Director, Division of Risk Management

Supervision, (202) 898–3504; Sylvia Plunkett, Senior Deputy Director, Division of Depositor and Consumer Protection, (202) 898–6929; and James Watts, Senior Attorney, Legal Division, (202) 898–6678.

SUPPLEMENTARY INFORMATION: The FDIC is publishing for notice and comment proposed amendments to the Guidelines for Appeals of Material Supervisory Determinations. The FDIC considers it desirable in this instance to seek comments regarding these amendments to the Guidelines, although notice and comment is not required. The proposed amendments would be effective upon adoption so that institutions have additional avenues of redress with respect to material supervisory determinations.

The proposed amendments would (1) permit appeal of the level of compliance with an existing formal enforcement action; (2) provide that a formal enforcement-related action or decision does not affect an appeal that is pending under the Guidelines; (3) make additional appeal rights available pursuant to the Guidelines with respect to material supervisory determinations in certain circumstances; and (4) make other limited technical and conforming amendments.

Background

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) (''Riegle Act''), required the FDIC (as well as the other Federal banking agencies and the National Credit Union Administration Board) to establish an independent intra-agency appellate process to review material supervisory determinations. The Riegle Act defines the term ''independent appellate process'' to mean a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review. In the appeals process, the FDIC is required to ensure that: (1) An appeal of a material supervisory determination by an insured depository institution is heard and decided expeditiously; and (2) appropriate safeguards exist for protecting appellants from retaliation by agency examiners.

The term ''material supervisory determinations'' is defined in the Riegle Act to include determinations relating to: (1) Examination ratings; (2) the adequacy of loan loss reserve provisions; and (3) classifications on loans that are significant to an institution. The Riegle Act specifically excludes from the definition of ''material supervisory determinations'' a decision to appoint a conservator or receiver for an insured depository institution or to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act (''FDI Act''), 12 U.S.C. 1831o. Finally, section 309(g) (12 U.S.C. 4806(g)) expressly provides that the Riegle Act's requirement to establish an appeals process shall not affect the authority of the Federal banking agencies to take enforcement or supervisory actions against an institution.

On December 28, 1994, the FDIC published in the **Federal Register**, for a 30-day comment period, a notice of and request for comments on proposed Guidelines for Appeals of Material Supervisory Determinations (''Guidelines'') (59 FR 66965.) In the proposed Guidelines, the FDIC proposed that the term ''material supervisory determinations,'' in addition to the statutory exclusions noted above, also should not include: (1) Determinations for which other appeals procedures exist (such as determinations relating to deposit insurance assessment risk classifications); (2) decisions to initiate formal enforcement actions under section 8 of the FDI Act; (3) decisions to initiate informal enforcement actions (such as memoranda of understanding); (4) determinations relating to a violation of a statute or regulation; and (5) any other determinations not specified in the Riegle Act as being eligible for appeal.

Commenters to the proposed Guidelines suggested that the proposed limitations on determinations eligible for appeal were too restrictive. In response to comments received, the FDIC modified the proposed Guidelines. The FDIC added a final clarifying sentence to the listing of ''Determinations Not Eligible for Appeal'' in the Guidelines as follows: ''The FDIC recognizes that, although determinations to take prompt corrective action or initiate formal or informal enforcement actions are not appealable, the determinations upon which such actions may be based (*e.g.,* loan classifications) are appealable provided they otherwise qualify.'' (60 FR 15929, March 28, 1995.) On March 21, 1995, the FDIC's Board of Directors adopted the proposed Guidelines. (60 FR 15923.)

On March 18, 2004, the FDIC published in the **Federal Register**, for a 30-day comment period, a notice and request for comments regarding proposed revisions to the Guidelines, which would change the composition and procedures of the SARC. (69 FR 12855.) On July 9, 2004, the FDIC published in the **Federal Register** a notice of guidelines which, effective June 28, 2004, adopted the revised Guidelines, largely as proposed. (69 FR 41479.)

On May 27, 2008, the FDIC published in the **Federal Register**, for a 60-day comment period, a notice and request for comments regarding proposed revisions to the Guidelines. (73 FR 30393.) On September 23, 2008, the FDIC published in the **Federal Register** a notice of guidelines which, effective September 16, 2008, adopted revised Guidelines modifying the supervisory determinations eligible for appeal to eliminate the ability of an FDIC-supervised institution to file an appeal with the SARC for determinations or the facts and circumstances underlying a recommended or pending formal enforcement-related action or decision, including the initiation of an investigation. The FDIC noted that these amendments better aligned the SARC appellate process with the material supervisory determinations appeals procedures at the other Federal banking agencies. (73 FR 54822.)

On April 19, 2010, the FDIC published in the **Federal Register** a notice of guidelines which, effective April 13, 2010, adopted revised Guidelines extending the decision deadline for requests for review and clarifying the decisional deadline for written decisions by the SARC. (75 FR 20358.)

On March 23, 2012, the FDIC published in the **Federal Register** a notice of guidelines which, effective March 20, 2012, adopted revised Guidelines that included technical and ministerial revisions to reflect changes in the organization of the FDIC's Board, of its offices and divisions, and in the categories of institutions that it supervises. (77 FR 17055.)

Proposed Amendments

As noted above, the FDIC adopted amendments to the Guidelines in 2008 modifying the supervisory determinations eligible for appeal to eliminate the ability of an FDIC-supervised institution to file an appeal with the SARC for determinations or the facts and circumstances underlying a recommended or pending formal enforcement-related action or decision, including the initiation of an investigation. However, based on the FDIC's experience in administering the current appellate process, the FDIC believes that there are changes that could be beneficial to allow for additional avenues of redress with respect to certain material supervisory

determinations. In considering changes, the FDIC also reviewed the current policies at the OCC and the Board of Governors of the Federal Reserve System. Accordingly, the FDIC is proposing amendments to the Guidelines that would expand institutions' appellate rights under certain circumstances as well as promote greater consistency with the other Federal banking agencies.

I. Amendment of Material Supervisory Determinations Eligible for Review

Currently, the Guidelines state that ''material supervisory determinations'' subject to appeal do not include determinations regarding compliance with an existing formal enforcement action. The proposed amendment to the Guidelines would allow determinations regarding an institution's level of compliance with an existing formal enforcement action to be appealed; however, if the FDIC determines that lack of compliance with an existing enforcement action requires additional enforcement action, the proposed new enforcement action would not be appealable. This proposed amendment to the Guidelines would enhance institutions' opportunities to obtain an independent review of supervisory determinations, promoting the goals of the Riegle Act in a manner consistent with the statute's requirement that the appeals process shall not affect the authority of the Federal banking agencies to take enforcement or supervisory actions against an institution.[1]

The FDIC notes that, similar to the proposed amendments, the current appeals process of the OCC allows institutions to appeal conclusions regarding their level of compliance with a formal enforcement action; however, if the OCC determines that the lack of compliance with an existing enforcement action requires additional enforcement action, the proposed new enforcement action is not appealable. *See* OCC Bulletin 2013–15 (June 7, 2013).

In addition, the proposed Guidelines would remove from the list of determinations that are not appealable the decision to initiate an informal enforcement action, such as a Memorandum of Understanding. This would better conform the FDIC's Guidelines to the current appeals process of the Office of the Comptroller of the Currency.

[1] 12 U.S.C. 4806(g).

II. Commencement of Formal Enforcement Action

Currently, the Guidelines state that a formal enforcement-related action or decision commences, and therefore becomes unappealable, when the FDIC initiates a formal investigation under 12 U.S.C. 1820(c) or provides written notice to the bank indicating its intention to pursue available formal enforcement remedies under applicable statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General pursuant to ECOA or a notice to HUD for violations of the FHA or ECOA. The proposed amendments would provide that a formal enforcement-related action or decision commences and becomes unappealable when the FDIC initiates a formal investigation under 12 U.S.C. 1820(c) or provides written notice to the bank of a recommended or proposed formal enforcement action under applicable statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General pursuant to the ECOA or a notice to HUD for violations of the FHA or ECOA. This change would make the Guidelines more consistent with the process of the OCC.

The proposed amendments also would provide that a formal enforcement-related action or decision does not affect the appeal of any material supervisory determination that is pending under the Guidelines.

III. Additional SARC Appeal Rights

The proposed amendments would make SARC appeal rights available with respect to material supervisory determinations in certain circumstances. In particular, SARC appeal rights would be made available pursuant to the Guidelines where the FDIC has provided an institution with written notice of a recommended or proposed formal enforcement action, but does not pursue an enforcement action within 120 days of the written notice. The FDIC may extend this 120-day period, with the approval of the SARC Chairperson, if the FDIC notifies the institution that the relevant Division Director is seeking formal authority to take an enforcement action.

In addition, SARC appeal rights would be made available in the case of a referral to the Attorney General for certain violations of the ECOA, if the Attorney General returns the matter to the FDIC and the FDIC does not initiate an enforcement action within 120 days of the date the referral is returned.

SARC appeal rights would also be made available if the FDIC provides notice to HUD for violations of the ECOA or FHA, but does not initiate an enforcement action within 120 days of the date the notice is provided.

Under the proposal, these additional appeal rights may be extended if the FDIC and the institution mutually agree and deem it appropriate in order to reach a mutually agreeable solution.

Institutions would be provided written notice of SARC appeal rights within 10 days of a determination that appeal rights have been made available.

* * * * *

Proposed Amended Guidelines for Appeals of Material Supervisory Determinations

A. Introduction

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) (''Riegle Act'') required the Federal Deposit Insurance Corporation (''FDIC'') to establish an independent intra-agency appellate process to review material supervisory determinations made at insured depository institutions that it supervises. The Guidelines for Appeals of Material Supervisory Determinations (''guidelines'') describe the types of determinations that are eligible for review and the process by which appeals will be considered and decided. The procedures set forth in these guidelines establish an appeals process for the review of material supervisory determinations by the Supervision Appeals Review Committee (''SARC'').

B. SARC Membership

The following individuals comprise the three (3) voting members of the SARC: (1) One inside FDIC Board member, either the Chairperson, the Vice Chairperson, or the FDIC Director (Appointive), as designated by the FDIC Chairperson (this person would serve as the Chairperson of the SARC); and (2) one deputy or special assistant to each of the inside FDIC Board members who are not designated as the SARC Chairperson. The General Counsel is a non-voting member of the SARC. The FDIC Chairperson may designate alternate member(s) to the SARC if there are vacancies so long as the alternate member was not involved in making or affirming the material supervisory determination under review. A member of the SARC may designate and authorize the most senior member of his or her staff within the substantive area of responsibility related to cases before the SARC to act on his or her behalf.

C. Institutions Eligible To Appeal

The guidelines apply to the insured depository institutions that the FDIC supervises (*i.e.,* insured State nonmember banks, insured branches of foreign banks, and state savings associations) and to other insured depository institutions with respect to which the FDIC makes material supervisory determinations.

D. Determinations Subject To Appeal

An institution may appeal any material supervisory determination pursuant to the procedures set forth in these guidelines.

Material supervisory determinations include:

(a) CAMELS ratings under the Uniform Financial Institutions Rating System;

(b) IT ratings under the Uniform Interagency Rating System for Data Processing Operations;

(c) Trust ratings under the Uniform Interagency Trust Rating System;

(d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System;

(e) Consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System;

(f) Registered transfer agent examination ratings;

(g) Government securities dealer examination ratings;

(h) Municipal securities dealer examination ratings;

(i) Determinations relating to the adequacy of loan loss reserve provisions;

(j) Classifications of loans and other assets in dispute the amount of which, individually or in the aggregate, exceeds 10 percent of an institution's total capital;

(k) Determinations relating to violations of a statute or regulation that may affect the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution;

(l) Truth in Lending (Regulation Z) restitution;

(m) Filings made pursuant to 12 CFR. 303.11(f), for which a request for reconsideration has been granted, other than denials of a change in bank control, change in senior executive officer or board of directors, or denial of an application pursuant to section 19 of the Federal Deposit Insurance Act (''FDI Act''), 12 U.S.C. 1829 (which are contained in 12 CFR. 308, subparts D, L, and M, respectively), if the filing was originally denied by the Director, Deputy Director, or Associate Director of the Division of Depositor and Consumer Protection (''DCP'') or the Division of Risk Management Supervision (''RMS'');

(n) Determinations regarding the institution's level of compliance with a formal enforcement action; however, if the FDIC determines that the lack of compliance with an existing enforcement action requires additional enforcement action, the proposed new enforcement action is not appealable; and

(o) Any other supervisory determination (unless otherwise not eligible for appeal) that may affect the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution.

Material supervisory determinations do not include:

(a) Decisions to appoint a conservator or receiver for an insured depository institution;

(b) Decisions to take prompt corrective action pursuant to section 38 of the FDI Act, 12 U.S.C. 1831o;

(c) Determinations for which other appeals procedures exist (such as determinations of deposit insurance assessment risk classifications and payment calculations); and

(d) Formal enforcement-related actions and decisions, including determinations and the underlying facts and circumstances that form the basis of a recommended or pending formal enforcement action.

A formal enforcement-related action or decision commences, and becomes unappealable, when the FDIC initiates a formal investigation under 12 U.S.C. 1820(c) or provides written notice to the bank of a recommended or proposed formal enforcement action under applicable statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General pursuant to the Equal Credit Opportunity Act (''ECOA'') or a notice to the Secretary of Housing and Urban Development (''HUD'') for violations of the ECOA or the Fair Housing Act (''FHA''). A formal enforcement-related action or decision does not affect the appeal of any material supervisory determination that is pending under these guidelines. For the purposes of these guidelines, remarks in a Report of Examination do not constitute written notice of a recommended or proposed enforcement action.

Additional SARC Rights:

(a) In the case of any written notice from the FDIC to the institution of a recommended or proposed formal enforcement action, including a draft consent order, if an enforcement action, such as the issuance of a notice of charges or the signing of a consent order, is not pursued within 120 days of the written notice, SARC appeal rights will be made available pursuant to these guidelines. The FDIC may extend this 120-day period, with the approval of the SARC Chairperson, if the FDIC notifies the institution that the relevant Division Director is seeking formal authority to take an enforcement action.

(b) In the case of a referral to the Attorney General for violations of the ECOA, if the Attorney General returns the matter to the FDIC and the FDIC does not initiate an enforcement action within 120 days of the date the referral is returned, SARC appeal rights will be made available pursuant to these guidelines.

(c) In the case of providing notice to HUD for violations of the ECOA or the FHA, if the FDIC does not initiate an enforcement action within 120 days of the date the notice is provided, SARC appeal rights will be made available under these guidelines.

(d) Written notification of SARC rights will be provided to the institution within 10 days of a determination that such rights have been made available.

(e) The FDIC and an institution may mutually agree to extend the timeframes in paragraphs (a), (b), and (c) if the parties deem it appropriate in order to reach a mutually agreeable solution.

E. Good Faith Resolution

An institution should make a good-faith effort to resolve any dispute concerning a material supervisory determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office will promptly respond to any concerns raised by an institution regarding a material supervisory determination. Informal resolution of disputes with the on-site examiner and/or the appropriate Regional Office is encouraged, but seeking such a resolution is not a condition to filing a request for review with the appropriate Division, either DCP or RMS, or to filing an appeal with the SARC under these guidelines.

F. Filing a Request for Review With the Appropriate Division

An institution may file a request for review of a material supervisory determination with the Division that made the determination, either the Director, DCP, or the Director, RMS, (''Director'' or ''Division Director''), 550 17th Street NW., Room F–4076,

Washington, DC 20429, within 60 calendar days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. A request for review must be in writing and must include:

(a) A detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position (including citation of any relevant statute, regulation, policy statement, or other authority), how resolution of the dispute would materially affect the institution, and whether a good-faith effort was made to resolve the dispute with the on-site examiner and the Regional Office; and

(b) A statement that the institution's board of directors has considered the merits of the request and has authorized that it be filed.

The Division Director will issue a written determination on the request for review, setting forth the grounds for that determination, within 45 days of receipt of the request. No appeal to the SARC will be allowed unless an institution has first filed a timely request for review with the appropriate Division Director.

G. Appeal to the SARC

An institution that does not agree with the written determination rendered by the Division Director must appeal that determination to the SARC within 30 calendar days from the date of that determination. The Director's determination will inform the institution of the 30-day time period for filing with the SARC and will provide the mailing address for any appeal the institution may wish to file. Failure to file within the 30-day time limit may result in denial of the appeal by the SARC. If the Division Director recommends that an institution receive relief that the Director lacks delegated authority to grant, the Director may, with the approval of the Chairperson of the SARC, transfer the matter directly to the SARC without issuing a determination. Notice of such a transfer will be provided to the institution. The Division Director may also request guidance from the SARC Chairperson as to procedural or other questions relating to any request for review.

H. Filing With the SARC

An appeal to the SARC will be considered filed if the written appeal is received by the FDIC within 30 calendar days from the date of the Division Director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. If the 30th day after the date of the Division Director's written determination is a Saturday, Sunday, or a Federal holiday, filing may be made on the next business day. The appeal should be sent to the address indicated on the Division Director's determination being appealed.

I. Contents of Appeal

The appeal should be labeled to indicate that it is an appeal to the SARC and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the Division Director's determination being appealed. If oral presentation is sought, that request should be included in the appeal. Only matters previously reviewed at the division level, resulting in a written determination or direct referral to the SARC, may be appealed to the SARC. Evidence not presented for review to the Division Director may be submitted to the SARC only if authorized by the SARC Chairperson. The institution should set forth all of the reasons, legal and factual, why it disagrees with the Division Director's determination. Nothing in the SARC administrative process shall create any discovery or other such rights.

J. Burden of Proof

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution.

K. Oral Presentation

The SARC may, in its discretion, whether or not a request is made, determine to allow an oral presentation. The SARC generally grants a request for oral presentation if it determines that oral presentation is likely to be helpful or would otherwise be in the public interest. Notice of the SARC's determination to grant or deny a request for oral presentation will be provided to the institution. If oral presentation is held, the institution will be allowed to present its positions on the issues raised in the appeal and to respond to any questions from the SARC. The SARC may also require that FDIC staff participate as the SARC deems appropriate.

L. Dismissal and Withdrawal

An appeal may be dismissed by the SARC if it is not timely filed, if the basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal. An appeal may be rejected if the right to appeal has been cut off under Section D, above.

M. Scope of Review and Decision

The SARC will review the appeal for consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced. The SARC will notify the institution, in writing, of its decision concerning the disputed material supervisory determination(s) within 45 days from the date the SARC meets to consider the appeal, which meeting will be held within 90 days from the date of the filing of the appeal. SARC review will be limited to the facts and circumstances as they existed prior to, or at the time the material supervisory determination was made, even if later discovered, and no consideration will be given to any facts or circumstances that occur or corrective action taken after the determination was made. The SARC may reconsider its decision only on a showing of an intervening change in the controlling law or the availability of material evidence not reasonably available when the decision was issued.

N. Publication of Decisions

SARC decisions will be published, and the published SARC decisions will be redacted to avoid disclosure of exempt information. In cases in which redaction is deemed insufficient to prevent improper disclosure, published decisions may be presented in summary form. Published SARC decisions may be cited as precedent in appeals to the SARC.

O. SARC Guidelines Generally

Appeals to the SARC will be governed by these guidelines. The SARC will retain discretion to waive any provision of the guidelines for good cause. The SARC may adopt supplemental rules governing its operations; order that material be kept confidential; and consolidate similar appeals.

P. Limitation on Agency Ombudsman

The subject matter of a material supervisory determination for which either an appeal to the SARC has been filed, or a final SARC decision issued, is not eligible for consideration by the Ombudsman.

Q. Coordination With State Regulatory Authorities

In the event that a material supervisory determination subject to a request for review is the joint product of the FDIC and a State regulatory authority, the Director, DCP, or the Director, RMS, as appropriate, will

promptly notify the appropriate State regulatory authority of the request, provide the regulatory authority with a copy of the institution's request for review and any other related materials, and solicit the regulatory authority's views regarding the merits of the request before making a determination. In the event that an appeal is subsequently filed with the SARC, the SARC will notify the institution and the State regulatory authority of its decision. Once the SARC has issued its determination, any other issues that may remain between the institution and the State authority will be left to those parties to resolve.

R. Effect on Supervisory or Enforcement Actions

The use of the procedures set forth in these guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

S. Effect on Applications or Requests for Approval

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination that relates to, or could affect the approval of, the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

T. Prohibition on Examiner Retaliation

The FDIC has an experienced examination workforce and is proud of its professionalism and dedication. FDIC policy prohibits any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution. Such behavior against an institution that appeals a material supervisory determination constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action. Institutions that believe they have been retaliated against are encouraged to contact the Regional Director for the appropriate FDIC region. Any institution that believes or has any evidence that it has been subject to retaliation may file a complaint with the Director, Office of the Ombudsman, Federal Deposit Insurance Corporation, 550 17th Street, Washington, DC 20429, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken. The Office of the Ombudsman will work with the appropriate Division Director to resolve the allegation of retaliation.

By order of the Board of Directors.

Dated at Washington, DC, the 28th day of July, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–18507 Filed 8–3–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Final notice of submission for OMB review.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Federal Maritime Commission (FMC or Commission) hereby gives notice that it has submitted to the Office of Management and Budget a request for an extension of the existing collection requirements under 46 CFR part 532—NVOCC Negotiated Rate Arrangements. The FMC has requested an extension of an existing collection as listed below.

DATES: Written comments must be submitted on or before September 6, 2016.

ADDRESSES: Comments should be addressed to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for FMC, 725 17th Street NW., Washington, DC 20503, *OIRA_Submission@OMB.EOP.GOV,* Fax (202) 395–5806 and to:

Vern Hill, Managing Director, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523–5800, *omd@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by contacting Donna L. Lee on 202–523–5800 or email: *dlee@fmc.gov.*

SUPPLEMENTARY INFORMATION: A notice that FMC would be submitting this request was published in the **Federal Register** on April 27, 2016 (81 FR 24814) allowing for a 60-day comment period. No comments were received.

The FMC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Information Collection Open for Comment

Title: 46 CFR part 532—NVOCC Negotiated Rate Arrangements.

OMB Approval Number: 3072–0071 (Expires July 31, 2016).

Abstract: Section 16 of the Shipping Act of 1984, 46 U.S.C. 40103, authorizes the Commission to exempt by order or regulation ''any class of agreements between persons subject to this [Act] or any specified activity of those persons from any requirement of this [Act] if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce.'' The Commission may attach conditions to any exemption and may, by order, revoke an exemption. In 46 CFR part 532, the Commission exempted non-vessel-operating common carriers (NVOCCs) from the tariff rate publication requirements of part 520, and allowed an NVOCC to enter into an NVOCC Negotiated Rate Arrangement (NRA) in lieu of publishing its tariff rate(s), provided the NVOCC posts a prominent notice in its rules tariff invoking the NRA exemption and provides electronic access to its rules tariff to the public free of charge. This information collection corresponds to the rules tariff prominent notice and the requirement to make its tariff publicly available free of charge.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses the information filed by an NVOCC in its rules tariff to determine whether the NVOCC has invoked the exemption for a particular shipment or shipments. The Commission has used and will continue to use the information required to be maintained by NVOCCs for monitoring and investigatory purposes, and, in its proceedings, to adjudicate related issues raised by private parties.

Frequency: An NVOCC invokes the NRA exemption by publishing a prominent notice in its rules tariff once.

Type of Respondents: NVOCCs.

Number of Annual Respondents: 255. New NVOCCs become licensed or registered with the Commission regularly. Of those, approximately 255 invoke the exemption by publishing a tariff rule or prominent notice.

Estimated Time per Response: 15 minutes for those adding a tariff rule to use a combination of tariff rates and NRAs. One hour for those who make their tariff rules publicly available by opting to use NRAs exclusively and posting them to their Web site.

Total Annual Burden: Based on the number of NVOCCs who have filed a rule or prominent notice in their respective tariffs, we calculate that 25% of new NVOCCs will use the NRA exemption. Of those, about 3% will use NRAs exclusively. Almost all will likely use similar language invoking the exemption in their tariffs. For the 255 new respondents that invoke the exemption annually and the 1,295 respondents that have invoked the exemption thus far, the total burden is calculated as follows:

Modification of Tariff:

8 × 1 hour = 8 hours (3% using NRAs exclusively)

247 × .25 hour = 61.75 hours rounded to 62 (combination of tariff rates and NRAs)

A total of 1,295 NVOCCs thus far have filed a rule or prominent notice in their tariffs invoking the exemption. For those, the recordkeeping burden is estimated as follows.

Recordkeeping:

1,295 × 1 hour = 1,295 hours

Total annual burden is estimated to be 1,365 hours.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–18465 Filed 8–3–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

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

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 22, 2016.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *WSB Bancshares, Inc., Wellington, Texas,* to acquire 100 percent of First Dalhart Bancshares, Inc., and therefore, indirectly acquire First National Bank in Dalhart, both of Dalhart, Texas.

Board of Governors of the Federal Reserve System, August 1, 2016.

Michele T. Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–18526 Filed 8–3–16; 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 August 22, 2016.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Steven S. Mack, San Antonio, Texas, to acquire shares of Southwestern Bancorp, Inc., Boerne, Texas, and thereby, indirectly acquire shares of Texas Heritage Bank, both in Boerne, Texas.

Board of Governors of the Federal Reserve System, August 1, 2016.

Michele T. Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–18527 Filed 8–3–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Board 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.

FOR FURTHER INFORMATION CONTACT: Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

Report title: Report of Selected Balance Sheet Items for Discount Window Borrowers.

Agency form number: FR 2046.

OMB control number: 7100–0289.

Frequency: On occasion.

Reporters: Depository institutions.

Estimated annual burden hours: Primary and Secondary Credit, 1 hour; Seasonal Credit, 383 hours.

Estimated average hours per response: Primary and Secondary Credit, 0.75 hours; Seasonal Credit, 0.25 hours.

Number of respondents: Primary and Secondary Credit, 1; Seasonal Credit, 85.

General description of report: The Board's Legal Division has determined that the FR 2046 is authorized pursuant to sections 10B and 19(b)(7) of the Federal Reserve Act (12 U.S.C. 347b and 461(b)(7)) and the Board's Regulation A (12 CFR part 201). Sections 10B and 19(b)(7) authorize Federal Reserve Banks to make advances to a member bank or other depository institution on the borrower's time or demand notes under rules and regulations prescribed by the Board. The Board's Regulation A sets out the rules for obtaining such advances. The FR 2046 is required to obtain a benefit because an entity may be required to file the form in order to borrow from the Federal Reserve's discount window. Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The Federal Reserve's Regulation A, Extensions of Credit by Federal Reserve Banks, requires that Reserve Banks review balance sheet data in determining whether to extend credit and to help ascertain whether undue use is made of such credit. Depository institutions that borrow from the discount window report on the FR 2046 certain balance sheet data for a period that encompasses the dates of borrowing.

Current Actions: On May 19, 2016, the Board published a notice in the **Federal Register** (81 FR 31635) requesting public comment for 60 days on the extension, without revision, of the FR 2046. The comment period for this notice expired on July 18, 2016. The Federal Reserve did not receive any comments.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

Report title: Payments Research Survey.

Agency form number: FR 3067.

OMB control number: 7100–0355.

Frequency: On occasion.

Reporters: Depository institutions, financial and nonfinancial businesses and related entities, individual consumers, households, and federal, state and local government agencies.

Estimated annual burden hours: 30,000 hours.

Estimated average hours per response: 1.5 hours.

Number of respondents: 10,000.

General description of report: This survey is generally authorized by sections 2A and 12A of the Federal Reserve Act (FRA). Section 2A of the FRA requires that the Board of Governors of the Federal Reserve System and the Federal Open Market Committee (FOMC) maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of the maximum employment, stable prices, and moderate long-term interest rates (12 U.S.C. 225a). In addition, under section 12A of the FRA, the FOMC is required to implement regulations relating to the open market operations conducted by Federal Reserve Banks with a view to accommodating commerce and business and with regard to the regulations' bearing upon the general credit situation of the country (12 U.S.C. 263). The authority of the Federal Reserve to collect economic data to carry out the requirements of these provisions is implicit. Accordingly, the Federal Reserve is authorized to use the FR 3067 by sections 2A and 12A of the FRA.

Additionally, depending on the survey respondent, the information collection may be authorized under a more specific statute. These statutes are:

- Expedited Funds Availability Act section 609 (12 U.S.C. 4008)
- Electronic Fund Transfer Act section 920 (15 U.S.C. 1693o–2)
- The Check Clearing for the 21st Century Act section 15 (12 U.S.C. 5014)
- Federal Reserve Act section 11 (Examinations and reports, Supervision over Reserve Banks, and Federal Reserve Note provisions, 12 U.S.C. 248); section 11A (Pricing of Services, 12 U.S.C. 248a); section 13 (FRB deposits and collections, 12 U.S.C. 342); and section 16 (Issuance of Federal Reserve notes, par clearance, and FRB clearinghouse, 12 U.S.C. 248–1, 360, and 411).

Under the appropriate authority, the Federal Reserve may make submission of survey information mandatory for entities such as financial institutions or payment card networks; submissions would otherwise be voluntary.

The ability of the Federal Reserve to maintain the confidentiality of information provided by respondents to the FR 3067 surveys will be determined on a case-by-case basis depending on the type of information provided for a particular survey. For instance, in some circumstances, no issue of confidentiality will arise as the surveys may be conducted by private firms under contract with the Federal Reserve and names or other directly identifying information would not be provided to the Federal Reserve. In circumstances where identifying information is provided to the Federal Reserve, such information could possibly be protected under the Freedom of Information Act (FOIA), exemptions 4 and 6. If the survey is mandatory and is undertaken as part of the supervisory process, information could be protected under FOIA exemption 8, which protects information relating to the examination reports (5 U.S.C. 552(b)(8)).

Abstract: This survey collects information, as needed, on specific and time sensitive issues, which may affect the Federal Reserve's decision making. Respondents may comprise depository institutions, financial and nonfinancial businesses and related entities, individual consumers, households, and federal, state and local government agencies. This survey may be mandatory for a certain subset of entities and voluntary for all other respondents. The Federal Reserve uses this event-driven survey to obtain information specifically tailored to the Federal Reserve System's supervisory, regulatory, fiscal, and operational responsibilities. The Federal Reserve may conduct various versions of the survey, as needed, and may survey respondents up to four times per year. The frequency and content of the questions depends on changing economic, regulatory, supervisory, or legislative developments.

Current Actions: On May 19, 2016, the Board published a notice in the **Federal Register** (81 FR 31635) requesting public comment for 60 days on the extension, with revision, of the FR 3067. The comment period for this notice expired on July 18, 2016. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, July 28, 2016.

Robert deV. Frierson

Secretary of the Board.

[FR Doc. 2016–18515 Filed 8–3–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.623]

Announcement of the Intent to Award a Supplemental Grant to the National Safe Place Network in Louisville, KY

AGENCY: Family and Youth Services Bureau, ACYF, ACF, HHS.

ACTION: Notice.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB) announces its intent to award a non-competitive supplemental grant in the amount of up to $310,000 to the National Safe Place Network in Louisville, KY, to support and expand the grantee's activities under their award for the Runaway and Homeless Youth Training and Technical Assistance Center (RHYTTAC).

DATES: The proposed supplement is intended to support costs for the period of September 30, 2016, through September 29, 2017.

FOR FURTHER INFORMATION CONTACT: Ana Cody, Family and Youth Services Bureau, 330 C Street SW., Washington, DC 20024. Telephone: 202–205–8418 Email: *Ana.Cody@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The National Safe Place Network is the recipient agency of the RHYTTAC cooperative agreement that fulfills Section 342 of the Runaway and Homeless Youth (RHY) Act, which allows for grants to organizations to provide training and technical assistance to public and private entities that are eligible to receive grants under this title. The purpose of this agreement is for carrying out the programs, projects, or activities for which such grants are made. The original award was made as the result of a competition under ACF Funding Opportunity Announcement HHS–2012–ACF–ACYF–CY–0312.

The primary goal of the RHYTTAC program is to serve as a centralized, national Training and Technical Assistance (T&TA) resource for FYSB-funded RHY program grantees. Training and other resources are made available to assist grantees to improve the quality of their core services, build capacity to increase the number of youth served, and address the dynamic needs of the runaway and homeless youth population.

The total supplemental funding available for the proposed non-competitive award would allow for the allocation of $150,000 for T&TA to support 12 new Domestic Victims of Human Trafficking (DVHT) grantees and the allocation of $160,000 for T&TA to support 8 new Transitional Living Program (TLP) demonstration program grantees.

The supplemental funding will be used to provide each grantee in the DVHT program with an on-site T&TA visit by RHYTTAC to collect information from a Human Trafficking Specific Capacity Assessment. The assessment and on-site observations will be used to create individualized action plans for each grantee to direct RHYTTAC's work with them for the remainder of their projects. In addition, RHYTTAC will facilitate discussions with human trafficking experts and coordinate a peer-exchange meeting to encourage grantees to build a cohesive working group. It will operate as a unit to ensure that all programs are functioning from the same baseline performance level. The proposed funding also will support new approaches and strategies to better serve Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) youth and youth who are ''aging out'' of foster care.

A new, non-competitive application will be solicited from the National Safe Place Network. The application will receive an objective review by a panel using criteria related to the program's approach, objectives, outcomes and need for assistance, organizational profile, and an assessment of the proposed budget and budget justification.

STATUTORY AUTHORITY: The RHY and FYSB grantee is authorized by the RHY Act, 42 U.S.C. 5701–5752, as most recently amended by the Reconnecting Homeless Youth Act of 2008, Pub. L.110–378, on October 8, 2008.

Mary M. Wayland,

Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration, Administration for Children and Families.

[FR Doc. 2016–18502 Filed 8–3–16; 8:45 am]

BILLING CODE 4182–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–2268]

Insanitary Conditions at Compounding Facilities; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Insanitary Conditions at Compounding Facilities.'' Drug products compounded under insanitary conditions could become contaminated and cause serious adverse events in patients, including death. FDA is issuing this draft guidance to assist compounding facilities in identifying insanitary conditions so that they can implement appropriate corrective actions, and to assist State regulatory agencies in understanding some examples of what FDA considers to be insanitary conditions.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by October 3, 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–2016–D–2268 for ''Insanitary Conditions at Compounding Facilities.'' 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 Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Sara Rothman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5197, Silver Spring, MD 20993, 301–796–3110.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Insanitary Conditions at Compounding Facilities.'' Under section 501(a)(2)(A) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 351(a)(2)(A)), a drug is deemed to be adulterated if it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health. Drug products compounded under insanitary conditions could become contaminated and cause serious adverse events in patients, including death. Although sections 503A and 503B of the FD&C Act (21 U.S.C. 353a and 353b) provide exemptions for compounded drugs from specified provisions of the FD&C Act if certain conditions are met, neither section provides an exemption from section 501(a)(2)(A) of the FD&C Act. Any drug that is prepared, packed, or held under insanitary conditions is deemed to be adulterated under the FD&C Act, including drugs produced by a compounding facility.

Since the 2012 fungal meningitis outbreak associated with injectable drug products that a compounding facility produced and shipped across the country, FDA has identified insanitary conditions at many of the compounding facilities that it has inspected, and numerous compounding facilities have voluntarily recalled drug products intended to be sterile and temporarily or permanently ceased sterile operations as a result of these findings. However, FDA does not inspect the vast majority of compounding facilities in the United States because they generally do not register with FDA unless they elect to become outsourcing facilities. Therefore, FDA is often not aware of these facilities and potential problems with their drug products, or conditions and practices, unless it receives a complaint such as a report of a serious adverse event or visible contamination. It is critical that compounding facilities avoid the presence of insanitary conditions and identify and remediate any insanitary conditions at their facilities before the conditions result in drug contamination and patient injury.

FDA is issuing this draft guidance to assist compounding facilities in identifying insanitary conditions so that they can implement appropriate corrective actions, and to assist State regulatory agencies in understanding some examples of what FDA considers to be insanitary conditions.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on insanitary conditions at compounding facilities. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: July 29, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–18461 Filed 8–3–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0544]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; National Direct-to-Consumer Advertising Survey

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 September 6, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and title National Direct-to-Consumer Advertising Survey. 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, Three White Flint North 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *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. National Direct-to-Consumer Advertising Survey—OMB Control Number 0910–NEW

I. Background

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 393(d)(2)(c)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

FDA last surveyed patients about their experiences with and attitudes toward DTC advertising in 2002 (Ref. 1). Numerous changes have affected the DTC landscape since 2002, including declines in print readership, the rise in online prescription drug promotion, and self-imposed industry guidelines for DTC advertising (Ref. 2). These changes may have affected consumers' exposure to different kinds of DTC advertising and its influence on their attitudes and behaviors. The purpose of the National Direct-to-Consumer Advertising Survey is to collect updated insights on consumer experiences with and attitudes towards DTC promotion of prescription drugs. This study will build on previous research by recruiting a wider range of respondents, weighting the data to make it nationally representative, and asking a wider range of questions about DTC promotion, including in online formats.

We plan to use an address-based mixed-mode methodology that will direct one randomly-chosen member of sampled households to complete a 20-minute online survey, with non-respondents receiving a paper questionnaire. The sample will be representative of the U.S. population. A sample of U.S. households will be drawn from the U.S. Postal Service Computerized Delivery Sequence File. Adults aged 18 or over will be eligible for participation. Up to five contacts will be sent to respondents by U.S. mail. The contacts will include the URL for the online survey and a unique personal identification number (PIN). This unique PIN will be used to track completed surveys without the use of personally identifying information. The contact method, based on recent recommendations (Ref. 3), includes a notification letter (Day 1), a reminder/thank-you postcard (Day 5), a second letter sent to non-responders (Day 12), a paper version of the survey mailed to non-responders (Day 19), and a reminder postcard sent to non-responders (Day 24).

Based on previous research (Refs. 4, 5, and 6), we plan to recruit using two $1 bills ($2 total per sampled respondent) mailed in advance with the initial invitation letter as a gesture to encourage response and maintain data quality. Offering a small token of value to respondents establishes a latent social contract and subsequent reciprocity (Ref. 3). In the second contact attempt, we will conduct an experiment to test whether a short statement mentioning the previously paid incentive increases survey response, thereby testing whether social exchange can be extended past the initial contact attempt. Half the sample will be provided language that reminds them they received a cash incentive in the previous letter; the remaining half will be reminded they received a letter but will not be specifically reminded about the incentive.

We estimate a 35 percent response rate, based on recent work on similar studies (Ref. 7). Prior to the main study, a pilot study will be conducted to test the data collection process. We estimate 35 respondents will complete the pilot study and 1,765 will complete the main study (see table 1).

The survey contains questions about respondents' knowledge of FDA's authority with respect to prescription drug advertising, their exposure to DTC advertising, their beliefs and attitudes about DTC advertising, and the influence of DTC advertising on further information search and patient-physician interactions. At the end of the survey, respondents will be randomly assigned to view one of two ads for fictional prescription drugs intended to treat high cholesterol. They will be asked questions about FDA's authority regarding specific claims within the ad. The survey will include a debriefing to inform respondents that the advertised drug was fictitious. We will also measure other potentially important characteristics such as demographics, insurance coverage, and prescription drug use. The survey is available upon request.

We will test for any differences between modes (online versus mail survey) and will account for any mode effects in our analyses. We will weight the data to account for different probability of selection and nonresponse. We will examine the frequencies for survey items and the relation between survey items and demographic and health characteristics. We also plan to compare responses between this survey and FDA's 2002 survey for repeated items.

In the **Federal Register** of February 29, 2016 (81 FR 10257), FDA published a 60-day notice requesting public comment on the proposed collection of information. Nine comments were received. Five comments did not address any of the information collection topics solicited and therefore we do not discuss them in this document (four called for a ban on direct-to-consumer prescription drug advertising and one discussed FDA's response to public comments in general). No comments addressed *Topic 2—accuracy of our estimate.*

Topic 1—practical utility. One comment suggested that we increase the practical utility of the survey by (1) including teenagers 14–18 years of age, and (2) skewing the survey to include a disproportionate number of Americans over 50 years of age. Another comment suggested we use a quota to ensure that limited literacy respondents are included. One of our main goals is to survey a nationally representative sample of U.S. adults about their experiences with and attitudes towards DTC promotion of prescription drugs. Note that we have designed other studies that specifically examine adolescent and older adults' responses to prescription drug advertising (FDA–2013–N–1151–0004, ''Experimental Study of Direct-to-Consumer Promotion Directed at Adolescents''; FDA–2015–N–2163–000, ''Hearing, Aging, and Direct-to-Consumer Television Advertisements''). We will measure health literacy within the survey.

One comment suggested that respondents should watch a

prescription drug television ad and then answer questions about benefit and risk recall. Although this design is beyond what we can accomplish within a nationally representative survey, we have conducted studies that use this design (for examples, see *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDER/ucm090276.htm*).

Topic 3—ways to enhance quality, clarity, utility. Four comments suggested changes to the survey to enhance its quality, clarity, and utility. Three comments suggested changing our terminology throughout the survey for clarity. As suggested, we changed ''television'' to ''TV,'' ''advertisement'' to ''ad,'' used ''health care provider'' throughout the survey, and specified that by Internet we mean Internet accessed by computer, phone, or tablet. We changed ''small print'' to ''additional information.'' We did not change ''prescription drug'' to ''medicine.'' Respondents in cognitive interviews understood the term ''prescription drug,'' and we are concerned that ''medicine'' is too broad. We also chose not to highlight or bold ''prescription drug'' as cognitive interview respondents understood the purpose of the survey and we do not want to overuse highlighting.

Also, two comments suggested deleting survey questions. Two comments questioned the utility of a series of questions about the safety and efficacy of certain products. We agree that these questions are not as central to the survey topic and have deleted them. They also recommended deleting a series of questions about FDA approval of DTC promotion. These questions will highlight claims within the ad to determine whether consumers believe that advertising in general as well as specific claims are approved by FDA. Therefore, we have chosen to keep these questions on the survey. One comment recommended deleting a question perceived to be too negative whereas another comment recommended adding positive answer choices to balance the question; we chose the latter option.

In addition, four comments suggested additional topics for survey questions. In response we added questions about whether prescription drug advertising has caused respondents to talk with their healthcare provider about symptoms or side effects they've experienced, or to look for information about a prescription drug they thought might be helpful for a friend of family member. We also added a question about the respondents' primary language. Finally, we now ask whether respondents have seen prescription drug promotion on streaming services and whether they have looked for information on medical association Web sites.

One comment suggested adding places where consumers could see or hear advertisements (*e.g.,* ''on television at the doctor's office,'' ''in a pharmacy'') to a question that asks about the type of medium where they saw or heard an ad (*e.g.,* ''TV,'' ''print''). We chose not to take this suggestion because the question concerns medium, not location. We are also concerned about measurement error. For instance, some doctor's offices have magazines with DTC print ads, TVs playing broadcast television, or TVs playing videos. This also relies on having gone to a doctor or pharmacist in the last 3 months.

One comment suggested adding additional response options to a question about where consumers might attain more information about prescription drugs. Because this question is focused on adequate provision in DTC television ads, we chose not to add any additional response options beyond those specific to adequate provision (*i.e.,* branded Web site, manufacturer's toll-free number, print ad, and health care provider).

We note that the survey contains a series of questions about various new media, including social media, Web sites, and online videos. It also asks about respondents' attitudes about how benefits and risks are presented, whether they have seen information about the medical condition in TV ads, and whether they've looked for information on government Web sites. We chose not to ask whether they've looked for information on manufacturer Web sites because we don't want respondents to confuse it with the option, ''a prescription drug Web site.''

Finally, three comments had suggestions for how we ask our questions. One comment recommended reducing or eliminating the number of open-ended questions. The main survey has only two questions with an open-ended option (allowing respondents to specify another response). If pilot testing reveals potential closed-ended response options for these two questions we will add them to the main survey. One comment suggested changing our scale for how we measure exposure to prescription drug promotion. We changed this scale from qualitative frequency to a yes/no scale. Similarly, one comment asked us to consider how we measure how much of an ad respondents saw or read because there may be many variables that affect this. We have chosen not to change this scale but will consider this point when interpreting the data. One comment suggested that we randomize response order for the paper-based surveys. We plan to create multiple versions of the paper-based scale to account for household sampling and viewing of the ad, so we are concerned that creating different versions to account for response option randomization will be too complex for a survey of this scale. However, we agree that response option order is important to take into account when interpreting results.

Topic 4—ways to minimize burden. One comment suggested we conduct the survey with an online consumer survey panel to reduce time and costs and increase response rates. Although we agree that online survey panels can be an efficient way to collect data, this survey is designed to be nationally representative. Following OMB's advice, therefore, we will use the Internet as one mode of data collection but will not rely on an online survey panel for sampling (*https://www.whitehouse.gov/sites/default/files/omb/inforeg/pmc_survey_guidance_2006.pdf*).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pilot Study					
Survey invitation letter	100	1	100	.08 (5 min.)	8
Reminder postcard	100	1	100	.03 (2 min.)	3
Non-response letter	82	1	82	.08 (5 min.)	7
Non-response questionnaire letter	81	1	81	.08 (5 min.)	7

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Second postcard	60	1	60	.03 (2 min.)	2
Survey	35	1	35	.33 (20 min.)	12
Main Study					
Survey invitation letter	5,042	1	5,042	.08 (5 min.)	403
Reminder postcard	5,042	1	5,042	.03 (2 min.)	151
Non-response letter	4,173	1	4,173	.08 (5 min.)	334
Non-response questionnaire letter	4,073	1	4,073	.08 (5 min.)	326
Second postcard	3,063	1	3,063	.03 (2 min.)	92
Survey	1,765	1	1,765	.33 (20 min.)	582
Total					1927

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

II. References

The following references are on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov.* FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. Aikin, K.J., J.L. Swasy, and A.C. Braman, ''Patient and Physician Attitudes and Behaviors Associated With DTC Promotion of Prescription Drugs—Summary of FDA Survey Research Results,'' 2004. (*http://www.fda.gov/downloads/Drugs/ScienceResearch/ResearchAreas/DrugMarketingAdvertisingandCommunicationsResearch/ucm152860.pdf*).

2. PhRMA Guiding Principles: Direct-to-Consumer Advertisements About Prescription Medicines 2008. (*http://phrma.org/sites/default/files/pdf/phrmaguidingprinciplesdec08final.pdf*).

3. Dillman, D.A., J.D. Smyth, and L.M. Christian, *Internet, Phone, Mail, and Mixed-Mode Surveys: The Tailored Design Method,* 4th ed. Hoboken, NJ: John Wiley & Sons, Inc., 2014.

4. American Association for Public Opinion Research, ''Address-based Sampling,'' 2016. (*http://www.aapor.org/AAPOR_Main/media/MainSiteFiles/AAPOR_Report_1_7_16_CLEAN-COPY-FINAL.pdf*).

5. Millar, M.M. and D.A. Dillman, ''Improving Response to Web and Mixed-Mode Surveys,'' *Public Opinion Quarterly* 1–21. 2011.

6. Shaw, M.J., T.J. Beebe, H.L. Jensen, and S.A. Adlis, ''The Use of Monetary Incentives in a Community Survey: Impact on Response Rates, Data Quality, and Cost,'' *Health Services Research* 35:1339–1346. 2011.

7. Montaquila, J.M., J.M. Brick, D. Williams, K. Kim, et al., ''A Study of Two-Phase Mail Survey Data Collection Methods,'' *Journal of Survey Statistics and Methodology* 1(1), 66–87. 2013.

Dated: July 29, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–18425 Filed 8–3–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2012–N–1210; FDA–2004–N–0258]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Food Labeling: Nutrition Facts and Supplement Facts Label and Reference Amounts Customarily Consumed per Eating Occasion

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Food Labeling: Nutrition Facts and Supplement Facts Label and Reference Amounts Customarily Consumed Per Eating Occasion'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On May 27, 2016, the Agency submitted a proposed collection of information entitled ''Food Labeling: Nutrition Facts and Supplement Facts Label and Reference Amounts Customarily Consumed Per Eating Occasion'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0813. The approval expires on July 31, 2019. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: August 1, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–18509 Filed 8–3–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2016–M–1122, FDA–2016–M–1123, FDA–2016–M–1124, FDA–2016–M–1125, FDA–2016–M–1165, FDA–2016–M–1166, FDA–2016–M–1167, FDA–2016–M–1168, FDA–2016–M–1222, FDA–2016–M–1223, FDA–2016–M–1400, FDA–2016–M–1401, FDA–2016–M–1455, FDA–2016–M–1459, FDA–2016–M–1754, and FDA–2016–M–1755]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications

(PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the Agency's Division of Dockets Management.

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 Nos. FDA–2016–M–1122, FDA–2016–M–1123, FDA–2016–M–1124, FDA–2016–M–1125, FDA–2016–M–1165, FDA–2016–M–1166, FDA–2016–M–1167, FDA–2016–M–1168, FDA–2016–M–1222, FDA–2016–M–1223, FDA–2016–M–1400, FDA–2016–M–1401, FDA–2016–M–1455, FDA–2016–M–1459, FDA–2016–M–1754, and FDA–2016–M–1755 for ''Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications.'' 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.

FOR FURTHER INFORMATION CONTACT: Joshua Nipper, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1650, Silver Spring, MD 20993–0002, 301–796–6524.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the FD&C Act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from April 1, 2016, through June 30, 2016. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM APRIL 1, 2016, THROUGH JUNE 30, 2016

PMA No., Docket No.	Applicant	Trade name	Approval date
P100044/S018, FDA–2016–M–1123	Intersect ENT	PROPEL® Mini Sinus Implant	3/23/2016
P150028, FDA–2016–M–1122	NuMed, Inc	Cheatham Platinum Stent System	3/25/2016
P150026, FDA–2016–M–1124	Cardiofocus, Inc	HeartLight Endoscopic Ablation System	4/1/2016

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM APRIL 1, 2016, THROUGH JUNE 30, 2016—Continued

PMA No., Docket No.	Applicant	Trade name	Approval date
P150033, FDA–2016–M–1125	Medtronic, Inc	Medtronic Micra™ Transcatheter Pacemaker System.	4/6/2016
P140003/S005, FDA–2016–M–1165	Abiomed, Inc	Impella Left Ventricular Support System	4/7/2016
P150041, FDA–2016–M–1167	Abbott Molecular, Inc	Vysis CLL FISH Probe Kit	4/11/2016
P150016, FDA–2016–M–1166	Neomend, Inc	TRIDYNE™ Vascular Sealant	4/11/2016
P130001, FDA–2016–M–1168	Epigenomics AG	Epi proColon	4/12/2016
P150012, FDA–2016–M–1222	Boston Scientific Corporation	ImageReady MR Conditional Pacing System and Ingevity Pace/Sense Lead.	4/25/2016
P130029/S002, FDA–2016–M–1223	Bard Peripheral Vascular, Inc	Fluency® Plus Endovascular Stent Graft	4/26/2016
P160002, FDA–2016–M–1400	Ventana Medical Systems, Inc	VENTANA PD–L1(SP142) Assay	5/18/2016
P070014/S037, FDA–2016–M–1455	Bard Peripheral Vascular, Inc	Bard® LifeStent Vascular Stent System	5/31/2016
P110033/S018, FDA–2016–M–1401	Allergan	JUVÉDERM VOLBELLA® XC	5/31/2016
P150047, FDA–2016–M–1459	Roche Molecular Systems, Inc	cobas® EGFR Mutation Test v2	6/1/2016
P150024, FDA–2016–M–1754	Aspire Bariatrics, Inc	AspireAssist®	6/14/2016
P150029, FDA–2016–M–1755	Medtronic Minimed, Inc	iPro2 Continuous Glucose Monitoring System With Enlite Sensor.	6/17/2016

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/DeviceApprovalsandClearances/PMAApprovals/default.htm.*

Dated: August 1, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–18508 Filed 8–3–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2066]

Agency Information Collection Activities; Proposed Collection; Comment Request; Certification of Identity for Freedom of Information Act and Privacy Act Requests

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on ''Certification of Identity for Freedom of Information Act and Privacy Act Requests.''

DATES: Submit either electronic or written comments on the collection of information by October 3, 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–2016–N–2066 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Certification of Identity for Freedom of Information Act and Privacy Act Requests.'' 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.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20851, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Certification of Identity for Freedom of Information Act and Privacy Act Requests OMB Control Number 0910—NEW

In compliance with 44 U.S.C. 3507, FDA will submit to the Office of Management and Budget a request to review and approve a new collection of information: Certification of Identity for Freedom of Information Act and Privacy Act Requests. This new form provides the FDA with data necessary to identify an individual requesting a particular record under the Freedom of Information Act (FOIA) and the Privacy Act. The form is available at the following FDA FOIA page at: *http://www.fda.gov/RegulatoryInformation/FOI/default.htm,* although if an individual requests one, we will send it by mail or email. The FOIA grants the public a right to access Federal records not normally prepared for public distribution. The Privacy Act grants a right of access to members of the public who seek access to one's own records that are maintained in an Agency's system of records (*i.e.* the records are retrieved by that individual's name or other personal identifier). The statutes overlap, and individuals who request their own records are processed under both statutes. The Agency may need to confirm that the individual making the FOIA or Privacy Act request is indeed the same person named in the Agency records.

Members of the public who wish to access particular records will be asked for certain information: Name, citizenship status, social security number, address, date of birth, place of birth, signature, and date of signature.

FDA estimates the burden of this collection of information as follows:

As stated in table 1, the estimates are based on the following: The number of FOIA and Privacy Act requests received by FDA each year that require a certification of identity in order for FDA to process the request. Of the 10,000 requests received per year, only a small number require a certification of identity. In some cases, the requesters provide their own certification of identity. Therefore, we have estimated the number of affected individuals at 60 per year.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
3975	60	1	60	.17 (10 minutes)	10

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–18463 Filed 8–3–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for the ''MRC Serves'' Video Challenge

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Medical Reserve Corps (MRC) Program housed under the Office of the Assistant Secretary for Preparedness and Response (ASPR) within the U.S. Department of Health and Human Services (HHS), announces the launch of the ''MRC Serves'' Video Challenge. The MRC is a national network of volunteers, organized locally to improve the health and safety of their communities. MRC volunteers have medical, public health, other backgrounds and have responded to natural disasters, public health and other emergencies, while also supporting community health activities. The MRC Program is looking for

innovative and cost effective ways to promote these activities and demonstrate how MRC units and their volunteers make their communities healthier, prepared, and more resilient. Today there are nearly 200,000 volunteers, in almost 1,000 MRC units nationwide, who give their skills and time year around to support their communities and serve as ambassadors for the MRC to their friends, families, neighbors, and co-workers. The MRC Program would like to engage MRC volunteers to also be national ambassadors by creating short promotional videos that will be used by the MRC Program to highlight how serving as MRC volunteers makes communities healthier, more prepared, and more resilient.

DATES: Challenge begins on August 1, 2016, and ends on September 2, 2016 at 11 p.m. EDT. ASPR staff will judge eligible submissions and select semifinalists September 6–7, 2016. Judging of semifinalist videos will take place from September 8–26, 2016. The winners will be notified and announced no later than September 30, 2016. Timeline changes will be announced on *https://mrc.hhs.gov* as well as on the MRC Program's listservs and social media.

ADDRESSES: Contestants must be a member of a local Medical Reserve Corps unit. Videos must be submitted between August 1, 2016 and September 2, 2016. Contestants may be individuals or groups. A contestant can submit a video for each question for up to three total videos. Make sure to only answer one question per video. To register for the Challenge, each contestant will need to create a free account at *http://www.challenge.gov.* Groups must submit an entry through a single designated individual or entity within the group. Contestants must follow submission rules found at *https://www.challenge.gov/challenge/mrc-serves.*

FOR FURTHER INFORMATION CONTACT: Please submit an inquiry via *MRCContact@hhs.gov.*

SUPPLEMENTARY INFORMATION: MRC units consist of volunteers from all walks of life. We want to highlight the reasons that MRC volunteers join and continue to volunteer with the question, why I volunteer with the MRC? By answering the questions—How does MRC make my community healthier? and How does MRC make my community more prepared and resilient?—the goal is to highlight specific examples of how MRC units and their volunteers are making a difference. Contestants are encouraged to be creative when addressing these questions and sharing their story. The video can include other visuals such as footage or pictures of a MRC activity or event (see Contest Guidelines section for restrictions). Contestants are encouraged to wear MRC gear such as shirts and hats. Videos can also be submitted as a group with fellow MRC volunteers.

The challenge is authorized by Public Law 111–358, the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education and Science Reauthorization Act of 2010 (COMPETES Act).

Eligible Entities: This video contest is open to MRC volunteers and MRC units. Contestants may be individuals, public or private entities that are MRC units, or groups. An individual, whether participating individually or in a group, must be a citizen or permanent resident of the U.S. If the contestant is less than 18 at the time of entry, the entrant must have a completed Parental/Guardian Consent Form. In the case of a private entity, the entity must be incorporated in and maintain a primary place of business in the U.S. Federal entities are not eligible; federal employees acting within the scope of their employment are not eligible. ASPR employees are not eligible. Federal grantees may not use federal funds to develop an application unless consistent with the purpose of their grant award and specifically requested to do so due to competition design and as announced in the **Federal Register**. Federal contractors may not use federal funds from a contract to develop applications or to fund efforts in support of a challenge submission. The contest is subject to all applicable federal laws and regulations. Participation constitutes contestant's full and unconditional agreement to these official rules, which are final and binding in all matters related to the contest. Eligibility for a prize award is contingent upon fulfilling all requirements set forth herein. An individual or entity shall not be deemed ineligible because the individual or entity used federal facilities or consulted with federal employees during a competition if the facilities and employees are made available to all individuals and entities participating on an equitable basis.

Contest Guidelines: Only complete entries that follow application instructions will be reviewed. ASPR reserves the right to disqualify participants in instances where misconduct is identified. We expect participants will treat each other and their communities with respect. We will not accept submissions that contain vulgar language, personal attacks, or offensive terms that target individuals or groups. We will not accept submissions that promote services or products. Submissions that make unsupported claims will not be accepted. Other rules include:

- Contestants must be a member of a local Medical Reserve Corps unit;
- Contestants must submit their video by September 2, 2016, at 11 p.m. EDT;
- All videos must be submitted through the Challenge Web site at *https://www.challenge.gov/challenge/mrc-serves;*
- A video must be 60–90 seconds and must answer only one of these three questions:

1. Why I/we volunteer with the MRC?;
2. How does the MRC make my community healthier?;
3. How does the MRC make my community more prepared and resilient?;

- The video should be an MPEG–4 video file with an aspect ratio of 16 x 9;
- The trademarked MRC logo or the words Medical Reserve Corps/MRC should be clearly visible and accurately displayed in the video; view the MRC Identity Guide for guidance on correct logo use at *https://mrc.hhs.gov/;*
- Contestants may submit their entry as an individual or part of a group;
- Submissions by groups should be submitted only once by one member of the group (one prize will be awarded for each winning entry);
- Contestants must upload their video to YouTube (*http://www.youtube.com*) and add the link to their video on the ''Submit Solutions'' form, along with a description and transcript of the video;
- Each video must contain closed captioning;
- Only use royalty free music and/or images. No copyrighted images, footage, or music;
- Do not promote any company, service, or product in the video;
- Do not include any personal identifiable information in the video such as unit badges;
- Helpful links and information:
  - YouTube: How to upload *https://support.google.com/youtube/answer/57407?hl=en&rd=1.*
  - YouTube: How to add closed captions *https://support.google.com/youtube/answer/57407?hl=en&rd=1.*
- If under 18, a contestant must have their adult parent or legal guardian complete the Parental/Guardian Consent Form at *http://www.phe.gov/Preparedness/planning/authority/nhss/Documents/parental-consent-form.pdf.* This form must be submitted with your entry.

• Contestants must have the necessary documented permissions for individuals heard and/or seen on the submitted video. Please have individuals who are identifiable in the video complete a release form.

• The documented permission of the adult parent or guardian of each person under the age of 18 seen or heard in the video is also required.

• Any individual contestant or group entry with a member on the Excluded Parties List (*https://www.sam.gov/sam/transcript/Public_-_Identifying_Excluded_Entities.pdf*) will not be eligible for prizes.

• The video must be an original creation. Contestants must not infringe upon any copyright or any other rights of any third party.

• By submitting a video to this contest, contestants grant a royalty-free license to ASPR to copy, distribute, modify, display and perform publicly and otherwise use, and authorize others to use, your video for any educational purpose throughout the world and in any media.

• By submitting a video to this contest, contestants agree that the MRC and ASPR may make your video available to the public from their Web sites (*https://mrc.hhs.gov* and *http://www.phe.gov*) and to distribute it to organizations interested in showing it for educational purposes. That includes, but is not limited to, internet sites, conferences and events, and television and other media outlets.

• Contestants must agree that if your video is selected as a winner that you are willing to submit a digital file of the video for the above mentioned purposes.

• Contestants must agree to follow applicable local, state, and federal laws, regulations, and policies.

• ASPR reserves the right, in its sole discretion, to cancel, suspend, or otherwise modify the challenge, or not award prizes if no entries are deemed worthy.

• Contestants must comply with these terms and conditions of these rules.

Submission Topic: All video submissions should answer one of three questions: ''Why I/we volunteer with the MRC?'', ''How does the MRC make my community healthier?'', ''How does the MRC make my community more prepared and resilient?''.

Judges and Winner Selection: Submissions will be judged by a panel of MRC and other ASPR staff, qualified by training and experience, to evaluate submissions on the identified criteria and select the semifinalists. Judges will rate the semi-finalists based upon the judging criteria. Judges will be fair and impartial, may not have a personal or financial interest in, or be an employee, officer, director, or agent of, any entity that is a registered participant in the competition, and may not have a familial or financial relationship with an individual who is a registered contestant. ASPR staff will select the final winners by calculating the final scores.

Judging Criteria: Submissions will be scored by the challenge reviewers using the following criteria:

• Clear and consistent message/Overall impact (35 percent): Is the story clear, educational, inspiring, and persuasive? Does it motivate others to serve as MRC volunteers? Is it clear how the MRC impacts their community?

• Creativity and originality (25 percent): How creatively does the video answer the challenge question? How original is the idea?

• Production quality (25 percent): Does the video effectively use lighting, sound, and editing to tell the story? Is the dialogue clear and easy to understand? Do visual effects (if any) contribute to the message or detract from it?

• MRC Identity (15 percent): Does the video do a good job of promoting the MRC brand by showing the trademarked logo or names Medical Reserve Corps and MRC?

Winners and Recognition: There will be one winner selected for each category for a total of up to three winners. If you are selected as a winner, you will need to submit your digital video file to the MRC Program. The winners will be announced no later than September 30, 2016, on the MRC Program's listservs, Web site, and social media channels. Winning videos will be recognized on the MRC Program's Web site and social media and may also be posted to the ASPR Web site and social media. Winners will be invited to attend the 2017 Preparedness Summit where they will be recognized by MRC Program leadership and have their travel, lodging, and expenses covered. For group submissions that win, an invitation will be extended to one representative from the group who will be eligible to receive travel, lodging, and costs to attend the 2017 Preparedness Summit.

Publicity: Except where prohibited, participation in the challenge constitutes the winner's consent to use the winner's name, likeness, photograph, voice, opinions, and/or hometown and state information by ASPR and the MRC Program in any media without further payment or consideration.

Intellectual Property: By submitting an entry to the challenge, each contestant/submitter warrants that he or she is the sole author and owner of any copyrightable works that the entry comprises (or has obtained sufficient rights in any copyrightable works owned by third parties to satisfy its obligations set forth herein), that the works are wholly original with the contestant/submitter, and that the entry does not infringe any copyright or any other rights of any third party of which contestant/submitter is aware.

To receive an award, contestant/submitter will not be required to transfer their intellectual property rights to ASPR or the MRC Program. Each contestant/submitter retains title to their entry, and expressly reserves all intellectual property rights (*e.g.,* copyrights and rights to inventions and patents that cover them) in their entry. By participating in the challenge, each contestant/submitter grants to the federal government a nonexclusive, non-transferrable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. any invention throughout the world owned or controlled by the contestant/submitter that covers the entry, and grants to the U.S. government and others acting on behalf of the U.S. government, a royalty-free, irrevocable, non-exclusive worldwide license to use, reproduce, and display publicly all parts of the entry for the purposes of the challenge. This license includes, without limitation, posting or linking to the entry on the ASPR, MRC, and official Challenge Web sites. Contestants/submitters are free to discuss their entry and the ideas or technologies that it contains with other parties, encouraged to share ideas/technologies publicly, and free to contract with any third parties, as long as they do not sign any agreement or undertake any obligation that conflicts with the challenge rules set forth herein.

Liability: By participating in this challenge, each contestant/submitter agrees to assume any and all risks and waive claims against the federal government and its related entities (as defined in the America COMPETES Act), the challenge's expert advisors and judges, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this challenge, whether the injury, death, damage, or loss arises through negligence or otherwise. By participating in this challenge, each contestant/submitter agrees to indemnify the federal government

against third party claims for damages arising from or related to challenge activities.

Insurance: Based on the subject matter of the challenge, the type of work that it will possibly require, as well as an analysis of the likelihood of any claims for death, bodily injury, or property damage, or loss potentially resulting from competition participation, contestants are not required to obtain liability insurance or demonstrate financial responsibility in order to participate in this challenge.

Warranties: By submitting an entry to the challenge, each contestant/submitter represents and warrants that all information provided in the entry and as a result of the challenge registration process is true and complete, that contestant/submitter has the right and authority to submit such entry on the contestant's/submitter's own behalf or on behalf of the persons and entities specified within the entry, and that the entry:

- Is your original work, or is submitted by permission with full and proper credit given within your entry;
- Does not contain confidential information or trade secrets (yours or anyone else's);
- Does not knowingly violate or infringe upon the patent rights, industrial design rights, copyrights, trademarks, rights in technical data, rights of privacy, publicity or other intellectual property or other rights of any person or entity;
- Does not contain malicious code, such as viruses, malware, timebombs, cancelbots, worms, Trojan horses, or other potentially harmful programs or other material or information.

General Conditions: ASPR reserves the right to cancel, suspend, and/or modify this challenge at any time. In the event the challenge is modified, contestants/submitters registered in the challenge will be notified by email and provided with a copy of the amended challenge rules and a listing of the changes that were made. Any contestant/submitter who continues to participate in the challenge following receipt of such a notice of amendment(s) will be deemed to have accepted any such amendment(s). If a contestant/submitter does not wish to continue to participate in the challenge pursuant to the Official Rules, as amended, such contestant/submitter may terminate participation in the challenge by not submitting additional entries or withdrawing their submission. ASPR reserves the right to not award prizes if no entries are deemed worthy. Only complete entries that follow application instructions will be reviewed and eligible to win. ASPR reserves the right to disqualify any challenge participants in instances where misconduct is identified or other contest guidelines are not met.

Dated: July 28, 2016.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2016–18427 Filed 8–3–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0027]

Agency Information Collection Activities: Record of Vessel Foreign Repair or Equipment Purchase

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Record of Vessel Foreign Repair or Equipment Purchase (CBP Form 226). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before October 3, 2016 to be assured of consideration.

ADDRESSES: All submissions received must include the OMB Control Number 1651–0027 in the subject box, the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@CBP.DHS.GOV,* email should include OMB Control number in Subject.

(2) *Mail.* Submit written comments to CBP PRA Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 10th Floor, 90 K St NE., Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, or via telephone (202) 325–0123, Please note contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs please contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP Web site at *https://www.cbp.gov/.* For additional help: *https://help.cbp.gov/app/home/search/1.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Record of Vessel Foreign Repair or Equipment Purchase.

OMB Number: 1651–0027.

Form Number: CBP Form 226.

Abstract: 19 U.S.C. 1466(a) provides for a 50 percent *ad valorem* duty assessed on a vessel master or owner for any repairs, purchases, or expenses incurred in a foreign country by a commercial vessel registered in the United States. CBP Form 226, Record of Vessel Foreign Repair or Equipment Purchase, is used by the master or owner of a vessel to declare and file entry on equipment, repairs, parts, or materials purchased for the vessel in a foreign country. This information enables CBP to assess duties on these foreign repairs, parts, or materials. CBP Form 226 is provided for by 19 CFR 4.7 and 4.14 and is accessible at: *https://www.cbp.gov/document/forms/form-226-record-vessel-foreign-repair-or-equipment-purchase.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to the information collected on Form 226.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 11.

Estimated Number of Total Annual Responses: 1,100.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 2,200.

Dated: August 1, 2016.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2016–18503 Filed 8–3–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0019]

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers, Availability of FY 2017 Arrangement

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Each year, the Federal Emergency Management Agency (FEMA) is required by the Write-Your-Own (WYO) Program Financial Assistance/Subsidy Arrangement (Arrangement) to notify private insurance companies (Companies) and to make available to the Companies the terms for subscription or re-subscription to the Arrangement. In keeping with that requirement, this notice provides the terms to the Companies to subscribe or re-subscribe to the Arrangement.

FOR FURTHER INFORMATION CONTACT: Lloyd A. Hake, Product Delivery Division Director, Federal Insurance and Mitigation Administration, FEMA, 400 C. St. SW., Suite 313, Washington, DC 20472; 202–646–3428 (phone), 202–646–7970 (facsimile), or *Lloyd.hake@fema.dhs.gov* (email).

SUPPLEMENTARY INFORMATION: Under the Write-Your-Own (WYO) Program Financial Assistance/Subsidy Arrangement (Arrangement), 74 (as of July 27, 2016) private sector property insurers sell flood insurance policies and adjust flood insurance claims under their own names based on an Arrangement with the Federal Insurance and Mitigation Administration (FIMA) published at 44 CFR part 62, Appendix A.

The WYO insurers retain an expense allowance and remit the remaining premium to the Federal Government. The WYO insurers pay flood losses and pay loss adjustment expenses based on a fee schedule through the regulated access of federal funds. In addition, under certain circumstances, reimbursement for litigation costs, including court costs, attorney fees, judgments, and settlements, are paid by FEMA based on documentation submitted by the WYO insurers.

The complete Arrangement is published in 44 CFR part 62, Appendix A. Each year, FEMA is required to publish in the **Federal Register** and make available to the Companies the terms for subscription or re-subscription to the Arrangement. 44 CFR part 62, Appendix A, Article V.B.

Signatory Companies should remain aware that all requirements of the Arrangement, including, but not limited to, financial accounting in issues involving all transactions, must be met. As set forth in Article II.A.1. of Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement, the Company is responsible for meeting all fiduciary responsibilities for control and disbursement of funds in connection with policy administration. This includes ensuring that all accounting for policy administration is correct. If errors are made in policy administration, the Company shall be responsible for reimbursing any incorrect allocations, assessments, or other moneys compensated to that company by the Federal Government.

The Company is responsible for ensuring that all activities meet the requirements of this Arrangement and of the NFIP Financial Control Plan, 44 CFR part 62, Appendix B. The NFIP WYO Standards Committee may take remedial action in the event any such conduct is not corrected.

FEMA encourages all private insurance companies wishing to participate in the WYO Program for FY 2017 to contact the NFIP at *Kevin.Brown4@fema.dhs.gov* by September 4, 2016. Prior participation in the WYO Program does not guarantee that FEMA will approve continued participation. FEMA will evaluate requests to participate in light of publicly-available information, industry performance data, and other criteria listed in 44 CFR 62.24 and the Arrangement, 44 CFR part 62, Appendix A. Private insurance companies are encouraged to supplement this information with customer satisfaction surveys, industry awards or recognition, or other objective performance data. In addition, private insurance companies should work with their vendors and subcontractor involved in servicing and delivering their insurance lines to ensure FEMA receives the information necessary to effectively evaluate the criteria set forth in its regulations.

FEMA will send a copy of the offer for the FY 2017 Arrangement, together with related materials and submission instructions, to all private insurance companies successfully evaluated by the NFIP. If FEMA, after conducting its evaluation, chooses not to renew a Company's participation, FEMA, at its option, may require the continued performance of all or selected elements of the FY 2016 Arrangement for a period required for orderly transfer or cessation of the business and settlement of accounts, not to exceed 18 months, 44 CFR part 62, Appendix A, Article V.C. All evaluations, whether successful or unsuccessful, will inform both an overall assessment of the WYO Program and any potential changes FEMA may consider regarding the Arrangement in future fiscal years.

Any private insurance company with questions may contact FEMA in writing: DHS/FEMA, Federal Insurance and Mitigation Administration, Attn: Lloyd A. Hake, Product Delivery Division Director, Federal Insurance and Mitigation Administration, FEMA, 400 C. St. SW., Suite 313, Washington, DC 20472; 202–646–3428 (phone), 202–646–7970 (facsimile), or *Lloyd.hake@fema.dhs.gov* (email).

Authority: 44 CFR part 62, Appendix A, Article V.B.

Dated: July 29, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Federal Emergency Management Agency.

[FR Doc. 2016–18517 Filed 8–3–16; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4274–DR;Docket ID FEMA–2016–0001]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–4274–DR), dated July 15, 2016, and related determinations.

DATES: *Effective Date:* July 15, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 15, 2016, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from severe storms and flooding during the period of June 11–13, 2016, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Charles Maskell, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Oklahoma have been designated as adversely affected by this major disaster:

Caddo, Comanche, Cotton, Garvin, Grady, and Stephens Counties for Public Assistance.

All areas within the State of Oklahoma are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–18512 Filed 8–3–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2016–0010; OMB No. 1660–0017]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Public Assistance Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before September 6, 2016.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW., Washington, DC 20472–3100, or email address *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection previously published in the **Federal Register** on May 16, 2016 at 81 FR 30324 with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Public Assistance Program.

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

OMB Number: 1660–0017.

Form Titles and Numbers: FEMA Form 009–0–49 Request for Public Assistance; FEMA Form 009–0–91 Project Worksheet (PW); FEMA Form 009–0–91A Project Worksheet (PW)—Damage Description and Scope of Work Continuation Sheet; FEMA Form 009–0–91B Project Worksheet (PW)—Cost Estimate Continuation Sheet; FEMA Form 009–0–91C Project Worksheet (PW)—Maps and Sketches Sheet; FEMA Form 009–0–91D Project Worksheet (PW)—Photo Sheet; FEMA Form 009–0–120 Special Considerations Questions; FEMA Form 009–0–121 PNP Facility Questionnaire; FEMA Form 009–0–123 Force Account Labor Summary Record; FEMA Form 009–0–124 Materials Summary Record; FEMA Form 009–0–125 Rented Equipment Summary Record; FEMA Form 009–0–126 Contract Work Summary Record; FEMA Form 009–0–127 Force Account Equipment Summary Record; FEMA Form 009–0–128 Applicant's Benefits

Calculation Worksheet; FEMA Form 009–0–111 Quarterly Progress Reports; and FEMA Form 055–0–0–1, Request for Arbitration resulting from Dispute Resolution Pilot Program.

Abstract: The information collected is utilized by FEMA to make determinations for Public Assistance grants based on the information supplied by the respondents.

Affected Public: State, Local or Tribal government.

Estimated Number of Respondents: 976.

Estimated Total Annual Burden Hours: 359,186.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $19,625,807. There are no record keeping, capital, start-up or maintenance costs associated with this information collection. The cost to the Federal Government is $750,458.

Dated: July 29, 2016.

Richard W. Mattison,

Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2016–18430 Filed 8–3–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4272–DR; Docket ID FEMA–2016–0001]

Texas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4272–DR), dated June 11, 2016, and related determinations.

DATES: *Effective Date:* July 20, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 11, 2016.

Bosque, Callahan, Coleman, Comanche, Erath, Falls, Fisher, Leon, Madison, Somervell, Trinity, and Walker Counties for Public Assistance.

Lee, Palo Pinto, Stephens, and Tyler Counties for Public Assistance (already designated for Individual Assistance.)

Brazos County for Public Assistance [Categories A and C–G] (already designated for Individual Assistance and emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program.)

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–18511 Filed 8–3–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2016–0049]

Environmental Assessment for Commercial Wind Leasing and Site Assessment Activities on the Outer Continental Shelf (OCS) Offshore the Island of Oahu, Hawaii; Extension of Comment Period MMAA104000

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Extension of Comment Period.

SUMMARY: BOEM is extending the comment period for the Notice of Intent entitled, ''Environmental Assessment for Commercial Wind Leasing and Site Assessment Activities on the Outer Continental Shelf (OCS) Offshore the Island of Oahu, Hawaii,'' which appeared in the **Federal Register** on June 24, 2016, (81 FR 41334). The Environmental Assessment will address environmental impacts and socioeconomic effects related to the issuance of future commercial wind energy leases and approval of site assessment activities on those leases offshore the island of Oahu, Hawaii. The comment period has been extended an additional 30 days to September 7, 2016.

DATES: Comments should be submitted no later than September 7, 2016.

FOR FURTHER INFORMATION CONTACT: Mark Eckenrode, Bureau of Ocean Energy Management, Pacific OCS Region, 760 Paseo Camarillo, Suite 102, Camarillo, California 93010, (805) 384–6388, or *mark.eckenrode@boem.gov.*

ADDRESSES: Federal, State, and local governments, Native Hawaiians, and the public are requested to send their written comments regarding environmental issues and the identification of reasonable alternatives related to the proposed action described in this notice through one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* In the field entitled, ''Enter Keyword or ID,'' enter BOEM–2016–0049, and then click ''search.'' Follow the instructions to submit public comments and view supporting and related materials available for this notice; or

2. *U.S. mail* in an envelope labeled ''Comments on Hawaii EA'' and addressed to Regional Director, BOEM Pacific OCS Region, 760 Paseo Camarillo, Suite 102, Camarillo, California 93010. Comments must be postmarked by the last day of the comment period to be considered. This date is September 7, 2016.

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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 28, 2016.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2016–18528 Filed 8–3–16; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–956]

Certain Recombinant Factor VIII Products; Determination To Review In Part a Final Initial Determination Finding No Violation of Section 337 and a Summary Determination; Schedule for Filing Written Submissions on One Issue Under Review and 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 (1) the final initial determination (''FID'') issued by the presiding administrative law judge (''ALJ'') on May 27, 2016, finding no violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337); and (2) the initial determination issued on February 26, 2016, granting a summary determination of infringement of U.S. Patent No. 6,100,061 (the ''Summary ID'') (Order No. 30). On review, the Commission has determined to reverse the FID's finding that the economic prong of the domestic industry was not met for either asserted patent. Other issues remain on review.

FOR FURTHER INFORMATION CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, (202) 205–3427. 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, (202) 205–2000. General information concerning the Commission may also be obtained at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docketing system (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 at (202) 205–1810.

SUPPLEMENTARY INFORMATION: On May 22, 2015, the Commission instituted this investigation pursuant to section 337 of the Tariff Act of 1930, as amended, based on a complaint filed by Baxter Healthcare Corporation and Baxter Healthcare SA, both of Deerfield, Illinois. 80 FR 29745 (May 22, 2015). Baxalta Inc., Baxalta US Inc., and Baxalta GmbH were added as complainants after the filing of the complaint. 80 FR 62569 (Oct. 16, 2015). (The complainants are collectively referred to as ''Baxter.'') The Commission sought to determine whether there is a violation of section 337(a)(1)(B) in the importation into the United States, the sale for importation into the United States, or the sale within the United States after importation of certain recombinant factor VIII products by reason of infringement of any of claims 19–21, 36, 37, and 39 of U.S. Patent No. 6,100,061 (''the '061 patent''); claims 20 and 21 of U.S. Patent No. 6,936,441 (''the '441 patent''); and claims 1, 5, 8, 10, 14, and 18 of U.S. Patent No. 8,084,252 (''the '252 patent''). 80 FR at 29746. The Commission directed the ALJ to make findings of fact and provide a recommended determination with respect to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), and (g)(1). *Id.* The notice of investigation named as respondents Novo Nordisk A/S of Bagsvaerd, Denmark and Novo Nordisk Inc., of Plainsboro, NJ (collectively, ''Novo Nordisk''). *Id.* The Office of Unfair Import Investigations (''OUII'') is also a party to this investigation. *Id.*

On December 8, 2015, Baxter moved for partial termination of this investigation based on the withdrawal of claims 21, 36, 37, and 39 of the '061 patent; claims 1 and 10 of the '252 patent; and claims 20 and 21 of the '441 patent. That motion was granted, leaving only claims 19 and 20 of the '061 and claims 5, 8, 14, and 18 of the '252 patent at issue. Order No. 23 (Dec. 10, 2016), *unreviewed*, Notice of Commission Determination Not to Review an Initial Determination Granting a Motion for Partial Termination of the Investigation with Respect to Certain Claims (Jan. 6, 2016).

On September 17, 2015, the ALJ issued Order No. 11, which construed the terms ''protein-free conditions'' and ''protein-free medium'' in the asserted claims of each asserted patent. On December 4, 2015, Novo Nordisk moved for reconsideration. On January 7, 2016, the ALJ issued Order No. 25, which granted the motion and reaffirmed her previous claim constructions. On January 11, 2016, Baxter filed a motion requesting a summary determination that the accused products infringe claims 19 and 20 of the '061 patent. On February 26, 2016, the ALJ issued an initial determination (''ID'') (Order No. 30), which granted the motion. On February 29, 2016, Novo Nordisk filed a petition requesting that the Commission review Order Nos. 11, 25, and 30. On March 29, 2016, the Commission determined to defer its decision on whether to review those orders until the date on which the Commission determines whether to review the ALJ's final ID (FID). Notice of Comm'n Determination to Extend the Date for Determining Whether to Review a Non-Final Initial Determination Granting Complainants' Motion for Summary Determination that the Accused Products Infringe U.S. Patent No. 6,100,061 (Mar. 29, 2016).

On May 27, 2016, the ALJ issued the FID, which found no violation of section 337 as to either remaining asserted patent. Regarding the '061 patent, the ALJ concluded (1) claims 19 and 20 are invalid as anticipated under 35 U.S.C. 102(g) and obvious under 35 U.S.C. 103; (2) the economic prong of the domestic industry requirement is not met; and (3) the technical prong of the domestic industry requirement is met by Baxter's Advate product. Regarding the '252 patent, the ALJ concluded (1) Novo Nordisk has not established the invalidity of any asserted claim; (2) Baxter failed to establish the economic prong of the domestic industry requirement; (3) the technical prong of the domestic industry requirement is met by Advate; and (4) Novo Nordisk's Novoeight is made by a process that infringes claims 5, 8, 14, and 18.

On June 3, 2016, the ALJ issued her Recommended Determination on Remedy, Bonding, and the Public Interest, which contingently recommends both a limited exclusion order (''LEO'') and cease and desist orders (''CDOs''). If the Commission finds a Section 337 violation, the ALJ recommended that an LEO should be issued that excludes recombinant factor VIII products manufactured by processes that infringe the asserted claims. The ALJ further recommended that the LEO should not extend to products imported to support clinical trials in the United States and that Novo Nordisk should be required to certify to U.S. Customs and Border Protection that any imported Novoeight will be used solely for such trials. The ALJ additionally recommended that the LEO provide for a grace period of 60 days from the end of the Presidential review period before the LEO is enforced. Furthermore, the ALJ recommend that a CDO containing the above exception and grace period be directed to each respondent. The ALJ also recommended that no bond should be required during the Presidential review period.

On June 13, 2016, Baxter and OUII filed petitions for review of the FID, and Novo Nordisk filed a contingent petition for review. OUII and Baxter each

petitioned for review of the ALJ's determination that Baxter did not meet the economic prong of the domestic industry requirement. Baxter additionally petitioned for review of the FID's conclusions that the asserted claims of the '061 patent are anticipated and rendered obvious. Novo Nordisk's contingent petition challenged the ALJ's construction of ''protein-free'' in the asserted patents; the ALJ's construction of ''selective pressure for the selective marker'' in the '252 patent; and the ALJ's conclusion that Novo Nordisk infringes the '061 and '252 patents. On June 21, 2016, the parties filed responses to the petitions. On July 5, 2016, Novo Nordisk filed its Statement on the Public Interest, and on July 6, 2016, Baxter did the same. Members of the public filed comments on the public interest on June 27 and 28, 2016.

Having examined the record of this investigation, including the FID and Order Nos. 11, 25, and 30; the petitions for review; and the responses thereto; the Commission has determined to review the FID in part and Orders Nos. 11, 25, and 30. Specifically, the Commission has determined to review the construction of ''protein-free medium'' and ''protein-free conditions'' in Orders No. 11 and 25 and the ID granting summary determination of infringement of the asserted claims of the '061 patent in Order No. 30. The Commission has also determined to review the ALJ's conclusion in the FID that the asserted claims of the '061 patent are anticipated and obvious. The Commission has determined to review and, on review, to reverse the ALJ's determination in the FID that the economic prong of the domestic industry requirement is not met as to the '061 and '252 patents. The Commission has determined not to review the ALJ's conclusion in the FID that the '252 patent is infringed.

The parties are requested to brief their positions regarding the FID's determination that the '061 patent is anticipated, the relevant applicable law, and the evidentiary record. In connection with its review, the Commission is particularly interested in a response to the following:

The Federal Circuit has distinguished printed publication prior art from prior use/on sale prior art for purposes of the enablement requirement of 35 U.S.C. 102 and 103. *See In re Epstein*, 32 F.3d 1559, 1567–68 (Fed. Cir. 1994). Does this distinction have implications for enablement for prior inventions under 35 U.S.C. 102(g)?

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 activity involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 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.

The parties and the public are requested to brief their positions regarding the public interest. The Commission is especially interested in public comments from hemophilia A patients and medical professionals with experience in treating hemophilia A patients. The Commission is particularly interested in responses to the following:

(1) What criteria are appropriate to assess the scope of alternative medications to Novoeight that are on the market and that are available to new or existing hemophilia A patients? For example, given the increased safety of third generation hemophilia A medicines, should the relevant scope be limited to third generation (or higher) medications? Should the relevant scope be limited to those alternative medications suitable for patients of all ages and suitable for prophylaxis treatment? Applying these criteria, please identify all available medications that are suitable alternatives to Novoeight.

(2) What is the likelihood that a patient currently using Novoeight and who has insurance coverage for Novoeight will also have insurance coverage for a comparable medication that has similar therapeutic efficacy for that patient?

(3) What costs will patients incur in the process of switching from Novoeight to a comparable alternative? For example, does insurance typically cover (and to what extent does insurance cover) consultations with medical professionals associated with the switching process? Do the associated consultations often take place at one of the approximately 141 federally funded Hemophilia Treatment Centers (''HTCs'')? If so, do patients commonly incur significant expenses in traveling to those HTCs?

(4) What are the therapeutic and safety advantages, if any, of choosing to use Novoeight over Advate and/or other competing medications available in the U.S.?

(5) Do some patients have better therapeutic outcomes with Novoeight than other alternatives? If so, what would the risks be of requiring a patient to switch from Novoeight to a medicine that is less effective for a given patient? Could the risk of switching to a less effective treatment include serious health risks or death?

(6) How should the Commission take into account hemophilia A patients' well-documented fear of developing an inhibitor upon switching hemophilia A medications, given the potentially serious consequences of developing an inhibitor, regardless of the likelihood of developing an inhibitor?

(7) How much weight should the Commission give the fact that Novoeight can be used by a patient for a longer period after reconstitution, and that it has a longer shelf life, than some other medications? For example, how much weight should the Commission give to the fact that some patients may have structured their lives around this increased convenience and flexibility?

(8) Is the ALJ's recommendation that any remedial order should be delayed for sixty days necessary and/or sufficient to allow all individuals who are currently using Novoeight to transition to a different medicine? For example,

(a) How much time is typically needed to establish the viability of a suitable alternative medicine for a particular patient?

(b) How should the Commission consider that some hemophilia A patients may need additional time to switch because (1) those patients have upcoming scheduled surgeries, and/or (2) those patients started using Novoeight near the time of the issuance

of any remedial order and should not change hemophilia medications within fifty days?

(c) If patients need to travel to and schedule appointments at HTCs, is the sixty day grace period sufficient?

(d) If all patients currently using Novoeight need to begin seeking alternative treatments at the same time, is the availability of medical professionals qualified to treat hemophilia A sufficient to meet that spike in demand such that all patients can find alternative treatments within a sixty day time frame?

(e) If the Commission were to limit a remedy so that patients who cannot find an alternative medicine within sixty days (or other time period), despite reasonable efforts, can continue to obtain Novoeight, how could the Commission do so without placing any or only a minimal burden on patients or medical professionals and still guarantee access to Novoeight by those patients? Could such a limit on the remedy be crafted so that the parties, Customs and Border Protection (''CBP''), U.S. distributors and vendors, doctors, and patients can maintain reliable supplies of Novoeight for patients in need?

(9) If the Commission were to tailor any remedial order to allow current users to continue to reliably obtain Novoeight, how could the Commission draft such an exception? Could such an exception be crafted so that the parties, CBP, U.S. distributors and vendors, the appropriate decisionmakers, doctors or other prescribers, and patients can maintain reliable supplies of Novoeight for patients in need while providing no or only a minimal burden on medical professionals and patients?

(10) If the Commission were to issue a remedial order, to what extent should the Commission craft the remedy so that individuals who are seeking treatment for hemophilia A for the first time and for whom relevant alternative medications are not suitable could access Novoeight? For example,

(a) If such modification is appropriate, how could it be accomplished?

(b) What standards should a physician or other decisionmaker use to determine whether such medicines are suitable for the patient?

(c) Could such a limit on the remedy be crafted so that the parties, CBP, U.S. distributors and vendors, the appropriate decisionmakers, doctors or other prescribers, and patients can maintain reliable supplies of Novoeight for patients in need while providing no or only a minimal burden on medical professionals and patients?

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. *See* Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). 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: The parties to the investigation are requested to file written submissions responding to the above question regarding anticipation under 35 U.S.C. 102(g) of the asserted claims of the '061 patent. Parties to the investigation, interested government agencies, and the public are encouraged to file written submissions on the issues of remedy, the public interest, and bonding; and such submissions should address the recommended determination by the ALJ on remedy, public interest, and bonding, and the questions posed above. Complainants are requested to submit proposed remedial orders for the Commission's consideration. Complainants and OUII are also requested to state the date that the subject patents expire and the HTSUS numbers under which the accused products are imported. Complainants are further requested to supply the names of known importers of the products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on August 19, 2016. Reply submissions must be filed no later than the close of business on August 26, 2016. No further submissions 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 eight 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–956'') 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*). 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 information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All nonconfidential 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: July 29, 2016.

Katherine M. Hiner,

Acting Supervisory Attorney.

[FR Doc. 2016–18464 Filed 8–3–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Anheuser-Busch InBev SA/NV et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Anheuser Busch InBev SA/NV et al.,* Civil Action No. 1:16–cv–01483. On July 20, 2016, the United States filed a

Complaint alleging that the proposed acquisition by Anheuser-Busch InBev SA/NV (''ABI'') of SABMiller plc (''SABMiller'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires the divestiture of SABMiller's equity and ownership stake in MillerCoors LLC, which is the joint venture through which SABMiller conducts substantially all of its operations in the United States, and SABMiller's world-wide rights to Miller-branded beers. ABI must also offer the acquirer of the divested assets perpetual, fully paid-up, royalty-free licenses to permit the acquirer to manufacture, import, distribute, market, and sell certain SABMiller-owned beers in the United States. The proposed Final Judgment also requires ABI to undertake certain actions and refrain from certain conduct for the purposes of remedying the potential loss of competition alleged in the Complaint.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's Web site at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's Web site, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Peter Mucchetti, Chief, Litigation I, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530 (telephone: 202–353–4211).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

UNITED STATES OF AMERICA, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW., Suite 4100, Washington, DC 20530, Plaintiff, v. *ANHEUSER-BUSCH InBEV SA/NV, Brouwerijplein, 1, 3000 Leuven, Belgium,* and *SABMILLER plc, SABMiller House, Church Street West, Woking, Surry, GU21 6HS, United Kingdom,* Defendants.

CASE NO.: 1:16–cv–01483
JUDGE: Emmet G. Sullivan
FILED: 07/20/2016

Complaint

1. The United States of America brings this civil antitrust action to enjoin Anheuser-Busch InBev SA/NV (''ABI'') from acquiring SABMiller plc (''SABMiller''). The United States alleges as follows:

I. Nature of the Action

2. On November 11, 2015, ABI agreed to acquire SABMiller in a transaction valued at $107 billion.

3. ABI is the largest brewing company both in the United States and worldwide. In the United States, ABI accounts for approximately 47% of all beer sales.[1]

4. SABMiller is the second-largest global brewing company. In the United States, SABMiller owns 58% of MillerCoors LLC (''MillerCoors''), which is a joint venture between SABMiller and Molson Coors Brewing Company (''Molson Coors''). In the United States, MillerCoors is the second-largest brewing company, accounting for 25% of all beer sales, and is ABI's largest competitor.

5. ABI and MillerCoors are the two largest brewers in local beer markets throughout the United States and have combined market shares that range from 37% to 94% of beer sales in 58 Metropolitan Statistical Areas (''MSA'') in the United States.[2] In more than 15 of these MSAs, ABI and MillerCoors jointly account for 70% or more of beer sales.

6. ABI's proposed acquisition of SABMiller would give ABI a majority ownership interest in and 50% governance rights over MillerCoors. Consequently, this transaction would eliminate head-to-head competition between the two largest brewers in the United States—ABI and MillerCoors—both nationally and in every local market in the United States. This reduction in competition would likely result in increased beer prices and fewer choices for beer consumers across the United States.

7. This transaction threatens other likely anticompetitive effects. ABI's proposed acquisition of SABMiller would increase ABI's incentive and ability to disadvantage its remaining rivals by limiting or impeding the distribution of their beers, thereby restricting their ability to serve the millions of Americans who spend over $100 billion on beer every year. These exclusionary effects would fall especially on brewers and consumers of high-end beers that have served as an important constraint on ABI's ability to raise the price of its beers, and thus would allow ABI to charge consumers higher prices for its beers.

8. ABI, as the largest U.S. brewer, uses a variety of practices and contractual provisions to promote exclusivity from distributors that sell ABI beer. Among other things, ABI has established financial incentive programs that reward distributors based on the percentage of ABI beer that a distributor sells as compared to the beer of ABI competitors. Moreover, ABI insists on contractual terms that limit a distributor's ability to promote and sell a competitor's beer. If permitted to acquire SABMiller, ABI would be able to expand these practices in its current distribution channel and to pursue a similar strategy with distributors that currently sell the beers of MillerCoors and third-party rivals. Consequently, ABI's acquisition of a controlling interest in MillerCoors via its acquisition of SABMiller would likely harm competition by undermining the ability of its remaining rivals to compete with ABI, leading to higher prices, fewer choices, and less innovative products for U.S. beer consumers.

9. For these reasons, ABI's proposed acquisition of SABMiller violates Section 7 of the Clayton Act, 15 U.S.C. 18, and should be permanently enjoined.

II. Jurisdiction, Venue, and Interstate Commerce

10. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants ABI and SABMiller from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

11. ABI and SABMiller produce and sell beer in the flow of interstate commerce and their production and sale of beer substantially affect interstate commerce. ABI and SABMiller have each consented to personal jurisdiction and venue in this judicial district for purposes of this action. Venue is proper for ABI, a Belgium corporation, and SABMiller, a United Kingdom corporation, in this judicial district

[1] National market shares are based on dollar-sales data from IRI, a market research firm, whose data are commonly used by industry participants. The national market shares reflect only off-premise sales. ABI accounts for approximately 35% of dollar sales of beer made only through grocery stores.

[2] The MSAs are defined by IRI. These 58 MSAs represent every MSA in the United States for which reliable data are available at the MSA level. MSA-level data reflect dollar sales of beer only through grocery stores.

under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391.

III. The Defendants and the United States Beer Industry

A. The Defendants

12. ABI is a corporation organized and existing under the laws of Belgium, with its headquarters in Leuven, Belgium. ABI owns and operates 19 breweries in the United States. ABI owns more than 40 major beer brands sold in the United States, including Bud Light—the top-selling beer brand in the United States—and other popular beer brands, such as Budweiser, Busch, Michelob, Natural Light, Stella Artois, Shock Top, Goose Island, and Beck's.

13. SABMiller is a corporation organized and existing under the laws of the United Kingdom, with its headquarters in London, England. SABMiller operates in the United States through its 58% ownership interest in the MillerCoors joint venture.

14. MillerCoors is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Chicago, Illinois. Under MillerCoors' corporate governance structure, SABMiller and Molson Coors, through their designated representatives, have an equal right to govern MillerCoors. MillerCoors owns and operates 12 breweries in the United States. MillerCoors has the sole right to produce and sell in the United States more than 40 major brands of beer, including Coors Light and Miller Lite—the second- and fourth-highest selling beer brands in the United States. MillerCoors also has the right to produce and sell in the United States other popular beer brands, such as Miller Genuine Draft, Coors Banquet, and Blue Moon. In addition, MillerCoors has the exclusive right to import into and sell in the United States certain beer brands owned by SABMiller, including Peroni, Grolsch, and Pilsner Urquell.

B. Beer Segments in the United States

15. Beers sold in the United States are segmented based on price and quality. Beers in the United States can generally be grouped into three segments: Sub-premium, premium, and high-end. A large majority of the beers sold by ABI and MillerCoors in the United States fall into the premium and sub-premium beer segments.

16. The sub-premium segment, also referred to as the value segment, generally consists of lager beers, such as Natural and Keystone branded beer, and some ales and malt liquor. Sub-premium beers are priced lower than premium beers and are generally perceived as being of lower quality than premium beers.

17. The premium segment generally consists of medium-priced American lager beers, such as ABI's Budweiser, and the Miller and Coors brand families, including the ''light'' varieties.[3]

18. The sub-premium and premium segments accounted for 69% of all beer sold in the United States in 2015.

19. The high-end segment generally consists of craft beers, which are often produced in small-scale breweries, and imported beers. High-end beers sell at a wide variety of prices, most of which are higher than the prices for premium beers. Examples of high-end craft beers include Dogfish Head, Flying Dog, and Sam Adams. Examples of high-end imports include Corona, Stella Artois, and Peroni.

20. High-end beers account for a much smaller portion of the beer sold by ABI and MillerCoors in the United States than premium and sub-premium beer. However, over the last five years, the high-end beer segment's market share in the United States has increased from 21% to 31%, while the market share of the premium and sub-premium segments has decreased from 79% to 69%.

21. Historically, ABI has employed a ''price leadership'' strategy whereby ABI, as the largest U.S. brewer, seeks to establish industry-wide price increases by being the first brewer to announce its prices for the upcoming year. In most local markets, ABI is the market share leader and issues its price announcement first, purposely making its price increases transparent to the market so its competitors will follow its lead. These price increases vary by region, but typically cover a broad range of beer brands and packages.

22. For many years, MillerCoors has followed ABI's price increases to a significant degree.

23. Brewers with a broad portfolio of beer brands, such as ABI and MillerCoors, seek to maintain ''price gaps'' between each beer segment to minimize competition across segments. As ABI has continued to raise premium prices, it is increasingly concerned about the threat of high-end brands constraining its ability to lead future price increases. As the prices of premium brands approach the prices of high-end brands, consumers are increasingly willing to trade up from one category of brands to another. Consequently, competition in the high-end beer segment serves as an important constraint on the ability of ABI and MillerCoors to raise—either unilaterally or through coordination—beer prices in the United States.

C. Beer Distribution in the United States

24. Most brewers use distributors to merchandise, sell, and deliver beer to retailers. Those retailers are primarily grocery stores, large retailers (such as Target and Walmart), convenience stores, liquor stores, restaurants, and bars. Retailers, in turn, sell beer to consumers. Beers brewed in foreign countries are typically sold to an importer that resells the beer to distributors.

25. Distributors owned by ABI currently distribute about 9% of ABI's beer in the United States. These distributors typically distribute only brands that are owned by or affiliated with ABI. To the extent that ABI-owned distributors sell beer brands that are not owned by or affiliated with ABI, those brands tend to be local craft beers with limited sales and high operating costs.

26. Almost all of the remaining volume of ABI's beer is sold by distributors who sell large volumes of ABI beer, including the Budweiser and Bud Light brands of beer, but are not owned by ABI (''ABI-Affiliated Wholesalers''). ABI beer brands account for approximately 90% by volume, on average, of the beer sold by ABI-Affiliated Wholesalers. ABI-Affiliated Wholesalers often also distribute high-end beers that compete with ABI's beers, such as Heineken or Sam Adams.

27. ABI exerts considerable influence over ABI-Affiliated Wholesalers, in part by requiring that these distributors enter into a Wholesaler Equity Agreement (''Equity Agreement'') with ABI. The Equity Agreement contains a number of provisions that are designed to encourage ABI-Affiliated Wholesalers to sell and promote ABI's beer brands instead of the beer brands of ABI's competitors.

28. For example, the Equity Agreement prohibits an ABI-Affiliated Wholesaler from requesting that a bar replace an ABI tap handle with a competitor's tap handle or that a retailer replace ABI shelf space with a competitor's beer. Further, the Equity Agreement prohibits an ABI-Affiliated Wholesaler from compensating its salespeople for their sales of competing beer brands (such as a dollar-per-case incentive) unless it provides the same

[3] ABI also identifies a ''premium plus'' segment that consists largely of American beers that are priced somewhat higher than Budweiser and Bud Light. Examples of beers that ABI identifies as ''premium plus'' beers include Bud Light Lime, Bud Light Platinum, Bud Light Lime-a-Rita, and Michelob Ultra.

incentives for sales of certain ABI beer brands.

29. ABI also provides payments to ABI-Affiliated Wholesalers based on their ABI ''alignment,'' that is, the amount of ABI beer that they sell relative to the beer of ABI competitors. For example, under a program known as the Voluntary Anheuser-Busch Incentive for Performance Program, ABI offers ABI-Affiliated Wholesalers that are 90% or more ''aligned'' a payment for each case-equivalent of ABI beer they sell. The size of the payment increases based on the ABI-Affiliated Wholesaler's level of alignment. Only the sales of very small, local craft beers are excluded from the calculation of an ABI-Affiliated Wholesaler's level of alignment.

IV. The Relevant Market

A. Relevant Product Market

30. Beer is a relevant product market and line of commerce under Section 7 of the Clayton Act. Beer is usually made from a malted cereal grain, flavored with hops, and brewed via a fermentation process. Beer's taste, alcohol content, image, price, and other factors make it substantially different from other alcoholic beverages.

31. Other alcoholic beverages, such as wine and distilled spirits, are not sufficiently substitutable to discipline a small but significant and non-transitory increase in the price of beer, and relatively few consumers would substantially reduce their beer purchases in the event of such a price increase. Therefore, a hypothetical monopolist producer of beer likely would increase its prices by at least a small but significant and non-transitory amount.

B. Relevant Geographic Market

32. ABI and MillerCoors are the two largest brewers in local markets throughout the United States. Appendix A lists the 58 MSAs in the United States for which reliable data on beer sales are available. These and the other MSAs in the United States are relevant geographic markets for antitrust purposes. These local markets currently benefit from head-to-head competition between ABI and MillerCoors, and in each local market the proposed acquisition would likely substantially lessen competition.

33. The relevant geographic markets for analyzing the effects of the proposed acquisition are best defined by the locations of the customers who purchase beer, rather than by the locations of breweries.

34. Brewers develop pricing and promotional strategies based on an assessment of local demand for their beer, local competitive conditions, and local brand strength. Thus, the price for a brand of beer can vary by local market.

35. Brewers are able to price differently in different locations, in part because arbitrage across local markets is unlikely to occur. Consumers buy beer near their homes and typically do not travel to other areas to buy beer when prices rise. Also, distributors' contracts with brewers and importers contain territorial limits and prohibit distributors from reselling beer outside their territories. In addition, each state has different laws and regulations regarding beer distribution and sales that would make arbitrage unfeasible.

36. A hypothetical monopolist of beer sold in each MSA in the United States would likely increase its prices in that local market by at least a small but significant and non-transitory amount. Therefore, these areas are relevant geographic markets and ''sections of the country'' within the meaning of Section 7 of the Clayton Act.

37. Competition also exists among brewers on a national level, which affects local markets throughout the United States. Decisions about beer brewing, marketing, and brand building typically take place on a national level. In addition, a significant portion of beer advertising is placed on national television, and brewers commonly compete for national retail accounts. General pricing strategy also typically originates at a national level.

38. A hypothetical monopolist of beer sold in the United States would likely increase its prices by at least a small but significant and non-transitory amount. Accordingly, the United States is a relevant geographic market under Section 7 of the Clayton Act.

V. ABI's Acquisition of SABMiller Is Likely To Result in Anticompetitive Effects

A. The Relevant Markets Are Highly Concentrated and the Proposed Acquisition Is Presumptively Illegal

39. The relevant beer markets are highly concentrated and would become significantly more concentrated as a result of the proposed acquisition. ABI and MillerCoors jointly account for approximately 72% of the national beer market. In every local market for which reliable data are available, ABI and MillerCoors have a combined market share that ranges from 37% to 94%. Indeed, in 18 MSAs, ABI and MillerCoors have a combined market share of 70% or greater. *See* Appendix A.

40. Market concentration is often one useful indicator of the level of competitive vigor in a market and the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that the transaction would result in harm to consumers by meaningfully reducing competition.

41. Concentration in relevant markets is typically measured by the Herfindahl-Hirschman Index (or ''HHI,'' defined and explained in Appendix B). Markets in which the HHI is in excess of 2,500 points are considered highly concentrated. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, *Horizontal Merger Guidelines* ¶ 5.3 (revised Aug. 19, 2010) (''*Merger Guidelines*''), *https://www.justice.gov/atr/horizontal-merger-guidelines-08192010.*

42. The beer industry in the United States is highly concentrated and would become even more concentrated as a result of ABI's proposed acquisition of SABMiller. Market share estimates demonstrate that nationally, and in all but three local geographic markets identified in Appendix A, the post-acquisition HHI would exceed 2,500 points. In one local market (the Wichita, Kansas MSA), the post-acquisition HHI would be more than 8,900. Moreover, the HHI would increase in every relevant geographic market by at least 680 points. Based on the resulting HHI measures of concentration, and the increase in concentration that would result from the transaction, ABI's proposed acquisition of SABMiller is presumptively anticompetitive. *See Merger Guidelines* ¶ 5.3.

B. ABI's Acquisition of SABMiller Would Eliminate Head-to-Head Competition Between ABI and MillerCoors

43. Today, ABI and MillerCoors compete directly against each other both nationally and in every local market in the United States.

44. ABI's proposed acquisition of SABMiller would give ABI a majority ownership interest in and 50% governance rights over MillerCoors and thereby eliminate competition between the two largest beer brewers in the United States. Thus, ABI's acquisition of SABMiller would likely substantially lessen competition both nationally and in every local market in the United States, and therefore violate Section 7 of the Clayton Act.

C. ABI's Acquisition of SABMiller Would Increase ABI's Incentive and Ability to Disadvantage High-End Rivals by Limiting Their Distribution

45. ABI's proposed acquisition of SABMiller would also harm competition by increasing ABI's incentive and ability to engage in anticompetitive conduct that limits and impedes the distribution of its high-end rivals' beer. With the elimination of MillerCoors as a competitive constraint, ABI's high-end rivals would become a more important constraint on ABI's ability to raise beer prices.

46. ABI currently encourages ABI-Affiliated Wholesalers to limit their sales of the beers of ABI's high-end rivals through the Equity Agreement and ABI's incentive programs. Consequently, the beers of ABI's competitors account for only a small percentage of the sales of many ABI-Affiliated Wholesalers. ABI has also purchased distributors in states in which those purchases are legal, allowing ABI directly to limit sales of ABI's high-end rivals.

47. After the proposed acquisition, ABI would have a greater incentive and ability to invest resources in distributor acquisitions and to use practices that restrict its rivals' access to distribution. With control over the MillerCoors brands, ABI could encourage the distributors of both ABI brands and MillerCoors brands to limit their sales of high-end rivals' beer, which would likely result in increased beer prices and fewer choices for consumers.

VI. Absence of Countervailing Factors

48. New entry and expansion by competitors likely will not be timely and sufficient in scope to prevent the acquisition's likely anticompetitive effects. Barriers to entry and expansion within each relevant market include: (i) The substantial time and expense required to build a brand's reputation; (ii) the substantial sunk costs for promotional and advertising activity needed to secure the distribution and placement of a new entrant's beer products in retail outlets; (iii) the time and cost of building new breweries and other facilities; and (iv) the difficulty of developing an effective network of beer distributors with incentives to promote and expand a new entrant's sales.

49. The anticompetitive effects of the proposed acquisition are not likely to be eliminated or mitigated by any efficiencies the proposed acquisition may achieve.

VII. Violation Alleged

50. The United States hereby incorporates the allegations of paragraphs 1 through 49 above as if set forth fully herein.

51. The proposed transaction would likely substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and would likely have the following anticompetitive effects, among others:

(a) Head-to-head competition between ABI and MillerCoors for beer sales in the relevant geographic markets would be eliminated or substantially lessened; and

(b) competition generally in the relevant geographic markets for beer would be substantially lessened.

Requested Relief

The United States requests:

1. That the proposed acquisition be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

2. That Defendants be permanently enjoined and restrained from carrying out the proposed transaction or from entering into or carrying out any other agreement, understanding, or plan by which ABI would acquire, be acquired by, or merge with SABMiller or MillerCoors;

3. That the United States be awarded costs in this action; and

4. That the United States have such other relief as the Court may deem just and proper.

Dated: July 20, 2016

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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Appendix A

RELEVANT GEOGRAPHIC MARKETS AND CONCENTRATION DATA

Metropolitan statistical area	Combined share (%)	Post-acquisition HHI	HHI increase
Wichita, KS	94	8904	4431
Tulsa, OK	90	8094	3477
Green Bay, WI	87	7551	3761
Oklahoma City, OK	83	6985	3013
Peoria/Springfield	80	6465	3148
St. Louis, MO	79	6268	2343
Milwaukee, WI	78	6105	2303
Salt Lake City, UT	77	6081	2828
Denver, CO	76	5916	2903
Omaha, NE	76	5796	2643
Louisville, KY	76	5791	2774
Des Moines, IA	75	5694	2614
New Orleans/Mobile	75	5646	2593
Minneapolis/St Paul	72	5506	2478
Indianapolis, IN	72	5296	2605
Roanoke, VA	72	5205	2454
Birmingham/Montgom	71	5115	2303

RELEVANT GEOGRAPHIC MARKETS AND CONCENTRATION DATA—Continued

Metropolitan statistical area	Combined share (%)	Post-acquisition HHI	HHI increase
Kansas City, KS	70	5027	2328
Memphis, TN	69	4909	2085
Cincinnati/Dayton	69	4841	2350
Tampa/St Petersburg	69	4832	2091
Knoxville	68	4763	2237
Spokane, WA	68	4760	2316
Toledo	68	4699	2163
Charlotte, NC	67	4626	2200
Phoenix/Tucson	66	4624	2147
Houston, TX	66	4594	1910
Richmond/Norfolk	67	4580	2168
Jacksonville, FL	66	4513	1805
Dallas/Ft. Worth	65	4474	2113
Raleigh/Greensboro	66	4427	2018
Orlando, FL	65	4416	1898
Grand Rapids, MI	65	4326	2053
Las Vegas	63	4221	1948
Chicago, IL	63	4157	1838
Nashville, TN	64	4155	1958
Boise, ID	63	4150	1923
Detroit, MI	62	3995	1891
Columbus, OH	59	3611	1722
Cleveland, OH	59	3568	1722
Hartford/Springfield	57	3552	1442
Albany, NY	57	3528	1640
Miami/Ft Lauderdale	53	3367	1274
Los Angeles, CA	49	3261	1166
Atlanta, GA	55	3241	1506
New York	53	3190	1319
Syracuse, NY	54	3179	1400
Portland, OR	54	3042	1382
Seattle/Tacoma	51	2878	1323
Boston, MA	50	2836	1169
Buffalo/Rochester	50	2773	1207
Sacramento, CA	48	2715	1174
San Diego, CA	47	2594	1085
Harrisburg/Scranton	49	2582	1172
Baltimore/Washington	48	2513	1124
San Fran/Oakland	41	2251	820
Pittsburgh, PA	42	1960	835
Philadelphia, PA	37	1556	683

Appendix B

Definition of the Herfindahl–Hirschman Index

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30 percent, 30 percent, 20 percent, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is in excess of 2,500 are considered to be highly concentrated. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, *Horizontal Merger Guidelines* ¶ 5.3 (revised Aug. 19, 2010), *https://www.justice.gov/atr/horizontal-merger-guidelines-08192010.* Transactions that increase the HHI by more than 200 points in highly concentrated markets presumptively raise antitrust concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id.*

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Anheuser-Busch InBEV SA/NV, and SABMILLER plc, Defendants.

CASE NO.: 1:16–cv–01483

JUDGE: Emmet G. Sullivan

FILED: 07/20/2016

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b), Plaintiff United States of America (''United States'') files this Competitive Impact Statement relating to the proposed Final Judgment submitted on July 20, 2016, for entry in this civil antitrust proceeding.[1]

I. Nature and Purpose of the Proceeding

On November 11, 2015, Defendant Anheuser-Busch InBev SA/NV (''ABI'') agreed to acquire Defendant SABMiller plc (''SABMiller'') in a transaction valued at $107 billion. The United States filed a civil antitrust Complaint against ABI and SABMiller (collectively, ''Defendants'') on July 20, 2016, seeking

[1] Capitalized terms not otherwise defined herein have the meaning ascribed to them in the proposed Final Judgment.

to enjoin the proposed acquisition. The Complaint alleges that this proposed transaction will likely lessen competition substantially in the U.S. beer industry—an industry in which millions of U.S. consumers spend over $100 billion per year—in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

Specifically, the Complaint alleges that this proposed transaction will reduce competition by eliminating head-to-head competition between the two largest beer brewers in the United States—ABI and MillerCoors LLC (''MillerCoors'')—both nationally and in every local market in the United States. The Complaint also alleges that the elimination of competition between ABI and MillerCoors will increase ABI's incentive and ability to disadvantage its remaining rivals—in particular, brewers of high-end beers that serve as an important constraint on ABI's ability to raise its beer prices—by limiting or impeding the distribution of their beers. As detailed in the Complaint, these anticompetitive effects likely would result in higher beer prices and fewer choices for U.S. beer consumers.

Simultaneously with the filing of the Complaint, the United States filed a Hold Separate Stipulation and Order (''Hold Separate Stipulation and Order'') and a proposed Final Judgment, which seek to prevent the transaction's likely anticompetitive effects.

As detailed below, the proposed Final Judgment requires ABI to divest SABMiller's equity and ownership stake in MillerCoors, which is the joint venture through which SABMiller conducts substantially all of its operations in the United States, as well as certain other assets related to MillerCoors' business and the Miller-branded beer business outside of the United States. The divestiture will not only maintain MillerCoors as an independent competitor, but will protect MillerCoors' competitiveness by giving MillerCoors (or its majority owner) (i) perpetual, royalty-free licenses to products for which it currently must pay royalties, and (ii) ownership of the international rights to the Miller brands of beer.

To further help preserve and promote competition in the U.S. beer industry, the proposed Final Judgment (i) imposes certain restrictions on ABI's distribution practices and ownership of distributors, and (ii) requires ABI to provide the United States with notice of future acquisitions, including acquisitions of beer distributors and craft brewers, prior to their consummation. Among other things, the proposed Final Judgment prohibits ABI from:

- Acquiring a distributor if the acquisition would cause more than 10% of ABI's beer in the United States to be sold through ABI-owned distributors;
- Prohibiting or impeding a distributor that sells ABI's beer from using its best efforts to sell, market, advertise, promote, or secure retail placement for rivals' beers, including the beers of high-end brewers;
- Providing incentives or rewards to a distributor who sells ABI's beer based on the percentage of ABI beer the distributor sells as compared to the distributor's sales of the beers of ABI's rivals;
- Conditioning any agreement or program with a distributor that sells ABI's beer on the fact that it sells ABI's rivals' beer outside of the geographic area in which it sells ABI's beer;
- Exercising its rights over distributor management and ownership based on a distributor's sales of ABI's rivals' beers;
- Requiring a distributor to report financial information associated with the sale of ABI's rivals' beers;
- Requiring that a distributor who sells ABI's beer offer its sales force the same incentives for selling ABI's beer when the distributor promotes the beers of ABI's rivals with sales incentives; and
- Consummating non-reportable acquisitions of beer brewers—including craft brewers—without providing the United States with advance notice and an opportunity to assess the transaction's likely competitive effects.

These provisions will help ensure that U.S. beer consumers receive the products they want at competitive prices and that ABI is not able to disadvantage its rivals in their efforts to compete for consumer demand.

Finally, under the terms of the Hold Separate Stipulation and Order, Defendants will take certain steps to ensure that, pending the ordered divestiture, MillerCoors will continue to be operated as an economically viable, ongoing business concern and that all divestiture assets will be preserved and will be independent from, and not influenced by, ABI.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

ABI is a corporation organized and existing under the laws of Belgium, with headquarters in Leuven, Belgium. ABI brews and markets more beer sold in the United States than any other company, accounting for approximately 47% of beer sales nationally.[2] ABI owns and operates 19 breweries in the United States and over 40 major beer brands sold in the United States, including Bud Light (the highest-selling brand in the United States) and other popular brands, such as Budweiser, Busch, Michelob, Natural Light, Stella Artois, Shock Top, and Beck's.

SABMiller is a corporation organized and existing under the laws of the United Kingdom, with its headquarters in London, England. In the United States, SABMiller operates through its ownership interest in MillerCoors. MillerCoors is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Chicago, Illinois. MillerCoors is a joint venture between SABMiller and Molson Coors Brewing Company (''Molson Coors''). SABMiller and Molson Coors have, respectively, a 58% and 42% ownership interest in and equal governance rights over MillerCoors.

MillerCoors is the second-largest brewing company in the United States, accounting for 25% of beer sales nationally. MillerCoors owns and operates 12 breweries in the United States, and has the sole right to produce and sell in the United States more than 40 brands of beer, including Coors Light and Miller Lite, the second- and fourth-highest selling beer brands in the United States. MillerCoors also has the right to produce and sell in the United States other popular brands of beer, such as Miller Genuine Draft, Coors Banquet, and Blue Moon. In addition, MillerCoors has the exclusive right to import into and sell in the United States certain beer brands owned by SABMiller, including Peroni, Grolsch, and Pilsner Urquell.

At the same time that ABI agreed to acquire complete ownership of SABMiller, ABI also agreed to divest to Molson Coors (1) SABMiller's equity and ownership stake in MillerCoors; (2) perpetual, royalty-free licenses to

[2] National market shares are based on dollar-sales data from IRI, a market research firm, whose data are commonly used by industry participants. The shares reflect only off-premise sales. ABI accounts for approximately 35% of dollar sales of beer made only through grocery stores.

import, manufacture, distribute, market, and sell the Import Products, which are SABMiller brands that are imported by MillerCoors for sale in the United States; [3] (3) perpetual, royalty-free licenses to manufacture, distribute, market, and sell the Licensed Products, which are brands currently manufactured under contract in the United States by MillerCoors under royalty-bearing licenses with SABMiller; (4) all rights, title, and interests in Miller-Branded Products outside the United States; and (5) certain tangible and intangible assets related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the United States. The transaction between ABI and Molson Coors is contingent upon ABI completing its acquisition of SABMiller.

B. The Competitive Effects of the Transaction on the Market for Beer in the United States

1. Relevant Markets

Beer is a relevant product market under Section 7 of the Clayton Act. Beer is usually made from malted cereal grain, flavored with hops, and brewed via a fermentation process. Wine, distilled liquor, and other alcoholic or non-alcoholic beverages do not substantially constrain the prices of beer, and a hypothetical monopolist in the beer market could profitably raise prices.

Beer brewers generally categorize beer into different segments based primarily on price. Beers in the United States can generally be grouped into three segments: Sub-premium, premium, and high-end.[4] However, beers in different segments—particularly those in adjacent segments—can compete with each other under certain circumstances. For example, the prices of high-end beers can constrain the prices of premium beers because some consumers of premium beers may trade up to high-end beers when the prices of premium beers approach the prices of high-end beers.

Most sales of beer in the United States are of premium and sub-premium brands. The vast majority of premium and sub-premium beer sold in the United States is brewed by ABI and MillerCoors, which own most of the popular premium and sub-premium brands. But high-end brands—in particular, Mexican imports and craft brands—are increasingly gaining market share. This market trend is increasing the competition faced by ABI and MillerCoors and the choices available to consumers.

Both national and local geographic markets exist in the beer industry. At the local level, demand for beer is driven by the locations of the customers who purchase beer, rather than by the locations of the breweries that brew it. Beer brewers also make many pricing and promotional decisions at the local level, reflecting local brand preferences and demand, demographics, and other competitive conditions and factors, which can vary significantly from one local market to another. This is sustainable in part because arbitrage across local markets is unlikely to occur.

Important competitive decisions, however, are also made at the national level. At the national level, large beer companies, such as ABI and MillerCoors, make competitive decisions and develop strategies regarding product development, marketing, and brand building. Moreover, large beer brewers typically create and implement national pricing strategies, place a significant portion of beer advertising on national television, and compete for national retail accounts.

2. Competitive Effects of Increased Concentration in the Relevant Markets

The beer industry in the United States is highly concentrated and would become significantly more so if ABI were allowed to acquire SABMiller, including its ownership interest in MillerCoors. As a majority owner with equal governance rights over MillerCoors, ABI would be able to direct the competitive behavior of MillerCoors, leading to a loss of competition between the firms both nationally and in every local market in the United States. Although Molson Coors would continue to own a minority equity interest in MillerCoors and have equal governance rights, Molson Coors' interest in MillerCoors would not eliminate the anticompetitive effects that would result from the acquisition. After the acquisition, ABI would have the right to appoint half of the board members of MillerCoors, who would have the same governance rights as other board members over MillerCoors' business. Given that ABI would have significant influence over MillerCoors, ABI and MillerCoors would be able to coordinate their competitive behavior, possibly to the extent where they behaved as a single, profit-maximizing entity.

The result would be a combination of the two largest beer brewers in the United States, leaving only a fringe of competitors with substantially smaller market shares than ABI and MillerCoors. ABI and MillerCoors account for more than 70% of beer sold in the United States. After the proposed acquisition, ABI would have a commanding market share ranging from 37% to 94% in every local U.S. market for which reliable data are available.[5] In 18 local markets, ABI and MillerCoors would have a combined share of 70% or more.

3. Beer Distribution in the United States

Effective distribution is important for a brewer to be competitive in the U.S. beer industry. Many states require large brewers to use independent distributors, and these distributors typically have exclusive and perpetual rights to sell the brands they carry within a particular territory. Most brewers use distributors to merchandise, sell, and deliver beer to retailers. Those retailers are primarily grocery stores, large retailers (such as Target and Walmart), convenience stores, liquor stores, restaurants, and bars. Retailers, in turn, sell beer to consumers.

ABI beers are distributed both through ABI-owned distributors and through distributors that are not owned by ABI but who sell large volumes of ABI beer, including the Budweiser and Bud Light brands (''ABI-Affiliated Wholesalers''). ABI beer brands account for approximately 90% of the volume of the beer sold by ABI-Affiliated Wholesalers. In spite of many state laws requiring that beer distributors be independent of brewers, ABI exerts considerable influence over ABI-Affiliated Wholesalers, in part by requiring them to enter into a Wholesaler Equity Agreement (''Equity Agreement'') with ABI.

The Equity Agreement contains a number of provisions that are designed to encourage ABI-Affiliated Wholesalers to sell and promote ABI's beer brands instead of the beer brands of ABI's competitors. For example, the Equity Agreement prohibits an ABI-Affiliated Wholesaler from requesting that a bar replace an ABI tap handle with a competitor's tap handle or that a retailer replace ABI shelf space with a

[3] For purposes of this Competitive Impact Statement, the United States includes the fifty states of the United States of America, the District of Columbia, Puerto Rico, and all United States military bases located therein.

[4] The high-end segment is composed of imports and craft brands. ABI also identifies a ''premium plus'' segment that consists largely of American beers that are priced somewhat higher than Budweiser and Bud Light. Examples of beers that ABI identifies as ''premium plus'' beers include Bud Light Lime, Bud Light Platinum, Bud Light Lime-a-Rita, and Michelob Ultra.

[5] The Complaint identifies 58 metropolitan statistical areas (''MSAs''), as defined by IRI, for which reliable data are available. The market shares for these MSAs are based on dollar-sales data from IRI and reflect sales of beer only through grocery stores.

competitor's beer. Further, the Equity Agreement prohibits an ABI-Affiliated Wholesaler from compensating its salespeople for their sales of competing beer brands (such as a dollar-per-case incentive) unless it provides the same incentives for sales of certain ABI beer brands. The expense of extending a per-case sales incentive to the large volume of ABI brands effectively limits an ABI-Affiliated Wholesaler's ability to promote brands of Third-Party Brewers through targeted sales incentives.

ABI also promotes distributor exclusivity by providing payments to ABI-Affiliated Wholesalers based on their ABI ''alignment,'' that is, the amount of ABI beer that they sell relative to the beer of ABI's competitors. For example, under a program known as the Voluntary Anheuser-Busch Incentive for Performance Program, ABI offers ABI-Affiliated Wholesalers that are 90% or more ''aligned'' a payment for each case-equivalent of ABI beer they sell. The size of the payment increases based on the ABI-Affiliated Wholesaler's level of alignment. Only the sales of very small, local craft beers are excluded from the calculation of an ABI-Affiliated Wholesaler's level of alignment. This allows ABI-Affiliated Wholesalers to carry small, local craft beers but decreases or eliminates the payments to ABI-Affiliated Wholesalers that add craft beers that grow above a certain size or expand outside of a certain geographic area. Thus, this incentive program has the effect of impeding rival craft brewers from growing large enough to have the scale to better compete with ABI.

MillerCoors beers are distributed almost exclusively through distributors that are not owned by MillerCoors but who sell large volumes of MillerCoors beer (''MillerCoors-Affiliated Wholesalers''). MillerCoors brands account for approximately 65% of the volume of the beer sold by MillerCoors-Affiliated Wholesalers.

Other than MillerCoors and ABI, most brewers do not have a distribution network affiliated with their brands. Consequently, the majority of other brewers' beers are distributed either by the ABI-Affiliated Wholesaler or the MillerCoors-Affiliated Wholesaler in a given geographic area. For example, in 2014, 85% or more of the beer sold in the United States was distributed by a Miller-Coors Affiliated Wholesaler, an ABI-Affiliated Wholesaler, or a distributor owned by ABI.

Although some brewers use alternative means to sell their beer to retailers, their only alternatives to an ABI-Affiliated Wholesaler or MillerCoors-Affiliated Wholesaler tend to be considerably smaller and significantly less efficient distributors. Indeed, some of these alternative distributors are not even primarily focused on selling beer. For instance, these distributors may be more focused on selling a broad range of wine and liquor while only offering a small selection of beers. Moreover, beer distributors who are not affiliated with ABI or MillerCoors typically service fewer retail establishments (or exclude entire classes of retailers), visit the establishments that they do service less frequently, and provide fewer resources (such as financial support and sales associates) than the ABI-Affiliated Wholesaler or the MillerCoors-Affiliated Wholesaler that operates in the same territory.

Unlike ABI, MillerCoors does not include in its agreements with MillerCoors-Affiliated Wholesalers any provisions that discourage or impede the promotion and sales of the brands of Third-Party Brewers. There is, however, a practical limit to the number of brands that any distributor can effectively carry and promote to its retail accounts. As the number of brands carried by a distributor increases, the distributor may incur costs to manage the resulting complexities, and the distributor may become less focused on promoting the smaller brands that it carries. Consequently, the presence of a MillerCoors-Affiliated Wholesaler or a small distributor in a market does not eliminate the advantages that many independent craft brewers would receive from having access to ABI-Affiliated Wholesalers.

4. The Proposed Divestiture Alone Would Not Eliminate the Likely Competitive Effects of the Transaction on Beer Distribution

Even though ABI has proposed to divest SABMiller's interest in MillerCoors to Molson Coors, the divestiture to Molson Coors likely would not eliminate the anticompetitive effects of the transaction on beer distribution, which, as noted above, plays an important role in a brewer's ability to effectively compete in the U.S. beer industry.

Presently, MillerCoors competes against ABI only in the United States. Molson Coors, however, competes with ABI in multiple countries throughout the world—most significantly in Canada, where ABI and Molson Coors are the two largest brewers and together account for a large share of beer sales. ABI and Molson Coors also have certain cooperative arrangements in Eastern Europe. For example, ABI brews and distributes Molson Coors' beers in certain countries while Molson Coors provides such services to ABI in other countries. ABI and MillerCoors have no comparable business arrangements.

The change in ownership of MillerCoors—from a joint venture between SABMiller and Molson Coors to a wholly owned subsidiary of Molson Coors—will increase the number of highly concentrated markets across the world in which ABI competes directly against Molson Coors. By increasing the number of markets in which ABI and Molson Coors compete, the divestiture of SABMiller's interest in MillerCoors to Molson Coors could facilitate coordination between ABI and Molson Coors in the United States. For example, this multi-market contact could lead Molson Coors and ABI to be more accommodating to each other in the United States in order to avoid provoking a competitive response outside the United States or disrupting their cooperative business arrangements in other countries. Coordination could also be facilitated by the existing and newly-created cooperative agreements between ABI and Molson Coors around the world.

If the divestiture facilitates coordination between ABI and Molson Coors, it would also increase ABI's incentive to limit competition from its high-end rivals. This is because competition from high-end rivals would become an even more important constraint on the ability of ABI and Molson Coors to increase the prices of their beers across all segments. As a result, following a divestiture to Molson Coors, ABI may have a greater incentive to impede the growth and reduce the competitiveness of its high-end rivals by limiting their access to effective and efficient distribution. The extent to which craft and other brewers in the United States are able to compete with ABI and Molson Coors will thus affect the likelihood of the divestiture to Molson Coors leading to unilateral or coordinated anticompetitive effects.

5. Entry and Expansion

Neither entry into the national or local beer markets in the United States, nor any repositioning of existing brewers, would undo the likely anticompetitive harm from ABI's acquisition of SABMiller. Many MillerCoors brands compete directly against ABI brands in terms of their brand position, reputation, taste profile, well-established marketing, acceptance by a wide range of consumers, and robust distribution networks. ABI and MillerCoors brands of beer are available in almost every establishment in which consumers can purchase or consume

beer. ABI and MillerCoors also compete directly on a national level for advertising and promotions, such as sports sponsorships. Any entrant would face enormous costs attempting to replicate these assets and would, at best, take many years to succeed.

Building nationally-recognized and accepted brands, which retailers will support with feature and display activity, is difficult, expensive, and time consuming. Although new beer breweries open frequently, new brewers face significant barriers to achieving efficient scale. In addition, ABI's distribution practices hinder new entrants from accessing effective and efficient distribution, which prevents them from growing to a scale that allows significant economies in production. While consumers have undoubtedly benefited from the launch of many individual craft and specialty beers in the United States, the multiplicity of such brands does not replace the nature, scale, and scope of the existing competition between ABI and MillerCoors, which would be eliminated by the proposed transaction.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment contains a remedy designed to eliminate the likely anticompetitive effects of the acquisition in the national market for beer in the United States and local markets throughout the United States. The proposed Final Judgment contemplates that the divested assets will be sold to Molson Coors, which, on November 11, 2015, entered into an agreement with ABI to acquire the divested assets. If the divestiture to Molson Coors should fail to close, ABI would be required to make the same divestiture to another acquirer acceptable to the United States, in its sole discretion, for the purpose of enabling that alternative acquirer to assume SABMiller's role with respect to the ownership and governance of MillerCoors.[6]

The divestiture required by the proposed Final Judgment will preserve MillerCoors as an independent and economically viable competitor and will strengthen MillerCoors by giving it valuable rights that it does not currently have. The divestiture includes assets that are necessary to preserve or enhance the viability of MillerCoors as a competitor in the national and local beer markets in the United States. Those assets include SABMiller's full interest in MillerCoors and the intangible assets necessary to permit Molson Coors to brew and import the Import Products for sale in the United States. The proposed divestiture also gives Molson Coors full rights to the Miller-Branded Products, as well as the tangible and intangible assets that are primarily related to the manufacture, distribution, marketing, and sale of the Miller-Branded Products outside the United States.

The distribution-related relief seeks to prohibit ABI from rewarding, penalizing, or otherwise conditioning its relationships with ABI-Affiliated Wholesalers, or any employees or agents of the wholesalers, based on the wholesalers' sale, marketing, advertising, promotion, or retail placement of rivals' beers—including ABI's high-end rivals. For example, the remedy seeks to prevent ABI from using its relationship with ABI-Affiliated Wholesalers to disadvantage, or maintain or erect barriers to scale for, ABI's high-end rivals. Under the proposed Final Judgment, ABI-Affiliated Wholesalers should be free to make independent decisions regarding their sale of ABI's high-end rivals' beers. By removing obstacles to effective distribution, competition in the high-end beer segment can continue to serve as an important constraint on the ability of ABI and MillerCoors (Molson Coors) to raise—either unilaterally or through coordination—beer prices in the United States.

In short, the remedy seeks to preserve and promote competition in the U.S. beer industry by maintaining MillerCoors as an independent competitor and by reducing the influence of ABI on the distribution of beer in the United States. In addition, the proposed Final Judgment also provides for supervision by this Court and the United States of the transition services and supply arrangements between ABI and Molson Coors. Those arrangements will allow Molson Coors time to establish the ability to brew the Import Products and Miller-Branded Products independently of ABI. The remedy also provides for supervision of ABI's compliance with the restrictions on its distribution practices.

A. The Divestiture

The proposed Final Judgment requires ABI, within 90 days after entry of the Hold Separate Stipulation and Order by the Court, to divest (1) SABMiller's equity and ownership stake in MillerCoors; (2) all raw material inventory exclusively related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the United States; (3) all other tangible and intangible assets of SABMiller and its subsidiaries (other than MillerCoors and its subsidiaries) that are primarily related to the Miller-Branded Products, both inside and outside the United States; and (4) perpetual, fully paid-up, royalty-free licenses to any intellectual property and any other intangible assets required to permit the acquirer of the divested assets to manufacture, import, distribute, market, or sell the Import Products and Licensed Products in the United States. Molson Coors will also have a one-year period in which to negotiate to hire employees of SABMiller whose primary responsibility is the production, manufacture, importation, distribution, marketing, or sale of Miller-Branded Products.

The proposed divestiture will permit MillerCoors to continue as a viable competitor in the relevant beer markets independent of ABI. After the divestiture, Molson Coors will own all assets in the United States that are used in the production, marketing, and sale of the MillerCoors brands of beer that are brewed in the United States. Under the proposed divestiture, Molson Coors will also obtain the international rights to brew and export the Miller-Branded Products. With respect to two beer brands, Redd's and Foster's, MillerCoors now produces those brands for sale in the United States under royalty-bearing licenses from SABMiller. The divestiture provides that Molson Coors will have perpetual, fully paid-up, royalty-free licenses and any other intangible assets required to manufacture and sell those brands in the United States. MillerCoors now has the right to import and sell in the United States certain SABMiller brands that are brewed internationally. The proposed divestiture provides that Molson Coors will have perpetual, royalty-free licenses to brew those brands and import them into the United States.

The European Commission also investigated the effects of ABI's proposed acquisition of SABMiller. To resolve concerns raised by the European Commission, ABI is divesting essentially all of the European business that it would have acquired from SABMiller. ABI has already agreed to sell to Asahi Group, a Japanese brewer, the Peroni, Grolsch, and Meantime brands of beer. ABI has also agreed to divest SABMiller's business in the Czech Republic, Hungary, Poland, and Romania, including the Pilsner Urquell brand of beer. The proposed Final

[6] The remainder of the explanation of the proposed Final Judgment refers to the proposed acquirer as Molson Coors. If Molson Coors does not acquire the Divestiture Assets, the proposed Final Judgment will apply to another Acquirer in the same manner as described with respect to Molson Coors.

Judgment, however, requires that ABI divest the U.S. rights to the Import Brands—including Peroni, Grolsch, and Pilsner Urquell—to Molson Coors, notwithstanding the divestiture of the ex-U.S. rights to those brands to other buyers.

B. Transition Services and Interim Supply Agreements

Sections IV.I and IV.J of the Final Judgment require ABI to enter into one or more transition services agreements and interim supply agreements with Molson Coors. The transition services agreements require ABI to provide Molson Coors with services with respect to the development, production, servicing, importing, distributing, marketing, and selling of Miller-Branded Products outside of the United States. The transition services agreements will allow Molson Coors to operate the business of selling Miller-Branded Products outside of the United States in a manner that is consistent with SABMiller's current operation of that business. The interim supply agreements will require ABI to supply beer such that Molson Coors can continue to import SABMiller brands of beer to the United States and can operate the Miller International Business.

The transition services and interim supply agreements are time-limited to assure that Molson Coors will become fully independent of ABI with respect to the supply of the Import Products and the Miller International Business as soon as practicable. As such, in conjunction with the nondisclosure of information provisions in the proposed Final Judgment, the terms of the transition services and interim supply agreements are intended to prevent the vertical supply arrangements from causing competitive harm in the near term. The proposed Final Judgment subjects these agreements, including any extensions, to monitoring by a trustee appointed by the United States and requires that the agreements be approved by the United States. Section V.C of the proposed Final Judgment further provides that if ABI and Molson Coors enter any new agreements with each other with respect to the brewing, packaging, production, marketing, importing, distribution, or sale of beer in the United States, ABI must notify the United States of the new agreements at least 60 calendar days in advance of such agreements becoming effective, and the United States must approve the agreements. To the extent that ABI has divested the worldwide rights to a brand, however, the provisions of the proposed Final Judgment relating to transition services and interim supply agreements do not apply to arrangements, if any, between Molson Coors and the new owner of the brand outside of the United States.

C. Limits on ABI's Distribution Practices

Section V.A of the proposed Final Judgment requires ABI and SABMiller to agree—and for ABI to further require Molson Coors to agree—not to cite the transaction or the required divestiture as a basis for modifying, renegotiating, or terminating any contract with any Distributor. This language prevents ABI, SABMiller, and Molson Coors from claiming that either the transaction or the divestiture is a change of ownership or control that would otherwise enable ABI or Molson Coors to make changes to their distribution contracts, potentially limiting their rival brewers' path to market.

Section V.B prevents ABI from acquiring any equity interests in, or ownership or control of the assets of, a Distributor if such acquisition would transform the Distributor into an ABI-Owned Distributor, and if more than 10% of ABI's beer sold in the United States, measured by volume, would be sold through ABI-Owned Distributors after such acquisition. The United States' investigation revealed that ABI-Owned Distributors typically distribute only brands owned by or affiliated with ABI, and that ABI-Owned Distributors currently sell approximately 9% of ABI's beer in the United States. This provision limits ABI's ability to acquire Distributors and then cause the Distributors to cease to promote or to expel rival brands from the Distributors' portfolios—thus preventing or impeding a rival from selling its beer through a Distributor or forcing the rival to find a different and potentially less effective path to market.

Section V.D prohibits ABI from instituting or continuing any practices or programs that impede or disincentivize ABI-Affiliated Wholesalers from selling, marketing, advertising, promoting, or maximizing the retail placement of the beers of Third-Party Brewers,[7] including the beers of high-end brewers.[8] In particular, Section V.D precludes ABI from, among other things:

- Conditioning the availability of ABI's beer to an ABI-Affiliated Wholesaler on the wholesaler's sales, marketing, advertising, promotion, or retail placement of Third-Party Brewers' beers;
- Conditioning the prices, services, product support, rebates, discounts, buy backs, or other terms and conditions of sale of ABI's beer that are offered to an ABI-Affiliated Wholesaler based on its sales, marketing, advertising, promotion, or retail placement of Third-Party Brewers' beers;
- Conditioning any agreement or program with an ABI-Affiliated Wholesaler on the fact that it sells Third-Party Brewers' beers outside of the geographic area in which it sells ABI beer;
- Requiring an ABI-Affiliated Wholesaler to offer any incentive for selling ABI beer in connection with or in response to any incentive that the wholesaler offers for selling Third-Party Brewers' beers; and
- Preventing an ABI-Affiliated Wholesaler from using best efforts to sell, market, advertise, or promote any Third-Party Brewer's beers, which may be defined as efforts designed to achieve and maintain the highest practicable sales volume and retail placement of the Third Party Brewer's beers in a geographic area.

In sum, Section V.D seeks to ensure that ABI cannot use distribution-related practices and incentives to prevent or limit Third-Party Brewers from securing the distribution necessary to effectively compete with ABI. This is especially important with respect to brewers of high-end beers, which, as detailed above and in the Complaint, have served as an important constraint on ABI's ability to raise prices of its beers.

It should be noted, however, that the proposed Final Judgment—including Section V.D—does not prevent ABI from requiring that an ABI-Affiliated Wholesaler use its best efforts to sell, market, advertise, or promote ABI's beers. The proposed Final Judgment also does not prohibit ABI from conditioning incentives, programs, or contractual terms based on an ABI-Affiliated Wholesaler's volume of sales of ABI beer,[9] the retail placement of ABI beer, or ABI's percentage of beer sales in a geographic area, provided that any such incentives, programs, or

[7] Third-Party Brewers include any brewer, contract-brewer, or importer of beer for sale in the United States other than ABI, SABMiller, Molson Coors, or MillerCoors.

[8] In the proposed Final Judgment, ''Beer'' includes not only products made from malted barley, but also flavored malt beverages, alcoholic root beers, and hard ciders. This definition is necessary because ABI-Affiliated Wholesalers who sell a Third-Party Brewer's beer typically also sell any flavored malt beverages, alcoholic root beers, and hard ciders made by the Third-Party Brewer.

[9] ABI, however, may not define the percentage of its beer sales in a geographic area by reference to or derived from information obtained from ABI-Affiliated Wholesalers concerning their sales of any Third-Party Brewer's beers.

contractual terms do not require or encourage an ABI-Affiliated Wholesaler to provide less than best efforts to the sale, marketing, advertising, retail placement, or promotion of Third-Party Brewers' beers or to stop distributing Third-Party Brewers' beers.

The proposed Final Judgment also does not prevent ABI from requiring an ABI-Affiliated Wholesaler to allocate to ABI's beers a proportion of the ABI-Affiliated Wholesaler's annual spending on beer promotions and incentives as long as the allocation does not exceed the proportion of revenues that ABI's beers constituted in the ABI-Affiliated Wholesaler's overall revenue for beer sales in the preceding year. The proposed Final Judgment permits this practice because, in any given geographic area, the ABI-Affiliated Wholesaler provides the exclusive path to market for ABI's beers, and therefore ABI may be reluctant to invest in its distributors without some assurance that those investments will not be used primarily to benefit its rivals. ABI therefore may require an ABI-Affiliated Wholesaler to promote ABI's beers in proportion to the revenues it earns on ABI's beers.

The proposed Final Judgment does not prohibit ABI from taking the above actions, because such actions can be undertaken in a way that does not undermine the proposed Final Judgment's objective of ensuring that Third-Party Brewers have access to the distribution networks necessary to effectively compete with ABI and meet consumer demand. The proposed Final Judgment is not designed to prevent ABI from competing. Rather, it is designed to ensure that Third-Party Brewers whose beer is sold by ABI-Affiliated Wholesalers have the opportunity to compete with ABI on a level playing field—not on a playing field in which ABI has used its influence over the distributor to favor ABI's beers at the expense of other beers in the distributor's portfolio.

The proposed Final Judgment contains provisions designed to ensure that ABI-Affiliated Wholesalers are free to carry and promote rival brands without concern that ABI will use its control over management and ownership changes to punish the wholesaler. Section V.E prohibits ABI from disapproving an ABI-Affiliated Wholesaler's selection of its own general manager, or a successor general manager, based on the ABI-Affiliated Wholesaler's sales, marketing, advertising, promotion, or retail placement of a Third-Party Brewer's beer. Similarly, Section V.F requires that when ABI exercises any right related to the transfer of control, ownership, or equity in any Distributor to any other Distributor, ABI shall not give weight to or base any decision upon either Distributor's business relationship with a Third-Party Brewer—including, but not limited to, such Distributor's sales, marketing, advertising, promotion, or retail placement of a Third-Party Brewer's beer. These provisions are intended to prevent ABI from using its rights over management or ownership changes to promote alignment by selecting new owners because they have demonstrated a willingness not to carry or promote rival brands.

Section V.G prevents ABI from requesting or requiring an ABI-Affiliated Wholesaler to report to ABI the wholesaler's revenues, profits, margins, costs, sales, volumes, or other financial information associated with the purchase, sale, or distribution of a Third-Party Brewer's beer. ABI, however, is not prohibited from requesting the reporting of general financial information by an ABI-Affiliated Wholesaler to assess the overall financial condition and financial viability of such wholesaler, the percentage of total beer revenues received by the wholesaler associated with ABI's beer, or from conducting ordinary course due diligence in connection with any potential acquisition of an ABI-Affiliated Wholesaler.

Section V.I directs ABI to notify ABI-Affiliated Wholesalers of the changes to ABI's programs or agreements required by the proposed Final Judgment and the ABI-Affiliated Wholesalers' rights to bring to the attention of the Monitoring Trustee or the United States any actions by ABI which the distributor believes may violate Section V of the proposed Final Judgment. ABI must also provide ABI-Affiliated Wholesalers with a copy of the proposed Final Judgment. Further, under Section V.H, ABI may not discriminate against, penalize, or retaliate against a Distributor that brings to the attention of the Monitoring Trustee or the United States a potential violation by ABI of Section V of the Final Judgment.

D. Divestiture Trustee

In the event that ABI does not accomplish the divestiture as prescribed in the proposed Final Judgment, Section VI provides that, upon application of the United States, the Court will appoint a Divestiture Trustee selected by the United States to complete the divestiture. If a Divestiture Trustee is appointed, the proposed Final Judgment provides that ABI will pay all costs and expenses of the Divestiture Trustee. After his or her appointment becomes effective, the Divestiture Trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture.

E. Monitoring Trustee

Section VIII of the proposed Final Judgment permits the appointment of a Monitoring Trustee by the United States in its sole discretion. The United States intends to appoint a Monitoring Trustee and to seek the Court's approval of such appointment. The Monitoring Trustee will ensure that Defendants expeditiously comply with all of their obligations and perform all of their responsibilities under the proposed Final Judgment and the Hold Separate Stipulation and Order; that the Divestiture Assets remain economically viable, competitive, and ongoing assets; and that competition in the sale of beer in the United States and in all local markets within the United States is maintained. The Monitoring Trustee will have the power and authority to monitor Defendants' compliance with the terms of the proposed Final Judgment and attendant interim supply and transition services agreements. The Monitoring Trustee will also have the authority to investigate complaints that ABI has violated the restrictions related to its distribution practices. The Monitoring Trustee will have access to all personnel, books, records, and information necessary to monitor Defendants' compliance with the proposed Final Judgment, and will serve at the cost and expense of ABI. The Monitoring Trustee will file reports every 90 days with the United States and, as appropriate, the Court setting forth Defendants' efforts to comply with their obligations under the proposed Final Judgment and the Hold Separate Stipulation and Order.

F. Hold Separate Stipulation and Order Provisions

Defendants have entered into the Hold Separate Stipulation and Order attached as an exhibit to the Explanation of Consent Decree Procedures, which was filed simultaneously with the Court, to ensure that, pending the divestiture, the Divestiture Assets are maintained as an ongoing, economically viable, and active business. The Hold Separate Stipulation and Order ensures that the Divestiture Assets are preserved and maintained in a condition that allows the divestiture to be effective.

The Hold Separate Stipulation and Order requires that the Defendants take all steps that are within their power and

consistent with the agreements that govern the operations of MillerCoors to ensure that MillerCoors will be maintained as a completely independent competitor in the brewing and sale of beer in the same manner that it is today. Moreover, SABMiller and ABI will not prevent or interfere with MillerCoors' achieving its ordinary course, previously agreed upon business plan and budget.

The Hold Separate Stipulation and Order further requires the Defendants to maintain and operate the Import Products and business of selling Miller-Branded Products outside of the United States—which are not today standalone businesses—in the same manner as they are currently operated. Defendants are required to use all reasonable efforts to achieve the sales and revenues targets for the Import Products and Miller-Branded Products in accordance with previously agreed upon business plans and budgets and are prohibited from sharing any competitively sensitive information regarding these products with any employee that is not currently involved in their operations or does not have a reasonable need to know such information.

G. Notification Provisions

Section XII of the proposed Final Judgment requires ABI to notify the United States in advance of executing certain transactions that would not otherwise be reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the ''HSR Act''). The transactions covered by these provisions include the acquisition or license of any interest in non-ABI beer brewing or distribution assets or brands, excluding acquisitions of: (1) Assets that do not generate at least $7.5 million in annual gross revenue from beer sold for resale in the United States; (2) distribution licenses that do not generate at least $3 million in annual gross revenue in the United States; and (3) beer distributors that do not generate at least $3 million in annual gross revenue in the United States. This provision significantly broadens ABI's pre-merger reporting requirements because the $3 million and $7.5 million threshold amounts are significantly less than the HSR Act's ''size of the transaction'' reporting threshold.

Section XII will provide the United States with advance notice of, and an opportunity to evaluate, ABI's acquisition of both beer distributors and craft brewers. Notification of distributor acquisitions allows the United States to evaluate whether ABI's acquisition of a distributor implicates the prohibitions in Section V or is otherwise likely to substantially lessen competition by hindering the effective distribution of the beers of ABI's rivals. Notification of brewer acquisitions allows the United States to evaluate any acquisition by ABI of, among other things, craft breweries. ABI has acquired multiple craft breweries over the past several years, some of which were not reportable under the HSR Act. Acquisitions of this nature, individually or collectively, have the potential to substantially lessen competition, and the proposed Final Judgment gives the United States an opportunity to evaluate such transactions in advance of their closing even if the purchase price is below the HSR Act's thresholds.

The proposed Final Judgment requires ABI to provide such notification to the Antitrust Division of the United States Department of Justice (the ''Antitrust Division'') in the same format as, and in accordance with the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended. ABI must provide such notification at least 30 calendar days prior to acquiring any such interest. If within the 30-day period after notification the Antitrust Division makes a written request for additional information, ABI shall be precluded from consummating the proposed transaction or agreement until 30 calendar days after submitting all requested additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder.

H. Nondisclosure of Information

Section XIII of the proposed Final Judgment requires Defendants to implement and maintain procedures to prevent the disclosure of the confidential commercial information of MillerCoors and Molson Coors by Defendants to any of Defendants' affiliates who are involved in the marketing, distribution, or sale of beer in the United States. Within 10 days of the Court approving the Hold Separate Stipulation and Order described above, Defendants must submit to the United States their planned procedures to effect compliance with their nondisclosure obligations. Additionally, Defendants must provide a briefing as to the obligations required under Section XIII of the proposed Final Judgment to certain of Defendants' officers and employees who will (i) receive the confidential commercial information of MillerCoors or Molson Coors; (ii) be responsible for the transition services and interim supply agreements described above; or (iii) be responsible for making decisions regarding ABI's relationships with, agreements with, or policies regarding distributors. This provision ensures that Defendants cannot improperly use any confidential information that they receive from Molson Coors or from SABMiller concerning MillerCoors in ways that would harm competition in the U.S. beer industry.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damages action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register,** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the Antitrust Division's internet Web site

and, in certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Peter J. Mucchetti, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any necessary or appropriate modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, seeking preliminary and permanent injunctions against Defendants' proposed transaction and proceeding to a full trial on the merits. The United States is satisfied, however, that the relief in the proposed Final Judgment will preserve competition in the national market and in each local market for beer in the United States. Thus, the proposed Final Judgment will protect competition as effectively as, and will achieve all or substantially all of the relief the United States would have obtained through, litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making such a determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1, 15–17 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *U.S. Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable'').[10]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[11] In determining whether a proposed settlement is in the public interest, a court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft,* 56 F.3d at 1461)); *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a

[10] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[11] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As a court in this district confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[12] A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 38 F. Supp. 3d at 76.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 20, 2016

Respectfully Submitted,

/s/_____

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Attorney for the United States

United States District Court for the District of Columbia

UNITED STATES OF AMERICA, Plaintiff, v. ANHEUSER–BUSCH InBEV SA/NV, and SABMILLER plc, Defendants.

CASE NO.: 1:16–cv–01483

JUDGE: Emmet G. Sullivan

FILED: 07/20/2016

Proposed Final Judgment

Whereas, Plaintiff, United States of America (''United States'') filed its Complaint on July 20, 2016, the United States and Defendants, by their respective attorneys, have consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of the Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt divestiture of certain rights and assets to assure that competition is not substantially lessened;

And whereas, this Final Judgment requires Defendant ABI to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Plaintiff requires Defendants to agree to undertake certain actions and refrain from certain conduct for the purposes of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestitures required below can (after the Completion of the Transaction) and will be made, and that the actions and conduct restrictions can and will be undertaken, and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and each of the parties. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in the Final Judgment:

A. ''ABI'' means Anheuser-Busch InBev SA/NV, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, successors in interest (including any successor in interest to Anheuser-Busch InBev SA/NV following the Completion of the Transaction), and joint ventures; and all directors, officers, employees, agents, and representatives of the foregoing. The terms ''parent,'' ''subsidiary,'' ''affiliate,'' and ''joint venture'' refer to any person in which there is majority (greater than 50%) or total ownership or control between the company and any other person.

B. ''ABI Divested Brand'' means any Import Product divested or sold pursuant to commitments offered to the

[12] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

European Commission pursuant to its review of the Transaction.

C. ''ABI-Owned Distributor'' means any Distributor in which ABI owns more than 50% of the outstanding equity interests or more than 50% of the assets.

D. ''Acquirer'' means:

1. Molson Coors; or

2. an alternative purchaser of the Divestiture Assets selected pursuant to the procedures set forth in this Final Judgment.

E. ''Beer'' means any fermented alcoholic beverage that is (1) composed in part of water, a type of malted starch, yeast, and hops or other flavoring, and (2) has undergone the process of brewing. As used herein, the term ''Beer'' shall also include flavored malt beverages, root beers, and ciders.

F. ''Closing'' means consummation of the divestiture of the Divestiture Assets pursuant to the Final Judgment.

G. ''Completion of the Transaction'' means the completion of the Transaction in accordance with its terms.

H. ''Confidential Information'' means confidential commercial information of the Acquirer or MillerCoors that has been obtained from the Acquirer, MillerCoors or SABMiller in connection with, or as a result of, (1) SABMiller's equity and ownership stake in the Divestiture Assets prior to the divestiture of the Divestiture Assets, (2) the divestiture of the Divestiture Assets, or (3) the entry into and performance under the Interim Supply Agreements, the License Agreements, or the Transition Services Agreements, including quantities, units, and prices of items ordered or purchased from Defendant ABI by the Acquirer, and any other competitively sensitive information regarding Defendant ABI's or the Acquirer's performance under the Interim Supply Agreements, the License Agreements, or the Transition Services Agreements.

I. ''Covered Entity'' means any Beer brewer, importer, distributor, or brand owner (other than ABI) that derives more than $7.5 million in annual gross revenue from Beer sold for further resale in the Territory, or from license fees generated by such Beer sales.

J. ''Covered Interest'' means ownership or control of any Beer brewing assets of, or any Beer brand assets of, or any Beer distribution assets of, or any interest in (including any financial, security, loan, equity, intellectual property, or management interest), a Covered Entity; except that a Covered Interest shall not include (i) a Beer brewery or Beer brand located outside the Territory that does not generate at least $7.5 million in annual gross revenue from Beer sold for resale in the Territory; (ii) a license to distribute a non-ABI Beer brand where said distribution license does not generate at least $3 million in annual gross revenue in the Territory; or (iii) a Beer distributor which does not generate at least $3 million in annual gross revenue in the Territory.

K. ''Defendants'' means ABI and SABMiller, and any successor or assignee to all or substantially all of the business or assets of ABI or SABMiller, involved in the brewing, development, production, servicing, distribution, marketing, or sale of Beer.

L. ''Distributor'' means a wholesaler in the Territory who acts as an intermediary between a brewer or importer of Beer and a retailer of Beer.

M. ''Divestiture Assets'' means:

1. SABMiller's equity and ownership stake in MillerCoors;

2. All intellectual property of SABMiller (other than MillerCoors) that is primarily related to any Miller-Branded Product, both inside and outside the Territory, including, but not limited to: (i) Patents (including all reissues, divisions, continuations, continuations-in-part, reexaminations, supplemental examinations, foreign counterparts, substitutions and extensions thereof) and patent applications; (ii) copyrights and all applications, registrations, and renewals therefor; (iii) trademarks, trade names, service marks, service names, trade dress, and other indicia of origin and all applications, registrations, and renewals therefor; (iv) technical information, know-how, trade secrets, and other proprietary and confidential information, including such information relating to inventions, technology, product formulations, recipes, production processes, customer lists, and marketing databases; and (v) domain names, social media accounts, and identifiers and registrations therefor;

3. All contracts, commitments, agreements, subcontracts, leases, subleases, licenses, sublicenses, purchase orders, or other legally binding promises or obligations, whether written or oral, to which SABMiller (other than MillerCoors) is a party and that are primarily related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the Territory, in each case other than any real estate leases or employment or independent contractor agreements;

4. All raw material inventory exclusively related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the Territory;

5. All royalty or equivalent rights of SABMiller in respect of oil and gas deposits at the brewery operated by MillerCoors located at Fort Worth, Texas;

6. All research and development activities primarily related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the Territory;

7. All licenses, permits, and authorizations issued by any governmental organization primarily related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the Territory, to the extent such licenses, permits, and authorizations are capable of assignment or transfer by SABMiller;

8. All customer lists, contracts, accounts, and credit records primarily related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the Territory;

9. All repair, performance, and other records primarily related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the Territory;

10. All intangible assets including computer software and related documentation, safety procedures for the handling of materials and substances, design tools and simulation capability, and research data concerning historic and current research and development efforts, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments, primarily related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the Territory;

11. All drawings blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, research data concerning historic and current research and development, quality assurance and control procedures, manuals and technical information Defendants provide to their own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments, primarily related to the manufacture, distribution, marketing, and sale of Miller-Branded Products outside of the Territory;

12. All other assets primarily related to the manufacture, distribution, marketing, and sale of Miller-Branded

Products outside of the Territory, including finished goods and work-in-progress, point-of-sale and advertising materials; and

13. Perpetual, fully paid-up, royalty-free licenses, entered into only with the approval of the United States in its sole discretion, to any intellectual property and any other intangible assets required to permit the Acquirer to manufacture, import, distribute, market, or sell the Import Products and the Licensed Products in the Territory.

With respect to clauses (2) through (13) above, Divestiture Assets excludes (A) cash and cash equivalents, (B) any accounts receivable, (C) subject to the provisions of Section IV.E, any employees or other personnel or benefit obligations with respect thereto, (D) any capital stock or other equity securities, (E) any real property or interests therein (other than certain royalty and equivalent rights in respect of oil and gas deposits referenced in clause (5)), (F) any property, plant or equipment (or any portion thereof), and (G) any of the items enumerated in clauses (2) through (13) above that are owned or controlled by any third party and are therefore not capable of assignment or transfer by Defendant ABI or Defendant SABMiller.

N. ''Hold Separate Stipulation and Order'' means the Hold Separate Stipulation and Order filed by the parties simultaneously herewith, which imposes certain duties on the Defendants with respect to the operation of the Divestiture Assets pending the proposed divestitures.

O. ''Import Products'' means Beer and any other beverages, excluding Miller-Branded Products and Licensed Products, imported, distributed, marketed, or sold in the Territory, under any of the brands or sub-brands set forth on Attachment B hereto and any other sub-brands of such brands.

P. ''Independent Distributor'' means any Distributor that is not an ABI-Owned Distributor and that has an exclusive contractual right to sell Budweiser or Bud Light branded Beer.

Q. ''Interim Supply Agreements'' means supply agreements covering any Miller-Branded Products or Import Products.

R. ''License Agreement'' means any agreement to license intellectual property pursuant to Section II.M.13 of this Final Judgment.

S. ''Licensed Products'' means Beer and any other beverages manufactured, distributed, marketed or sold in the Territory under the Foster's or Redd's brands or any sub-brands of such brands.

T. ''MillerCoors'' means MillerCoors LLC, its divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms ''subsidiary,'' ''affiliate,'' and ''joint venture'' refer to any person in which there is majority (greater than 50%) or total ownership or control between the company and any other person. As used herein, the term ''MillerCoors'' shall not include SABMiller or Molson Coors.

U. ''Miller-Branded Products'' means Beer and any other beverages manufactured, distributed, marketed and sold, anywhere in the world, under any of the brands or sub-brands set forth on Attachment A hereto and any other sub-brands of such brands.

V. ''Molson Coors'' means Molson Coors Brewing Company, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms ''parent,'' ''subsidiary,'' ''affiliate,'' and ''joint venture'' refer to any person in which there is majority (greater than 50%) or total ownership or control between the company and any other person. As used herein, the term ''Molson Coors'' shall not include MillerCoors unless and until Molson Coors acquires the Divestiture Assets pursuant to Section IV or Section VI of this Final Judgment.

W. ''SABMiller'' means SABMiller plc, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms ''parent,'' ''subsidiary,'' ''affiliate,'' and ''joint venture'' refer to any person in which there is majority (greater than 50%) or total ownership or control between the company and any other person. As used herein in connection with any obligation of SABMiller under this Order with respect to control of MillerCoors, the term SABMiller means SABMiller's non-controlling 58% equity interest and 50% voting rights in MillerCoors, which are subject to the MillerCoors LLC Amended and Restated Operating Agreement, until the Completion of the Transaction pursuant to Section IV or Section VI of this Final Judgment.

X. ''Territory'' means the fifty states of the United States of America, the District of Columbia, Puerto Rico, and all United States military bases located in the fifty states of the United States of America, the District of Columbia, and Puerto Rico.

Y. ''Third-Party Brewer'' means any person (other than Defendants or the Acquirer, including any subsidiaries or joint ventures of the Acquirer), that manufactures, has a third party manufacture, or imports Beer for sale in the Territory.

Z. ''Transaction'' means ABI's proposed acquisition of all of the shares of SABMiller pursuant to the Co-Operation Agreement between Anheuser-Busch Inbev SA/NV and SABMiller plc, the joint announcement by Anheuser-Busch Inbev SA/NV and SABMiller plc in relation to the Transaction pursuant to Rule 2.7 of the UK City Code on Takeovers and Mergers and the letter agreement related to the Co-Operation Agreement between Anheuser-Busch Inbev SA/NV and SABMiller plc, each of which is dated November 11, 2015.

III. Applicability

A. This Final Judgment applies to Defendants, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and VI of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment unless such sale or disposition is pursuant to commitments offered to the European Commission pursuant to its review of the Transaction.

IV. Divestiture

A. Defendant ABI is ordered and directed, within ninety (90) calendar days after the filing of the Hold Separate Stipulation and Order, to divest the Divestiture Assets, if the Completion of the Transaction has occurred, in a manner consistent with this Final Judgment to Molson Coors. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendant ABI agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible. Defendant ABI shall perform all duties and provide any and all services required of Defendant ABI pursuant to the agreements with the Acquirer to effect the divestiture of the Divestiture Assets (including the License Agreements, Transition Services Agreements, and Interim Supply Agreements).

B. In the event Molson Coors is not the Acquirer of the Divestiture Assets,

Defendant ABI or any Monitoring Trustee appointed pursuant to Section VIII of this Final Judgment shall promptly notify the United States of that fact in writing. In such circumstances, within sixty (60) calendar days after the United States receives such notice, Defendant ABI shall divest the Divestiture Assets in a manner consistent with this Final Judgment to an alternative Acquirer(s) acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances.

C. In the event that Molson Coors is not the Acquirer of the Divestiture Assets, Defendant ABI promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendant ABI shall inform any person inquiring about a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment.

D. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

E. For a period beginning on the date of the filing of the Hold Separate Stipulation and Order and continuing for not less than one (1) year from the date of the divestiture required by Section IV or VI of this Final Judgment, to the extent consistent with applicable law, Defendants shall provide the Acquirer and the United States information relating to the personnel who spend the majority of their time on or are otherwise material to the operation of the Divestiture Assets, including Defendant SABMiller employees who spend the majority of their time on or are otherwise material to the production, manufacture, importation, distribution, marketing, or sale of Miller-Branded Products outside the Territory, to enable the Acquirer to make offers of employment. Beginning as of the date of the filing of the Hold Separate Stipulation and Order, Defendants will not interfere with any negotiations by the Acquirer to retain, employ, or contract with any employee of MillerCoors or any Defendant SABMiller employee whose primary responsibility is the production, manufacture, importation, distribution, marketing, or sale of Miller-Branded Products.

F. In the event that Molson Coors is not the Acquirer of the Divested Assets, Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of MillerCoors; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

G. Defendant ABI shall warrant to the Acquirer that the Divestiture Assets will be operational on the date of sale to the extent such assets were operational on the date the Complaint was filed.

H. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

I. On or before the date of the divestiture pursuant to Section IV or Section VI of this Final Judgment, Defendant ABI shall enter into one or more transitional services agreements (collectively, the ''Transition Services Agreements'') with the Acquirer for a period of up to one (1) year from the date of the divestiture required by Section IV or Section VI of this Final Judgment to provide such services with respect to the business of developing, producing, servicing, importing, distributing, marketing, and selling Miller-Branded Products outside the Territory (the ''Miller International Business'') that are reasonably necessary to allow the Acquirer to operate the Miller International Business in a manner substantially consistent with the operation of such business prior to date of the divestiture of the Divestiture Assets. Defendant ABI shall perform all duties and provide any and all services required of Defendant ABI under the Transition Services Agreements. The Transition Services Agreements, and any amendments or modifications thereto, may be entered into only with the approval of the United States in its sole discretion. Nothing in the foregoing shall apply to any agreements regarding any ABI Divested Brands.

J. On or before the date of the divestiture pursuant to Section IV or Section VI of this Final Judgment, Defendant ABI shall enter into Interim Supply Agreements with the Acquirer for a period of up to three (3) years from the date of the divestiture required by Section IV or Section VI of this Final Judgment. Defendant ABI shall perform all duties and provide any and all services required of Defendant ABI under the Interim Supply Agreements. The Interim Supply Agreements, and any amendments, modifications, or extensions of the Interim Supply Agreements, may be entered into only with the approval of the United States in its sole discretion.

K. If the Acquirer seeks an extension of any of the Interim Supply Agreements covering Import Products, or if Defendant ABI and the Acquirer mutually agree to an extension of any of the Interim Supply Agreements covering Miller-Branded Products, the Acquirer shall so notify the United States in writing at least four (4) months prior to the date the Interim Supply Agreement(s) expires. The total term of the Interim Supply Agreements and any extension(s) so approved shall not exceed five (5) years. Nothing in the foregoing shall apply to any agreements regarding any ABI Divested Brands.

L. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV or Section VI shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business, engaged in brewing, developing, producing, distributing, marketing, and selling Beer. The divestiture shall be:

1. Made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) to compete in the business of brewing, developing, producing, and selling Beer;

2. accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of the agreement between an Acquirer and Defendant ABI gives Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively; and

3. made to an Acquirer who agrees to comply with the provisions of Section V.A of this Final Judgment, in a manner satisfactory to the United States, in its sole discretion.

M. Defendant ABI shall, as soon as possible, but within two (2) business days after completion of the relevant event, notify the United States of: (1) The effective date of the completion of the Transaction; and (2) the effective date of the divestiture of the Divestiture Assets to the Acquirer.

V. Supplemental Relief

A. Defendants agree, and Defendant ABI shall require any Acquirer to agree, that they will not cite the Transaction or the divestiture required by Section IV or VI of this Final Judgment as a basis for modifying, renegotiating, or terminating any contract with any Distributor.

B. Defendant ABI shall not acquire any equity interests in, or any ownership or control of the assets of, a Distributor if (i) such acquisition would transform said Distributor into an ABI-Owned Distributor, and (ii) as measured on the day of entering into an agreement for such acquisition more than ten percent (10%), by volume, of Defendant ABI's Beer sold in the Territory would be sold through ABI-Owned Distributors after such acquisition. Percentages of volume will be calculated using a twelve month trailing average as used in Defendant ABI's ordinary course, described in Attachment C.

C. If Defendants and the Acquirer enter into any new agreement(s) with each other with respect to the brewing, packaging, production, marketing, importing, distribution, or sale of Beer in the Territory, Defendants shall notify the United States of the new agreement(s) at least sixty (60) calendar days in advance of such agreement(s) becoming effective and such agreement(s) may only be entered into with the approval of the United States in its sole discretion.

D. Defendant ABI shall not unilaterally, or pursuant to the terms of any contract or agreement, provide any reward or penalty to, or in any other way condition its relationship with, an Independent Distributor or any employees or agents of that Independent Distributor based upon the amount of sales the Independent Distributor makes of a Third-Party Brewer's Beer or the marketing, advertising, promotion, or retail placement of such Beer. Actions prohibited by this Sub-section include, but are not limited to:

1. Conditioning the availability of Defendant ABI's Beer on an Independent Distributor's sales, marketing, advertising, promotion, or retail placement of a Third-Party Brewer's Beer;

2. Conditioning the prices, services, product support, rebates, discounts, buy backs, or other terms and conditions of sale of Defendant ABI's Beer that are offered to an Independent Distributor based on an Independent Distributor's sales, marketing, advertising, promotion, or retail placement of a Third-Party Brewer's Beer;

3. Conditioning any agreement or program with an Independent Distributor on the fact that an Independent Distributor sells a Third-Party Brewer's Beer outside of the geographic area in which the Independent Distributor sells Defendant ABI's Beer;

4. Requiring an Independent Distributor to offer any incentive for selling Defendant ABI's Beer in connection with or in response to any incentive that the Independent Distributor offers for selling a Third-Party Brewer's Beer; and

5. Preventing an Independent Distributor from using best efforts to sell, market, advertise, or promote any Third-Party Brewer's Beer, which may be defined as efforts designed to achieve and maintain the highest practicable sales volume and retail placement of the Third Party Brewer's Beer in a geographic area.

Notwithstanding the foregoing, nothing in this Final Judgment shall prohibit Defendant ABI from entering into or enforcing an agreement with any Independent Distributor requiring the Independent Distributor to use best efforts to sell, market, advertise, or promote Defendant ABI's Beer, which may be defined as efforts designed to achieve and maintain the highest practicable sales volume and retail placement of Defendant ABI's Beer in a geographic area. Defendant ABI may condition incentives, programs, or contractual terms based on an Independent Distributor's volume of sales of Defendant ABI's Beer, the retail placement of Defendant ABI's Beer, or on Defendant ABI's percentage of Beer industry sales in a geographic area (such percentage not to be defined by reference to or derived from information obtained from Independent Distributors concerning their sales of any Third-Party Brewer's Beer), provided, however, that any such incentives, programs, or contractual terms may not require or encourage an Independent Distributor to provide less than best efforts to the sale, marketing, advertising, retail placement, or promotion of any Third-Party Brewer's Beer or to discontinue the distribution of a Third-Party Brewer's Beer. Defendant ABI may require an Independent Distributor to allocate to Defendant ABI's Beer a proportion of the Independent Distributor's annual spending on Beer promotions and incentives not to exceed the proportion of revenues that Defendant ABI's Beer constitutes in the Independent Distributor's overall revenue for Beer sales in the preceding year.

E. Defendant ABI shall not disapprove an Independent Distributor's selection of a general manager or successor general manager based on the Independent Distributor's sales, marketing, advertising, promotion, or retail placement of a Third-Party Brewer's Beer.

F. When exercising any right related to the transfer of control, ownership, or equity in any Distributor to any other Distributor, Defendant ABI shall not give weight to or base any decision to exercise such right upon either Distributor's business relationship with a Third-Party Brewer—including, but not limited to, such Distributor's sales, marketing, advertising, promotion, or retail placement of a Third-Party Brewer's Beer.

G. Defendant ABI shall not request or require an Independent Distributor to report to Defendant ABI, whether in aggregated or disaggregated form, the Independent Distributor's revenues, profits, margins, costs, sales volumes, or other financial information associated with the purchase, sale, or distribution of a Third-Party Brewer's Beer. Nothing in the foregoing sentence shall prohibit Defendant ABI from requesting the reporting of general financial information by an Independent Distributor to assess the overall financial condition and financial viability of such Independent Distributor, or the percentage of total Beer revenues received by the Independent Distributor in the prior year associated with the purchase, sale, or distribution of Defendant ABI's Beer distributed by the Independent Distributor, provided that the requested information does not disclose or enable Defendant ABI to infer the disaggregated revenues, profits, margins, costs, or sales volumes associated with the Independent Distributor's purchase, sale, or distribution of Third-Party Brewers' Beer. Nothing herein shall prevent Defendant ABI from conducting ordinary course due diligence in connection with any potential acquisition of an Independent Distributor.

H. Defendant ABI shall not discriminate against, penalize, or otherwise retaliate against any Distributor because such Distributor raises, alleges, or otherwise brings to the attention of the United States or the Monitoring Trustee an actual, potential, or perceived violation of Section V of this Final Judgment.

I. Within ten (10) business days after entry of this Final Judgment, Defendant ABI shall provide the United States, for the United States to approve in its sole discretion, with a proposed form of written notification to be provided to any Independent Distributor that

distributes Defendant ABI's Beer in the Territory. Such notification shall (1) explain the practices prohibited by Section V of this Final Judgment, (2) describe the changes Defendant ABI is making to any programs, agreements, or any interpretations of agreements required to comply with Section V of this Final Judgment, and (3) inform the Independent Distributor of its right, without fear of retaliation, to bring to the attention of any Monitoring Trustee appointed pursuant to Section VIII of this Final Judgment or the United States any actions by Defendant ABI which the Independent Distributor believes may violate Section V of this Final Judgment. Within ten (10) business days after receiving the approval of the United States, Defendant ABI shall make reasonable efforts to furnish the approved notification described above, together with a paper or electronic copy of this Final Judgment, to any Independent Distributor that distributes Defendant ABI's Beer in the Territory.

VI. Appointment of Trustee to Effect Divestiture

A. If following Completion of the Transaction Defendant ABI has not divested the Divestiture Assets within the time period specified in Section IV.A, Defendant ABI shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to divest the Divestiture Assets in a manner consistent with this Final Judgment.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, VI, and VII of this Final Judgment, and shall have such other powers as this Court deems appropriate.

C. Subject to Section VI.E of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendant ABI any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications.

D. Defendant ABI shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objection by Defendant ABI must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VII.A.

E. The Divestiture Trustee shall serve at the cost and expense of Defendant ABI pursuant to a written agreement, on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendant ABI and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and Defendant ABI are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to Defendant ABI and the United States. Defendant ABI shall use its best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other persons retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendant ABI shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendant ABI shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to Defendant ABI and to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

VII. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement with an Acquirer other than Molson Coors, Defendant ABI or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendant ABI. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets or, in the case of the Divestiture Trustee, any update of the information required to be provided under Section VI.G above.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendant ABI, the proposed Acquirer, any other third party, or the Divestiture Trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendant ABI and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendant ABI, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendant ABI and the Divestiture Trustee, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendant ABI's limited right to object to the sale under Section VI.D of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section VI shall not be consummated. Upon objection by Defendant ABI under Section VI.D, a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

VIII. Monitoring Trustee

A. Upon the filing of this Final Judgment, the United States may, in its sole discretion, appoint a Monitoring Trustee, subject to approval by the Court.

B. The Monitoring Trustee shall have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Hold Separate Stipulation and Order entered by this Court, and shall have such other powers as this Court deems appropriate. The Monitoring Trustee shall investigate and report on the Defendants' compliance with their respective obligations under this Final Judgment and Defendants' efforts to effectuate the purposes of this Final Judgment, including but not limited to, reviewing (a) complaints that Defendant ABI has violated Section V of this Final Judgment; (b) the implementation of the compliance plan required by Section XIII.B of this Final Judgment; and (c) any claimed breach of the Transition Services Agreements, License Agreements, Interim Supply Agreements, or other agreement between Defendant ABI and the Acquirer that may affect the accomplishment of the purposes of this Final Judgment. If the Monitoring Trustee determines that any violation of the Final Judgment or breach of any related agreement has occurred, the Monitoring Trustee shall recommend an appropriate remedy to the Antitrust Division of the United States Department of Justice (the ''Antitrust Division''), which, in its sole discretion, can accept, modify, or reject a recommendation to pursue a remedy.

C. Subject to Section VIII.E of this Final Judgment, the Monitoring Trustee may hire at the cost and expense of Defendant ABI, any consultants, accountants, attorneys, or other persons, who shall be solely accountable to the Monitoring Trustee, reasonably necessary in the Monitoring Trustee's judgment.

D. Defendants shall not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities on any ground other than the Monitoring Trustee's malfeasance. Any such objection by Defendants must be conveyed in writing to the United States and the Monitoring Trustee within ten (10) calendar days after the action taken by the Monitoring Trustee giving rise to Defendants' objection.

E. The Monitoring Trustee shall serve at the cost and expense of Defendant ABI on such terms and conditions as the United States approves. The compensation of the Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. The Monitoring Trustee shall, within three (3) business days of hiring any consultants, accountants, attorneys, or other persons, provide written notice of such hiring and the rate of compensation to Defendant ABI.

F. The Monitoring Trustee shall have no responsibility or obligation for the operation of Defendants' businesses.

G. Defendants shall use their best efforts to assist the Monitoring Trustee in monitoring Defendants' compliance with their respective obligations under this Final Judgment and under the Hold Separate Stipulation and Order. The Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to compliance with this Final Judgment, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges, to the extent Defendants have the right to provide such access. Defendants shall take no action to interfere with or to impede the Monitoring Trustee's accomplishment of its responsibilities.

H. After its appointment, the Monitoring Trustee shall file reports every ninety (90) days, or more frequently as needed, with the United States and, as appropriate, the Court setting forth the Defendants' efforts to comply with their individual obligations under this Final Judgment and under the Hold Separate Stipulation and Order. To the extent such reports contain information that the Monitoring Trustee deems confidential, such reports shall not be filed in the public docket of the Court.

I. The Monitoring Trustee shall serve until the sale of all the Divestiture Assets is finalized pursuant to either Section IV or Section VI of this Final Judgment and the Transition Services Agreements and the Interim Supply Agreements have expired and all other relief has been completed as defined in Section V unless the United States, in its sole discretion, authorizes the early termination of the Monitoring Trustee's service.

IX. Financing

Defendants shall not finance all or any part of any purchase made pursuant

to Section IV or Section VI of this Final Judgment.

X. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, or the Transaction is abandoned by the Defendants in accordance with the terms of the Co-Operation Agreement between the Defendants dated November 11, 2015 and the United States has notified the Court, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

XI. Affidavits

A. Within twenty (20) calendar days of the filing of this proposed Final Judgment, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or Section VI, each Defendant shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or Section VI of this Final Judgment. Each such affidavit on behalf of Defendant ABI shall also include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Defendant ABI's affidavit shall also include a description of the efforts Defendant ABI has taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of this proposed Final Judgment, each Defendant shall deliver to the United States an affidavit that describes in reasonable detail all actions it has taken and all steps it has implemented on an ongoing basis to comply with Section X of this Final Judgment. Each Defendant shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in its earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after the date of the divestiture.

XII. Notification of Future Transactions

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), Defendant ABI, without providing at least thirty (30) calendar days advance notification to the United States, shall not directly or indirectly acquire or license a Covered Interest in or from a Covered Entity.

B. Any such notification shall be provided to the Antitrust Division in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, Defendant ABI shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder.

C. All references to the HSR Act in this Final Judgment refer to the HSR Act as it exists at the time of the transaction or agreement and incorporate any subsequent amendments to the HSR Act. This Section XII shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section XII shall be resolved in favor of filing notice.

XIII. Nondisclosure of Information

A. Each Defendant shall implement and maintain procedures to prevent the disclosure of Confidential Information by or through Defendants to Defendants' respective affiliates who are involved in the marketing, distribution, or sale of Beer or other beverages in the Territory, or to any other person who does not have a need to know the information.

B. Each Defendant shall, within ten (10) business days of the entry of the Hold Separate Stipulation and Order, submit to the United States a compliance plan setting forth in detail the procedures implemented to effect compliance with Section XIII.A of this Final Judgment. In the event that the United States rejects a Defendant's compliance plan, that Defendant shall be given the opportunity to submit, within ten (10) business days of receiving the notice of rejection, a revised compliance plan. If the United States and a Defendant cannot agree on a compliance plan, the United States shall have the right to request that the Court rule on whether the Defendant's proposed compliance plan is reasonable.

C. Each Defendant may submit to the United States evidence relating to the actual operation of its respective compliance plan in support of a request to modify such compliance plan set forth in this Section XIII. In determining whether it would be appropriate to consent to modify the compliance plan, the United States, in its sole discretion, shall consider the need to protect Confidential Information and the impact the compliance plan has had on Defendant ABI's ability to efficiently provide services, supplies, and products under the Transition Services Agreements, the License Agreements, the Interim Supply Agreements, and any agreements entered into between Defendant ABI and the Acquirer subject to Section V.C.

D. Defendants shall prior to the Completion of the Transaction, and Defendant ABI shall following Closing:

1. Furnish a copy of this Final Judgment and related Competitive Impact Statement within sixty (60) days of entry of the Final Judgment to (a) each officer, director, and any other employee that will receive Confidential Information; (b) each officer, director, and any other employee that is involved in (i) any contact with the Acquirer or MillerCoors, (ii) making decisions under the Transition Services Agreements, the License Agreements, the Interim Supply Agreements, and any agreements entered into between Defendants and the Acquirer subject to Section V.C, or (iii) making decisions regarding Defendant ABI's relationships with, agreements with, or policies regarding Distributors; and (c) any successor to a person designated in Section XIII.D.1(a) or (b);

2. annually brief each person designated in Section XIII.D.1 on the meaning and requirements of this Final Judgment and the antitrust laws; and

3. obtain from each person designated in Section XIII.D.1, within sixty (60) days of that person's receipt of the Final Judgment, a certification that he or she (i) has read and, to the best of his or her ability, understands and agrees to abide

by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not been reported to the company; and (iii) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against that Defendant and/or any person who violates this Final Judgment.

XIV. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the Antitrust Division, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

1. Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested. Written reports authorized under this paragraph may, at the sole discretion of the United States, require Defendants to conduct, at Defendants' cost, an independent audit or analysis relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under the Protective Order, then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XV. No Reacquisition

Defendant ABI may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XVI. Bankruptcy

The failure of any party to any agreement entered into to comply with this Final Judgment to perform any remaining obligations of such party under the agreement shall not excuse performance by the other party of its obligations thereunder. Accordingly, for purposes of Section 365(n) of the Bankruptcy Reform Act of 1978, as amended, and codified as 11 U.S.C. 101 *et. seq.* (the ''Bankruptcy Code'') or any analogous provision under any law of any foreign or domestic, federal, state, provincial, local, municipal or other governmental jurisdiction relating to bankruptcy, insolvency or reorganization (''Foreign Bankruptcy Law''), (a) the agreement will not be deemed to be an executory contract, and (b) if for any reason a License Agreement is deemed to be an executory contract, the licenses granted under the License Agreement shall be deemed to be licenses to rights in ''intellectual property'' as defined in Section 101 of the Bankruptcy Code or any analogous provision of Foreign Bankruptcy Law and the Acquirer shall be protected in the continued enjoyment of its right under the License Agreement including, without limitation, the Acquirer so elects, the protection conferred upon licensees under 11 U.S.C. Section 365(n) of the Bankruptcy Code or any analogous provision of Foreign Bankruptcy Law.

XVII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to ensure and enforce compliance, and to punish violations of its provisions.

XVIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIX. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date:

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge

Attachment A—Miller Brands

1. Hamm's
   - A. Hamm's
   - B. Hamm's Golden Draft
   - C. Hamm's Special Light
2. Icehouse
   - A. Icehouse 5.0
   - B. Icehouse 5.5
   - C. Icehouse Light
3. Magnum Malt Liquor
4. Mickey's
   - A. Mickey's
   - B. Mickey's Ice
5. Miller
   - A. Miller Chill
   - B. Miller Dark
   - C. Miller Genuine Draft
   - D. Miller Genuine Draft Light
   - E. Miller Genuine Draft 64
   - F. Miller High Life
   - G. Miller High Life Light
   - H. Miller Lite
   - I. Miller Mac's Light
   - J. Miller Pilsner
   - K. Miller Special
6. Milwaukee's
   - A. Milwaukee's Best
   - B. Milwaukee's Best Dry
   - C. Milwaukee's Best Ice
   - D. Milwaukee's Best Light
7. Olde English
   - A. Olde English 800
   - B. Olde English 800 7.5
   - C. Olde English High Gravity 800
8. Red Dog
9. Sharp's (Non-Alcohol)
10. Southpaw Light
11. Steel
    - A. Steel Reserve Triple Export 8.1%
    - B. Steel Reserve High Gravity
    - C. Steel Reserve High Gravity 6.0
    - D. Steel Six
12. Frederick Miller Classic Chocolate Lager

13. Henry Weinhard's
    A. Henry Weinhard's Blonde Lager
    B. Henry Weinhard's Blue Boar
    C. Henry Weinhard's Classic Dark Lager
    D. Henry Weinhard's Hefeweizen
    E. Henry Weinhard's Private Reserve
    F. Henry Weinhard's Belgian Style Wheat
    G. Henry Weinhard's Root Beer
    H. Henry Weinhard's Black Cherry
    I. Henry Weinhard's Vanilla Cream
    J. Henry Weinhard's Orange Cream
14. Leinenkugel's
    A. Leinenkugel's Apple Spice
    B. Leinenkugel's Berry Weiss
    C. Leinenkugel's BIG BUTT
    D. Leinenkugel's Creamy Dark
    E. Leinenkugel's Honey Weiss
    F. Leinenkugel's Light
    G. Leinenkugel's Oktoberfest
    H. Leinenkugel's Original Lager
    I. Leinenkugel's Red Lager
    J. Leinenkugel's Sunset Wheat
15. Sparks
    A. Sparks
    B. Sparks Light
    C. Sparks Plus 6%
    D. Sparks Plus 7%

Attachment B—Import Brands

1. Pilsner Urquell
2. Peroni
3. Grolsch
4. Tyskie
5. Lech
6. Cerveza Aguila
7. Cristal
8. Cusquena
9. Sheaf Stout
10. Castle Lager
11. Victoria Bitter
12. Crown Lager
13. Pure Blonde
14. Carlton Draught and Carlton Dry
15. Matilda Bay Brewing Company products described in the Exploitation of Rights Agreement between MBBC Pty Ltd (ACN 009 077 703) and MillerCoors LLC dated as of March 31, 2013
16. Cascade Brewery Company products described in the Exploitation of Rights Agreement between Cascade Brewery Company Pty Ltd (ACN 058 152 195) and MillerCoors LLC dated as of March 31, 2013
17. Caguama
18. Cantina
19. Pilsener
20. Regia
21. Suprema
22. Taurino
23. Barena
24. Port Royal
25. Salva Vida
26. Santiago
27. Haywards 5000
28. Arriba
29. Caballo
30. Cabana
31. Del Mar
32. San Lucas
33. Tocayo
34. Rialto
35. to the extent not otherwise listed herein, La Constancia S.A. de C.V. products described in the Supplier-Importer Agreement, dated as of July 11, 2005 between La Constancia S. S.A. de C.V. and Winery Exchange, Inc.

Attachment C—Defendant ABI's Calculation Beer Volume Sold Through ABI-Owned Distributors

For purposes of Section V.B., the percentage of Defendant ABI's Beer sold by ABI-Owned Distributors in the Territory will be calculated according to the following formula:

$$Percentage = \frac{X}{Y} \times 100$$

Where X and Y are defined as:

X = volume of Defendant ABI's Beer that was sold by ABI-Owned Distributors to retailers in the Territory, as indicated by the most comprehensive data then used by ABI (currently, ABI's BudNet system), during the Relevant Period. The Relevant Period, for purposes of this Attachment C, shall be the 12 month period ending at the month-end immediately prior to the execution of the acquisition agreement governing the acquisition by ABI of the assets or equity interest, as applicable, of a Distributor. For the avoidance of doubt, X will include the volume of Defendants' Beer that was sold during the Relevant Period to retailers in the territory by the Distributor whose assets or equity interests are the subject of the acquisition agreement.

Y = volume of Defendant ABI's Beer that was sold to retailers in the Territory during the Relevant Period, as indicated by the most comprehensive data then used by ABI (currently, ABI's BudNet system).

[FR Doc. 2016–18504 Filed 8–3–16; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Notice of Filing of Notice of Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

On July 28, 2016, a Notice of Settlement Among EFH Properties Company and the United States on behalf of the U.S. Environmental Protection Agency (''EPA'') and the U.S. Department of the Interior (''DOI'') was filed with the United States Bankruptcy Court for the District of Delaware in the bankruptcy proceeding entitled *In re Energy Future Holdings Corp., et al.,* Case No. 14–10979 (CSS). The proposed Settlement Agreement is attached to the Notice of Settlement as Exhibit A.

The Settlement Agreement resolves a claim against EFH Properties Company (''EFH Properties''), as the alleged corporate successor to former mine operators, asserted by the United States on behalf of the Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA''). The claim sought to recover costs incurred and expected to be incurred in the future by the United States in response to releases and threats of releases of hazardous substances at or in connection with the Faith, Hope, Doris, and Isabella Uranium Mine Sites, located in McKinley County, New Mexico (''New Mexico Sites'').

Under the Settlement Agreement, EPA will receive $4,000,000.00. The Settlement Agreement contains covenants not to sue by the United States on behalf of EPA in favor of EFH Properties and its predecessors, Chaco Energy Company, TXU Industries Company LLC, and EFH Properties Company LLC (the ''Covenant Beneficiaries''), under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607 and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, with respect to the EPA claim or the New Mexico Sites. The Settlement Agreement also contains a covenant not to sue by the United States on behalf of DOI in favor of the Covenant Beneficiaries, for natural resources damages claims under Sections 107 of CERCLA, 42 U.S.C. 9607, with respect to the EPA claim or the New Mexico Sites.

The publication of this notice opens a period for public comment on the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *In re Energy Future Holdings Corp., et al.,* Case No. 14–10979 (CSS), D.J. Ref. No. 90–5–2–1–09894/2. All comments must be submitted no later than fifteen (15) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General U.S. DOJ—ENRD P.O. Box 7611 Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the Settlement Agreement may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Settlement Agreement upon written

request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $13.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas P. Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–18479 Filed 8–3–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–NEW]

Agency Information Collection Activities; Proposed Collection Comments Requested; New collection: Arrest-Related Deaths Program

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 3, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Michael Planty, Deputy Director, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (email: *Michael.Planty@usdoj.gov*; telephone: 202–514–9746).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

— Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *The Title of the Form/Collection:* Arrest-Related Deaths Program

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

This collection includes the following forms:

• Form CJ–11: Arrest-Related Deaths Quarterly Summary. This form is distributed to all law enforcement agencies (LEAs). This summary form requests that LEA respondents confirm deaths identified through open-source review, correct decedent name and date of death as appropriate, and identify any other arrest-related deaths that were not found through open-source review. It requests any LEAs without any deaths to provide an affirmative zero.

• Form CJ–11A: Arrest-Related Death Incident Report. This form is distributed to all *LEAs* with an arrest-related death. This incident report form requests that LEA respondents provide characteristics of the decedent and the circumstances surrounding the death.

• Form CJ–12: Arrest-Related Deaths Quarterly Summary. This form is distributed to all medical examiner's or coroner's (ME/C) offices with jurisdiction concurrent with that of the LEAs with a potential arrest-related death. This summary form requests that ME/C respondents confirm deaths identified, correct decedent name and date of death as appropriate, and identify any other arrest-related deaths.

• Form CJ–12A: Arrest-Related Death Incident Report. This form is distributed to all *ME/Cs* with an arrest-related death. This incident report form requests that ME/C respondents provide characteristics of the decedent and the cause and manner of death.

The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public that will be asked to respond on an annual basis include 19,450 state and local law enforcement agencies (LEAs) and approximately 685 medical examiner's or coroner's (ME/C) offices.

Abstract: The Arrest-Related Deaths (ARD) program was implemented from 2003 as part of BJS's Deaths in Custody Reporting Program (DCRP). The DCRP was developed in response to the Death in Custody Reporting Act of 2000 (P.L. 106–247), which required state and local prisons, jails, and law enforcement agencies (LEAs) to report information about in-custody deaths and deaths occurring in the process of arrest to the Department of Justice. DICRA of 2000 expired in 2006 and was reauthorized as DICRA of 2013 (P.L. 113–242) in December 2014. The DCRP also includes collections that measure deaths occurring in jails and state prisons that are conducted through another data collection.

The BJS designed the ARD program to be a census of all deaths that occur during the process of arrest or during an attempt to obtain custody by a state or local LEA in the United States. BJS defined the manner of arrest-related death to include law enforcement homicides, other homicides, accidents, suicides, or deaths due to natural causes. Law enforcement homicides included all deaths attributed to weapons or restraint tactics used by state or local law enforcement officers, including deaths due to officer-involved shootings; complications related to the use of conducted energy devices, such as Tasers and stun guns; accidents caused by the use of spike strips or other tire deflation devices; injuries due to the use of impact devices, such as batons and soft projectiles; complications due to the use of chemical agents such as pepper spray and tear gas; and other injuries or complications related to the use of restraint tactics.

The ARD program was the only national data collection that attempted to enumerate all arrest-related deaths in the United States, including accidental and natural deaths that occurred during the process of arrest in addition to law enforcement homicides. Because of concerns about variations in data collection methodology and coverage, BJS recently conducted an assessment of its ARD program. Because accurate and comprehensive accounting of deaths that occur during the process of arrest is critical for LEAs to demonstrate responsiveness to the citizens and communities they serve, transparency

related to law enforcement tactics and approaches, and accountability for the actions of officers, BJS developed and tested new methodologies for collecting data on the arrest-related deaths.

The redesigned methodology includes a standardized mixed method, hybrid approach relying on open sources to identify eligible cases, followed by data requests from law enforcement and medical examiner/coroner offices for incident-specific information about the decedent and circumstances surrounding the event.

To identify respondents for the agency survey, open sources are reviewed and a list of potential arrest-related deaths are compiled. This list is checked for duplication to develop a list of unique cases. Then LEAs and ME/Cs with jurisdiction in these cases are contacted to (1) confirm, where indicated, whether the incident meets the definition of an arrest-related death and other inclusionary criteria; (2) identify any additional arrest-related deaths that BJS did not identify during its open-source review; and (3) collect additional information about the decedent and the circumstances surrounding the incident for all identified arrest-related deaths. Specifically the following items are collected:

For LEAs

(a) Identifying information, LEA involved, state, decedent name, date/time of death.
(b) Location of incident.
(c) Decedent demographics.
(d) Precipitating events, reason for initial contact, did decedent commit or allegedly commit any crimes.
(e) Decedent behavior during the incident, barricade, threaten, assault, escape; exhibit mental health problems or appear to be intoxicated; possess or appear to possess a weapon; use a weapon to threaten or assault; attempt to injure officers or others.
(f) Law enforcement actions during the incident, engage in pursuit or restraint tactics; use of force; if firearm discharged, how many shots fired; number of officers and LEAs that responded top incident.
(g) Manner of death.

For ME/Cs

(a) Identifying information, LEA involved, state, decedent name, date/time of death.
(b) Location of incident.
(c) Decedent demographics.
(d) Whether autopsy was performed.
(e) Manner of death
(f) Cause of death.
(g) If died from injuries, how were those injuries sustained.
(h) If weapon caused death, what type of weapon.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The current LEAs roster includes approximately 19,450 state and local agencies. For the 2016 collection, agencies will be asked to report one time to capture the full year. It is expected that 18,384 will report zero incidents with an estimated burden of 15 minutes. The remaining estimated 1,066 agencies will report an average of 1.79 incidents with an estimated burden of 68 minutes. A total LEAs burden of 5,801 hours associated with 2016. For ME/Cs, and estimated 685 offices will be asked to submit an average 2.79 incident forms incident form with an estimated burden 49 minutes. A total ME/C burden of 1,048 hours associated with 2016.

(6) For the 2017 collection, LEAs will be asked to report quarterly. It is expected that 19,106 will report zero incidents with an estimated total burden of 60 minutes for 2017. Approximately 1,066 agencies will report an average of 1.79 incidents with an estimated burden of 142 minutes. The burden is higher in 2017 due to quarterly reporting. A total LEAs burden of 20,440 hours associated with 2017. For ME/Cs, and estimated 685 offices will be asked to submit an average 2.79 incident forms incident form with an estimated burden 49 minutes. A total ME/C burden of 1,897 hours associated with 2017.

(7) *An estimate of the total public burden (in hours) associated with the collection:* The total respondent burden for reference years is 29,186.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: August 1, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–18484 Filed 8–3–16; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On July 29, 2016, the Department of Justice lodged a proposed consent decree with the United States District Court for the Southern District of Georgia in the lawsuit entitled *United States* v. *Honeywell International Inc. and Georgia Power Company*, Civil Action No. 2:16–cv–00112–LGW–RSB.

The United States, on behalf of the U.S. Environmental Protection Agency (EPA), filed this lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The complaint seeks performance of response actions to address contamination of mercury, polychlorinated biphenyls, lead, and polycyclic aromatic hydrocarbons in the saltwater marsh at the LCP Chemicals Superfund Site in Brunswick, Georgia. It also seeks recovery of costs that the United States will incur in overseeing implementation of the response actions. The marsh is known as ''Operable Unit 1,'' one of three contaminated areas at the Site.

The proposed consent decree would resolve the claims alleged in the complaint. It requires the defendants, Honeywell International Inc. and Georgia Power Company, to implement the remedy selected by EPA for Operable Unit 1, which is estimated to cost $28.6 million. The consent decree also requires the defendants to pay future response costs incurred by EPA at Operable Unit 1.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Honeywell International Inc. and Georgia Power Company,* D.J. Ref. No. 90–11–2–1237/3. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—

ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $322.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $9.25.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–18454 Filed 8–3–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of Disability Employment Policy

Advisory Committee on Increasing Competitive Integrated Employment for Individuals With Disabilities; Notice of Meeting

The Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the Committee) was mandated by section 609 of the Rehabilitation Act of 1973, as amended by section 461 of the Workforce Innovation and Opportunity Act (WIOA). The Secretary of Labor established the Committee on September 15, 2014, in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2. The purpose of the Committee is to study and prepare findings, conclusions and recommendations for Congress and the Secretary of Labor on (1) ways to increase employment opportunities for individuals with intellectual or developmental disabilities or other individuals with significant disabilities in competitive, integrated employment; (2) the use of the certificate program carried out under section 14(c) of the Fair Labor Standards Act (FLSA) of 1938 (29 U.S.C. 214(c)); and (3) ways to improve oversight of the use of such certificates.

The Committee is required to meet no less than eight times. The committee submitted an Interim Report to the Secretary of Labor; the Senate Committee on Health, Education, Labor and Pensions; and the House Committee on Education and the Workforce on September 15, 2015. A Final Report must be submitted to the same entities no later than September 15, 2016. The Committee terminates one day after the submission of the Final Report.

The next meeting of the Committee will be open to the public and take place by webinar on Monday, August 29, 2016. The meeting will take from 1:00 p.m. to 2:00 p.m., Eastern Daylight Time.

On August 29th, the Committee will meet to confirm consensus on the Final Report. Members of the public wishing to participate in the webinar must register in advance of the meeting, by Friday, August 19, 2016, using the following link—*http://bit.ly/ACICIEID10.*

Organizations or members of the public wishing to submit a written statement may do so by submitting their statement on or before August 19, 2016, to *www.acicieid.org/comments.* Written statements, with nine copies, may also be submitted to Mr. David Berthiaume, Advisory Committee on Increasing Competitive Integrated Employment for Individuals With Disabilities, U.S. Department of Labor, Suite S–1303, 200 Constitution Avenue NW., Washington, DC 20210.

Please ensure that any written submission is in an accessible format or the submission will be returned. Further, it is requested that statements not be included in the body of an email. Statements deemed relevant by the Committee and received on or before August 19, 2016 will be included in the record of the meeting. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed.

Jennifer Sheehy,

Deputy Assistant Secretary, Office of Disability Employment Policy.

[FR Doc. 2016–18615 Filed 8–3–16; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–86,004]

Cooper Power Systems, Power Delivery Division, an Eaton Corporation Company, Formerly Cooper Industries Including On-Site Leased Workers From Manpower, TEC Staffing, Infotree Services and Advantage Resourcing, Fayetteville, Arkansas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 29, 2015, applicable to workers and former workers of Cooper Power Systems, Power Delivery Division, an Eaton Corporation Company, formerly Cooper Industries, including on-site leased workers from Manpower, Tec Staffing, Infotree Services, Fayetteville, Arkansas. The Department's Notice of determination was published in the **Federal Register** on September 22, 2015 (80 FR 57219).

At the request of State of Arkansas, the Department reviewed the certification for workers of the subject firm. Workers from Advantage Resourcing were employed on-site at the Fayetteville, Arkansas location of the subject firm. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Advantage Resourcing working on-site at the Fayetteville, Arkansas location of Cooper Power Systems.

The amended notice applicable to TA–W–86,004 is hereby issued as follows:

All workers of Cooper Power Systems, Power Delivery Division, an Eaton Corporation Company, formerly Cooper Industries, including on-site leased workers from Manpower, Tec Staffing, Infotree Services, and Advantage Resourcing, Fayetteville, Arkansas, who became totally or partially separated from employment on or after May 8, 2014, through July 29, 2017, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 20th day of May, 2016.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–18407 Filed 8–3–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade

Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, no later than (insert date ten days after publication in FR).

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than (insert date ten days after publication in FR).

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 11th day of July 2016.

Jessica R. Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[44 TAA Petitions Instituted Between 6/27/16 and 7/8/16]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
91959	Madden Timberlands, Inc. (Company)	Old Town, ME	06/27/16	06/24/16
91960	Dana Holding Corporation (Union)	Glasgow, KY	06/27/16	06/26/16
91961	Matthew-Aurora Casket Company (Union)	Aurora, IN	06/27/16	06/24/16
91962	Minnesota Wire (Workers)	Eau Claire, WI	06/27/16	06/21/16
91963	IBM (Workers)	Camp Hill, PA	06/27/16	06/20/16
91964	Acuity Brands/Mark Lighting (State/One-Stop)	Edison, NJ	06/27/16	06/24/16
91965	Masonite Architectural Door Division (Union)	Algoma, WI	06/27/16	06/24/16
91966	Transitions Optical, Inc. (State/One-Stop)	Pinellas Park, FL	06/28/16	06/27/16
91967	Prime Electric Motors, Inc. C/O Madison Paper (State/One-Stop).	Madison, ME	06/28/16	06/27/16
91968	Noranda Intermediate Holding Corporation (Company)	Franklin, TN	06/28/16	06/27/16
91969	Silvanus Products Inc. (State/One-Stop)	St. Geneviere, MO	06/28/16	06/27/16
91970	ATOS (State/One-Stop)	Mountain Lakes, NJ	06/29/16	06/28/16
91971	InnoVista Sensors (State/One-Stop)	Thousand Oaks, CA	06/29/16	06/28/16
91972	Sensata Technologies (State/One-Stop)	Springfield, TN	06/29/16	06/28/16
91973	International Business Machines (Workers)	Austin, TX	06/29/16	06/28/16
91974	W.W. Grainger (State/One-Stop)	Lake Forest, IL	06/30/16	06/29/16
91975	Cascades Auburn Fiber (Company)	Auburn, ME	06/30/16	06/29/16
91976	Motorola Solutions, Inc. (Workers)	Schaumburg, IL	06/30/16	04/25/16
91977	TE Connectivity, AD&M or Areo Space and Defense Division (Workers).	Middletown, PA	07/01/16	06/30/16
91978	Caterpillar (Workers)	Thomasville, GA	07/05/16	07/01/16
91979	GE Transportation Engine System (State/One-Stop)	Latham, NY	07/05/16	07/01/16
91980	American Express (Workers)	Phoenix, AZ	07/05/16	07/03/16
91981	Gap Inc. (Workers)	New York, NY	07/05/16	04/22/16
91982	Caterpillar (State/One-Stop)	Thomasville, GA	07/06/16	07/01/16
91983	CDK Global, f/k/a ADP (State/One-Stop)	Ann Arbor, MI	07/06/16	07/05/16
91984	EMC Corporation (State/One-Stop)	Hopkinton, MA	07/06/16	07/05/16
91985	GE Energy (Union)	Pineville, LA	07/06/16	07/05/16
91986	Grede II LLC (Company)	Bessemer, AL	07/06/16	07/05/16
91987	Audatex, Audaexplore a Solera Company, Solera Holdings Inc. (Workers).	San Diego, CA	07/06/16	07/05/16
91988	Paccar Winch—Okmulgee Branch (State/One-Stop)	Broken Arrow, OK	07/07/16	07/06/16
91989	Emerson Electric Company dba White-Rodgers (State/One-Stop).	El Paso, TX	07/07/16	07/06/16
91990	Quality Saws and Supplies (Company)	West Enfield, ME	07/07/16	07/07/16
91991	Caterpillar Inc. (Company)	Morganton, NC	07/07/16	07/06/16
91992	Quad Graphics, East Greenville (Workers)	East Greenville, PA	07/07/16	07/06/16
91993	The Timken Company (Union)	North Canton, OH	07/07/16	07/06/16
91994	Strippit LVD (Union)	Akron, NY	07/08/16	07/01/16
91995	The Boeing Company (State/One-Stop)	St. Louis, MO	07/08/16	07/07/16
91996	Electrofilm Manufacturing Co. (State/One-Stop)	Valencia, CA	07/08/16	07/07/16
91997	Pall Corporation (State/One-Stop)	Port Washington, NY	07/08/16	07/07/16
91998	The Kasper Group (State/One-Stop)	New York, NY	07/08/16	07/07/16
91999	Fluke (Company)	Everett, WA	07/08/16	07/07/16
92000	Greatbatch, Ltd (State/One-Stop)	Plymouth, MN	07/08/16	07/07/16
92001	Boise Paper Holdings, LLC/Packaging Corporation of America (PCA)/Tharco (Workers).	Santa Fe Springs, CA	07/08/16	07/08/16
92002	Havells USA (Workers)	Atlanta, GA	07/08/16	07/08/16

[FR Doc. 2016–18409 Filed 8–3–16; 8:45 am]
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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–83,328]

General Electric Company; Transportation Division; Including On-Site Leased Workers From Adecco, YOH Services LLC, CH2MHILL, and GGS Information Services Erie, Pennsylvania; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 3, 2014, applicable to workers and former workers of General Electric Company, Transportation Division, including on-site leased workers from Adecco, Erie, Pennsylvania. On January 28, 2015, the Department issued an amended certification to include on-site leased workers from Yoh Services LLC.

At the request of the Commonwealth of Pennsylvania, the Department reviewed the certification for workers of the subject firm.

The company reports that workers leased from CH2MHill and GGS Information Services were on-site at the Erie, Pennsylvania location of General Electric Company, Transportation Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from CH2MHill and GGS Information Services working on-site at the Erie, Pennsylvania location of General Electric Company, Transportation Division.

The amended notice applicable to TA–W–83,328 is hereby issued as follows:

All workers of General Electric Company, Transportation Division, including on-site leased workers from Adecco, Yoh Services LLC, CH2MHill, and GGS Information Services, Erie, Pennsylvania, who became totally or partially separated from employment on or after December 20, 2012 through June 3, 2016, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 20th day of May, 2016.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–18408 Filed 8–3–16; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *June 27, 2016 through July 8, 2016.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group

eligibility requirements of Section 222(e) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) not withstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
90,043	Polyfusion Electronics, Inc., Durham Staffing, Inc	Lancaster, NY	January 1, 2014.
90,063	Oerlikon Fairfield, OC, Oerlikon Corporation AG	Lafayette, IN	March 27, 2015.
91,278	Jewel Acquisition, LLC, ATI Flat Rolled Products Midland Operations, Allegheny Technologies, etc.	Midland, PA	January 4, 2015.
91,539	Genpact, LLC—Farmington Hills Office, Genpact International, Inc., Kelly Services, Inc.	Farmington Hills, MI	March 2, 2015.
91,822	GatewayCDI Inc. DBA Brand Addition, Express Services, Inc.; Kforce Professional Staffing, and Keystone.	St. Louis, MO	May 18, 2015.
91,951	Noranda Alumina, LLC, Noranda Aluminum Holding Corporation, DMI Contractors, Inc.	Gramercy, LA	June 21, 2015.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
91,031	Vestas American Wind Technology, Vestas Wind Systems A/S, General Ledger and Accounts Payable Departments.	Portland, OR	October 6, 2014.
91,441	Sealed Air Corporation (US), Cryovac, Inc., Sealed Air Corporation, Phillips Staffing, Robert Half, etc.	Duncan, SC	August 7, 2015.
91,441A	Sealed Air Corporation (US), Cryovac, Inc., Sealed Air Corporation, Phillips Staffing.	Greenville, SC	February 4, 2015.
91,441B	Sealed Air Corporation (US), Cryovac, Inc., Sealed Air Corporation	Danbury, CT	February 4, 2015.
91,566	UBS Financial Services, Inc., Group Operations, Account Opening Division	Weehawken, NJ	March 8, 2015.
91,604	Dairy Farmers of America, Inc	Springfield, MO	March 17, 2015.
91,718	ITW Medical Division, ITW (Illinois Tool Works), SEEK Careers/Staffing, Inc	Sheboygan, WI	April 18, 2015.
91,728	Bank of America, Consumer Sourcing Division	Chandler, AZ	April 21, 2015.
91,754	QBE North Americas, INC., QBE Holdings, Inc	Bellevue, WA	April 27, 2015.
91,771	QBE North Americas, Inc., QBE Holdings, Inc	Jacksonville, FL	May 3, 2015.
91,789	Genpact, LLC, Finance Department, Genpact International, Inc., Manpower	Parsippany, NJ	May 9, 2015.
91,808	Resolute Forest Products Augusta LLC, Augusta Staffing	Augusta, GA	May 12, 2015.
91,838	Crawford & Company, Information and Communications Technology Division.	Sunrise, FL	May 23, 2015.
91,839	Crawford & Company, Information and Communications Technology Division.	Lake Zurich, IL	May 25, 2015.
91,840	Crawford & Company, Information and Communications Technology Division.	Atlanta, GA	May 25, 2015.
91,868	Hewlett Packard, Inc., Global Indirect Procurement Division	Vancouver, WA	May 26, 2015.
91,888	T-Systems North America, Inc., Deutsche Telekom, Aptuity, Finezi, ICON, Pinnacle, Recruit 121, etc.	Tempe, AZ	June 7, 2015.
91,889	Siemens Corporate, IT Americas Division	Buffalo Grove, IL	May 12, 2015.
91,892	CDK Global, LLC, Aerotek/Teksystems, Apex Systems, Inc., Edgelink, LLC, etc.	Portland, OR	June 8, 2015.
91,896	Smilebox, Inc., Incredimail, Inc., Accountemps, Aim Consulting, Arper & CO, etc.	Redmond, WA	June 8, 2015.
91,905	Hodges Trucking Company, LLC, Rodan Transport (U.S.A.) Ltd, Office Administration Division.	Oklahoma City, OK	June 9, 2015.
91,914	Ocwen Loan Servicing, LLC, Kelly Vendor Management Services, Ocwen Financial Corporation.	West Palm Beach, FL	June 10, 2015.
91,914A	Ocwen Loan Servicing, LLC, Ocwen Financial Corporation	Coppell, TX	April 25, 2015.

TA–W No.	Subject firm	Location	Impact date
91,914B	Kelly Vendor Management Services, Ocwen Loan Servicing, LLC	Coppell, TX	June 10, 2015.
91,929	Sandvik, Inc., Sandvik Coromant, Sandvik AB, Complete Staffing Services, Inc., etc.	Stafford, TX	June 16, 2015.
91,939	Graphic Packaging International Inc	Menasha, WI	June 20, 2015.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
91,296	Tritec of Minnesota, Inc	Virginia, MN	January 6, 2015.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1) and (b)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
90,232	International Business Machines (IBM), Management Consulting Digital Operations, Global Business Services.	Glendale, CA.	
90,238	BIC Corporation, BIC Fuel Cell Project, Kelly Services	Milford, CT.	
90,240	ABB, Inc., High Voltage Service Division, Pontoon Solutions	Greensburg, PA.	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
91,097	Toyota Auto Body California (TABC), Inc., TABC Holding, Aerotek Services	Long Beach, CA.	
91,253	Cast Corporation	Hibbing, MN.	
91,414	Keywell Metals LLC, FKA SGK Ventures (FKA Keywell LLC)	Falconer, NY.	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
90,007	Swiss International Airlines Ltd	East Meadow, NY.	
91,213	Superior Rock Bit Company	Virginia, MN.	
91,269	Dom-Ex, Inc., H–E Parts International	Hibbing, MN.	
91,269A	Crown Parts & Machine, Inc., H–E Parts International, Mining Solutions	Hibbing, MN.	
91,447	National OilWell Varco L.P., Nov Hydra Rig	Duncan, OK.	
91,724	Newpark Drilling Fluids LLC, North America Region, AIP Inc., and Upstream Fluid Consultants, LLC.	Katy, TX.	
91,785	Campbell Global, LLC, OMAM, Inc.	Fort Bragg, CA.	
91,842	Hewlett Packard Enterprise, f/k/a Hewlett Packard Corporation, ES EUWS AMS ITO–CITI Support Unit.	Jersey City, NJ.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
91,705	D+H USA Corp/Harland Financial Solutions, Inc.	Portland, OR.	
91,749	Premise Health	Brentwood, TN.	

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W No.	Subject firm	Location	Impact date
91,742	General Electric Company, D/B/A GE Capacitor and Power Quality Products, Energy Connections Division.	Fort Edward, NY.	
91,833	EMC Corporation, Disk Library for Mainframe (DLM) Division	Hopkinton, MA.	

I hereby certify that the aforementioned determinations were issued during the period of *June 27, 2016 through July 8, 2016.* These determinations are available on the Department's Web site *https://www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 14th day of July 2016.

Jessica R. Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–18411 Filed 8–3–16; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–91,611]

Sherwin Alumina Company, LLC Including On-Site Leased Workers From CCC Group, McWhorter Electric, MMR Constructors, Inc., Dols Managed Workforce, First Instrument Solutions, T. Parker Host, Rexco, GP Strategies, JM Davidson, Palacios Marine & Industrial, All Specialty, LK Jordan, Strom, and St. James Stevedoring Partners, LLC Including Workers Whose Unemployment Insurance (UI) Wages Are Reported Through Host Terminals, Gregory, Texas: Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 1, 2016, applicable to workers of Sherwin Alumina Company, LLC, Gregory, Texas. The Department's notice of determination was published in the **Federal Register** on June 28, 2016 (81 FR 41997).

At the request of State Workforce Office, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of alumina.

New information shows that workers separated from employment at Sherwin Alumina Company, LLC, Gregory, Texas had their wages reported through a separate unemployment insurance (UI) tax account under the name Host Terminals. Host Terminals is a separate entity owned by T. Parker Host.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by customer imports of alumina.

Accordingly, the Department is amending this certification to properly reflect this matter.

The amended notice applicable to TA–W–91,611 is hereby issued as follows:

All workers of Sherwin Alumina Company, LLC, including on-site leased workers from CCC Group, McWhorter Electric, MMR Constructors, Inc., DOLS Managed Workforce, First Instrument Solutions, T. Parker Host, Rexco, GP Strategies, JM Davidson, Palacios Marine & Industrial, All Specialty, LK Jordan, Strom, and St. James Stevedoring Partners, LLC, including workers whose unemployment insurance (UI) wages are reported through Host Terminals, Gregory, Texas who became totally or partially separated from employment on or after March 21, 2015 through June 1, 2018, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC this 12th day of July, 2016.

Jessica R. Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–18413 Filed 8–3–16; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85,373]

GE Industrial Solutions Service Engineering Organization Atlanta, Georgia: Notice of Revised Determination After Statutory Reconsideration

As required by the Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015), which was enacted as Title IV of the Trade Preferences Extension Act of 2015, Public Law 114–27, section 405(a)(1)(A), the investigation into this petition was reopened for a reconsideration investigation to apply the requirements for worker group eligibility under chapter 2 of title II of the Trade Act of 1974, as amended by the TAARA 2015, to the facts of this petition (statutory reconsideration).

The initial investigation, initiated June 12, 2014, resulted in a negative determination, issued on September 30, 2014, that was based on worker separations not being attributable to increased imports or a shift in production. A complaint was filed with the United States Court of International Trade (USCIT) on November 28, 2014 (No. 14–00314); however, a joint dismissal of the case was filed on July 20, 2015. During the Remand investigation, the worker group was clarified to be GE Industrial Solutions Service Engineering Organization, Atlanta, Georgia (hereafter referred to as ''GE Industrial Solutions Service Engineering Organization''). The workers' firm is engaged in activities related to the supply of designing, testing, documenting, and engineering services.

''Firm includes an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy, and receiver under decree of any court.'' 29 CFR 90.2

Based on information reviewed during the reconsideration investigation, the Department of Labor determines that a shift in services to a

foreign country contributed importantly to the worker group separations at GE Industrial Solutions Service Engineering Organization, Atlanta, Georgia.

Section 222(a)(1) has been met because a significant number or proportion of the workers in GE Industrial Solutions Service Engineering Organization, Atlanta, Georgia have become totally or partially separated, or are threatened to become totally or partially separated.

Section 222(a)(2)(B) has been met because the workers' firm has shifted to a foreign country a portion of the supply of services like or directly competitive with the services supplied by the subject workers which contributed importantly to worker group separations at GE Industrial Solutions Service Engineering Organization, Atlanta, Georgia.

Conclusion

After careful review, I determine that workers of GE Industrial Solutions Service Engineering Organization, Atlanta, Georgia, who are engaged in activities related to the internal supply of designing, testing, documenting, and engineering services, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of GE Industrial Solutions Service Engineering Organization, Atlanta, Georgia, who became totally or partially separated from employment on or after June 11, 2013, through two years from the date of certification, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 20th day of May, 2016.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–18410 Filed 8–3–16; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–91,039]

Foxconn Assembly, LLC, Houston, Texas: Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated December 9, 2015, the Department of Labor (Department) received a request for administrative reconsideration of the Department's Notice of Termination of Investigation regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The determination was issued on November 13, 2015. The determination was based on the Department's finding that the petitioning workers are eligible to apply for adjustment assistance under an existing certification.

In the request for reconsideration, the State of Texas stated that the workers who filed the petition are not part of the certified worker group at 8801 Fallbrook Drive, Houston, Texas but are part of a separately identifiable worker group at 8807 Fallbrook Drive, Houston, Texas.

The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 20th day of May, 2016.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–18406 Filed 8–3–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85,961]

Modine Manufacturing Company Including On-Site Leased Workers From Seek Professionals, LLC, Securitas Security Services USA, Inc., and Entegee, Washington, Iowa: Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 30, 2015, applicable to workers of Modine Manufacturing Company, including on-site leased workers from Seek Professionals, LLC and Securitas Security Services USA, Inc., Washington, Iowa. The Department's notice of determination was published in the **Federal Register** on August 17, 2015 (80 FR 49269).

At the request of State Workforce Office, the Department reviewed the certification for workers of the subject firm.

The company reports that workers leased from Entegee were employed on-site at the Washington, Iowa location of Modine Manufacturing Company. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Entegee working on-site at the Washington, Iowa location of Modine Manufacturing Company.

The amended notice applicable to TA–W–85,961 is hereby issued as follows:

All workers of Modine Manufacturing Company, including on-site leased workers from Seek Professionals, LLC, Securitas Security Services USA, Inc., and Entegee, Washington, Iowa, who became totally or partially separated from employment on or after April 24, 2014, through July 30, 2017, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC this 20th day of May, 2016.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–18412 Filed 8–3–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Work Opportunity Tax Credit (WOTC)

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), Employment and Training Administration is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Work Opportunity Tax Credit (WOTC).'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in

accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

DATES: Consideration will be given to all written comments received by October 3, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Carmen Ortiz, WOTC National Coordinator, by telephone at 202–693–2786 (these are not toll-free numbers) or by email at *AskWOTC@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Attention: Carmen Ortiz, Room C–4510 200 Constitution Avenue NW., Washington, DC 20210; by email: *AskWOTC@dol.gov;* or by Fax 202–693–3015.

FOR FURTHER INFORMATION CONTACT: Contact Carmen Ortiz, WOTC National Coordinator, by telephone at 202–693–2786 (these are not toll-free numbers) or by email at *AskWOTC@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Work Opportunity Tax Credit (WOTC) program is authorized under § 51 and 3111(e) of the Internal Revenue Code (Code) and the Small Business Job Protection Act of 1996, (Pub. L. 104–188), including Title 26 U.S.C. The WOTC program is currently extended and amended by the Protecting Americans from Tax Hikes Act of 2015, (Pub. L. 114–113), div. Q (PATH Act). See attached PATH Act, which authorizes this information collection. The WOTC is a Federal tax credit available to employers for hiring individuals from certain target groups who have consistently faced significant barriers to employment. On December 18, 2015, President Obama signed into law the PATH Act that retroactively reauthorizes the WOTC program and all its current target groups for a five-year period, from January 1, 2015 to December 31, 2019. Additionally the PATH Act extends the Empowerment Zones for a two-year period, from December 31, 2014 to December 31, 2016, and introduces a new target group, Qualified Long-term Unemployment Recipients, for new hires that begin to work for an employer on or after January 1, 2016 through December 31, 2019.

This submission includes seven WOTC processing and administrative program forms as follows: (1) ETA Form 9058, Report 1—Certification Workload and Characteristics of Certified Individuals; (2) ETA Form 9061, Individual Characteristics Form; (3) ETA Form 9061, Spanish version; (4) ETA Form 9062, Conditional Certification; (5) ETA Form 9063, Employer Certification, (6) ETA Form 9065, Agency Declaration of Verification Results Worksheet; and (7) ETA Form 9175, Long-term Unemployment Recipient Self-Attestation Form.

The data collected under this submission are necessary for effective Federal administration of the WOTC program, including allowing ETA and IRS to oversee state administration of the tax credit. Uniform program administration procedures and forms assure that businesses, especially multistate businesses that use the WOTC, receive consistent treatment from state to state regarding eligibility determinations, processing of their certification requests, and the statutory rules for receipt of the tax credit requests are administered in a consistent manner by the SWAs.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB CONTROL No. 1205–0371.

Submitted comments will also be a matter of public record for this ICR and posted on the Internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Type of Review: ''Revision of a Currently Approved Collection.''

Title of Collection: Work Opportunity Tax Credit (WOTC).

Forms: (1) ETA Form 9058, Report 1—Certification Workload and Characteristics of Certified Individuals; (2) ETA Form 9061, Individual Characteristics Form; (3) ETA Form 9061, Spanish version; (4) ETA Form 9062, Conditional Certification; (5) ETA Form 9063, Employer Certification, (6) ETA Form 9065, Agency Declaration of Verification Results Worksheet; and (7) ETA Form 9175, Long-term Unemployment Recipient Self-Attestation Form.

OMB Control Number: 1205–0371.

Affected Public: State Workforce Agencies (SWAs), Private Sector, Individuals or Households and 501 (c) Tax-Exempt organizations hiring certain Veterans.

Estimated Number of Respondents: 2,010,874.

Frequency: Varies.

Total Estimated Annual Responses: 5,840,620.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 1,960,774 hours.

Total Estimated Annual Other Cost Burden: $0.00.

Authority: 44 U.S.C. 3506(c)(2)(A).

Portia Wu,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2016–18405 Filed 8–3–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employee Benefit Plan Claims Procedure Under the Employee Retirement Income Security Act

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) will submit the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Employee Benefit Plan Claims Procedure Under the Employee Retirement Income Security Act,'' to the Office of Management and Budget (OMB) on July 29, 2016, for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 6, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201607-1210-004* (this link will only become active on July 30, 2016) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3507(a)(1)(D).

This ICR seeks to extend PRA authority for the Employee Benefit Plan Claims Procedure Under the Employee Retirement Income Security Act (ERISA) information collection. ERISA section 503 and regulations 29 CFR 2560.503–1 require an employee benefit plan subject to the Act to establish procedures for resolving benefit claims under the plan, including initial claims and appeal of denied claims. The regulation requires specific information to be disclosed at different stages of the claims process. The regulation also requires claims denial notices to be provided within specific time frames and that the notices include specific information. ERISA section 503 authorizes this information collection. *See* 29 U.S.C. 1133.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0053.

The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 23, 2015 (80 FR 72990).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0053. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Employee Benefit Plan Claims Procedure Under the Employee Retirement Income Security Act.

OMB Control Number: 1210–0053.

Affected Public: Private Sector—businesses or other for profits and not-for-profit institutions.

Total Estimated Number of Respondents: 5,790,000.

Total Estimated Number of Responses: 311,153,000.

Total Estimated Annual Time Burden: 492,500 hours.

Total Estimated Annual Other Costs Burden: $719,438.

Dated: July 27, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–18414 Filed 8–3–16; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0008]

Newport News Shipbuilding; Grant of a Permanent Variance

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA grants a permanent variance to Newport News

Shipbuilding from the OSHA shipyard-employment standards that prohibit shipyard employers from permitting workers to ride the hook or the load, from swinging or suspending loads over the heads of workers, and placing employees in a hazardous position between a swinging load and a fixed object while engaged in the construction and assembly of modular ship sections.

DATES: The permanent variance specified by this notice becomes effective on August 4, 2016 and shall remain in effect until it is modified or revoked.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov*.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; phone: (202) 693–2110 or email: *robinson.kevin@dol.gov*.

SUPPLEMENTARY INFORMATION:

Copies of this ***Federal Register*** *notice.* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov*. This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov*.

I. Notice of Application

Northrop Grumman Shipbuilding 4101 Washington Ave., Newport News, Virginia 23607, submitted on October 6, 2009, an application for a permanent multi-state variance under Section 6(d) of the Occupational Safety and Health Act of 1970 (''OSH Act''; 29 U.S.C. 655) and 29 CFR 1905.11 (''Variances and other relief under section 6(d)'') (Exhibit 1: Northrop Grumman Shipbuilding's original variance application dated 10/26/2009). On September 6, 2011, Newport News Shipbuilding (NNS), a division of Huntington Ingalls Industries, the successor to Northrop Grumman Shipbuilding, submitted an amended application for a permanent variance for the Newport News, Virginia, facility only (Exhibit 2: NNS's amended variance application).[1] [2] [3]

NNS seeks a permanent variance from the provisions in OSHA shipyard-employment standards that regulate gear and equipment used for rigging and materials handling, specifically paragraphs (i), (j), and (q) of 29 CFR 1915.116. These provisions prohibit shipyard employers from permitting workers to ride the hook or the load, swinging or suspending loads over the heads of workers, or placing workers in a hazardous position between a swinging load and a fixed object. These paragraphs specify the following requirements:

- *29 CFR 1915.116(i):* Employees shall not be permitted to ride the hook or the load.
- *29 CFR 1915.116(j):* Loads (tools, equipment or other materials) shall not be swung or suspended over the heads of employees.
- *29 CFR 1915.116(q):* At no time shall an employee be permitted to place himself in a hazardous position between a swinging load and a fixed object.

In its application, NNS contends that the permanent variance provides its workers with a place of employment that is at least as safe and healthful as they are able to obtain under these standards. NNS certifies that it (1) provided the union representative [4] with a copy of its variance application, and (2) notified its workers of the variance request by posting a summary of the application at a prominent location where it normally posts notices to its workers, and specifying where the workers can examine a complete copy of the application. In addition, NNS states that it informed workers and the union representative of their right to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on this variance application.

OSHA considered NNS' application for a permanent variance and on July 29, 2015, OSHA published a preliminary **Federal Register** notice announcing NNS' application and request for comments (80 FR 45238). The comment period expired on August 28, 2015, and OSHA received no comments.

II. Supplementary Information

A. Overview

NNS operates a shipyard in Newport News, Virginia, where it designs, builds, overhauls, and repairs a wide variety of ships for the U.S. government and navies of other countries. In the course of shipbuilding operations, NNS performs many operations that require the use of cranes or hoists during the course of vessel construction. Work processes include the erection of large modular units that, when assembled, comprise a vessel. In exceptional cases, workers may be beneath a portion of the unit for brief periods of time. Workers who work beneath units primarily remove interferences and ensure proper alignment of the units, as discussed below.

As noted above, § 1915.116(i), (j), and (q) prohibit workers from riding the hook or load, working on or under a suspended load, or working between a swinging load and a fixed object. However, the procedures and equipment used in shipbuilding today differ substantially from the procedures and equipment used when OSHA adopted these standards in 1982. Shipbuilding is no longer the ''stick construction'' industry it was when the standards were promulgated. With technological advancements, shipyards today build vessels using modular-production methods. Using these methods, shipyards completely construct major units of a vessel in modules. These modules include all components such as piping, electrical equipment, wiring, machinery, and ventilation. Modular-ship sections typically weigh 25 to 400 tons, but can weigh more. Generally, NNS uses cranes/hoists to lift and move ship sections during the following phases of modular production:

Phase 1: Fabrication shop/area. In the fabrication shop/area, NNS uses cranes/hoists to lift and rotate ship sections to various orientations to optimize work quality and productivity.

Phase 2: Travel from the fabrication shop/area to the ship-assembly staging area. In this phase, NNS typically uses one or more cranes/hoists to move a ship section from the fabrication shop/area, through the shipyard, and to the ship-assembly staging area.

Phase 3: Lifting from the staging area to the ship-assembly location (such as a dry dock or marine railway). This phase

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[1] Unless stated otherwise, the terms ''variance application'' or ''application'' used subsequently in this notice refers to both the original (2009) and amended (2011) applications submitted by NNS.

[2] This address also is the place of employment described in the application.

[3] Virginia operates its own OSHA-approved occupational safety and health plan under Section 18 of the Occupational Safety and Health Act (29 U.S.C. 667). Thus, Virginia generally adopts and enforces its own occupational safety and health standards. However, the Virginia plan does not cover private-sector maritime facilities. Accordingly, Federal OSHA retains its authority over occupational safety and health matters not covered by the Virginia plan (see 29 CFR 1952.375(b)(1)), including granting variances from OSHA standards applicable to such facilities.

[4] Mr. Arnold D. Outlaw, President, Local 8888, United Steelworkers (USW), Newport News, VA.

consists of using cranes/hoists for end-to-end installation (involving horizontal assembly), stacking installation (involving vertical assembly), or inserting installation (involving both horizontal and vertical assembly).

- End-to-end installation. This installation involves using cranes/hoists to move ship sections for end-to-end mating (horizontal assembly) of the sections, with brief worker exposure on or under a suspended load, or between a swinging load and a fixed object.
- Stacking installation. In this phase, which involves using a crane/hoist to place a ship module on top of another module (vertical assembly), it is necessary to have workers work briefly on or under a suspended load, or between a swinging load and a fixed object, to identify and remove interferences (or obstructions) that preclude proper alignment and mating of the sections.
- Inserting installation. These installations involve a combination of end-to-end and stacking installations in which NNS uses cranes/hoists to both lower and move horizontally ship sections into their mating position. For inserting installations, it is necessary to have workers work briefly on or under a suspended load, or between a swinging load and a fixed object, to identify and remove interferences for properly aligning and mating the sections.

NNS argues that OSHA should grant a variance from 29 CFR 1915.116(i), (j), and (q) because modular shipbuilding occasionally requires workers to work briefly on or under a suspended load, or between a swinging load and a fixed object.

NNS points to OSHA's past approval of an alternative standard for the National Aeronautics and Space Administration (NASA) for work performed under a suspended load (see Ex. 1, Appendix A). This alternative standard, NASA–STD–8719.9, establishes a specific set of controls when no alternative to working under a section or module is available. The NASA document provides 15 safety and engineering requirements that NASA uses in lieu of compliance with 29 CFR 1910.179(n)(3)(vi), 29 CFR 1910.180(h)(3)(vi), and 29 CFR 1910.180(h)(4)(ii).

B. Variance Paragraphs .116(i), (j), and (q) of 29 CFR 1915

As part of its variance application, NNS proposed an alternative means of compliance with the provisions prohibiting work on or under a suspended modular-ship section, or between a swinging modular-ship section and a fixed object. In its variance request, NNS states that ''[m]odular ship construction and repair techniques require, in rare cases, personnel to be under, in, or on such a load as the final fit-up of a modular section is made'' (Exhibit 2: NNS's amended variance application). NNS asserts that its alternative means of compliance provide equivalent protection with the provisions of the standard from which it seeks a variance.

NNS's application includes a description of the alternate means of compliance that it intends to implement during modular-ship construction and structural-repair operations. The protection of workers from exposure to the crushing hazards associated with work on or under a suspended load, or between a swinging load and a fixed object during the lifting phase of modular-ship sections includes the application of significant engineering, administrative, coordination, and supervisory controls. The variance application further describes ship construction and ship-repair operations as: highly engineered; involving tested and certified equipment; and including continuous communication and monitoring between the workers involved. Hazard analysis, rigging procedures, rigging-lifting-plan with associated drawings, and crew briefings are among existing modular-ship-section lifting requirements adopted by the industry. All workers performing various jobs (*e.g.,* supervisors, operators, riggers) receive special training and obtain necessary qualifications or certifications. Accordingly, NNS included the following conditions for its alternative means of compliance:

1. General Conditions and Definition of Suspended Load Operation

NNS defines a ''suspended-load operation'' as an operation that meets the following three criteria:

(a) Involves the use of a crane or hoist that supports the weight of a suspended load, whether the load is static or dynamic, including the rigging (*i.e.,* slings, Hydra Sets, lifting fixtures, shackles, straps) when attached to the hook (Note: This condition does not apply to loads supported entirely by a holding fixture, or blocks, even though still attached to the crane and hoist hook);

(b) When workers involved in the operation have any part of their body directly under the suspended load (Note: This condition does not apply when workers have their hands on the sides of a load, *e.g.,* to guide the load); and

(c) In the event of a crane or hoist failure, the falling load could contact workers working directly under it, with injury or death a possible result (Note: This condition does not apply when the falling load would push a worker's hand away such that no injury could result, or the load would come to rest on a holding fixture or block before injuring a worker).

2. Suspended-Load Operations

NNS proposed to meet the following conditions prior to performing suspended-load operations:

(a) A Registered Professional Engineer familiar with the type of equipment used for the suspended-load operations, prepares and signs a written hazard analysis for each operation. The hazard analysis is to provide the following information:

(i) Justification of why NNS cannot perform the operation without workers on or under a suspended load, or between a swinging load and a fixed object, including procedural and design options investigated to determine if NNS could perform the operation without workers working on or under a suspended load, or between a swinging load and a fixed object.

(ii) Detailed description of the precautions taken to protect workers should the load shift, move inadvertently or drop. This description includes an evaluation of the secondary support system, *i.e.,* equipment designed to assume support of (*i.e.,* catch) the load to prevent injury to workers should the crane/hoist fail; this description includes a determination of the feasibility of using this system under the planned lifting conditions. NNS is to construct the secondary support system in accordance with recognized engineering practices and designed with a minimum safety factor of 2 to yield.

(iii) The maximum number of exposed workers allowed under a load suspended from a crane/hoist. In this regard, NNS limits the number of workers working under a load suspended from a crane/hoist. NNS allows only those workers absolutely necessary to perform the operation to work in the safety-controlled access area. The rigging-lifting-plan drawing(s) identifies the name and exact location of each individual worker involved in the suspended-load operation and the drawing ensures that each worker is in the safest location.

(iv) The time of exposure. NNS ensures that workers' exposures under suspended loads are brief and that they do not remain under the load any longer than necessary to complete the work.

(b) The most senior manager at the site for crane operations and a qualified representative of NNS's health and safety department must review and approve in writing the suspended-load operation based on a detailed hazard analysis and rigging-lifting-plan drawing(s).

(c) NNS maintains written, up-to-date procedures that specify the minimum requirements for suspended loads. Accordingly, NNS is to revise the written hazard analysis and the Operational Procedures Document (or Lift Plan) (*e.g.,* Operations and Maintenance Instruction, Technical Operating Procedure, Work-Authorization Document) to specify the necessary additional requirements identified by the hazard analysis discussed in Condition 2(b). The procedures are to be readily available on-site for inspection by workers during the operation at locations normally used to post worker information.

(d) Each suspended-load operation is to have a separate hazard analysis and rigging-lifting-plan drawing performed and approved. A separate hazard analysis is not needed for a limited number of routine and repetitive operations for which a rigging-lifting-plan drawing(s) and procedures already exist and for which no new hazards are present.

(e) NNS is to design, test, inspect, maintain, and operate each crane/hoist used in a suspended-load operation in accordance with OSHA standards and internal written procedures.[5] Registered professional engineers are to review and certify all aspects of crane/hoist operations. NNS is to maintain the results of the annual inspections and all related documents and make them available to OSHA on request.

(f) Each crane/hoist involved in suspended-load operations is to undergo a system safety review that uses all documentation available on the suspended-load operation, including the hazards analysis and the rigging-lifting-plan drawing, and with approval based on a detailed analysis of the potential hazards and rationale for acceptance. The review is to determine single failure points (SFPs) in all critical mechanical functional components and support systems in the drive trains and critical electrical components.

(i) For cranes/hoists identified as having no SFPs, but for which failure can result in inadvertent movement of the load, the total weight of the suspended load must not exceed the device's rated load.

(ii) For cranes/hoists identified as having SFPs the failure of which can result in inadvertent movement of the load, the most senior manager at the site for crane operations and a qualified representative of NNS's health and safety department is to approve the use of that device for suspended-load operations.

(g) Before lifting a load during a suspended-load operation, the crane/hoist is to undergo a visual inspection (without major disassembly) of components instrumental in controlling the lift (*e.g.,* primary and secondary brake systems, hydraulics, mechanical linkages, and wire ropes). The most senior manager at the site for crane operations must resolve any potential problems before the operation begins. This pre-lift inspection is to be in addition to the inspections required in § 1910.179(j) and 180(d).

(h) A trained and qualified operator (*e.g.,* 29 CFR 1926.1427) is to remain at the crane/hoist controls while workers are under the load.

(i) Safety-controlled access areas are to be established with appropriate barriers (rope, cones, safety watches etc.). All non-essential employees are required to remain outside the barriers.

(j) Prior to initiating any suspended-load operation, the most senior manager at the site for crane operations or designee (*e.g.,* supervisor controlling the lift) is to hold a face-to-face meeting of all workers involved in the operation to plan and review the approved lift plan (operational procedural document), including procedures for entering and leaving the safety-controlled access area and the written hazard analysis.

(k) The most senior manager at the site for crane operations or designee (*e.g.,* supervisor controlling the lift) is to ensure communications (*i.e.,* voice, radio, hard-wired, or visual) are maintained between the crane/hoist operator(s), signal person(s), and any worker on or under the suspended modular-ship section, or between the swinging modular-ship section and a fixed object.

(l) Workers on or under a suspended modular-ship section, or between a swinging modular-ship section and a fixed object, are to remain in continuous sight of the operator(s) and/or the signal person(s) when feasible. When NNS demonstrates that maintaining continuous sight is not feasible, these workers must remain in continuous communications with the operator and/or signal person.

(m) Workers are not altering their planned access/egress travel path without approval from the most senior manager at the site for crane operations or designee (*e.g.,* supervisor controlling the lift), and then only after the most senior manager at the site for crane operations communicates this change to all workers involved in the operation.

(n) NNS is to provide a list of approved suspended-load operations, a list of cranes/hoists used for suspended-load operations, and copies of the associated hazards analysis to OSHA's Office of Technical Programs and Coordination Activities (OTPCA) and the Norfolk Area Office within 15 working days after developing these documents.

III. Decision

After reviewing NNS's amended application, OSHA finds that NNS developed and intends to implement engineering and administrative controls that are designed to effectively control the hazards associated with work performed on or under a suspended modular-ship section, or between a swinging modular-ship section and a fixed object for brief periods.

NNS also developed and intends to implement an alternative means of compliance that provides workers with protection that is equivalent to the protection afforded to them by the OSHA standards that regulate work on or under a suspended load, or between a swinging load and a fixed object (see, respectively, 29 CFR 1915.116(i), (j), and (q)). This alternative incorporates key elements of a job hazard analysis and lift planning, review, and approval to proceed (*i.e.,* permitting). The alternative informs essential and affected employees of the steps required to complete suspended-load operations safely, including the hazards associated with these operations and the methods NNS applies during each step to control the hazards (*e.g.,* secondary support systems, inspection of hoisting and rigging equipment, use of safety-controlled access areas, and specially trained and qualified workers).

In addition, NNS developed and proposes to implement a worker-training program to instruct affected and essential employees in the hazards associated with performing lifting and rigging operations.

OSHA recognized and addressed the need to work on or under a suspended load, or between a swinging load and a fixed object, when it granted NASA an alternative standard (Ex. 1). The alternative standard permitted NASA to expose its workers to these conditions when it complied with specific OSHA standards such as the construction hoisting and rigging standard (29 CFR 1926.753) and the conditions of the alternate standard (see Appendix A of

[5] NNS designated its internal written suspended-load operational procedures as proprietary.

NASA–STD–8719.9, NASA Standard for Lifting Devices and Equipment (in Ex. 1). NNS is committed to adopt and implement the conditions of NASA's alternate standard for its suspended-load operations.

Based on a review of available information and NNS's variance application, OSHA made a number of additions and revisions to the application that it believes are necessary to protect NNS's workers involved in suspended-load operations. The following items describe these additions and revisions:

1. OSHA bases the scope of the revised variance application primarily on the scope specified in NNS's application. OSHA expanded the scope to include the types of modular-section lifts made from the Lift Staging Area (described earlier in this notice as Phase 3 of modular ship section lifts) to a ship and to describe the types of lifting operations excluded from the scope of the application. The expanded scope serves to increase worker protection from exposure to crushing hazards associated with work on or under a suspended modular-ship section, or between a swinging modular-ship section and a fixed object, by providing precise identification and description of the limited circumstances under which the variance conditions apply.

2. OSHA added a section to the application that defined the terms ''essential employee,'' ''modular-ship section,'' ''safety-controlled access area,'' and ''suspended-load operation'' based on NNS's use of these terms in its variance application (Exhibit 2: NNS's amended variance application). OSHA defined the terms ''competent person'' and ''qualified person, employee, or worker'' based on existing OSHA standards. OSHA added a definition for ''lift incident'' based on conditions the Agency added to the variance. Further, OSHA added a definition of ''on-site variance monitoring inspection,'' based on existing inspection procedures described in the Field Operations Manual (FOM).[6] OSHA added a definitions section because it believes the definitions enhance NNS's and its workers' understanding of the conditions specified by the variance, thereby enhancing worker safety and health.

3. OSHA defines a number of abbreviations to the variance application. OSHA added these definitions to clarify the abbreviations and standardize their usage, thereby enhancing NNS's and its workers' understanding of the conditions specified by the variance application and to enhance their safety and health.

4. OSHA added a condition requiring the use of properly engineered lashing material to ensure that suspended loads do not inadvertently move or fall from cranes/hoists. This addition enhances worker safety and health by ensuring that lashing material is strong enough to prevent the load from dropping and injuring workers.

5. As part of the safety and engineering criteria, NNS proposed the development of a written hazard analysis in its application, and OSHA added a condition to this proposal that NNS perform a Failure Modes and Effects Analysis (FMEA) and approval to identify potential single point failures. Such analysis serves to further minimize the potential for inadvertent movement of the suspended load during modular-ship section lifts. This addition minimizes worker exposure to crushing hazards during modular-ship section lifts.

6. OSHA added a condition that the most senior manager at the site for crane operations approve in writing the written hazard analysis and rigging-lifting-plan drawings to ensure that these documents are technically accurate and reflect the knowledge and best practices of those responsible for supervising suspended-load operations.[7]

7. NNS proposed to implement a system-safety review to determine SFPs. OSHA added the clarification to the variance application that a registered professional engineer (PE) must perform this review using a FMEA. This addition ensures that NNS conducts the system-safety review according to professional standards. OSHA also clarified that the FMEA include any weight calculations or structural analysis performed during the review. The FMEA protects worker safety and health by accurately and reliably identifying potential crane/hoist failures that might result in inadvertent movement of the suspended load, thereby endangering workers near this equipment.

8. NNS proposed in its application to develop an Operational Procedural Document. OSHA added a condition to the application requiring that the most senior manager at the site for crane operations (for example, the supervisor controlling the lift) review the Lift Plan with essential employees to ensure that these workers are familiar with and thoroughly understand the procedures governing the suspended-load operations. The Lift Plan enhances worker safety and health by ensuring that suspended-load operations occur according to procedures planned in advance to minimize hazards.

9. OSHA added a condition requiring that NNS implement procedures to control hazards from unplanned or unforeseen activities that were not included in the initial planning of the modular-ship section lift operations and not covered by the initial procedural documents (such as lift plan, hazard analysis, and rigging/lifting drawing(s)). This condition requires NNS to develop the Operational Procedural Document to cover the unplanned activities in order to protect worker safety and health by reducing the probability of worker exposure to unanticipated hazards.

10. NNS proposed a case-by-case review of planned suspended-load operations that follow the set of safety and engineering criteria (described by this condition). OSHA added to this condition that a senior crane operations manager and a health and safety representative must perform this review following development of the Operational Procedural Document. This addition enhances worker safety and health by ensuring that knowledgeable company officials responsible for suspended-load operations conduct the review.

11. NNS proposed a condition addressing use of the Operational Procedural Document, and OSHA added to this condition requirements that NNS: Comply with a program operated by an accredited agency under OSHA's Gear Certification Program (29 CFR part 1919); use registered PE-designed pad-eye connection points; comply with nationally recognized non-destructive testing methods; [8] and provide drawings to document hoisting and rigging equipment design specifications. These additions protect worker safety and health by ensuring all equipment used for suspended-load operations are of suitable quality and design.

12. NNS proposed a pre-lift inspection in its application. OSHA added a condition to this proposal requiring that safety devices be operational during any lifts conducted during the pre-lift inspections. This addition increases worker protection during pre-lift inspections.

13. OSHA added a condition specifying that NNS develop a written

[6] See chapter 3: Inspection Procedures of OSHA's Field Operations Manual (CPL 02–00–159; Effective Date: October 1, 2015) accessible @ *http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-159.pdf.*

[7] The hazard analysis and rigging-lifting-plan drawings protect worker safety and health by making NNS plan suspended-load operations, anticipate hazards beforehand, and place workers at locations to minimize their exposure to hazards.

[8] For example, ASTM E164–13 Standard Practice for Contact Ultrasonic Testing of Weldments.

checklist to document the identification and removal of interferences to proper mating and unnecessary or unsecured items. The inspection using this checklist must be conducted by a qualified employee(s) before the suspended-load operation begins. This condition protects worker safety and health by reducing the time workers spend under the suspended load removing interferences to proper mating, and eliminating the need for workers to remove unsecured items while exposed to a suspended load.

14. Another condition added by OSHA requires that NNS conduct a test lift before beginning each suspended-load operation. The test lift protects worker safety and health by ensuring that equipment, including the rigging and crane/hoist systems, is in working order for the lift, thus minimizing the possibility of worker harm resulting from equipment failure.

15. NNS proposed a condition specifying that a trained and qualified operator remain at the crane/hoist controls while workers are on or under a suspended load, or between a swinging load and a fixed object. OSHA added a condition requiring that the operator not initiate movement while workers are on or under a suspended load, or between a swinging load and a fixed object, and that NNS use safety devices such as brakes, dogs or stops to further ensure that no such movement takes place. This added condition protects workers from the hazards associated with inadvertent movement of suspended loads.

16. In its application, NNS proposed the use of safety-controlled access areas where all non-essential employees must remain outside the safety-controlled access areas during modular-ship section lift operations. This requirement protects by minimizing the number of workers exposed to this hazard.

17. OSHA added the prohibition of working under, in or on suspended loads requirement to limit the presence of essential employees in the safety-controlled access areas. Essential employees may enter the safety-controlled access areas for the purpose of adjusting chain falls, making initial connections or confirming clearances between hull structures and outfitting systems. Further, essential employees must not enter safety controlled access areas under suspended loads until the load is placed in the fit-up position and at the lowest point in the lift in order to minimize the potential drop distance and instability of the suspended load. This requirement protects workers by minimizing worker exposure to the hazards of working under, in, or on suspended loads.

18. OSHA added a condition that requires NNS to train its workers (including, but not limited to current and newly assigned workers to be involved in modular-ship section load operations, qualified, and essential employees). The training provided is to include the means workers are to use to recognize hazards associated with work under, in or on suspended modular-ship section loads and application of associated hazard-control methods which minimize their risk of harm during construction and assembly of the modular ship sections. This added condition includes refresher training to ensure that workers retain knowledge of the hazards and associated control methods or update this knowledge as changes occur in hazard-control technology, methods, and procedures. The added condition also requires NNS to document the training, provide a means of tracking the training received by its workers, and prompt the updating of that training if necessary. The training documentation requirement allows NNS to accurately identify when to update the training and to identify the workers to receive such updated and/or refresher training.

19. NNS proposed a pre-job briefing requirement in its variance application, and OSHA clarified this condition by specifying that: The pre-job briefing include all workers involved in the suspended-load operation, both essential and non-essential employees; NNS document worker attendance at the briefing using a signed roster; and the briefing address the rigging-lifting drawing(s). This clarification protects workers by refreshing their knowledge of procedures just before the suspended-load operation begins.

20. NNS proposed having continuous communication during suspended-load operations, and OSHA revised the condition by specifying that suspended-load operations must cease upon loss of communications. This requirement protects workers by minimizing their exposure to hazards during communications failure.

21. In its application, NNS proposed that workers remain in continuous sight of the operator(s) and/or signal person(s) when feasible during suspended-load operations. OSHA clarified this condition by specifying that all essential employees must remain in continuous sight and/or be in communication with the most senior manager at the site for crane operations or designee (*e.g.,* supervisor controlling the lift) because this manager must account for all workers involved in the operation to ensure that no worker is in harm's way.

22. OSHA added a condition that if NNS postpones or discontinues a lift, the crane/hoist operator must lower the suspended load to the ground or other supporting structure. Alternatively, if a lift is postponed or discontinued, the most senior manager at the site for crane operations or designee (*e.g.,* supervisor controlling the lift) must cordon off the site of the crane/hoist operation and ensure that all essential employees remain outside the safety-controlled access area. Otherwise, if it is operationally necessary that the load remains suspended after postponing or discontinuing a lift: (1) The crane/hoist operator must remain on duty until the lift is either completed; or (2) lowered to the ground or other supporting structure. This condition reduces workers' exposure to the suspended-load hazard by ensuring that the crane/hoist operator remains in control of the suspended load should workers be in the vicinity of the load.[9]

23. Another condition added by OSHA requires a post-lift review of the suspended-load operation. This condition protects workers by assisting NNS in identifying and correcting shortcomings in the suspended-load program.

24. NNS proposed to develop a listing of the modular-ship section lift operations (suspended-load operations) scheduled to be performed during each quarter. OSHA is clarifying this condition by specifying that by the 15th calendar day of each new quarter NNS must prepare a list of planned modular-ship section lifts to be performed during the upcoming quarter (including the cranes/hoists used for suspended-load operations, the date and time of the operation, associated hazard analysis completed, and the calculated weight of each lift), and update the list when significant changes occur. OSHA also specified that workers and their representatives must have access to the list and that by the 15th calendar day of each new quarter NNS must provide a copy of the list to the Norfolk Area Office, Region 3 Regional Office, and OSHA's Office of Technical Programs and Coordination Activities. Further OSHA included a requirement that by January 15th of each year, NNS must provide to the Norfolk Area Office, Region 3 Regional Office, and OTPCA, a copy of the list of approved suspended-load operations completed

[9] While the discussion of this condition was included in the preliminary **Federal Register** notice, (80 FR 45243), the text of the condition was inadvertently omitted. In this final variance, it appears as condition 0.3–0.5.

the previous year. The lists requirements enhance worker safety by ensuring that NNS and workers have the most recent information on each modular-ship section lift in advance of its being performed so they have an opportunity to review and become familiar with the operation's potential hazards and planned hazard mitigation strategies.

25. OSHA added a condition requiring that NNS conduct an investigation of all lift incidents related to suspended-load operations. This condition is intended to protect workers by ensuring that NNS investigates such incidents and takes actions necessary to prevent a recurrence.

26. OSHA included a records-management condition that is intended to assist the Agency in monitoring and enforcing the variance conditions. This requirement protects workers by ensuring that NNS implements and maintains these conditions.

27. OSHA added a new condition that requires NNS to permit OSHA compliance safety and health officers to enter its Newport News, VA establishment or site without delay and at reasonable times for the purpose of conducting an on-site variance monitoring inspection. It should be noted that as a corollary to this new condition, NNS is not to require that the CSHOs seek an inspection warrant prior to entering its Newport News, VA establishment or site for the purpose of conducting an on-site variance monitoring inspection. This new condition is significant because as an OSHA Voluntary Protection Program participant, NNS is removed from OSHA's programmed inspection lists, thereby allowing OSHA to focus its limited inspection resources on establishments in greater need of agency oversight and intervention. Consequently, OSHA added this new condition in order to enable its CSHOs to effectively monitor and enforce the conditions of the granted variance.

28. OSHA also added a condition that requires NNS to provide the Agency with up-to-date information regarding its corporate status. This information permits OSHA to monitor and enforce the conditions to the benefit of NNS's workers.

IV. Specific Conditions of the Permanent Variance

After reviewing the evidence described above, OSHA determined that the conditions included in this order provide a place of employment as safe and healthful as that provided by the standards from which NNS requested a variance, notably 29 CFR 1915.116(i), (j), and (q). As noted earlier, on July 29, 2015, OSHA published a preliminary **Federal Register** notice announcing NNS' application and request for comments (80 FR 45238). The comment period expired on August 28, 2015, and OSHA received no comments.

Additionally, under the terms of this variance, NNS must provide a copy of this **Federal Register** notice to all employees affected by the conditions, including the affected employees of other employers (if any), using the same means it used to inform these employees of its application for a permanent variance. Therefore, pursuant to the provisions of Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(d)), and 29 CFR 1905.11(c), OSHA is issuing this final order authorizing Newport News Shipbuilding (''NNS'' or ''the applicant''), to comply with the following conditions instead of complying with the requirements of paragraphs 29 CFR 1915.116(i), (j), and (q). This final order applies to Newport News Shipbuilding at 4101 Washington Ave., Newport News, Virginia 23607. These conditions are:

A. Application

Except for the requirements specified by § 1915.116(i), (j), and (q), Newport News Shipbuilding must comply fully with all other safety and health provisions that are applicable to shipyard employment when implementing the permanent variance.

B. Scope

1. The variance applies to operations that satisfy all of the following:

(a) The operations are performed by Newport News Shipbuilding employees during modular-ship section construction and structural-repair operations at the company's Newport News, Virginia, facility;

(b) the operations involve lifting modular-ship sections from the lift-staging area to a ship during one of the following assembly phases:

(i) ''End-to-End'' (horizontal) assembly of modular-ship sections;

(ii) ''Stacking'' (vertical) assembly of modular-ship sections; or

(iii) ''Inserting'' (combined vertical/horizontal) assembly of modular-ship sections.

(c) the workers exposed to the hazards of the lift are those supporting modular-ship section lifts and essential employees working on or under a suspended modular-ship section, or between a swinging modular-ship section and a fixed object, during vessel assembly, repair, overhaul, and removal of interferences (or obstructions) that preclude proper alignment and mating of sections (fit-up); and

(d) Workers are exposed to the hazards of the lift only for a brief period of time.

2. The variance does *not* cover:

(a) Lifting modular-ship sections in the fabrication (assembly) shop or area;

(b) Transporting modular-ship sections from the fabrication (assembly) shop or area to the lift-staging area;

(c) Lifting structures or equipment onto a ship's deck; and

(d) Loads consisting of tools, equipment, or other materials.[10]

Note: Under Condition B.1.c, if engineering calculations show that failure of the crane/hoist or rigging during the lifting process could dislodge the ship from its supporting blocks (*e.g.,* keel blocks, bilge blocks), then all workers, other than those essential to the modular-ship section alignment and mating operation, must vacate the ship while the modular ship-section is suspended during the lifting process. Example: When lifting a superstructure onto the main deck of a vessel under construction, should the load fall between the dry dock and ship, then the ship could dislodge from the supporting blocks; therefore, all workers other than those essential to the lift must vacate the vessel during the suspended-load operation.

C. Definitions

The following definitions apply to the permanent variance, and do not necessarily apply in other contexts:

1. *Affected employee*—a Newport News Shipbuilding employee having a direct or supporting role in completing a suspended modular-ship section lift operation (including workers performing tasks such as crane operator, signal person, supervisor).

2. *Brief period of time*—a limited period of very short duration that is necessary for employees to work under, in or on the load for the purposes of alignment or positioning only. This is limited to the amount of time necessary to perform the alignment or positioning and mating operation, or 15 minutes, whichever is less.

3. *Competent person*—one who is capable of identifying existing and predictable hazards in the surrounding or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authority to take prompt corrective measures to eliminate them.[11]

4. *Essential employee*—a Newport News Shipbuilding employee required

[10] In sum, Condition B.2 specifies that there must be no instances of workers working on or under a suspended modular-ship section, or between a swinging modular-ship section and a fixed object, at the assembly shop or area, or while traveling with a suspended load through the shipyard.

[11] Adapted from 29 CFR 1926.32(f).

to work under, in or on a suspended modular-ship section, or between a swinging modular-ship section and a fixed object, while ensuring the proper alignment and mating of modular-ship sections. Examples of work activities performed by essential employees include, but are not limited to: Adjusting chain falls; confirming clearances between hull structures and outfitting systems; identifying and removing interferences; and aligning and mating the section to a ship.

5. *Lift incident*—an unplanned event or series of events that resulted in a work-related recordable injury or illness, or caused or could cause harm to a worker (includes near-miss events).[12]

6. *Lift Plan*—a set of written documents that specify the core requirements for completing a suspended modular-ship section lift. The following are examples of documents included in a lift plan: Engineering design; engineering hazard analysis; rigging and lifting drawings; crane, rigging and other lift support equipment inspection; operation and maintenance instructions; technical operating procedures; and work review, justification, and authorization documents. The documents included in a lift plan are collectively also known as the operational procedural document.

7. *Modular-ship section*—a ship block, section, or module that includes a portion of two or more of the following structures: Deck, bulkhead, overhead, or hull.

8. *On-site variance monitoring inspection*—a visit to the applicant's establishment or site by an OSHA compliance safety and health officer (CSHO) to determine whether the applicant complies with the applicable standards from which the variance is granted or to determine whether the applicant complies with the alternate conditions specified by the granted variance.[13]

9. *Qualified person*—one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, successfully demonstrated an ability to solve or resolve problems relating to the subject matter, the work, or the project.[14]

10. *Rigging-lifting-plan drawing*—a sketch of the rigging used whenever essential employees perform a suspended modular-ship section lift by working under, in or on a suspended load, or between a swinging load and a fixed object. The sketch is required to include the following essential information concerning the planned lift: (1) The number and location of essential employees that are to be on or under the load; (2) a pictorial illustration of the rigging configuration with size of all rigging components including load attachment points; (3) load identification, unit number or description; (4) weight of the load; (5) gear capacity and asset (crane) number/hook capacity; and (6) approval line.

11. *Safety-controlled access area*—a work area with controlled access. The periphery of the safety-controlled access area must:

(a) Be well defined and easily recognizable;

(b) Have means to keep unauthorized personnel out of the zone such as appropriate barriers (*e.g.,* rope, cones, safety watches);

(c) Extend a safe distance beyond the radius of the crane when at its maximum extended lifting position as determined by a hazard analysis; and

(d) Monitored and controlled by a competent person.

12. *Single failure point* (SFP)—identification of the critical components of the crane/hoist system involved in a suspended-load operation such that malfunction of any single component provokes a total systems failure.

13. *Suspended modular-ship-section operation*—an operation that meets all three of the following criteria:

(a) The operation involves the use of a crane/hoist or cranes/hoists that support the weight of a suspended modular-ship section, with no distinction made between static and dynamic loads. The load consists of all associated rigging equipment, including slings, Hydra Sets, lifting lugs, shackles, and straps, when attached to the crane hook;[15]

(b) When workers involved in the operation have any part of their body directly under the suspended load;[16] and

(c) In the event of a crane or hoist failure (including a rigging failure), the falling load could contact workers working directly beneath it, with injury or death as a possible result.[17]

D. Abbreviations

Abbreviations used throughout the permanent variance include:

1. CSHO—Compliance safety and health officer
2. CSP—Certified safety professional
3. FMEA—Failure modes and effects analysis
4. JHA—Job-hazard analysis
5. NASA—National Aeronautics and Space Administration
6. NNS—Newport News Shipbuilding
7. OSHA—Occupational Safety and Health Administration
8. PE—Professional engineer
9. SFP—Single failure point

E. Engineering-Review Requirements

1. Hazard-avoidance protocol. Using a hazard-avoidance protocol, NNS must design hazards out of the suspended-load operations covered by the permanent variance to the greatest extent possible. Accordingly, NNS must:

(a) Engineer, design, install, and operate all future systems, hardware, and equipment associated with these operations to prevent exposing workers to the hazards associated with working under, in or on a suspended modular-ship section, or between a swinging modular-ship section and a fixed object, unless NNS demonstrates that doing so is technically infeasible;

(b) Perform an operation in which employees work under, in or on a suspended modular-ship section, or work between a swinging modular-ship section and a fixed object, only under specifically approved and controlled conditions; and

(c) Perform the operation specified under Condition E.1.b above only after meeting all the review, approval, documentation, and special requirements.

2. Use of properly engineered lashing materials.

(a) When the operation specified under Condition E.1.b above involves the use of a crane/hoist that supports the weight of a modular-ship section, NNS must use properly engineered lashing materials[18] capable of lifting, moving, and suspending the entire weight of the load; and

(b) NNS must conduct a detailed weight calculation in determining

[12] See 29 CFR 1904 (Recording and Reporting Occupational Injuries and Illnesses) (*http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9631*); recordkeeping forms and instructions (*http://www.osha.gov/recordkeeping/RKform300pkg-fillable-enabled.pdf**); and updates to OSHA's recordkeeping rule and Web page ((79 FR 56130); (*http://www.osha.gov/recordkeeping/index.html*).

[13] See footnote 6.

[14] Adapted from 29 CFR 1926.32(m).

[15] This condition does not apply to loads supported entirely by a holding fixture or blocks even though still attached to the crane and hoist hook.

[16] This condition does not apply when workers have their hands on the sides of a load, *e.g.,* to guide the load.

[17] This condition does not apply when the falling load would push a worker's hand away such that no injury could result, or the load would come to rest on a holding fixture or block before injuring a worker.

[18] Used in accordance with the applicable provisions of 29 CFR 1915 Subpart G—Gear and Equipment for Rigging and Material Handling.

whether the lashing material can support the requisite weight of the load, considering the duration of maintaining the load in a safe condition in the event of loss of continuous communication, and paying special consideration to environmental factors that may affect the load (*e.g.,* water retention, snow, ice).

3. Engineering-hazard analysis.

(a) The most senior manager at the site for crane operations specified in paragraph E.1.b above must approve suspended modular-ship section load operations in writing based on: a detailed written hazard analysis, a rigging-lifting-plan, and a supporting drawing of the operation;

(b) NNS must ensure that the:

(i) Responsible crane-operations organization prepares the written engineering-hazards analysis under the direction of the most senior manager at the site for crane operations; and

(ii) Qualified representatives of NNS' engineering offices and the health and safety department review this analysis and indicate approval by signing the analysis;

(c) The engineering-hazard analysis must be in writing and include:

(i) A justification specifying why NNS cannot conduct the operation without its employees working under, in, or on suspended modular-ship sections, or between a swinging modular-ship section and a fixed object, with this justification describing the procedures and design options NNS considered in determining that it could not conduct the operation without its employees working under, in, or on a suspended modular-ship section, or working between a swinging modular-ship section and a fixed object;

(ii) Details of the engineering controls taken to prevent the modular-ship sections from moving or shifting when employees are under, in, or on a suspended modular-ship section or between a swinging modular-ship section and a fixed object, including the evaluation of testing and safety devices used for this purpose;

4. Secondary support systems. NNS must design any secondary support systems used during the operation specified in Condition E.1.b above in accordance with recognized engineering practices and designed with a minimum safety factor of 2 to yield.

F. Limiting Employee Hazard Exposure

NNS must limit employee exposure to the hazards of working under, in, or on a suspended modular-ship section, or between a swinging modular-ship section and a fixed object by:

1. Establishing a safety-controlled access area, taking into account the swing radius of the crane;

2. Allowing only essential personnel in the safety-controlled access area;

3. Ensuring that the rigging-lifting-plan drawings identify by name the exact location of each essential employee allowed in the safety-controlled access area and the location of that employee in the area;

4. Ensuring that each essential employee allowed in the safety-controlled access area is in the safest location possible for performing the work;

5. Ensuring that each essential employee moves to and from the work location using the safest route possible, and remains at that location only long enough to complete the work;

6. Verifying in writing that procedures are in place to prevent movement or shifting of the suspended modular-ship section when essential employees are under, in, or on a suspended modular-ship section, or between a swinging modular-ship section and a fixed object; and

7. Ensuring that a crane operator who meets the requirements of 29 CFR 1926.1427 and 1926.1430 is operating the crane used to suspend the modular-ship section while essential employees are working under, in, or on a suspended modular-ship section, or between a swinging modular-ship section and a fixed object.

G. Job-Hazard Analysis and Rigging-Lifting Drawings

Each operation specified under Condition E.1.b above must have a separate written job-hazard analysis that includes a detailed rigging specification drawing(s) and a detailed lifting plan drawing(s) approved and signed by the most senior manager at the site for crane operations. A separate hazard analysis is not needed for routine and repetitive operations where a rigging-lifting-plan drawing(s) and procedures already exist and where no new hazards are present.

H. Failure-Modes and Effects Analysis (FMEA) and Approval

1. Each crane involved in an operation specified under Condition E.1.b above must undergo a FMEA approved in writing by a Registered Professional Engineer.

2. The FMEA must:

(a) Determine SFPs by assessing the rigging equipment and all critical mechanical functional components and support systems in the drive trains and critical electrical components of the crane; and

(b) Include weight calculations and any structural analysis deemed necessary by the Registered Professional Engineer responsible for approving the FMEA.

3. For cranes and rigging equipment identified as not having any SFPs, the failure of which can result in movement of the modular-ship section, the total weight of the suspended modular-ship section load must not exceed the crane's rated load.

4. For those cranes and rigging equipment identified as having an SFP, the failure of which can result in movement of the modular-ship section, the most senior manager at the site for crane operations and a qualified representative of the health and safety department must have to approve in writing use of the crane and rigging equipment for an operation specified under Condition E.1.b above after reviewing all the documentation required by this order that addresses the operation, including the FMEA.

I. Operational Procedural Document (Lift Plan)

NNS must:

1. Develop and maintain written procedures that specify the requirements for an operation specified under Condition E.1.b above.

2. Revise the written detailed job-hazard analysis, rigging-lifting-plan drawing(s), and the operational-procedures documents (*e.g.,* operations and maintenance instruction, technical operating procedure, work authorization document, FMEA) to specify any additional requirements identified by the job-hazard analysis.

3. Review any revisions made under Condition I.2 above with essential employees and make these revisions available on-site during an operation specified by Condition E.1.b above for inspection by affected employees, employee representatives, or OSHA personnel.

J. New or Unforeseen Work Activity

During an operation under Condition E.1.b above, if a new or unforeseen work activity or circumstance not covered by the original operational-procedural documents (*e.g.,* job-hazard analysis, rigging-lifting-plan drawing(s), operations and maintenance instruction, technical operating procedure, work authorization document, FMEA) arises, then NNS must:

1. Immediately stop the lift and lower the modular-ship section to the ground or other supporting structure;

2. Before continuing the operation, obtain approval in writing from the most senior manager at the site for crane

operation and the health and safety department to revise the operations; and

3. Before repeating the operation on a subsequent occasion, prepare revised operational-procedures documents (*e.g.,* job-hazard analysis, rigging-lifting-plan drawing(s), operations and maintenance instruction, technical operating procedure, work authorization document, and FMEA) and obtain the approvals required of these documents.

K. Operational Requirements

1. A Registered Professional Engineer must develop and approve inspection, testing, and maintenance procedures and competent persons must perform the procedures and resolve noted discrepancies.

2. An independent third-party such as an accredited agency under OSHA's Gear Certification Program (29 CFR 1919) must inspect all cranes and rigging equipment not more than one year before the modular-ship section lift being performed, and NNS must maintain the inspection results, and make them available to OSHA upon request.

3. The engineers who design the modular-ship section subject to the operation specified under Condition E.1.b above must design or approve the pad-eye (lifting-lugs) connection points on the section, and specify the size (length and diameter) of wire-rope slings that lift, move, and handle the section.

4. Before using lifting pad-eyes and other welded lifting connection points in the operation, NNS must perform non-destructive tests on these pad-eyes and connections according to nationally recognized non-destructive testing methods.[19]

5. NNS must:

(a) Document the design specifications pertinent to the operation on engineering drawings;

(b) Ensure that these drawing accompany the modular-ship section during an operation specified under Condition E.1.b above; and

(c) Make the drawings available to the crane foreman/supervisor.

L. Pre-Lift Inspections and Test Lift[20]

1. Before lifting the modular-ship section involved in an operation specified under Condition E.1.b above, the components of the crane and rigging equipment involved in lifting the load must undergo a visual inspection (without major disassembly, and documented with a written checklist).

2. NNS must resolve any discrepancies identified in this visual inspection before initiating an operation.

3. Before lifting modular-ship sections for assembly with the ship, a qualified person(s) must:

(a) Perform an inspection to identify and remove interferences to proper mating; and

(b) Use a written checklist to document the inspection, including the removal of litter, tools, and any other unnecessary or unsecured equipment or items.

4. Before initiating an operation specified under Condition E.1.b above, NNS must:

(a) Conduct a test lift that consists of lifting the modular-ship section one to three feet above the lift staging area for five minutes; and

(b) Ensure that all safety devices identified in the modular-ship section lift plan are operational during the test lift.

M. Crane Operator

1. NNS must ensure that the crane operator who meets the requirements of 29 CFR 1926.1427 and 1926.1430 remains at the crane controls at all times during an operation specified under Condition E.1.b above.

2. Unless specifically authorized and required by the lift plan, the operator must:

(a) Not initiate movement of the suspended modular-ship section while an employee(s) is under, in, or on a modular-ship section, or between a swinging load and a fixed object, and

(b) Engage all safety devices such as brakes, dogs, or stops in accordance with the lifting plan when an employee(s) is under, in, or on a modular-ship section, or between a swinging load and a fixed object.

N. Safety-Controlled Access Areas

NNS must:

1. Establish safety-controlled access areas for all operations specified by Condition E.1.b above.

2. Ensure that all non-essential personnel remain outside the safety-controlled access areas.

Note: When engaged in an operation specified under Condition E.1.b above, if engineering calculations show that a failure of the crane or rigging during the lifting process could result in dislodging the ship from its supporting blocks (*e.g.,* keel blocks, bilge blocks), then all personnel, other than essential employees necessary for aligning and mating the modular-ship section, must vacate the ship during the operation and remain outside the safety-controlled access area. Example: When lifting a superstructure onto the main deck of a vessel under construction, dropping the load between the dry dock and ship could knock the ship off of the supporting blocks; therefore, all workers other than essential employees required to align and mate the modular-ship section to the ship must vacate the vessel and remain outside the safety-controlled access area during the operation.

O. Working Under, In, or On Suspended Modular-Ship Section, or Working Between a Swinging Modular-Ship Section and a Fixed Object

1. NNS's essential employees may be under, in, or on a suspended modular-ship section, or between a swinging modular-ship section and a fixed object, while ensuring the proper alignment and mating of modular-ship sections. Examples of work activities include, but are not limited to: Adjusting chain falls, confirming clearances between hull structures and outfitting systems, and identifying and removing interferences. Further, essential employees must not enter safety controlled access areas under suspended loads until the load is placed in the fit-up position and at the lowest point in the lift in order to minimize the potential drop distance and instability of the suspended load.

2. Only essential employees authorized by the most senior manager at the site for crane operations (*e.g.,* rigging foreman or supervisor) may be under, in, or on a suspended modular-ship section, or between a swinging modular-ship section and a fixed object for a brief period of time for the purpose of completing the final alignment or positioning and mating.

3. If NNS postpones or discontinues a lift, the crane/hoist operator must lower the suspended load to the ground or other supporting structure.

4. If NNS postpones or discontinues a lift and finds that the suspended load cannot be lowered to the ground or other supporting structure, the most senior manager at the site for crane operations or designee (*e.g.,* supervisor controlling the lift) must review the status of the lift and make a determination that it is operationally necessary to maintain the load in suspension.

5. NNS must document such a determination and ensure that: (1) The crane/hoist operator remains on duty until the lift is either completed or lowered to the ground or other supporting structure; or (2) the most senior manager at the site for crane operations or designee cordons off the

[19] See footnote 8.

[20] NNS must perform the pre-lift inspections specified below in addition to the inspections required by §§ 1910.179(j), .180(d), and 1915.111, which apply to cranes in maritime facilities (see 1910.5). The pre-lift inspection and test is in addition to the inspections and/or testing required by other safety procedures or daily operator checks specified under these conditions.

site of the suspended load operation and ensures that all essential employees remain outside the safety-controlled access area.

P. Training

1. NNS must develop and implement a worker training program to instruct affected employees in the:

(a) Hazards associated with performing work under, in, or on suspended modular-ship section, or between a swinging modular-ship section and a fixed object; and

(b) The controls mandated to protect affected employees from these hazards.

2. NNS must train and instruct the crane foreman/supervisor to strictly adhere to the lift plan and the rigging specifications on the approved drawings.

3. NNS must develop and implement a refresher training program, conducted periodically and as necessary, for all employees working under, in, or on suspended modular-ship section, or between a swinging modular-ship section and a fixed object. At a minimum, the refresher training must:

(a) Consist of a lift briefing;

(b) Review each employee's responsibilities; and

(c) Take place before initiating the operation.

4. NNS must document all training provided under the permanent variance, and maintain training records as specified below under Condition U.2.a.

Q. Briefing

Prior to conducting an operation in which its employees work under, in, or on suspended modular-ship section, or between a swinging modular-ship section and a fixed object, NNS must:

1. Hold the briefing with all affected employees having a direct or supporting role in the operation (including workers and/or contractors performing tasks such as crane operator, signal person, essential employees, supervisors), to review the operational procedures involved in the operation, including procedures for entering and leaving the safety-controlled access area;

2. Use the written job-hazard analysis and rigging-lifting-plan drawing(s) during the briefing to supplement the information;

3. Cover all safety considerations;

4. Ensure that the employees understand the information provided at the briefing; and

5. Document the briefing using a signed roster of attendees, and maintain the roster as specified at Condition U.2.a.

R. Continuous Communication

NNS must:

1. Maintain communications (voice, radio, hard wired, or visual) between the crane/hoist operator(s), signal person(s), and employees working under, in, or on the suspended modular-ship section, or between a swinging modular-ship section and a fixed object, at all times;

2. Upon losing communications, stop the operation immediately, inform employees of the problem, ensure that the employees exit the safety-controlled access area, and that the modular-ship section is in a safe condition (*e.g.,* prevented from inadvertent movement or shifting while suspended or returned to the lift staging area if restoring communications takes longer than the load can remain safely suspended as determined in Condition E.2.b above); and

3. Commence the operation only after restoring communications and informing the affected employees about what action NNS is taking to avoid a reoccurrence.

S. Continuous Visual Observation

The most senior manager at the site for crane operations or designee (*e.g.,* supervisor controlling the lift) must have continuous sight of and be in constant visual communication with, any essential employees working under, in, or on a suspended modular-ship section, or between a swinging modular-ship section and a fixed object.

T. Post-Lift Review and Incident Investigations

1. Post-lift review. NNS must conduct and document a post-lift review for each operation involving a suspended modular-ship section, including the identification of any incident that occurred during the operation.

2. Lift-incident investigation. NNS must investigate each lift incident. In doing so, NNS must:

(a) Initiate the investigation within 8 hours of the lift incident or 8 hours after becoming aware of the incident;

(b) Have a competent person(s) with expertise in the hazards associated with the operations involved in the incident conduct the investigation;

(c) Have the investigator(s) prepare a written report at the conclusion of the investigation which includes, at a minimum, the date of the incident, the date the investigation began, the date of the report, the location of the incident, the equipment or processes involved, a description of the incident, the root cause, the contributing factors, and any corrective actions resulting from the investigation (the completed OSHA 301 Incident Report form may be used for this purpose); [21]

(d) Provide a copy of the report to OSHA's Norfolk Area Office and OTPCA at OSHA's National Office within 15 calendar days of the incident or 15 calendar days after becoming aware of the incident;

(e) Within 15 calendar days of completing the incident report, address the findings of the report and implement corrective actions;

(f) Document in writing the corrective actions taken;

(g) Review the findings of the report and corrective actions taken with all affected workers; and

(h) Provide certification to OSHA's Norfolk Area Office and OTPCA at OSHA's National Office within 15 calendar days of completing the incident report, that the employer informed affected workers of the incident and the results of the incident investigation (including the root cause determination and preventive and corrective actions identified and implemented).

U. Records

1. By the 15th calendar day of each new quarter, NNS must prepare a list of planned modular-ship section lifts to be performed during the upcoming quarter (including the cranes/hoists used, the date and time of the operation, associated hazard analysis completed, and the calculated weight of the lift), and update the list when significant changes occur. NNS must:

(a) Make this document available for inspection by affected employees, employee representatives, and send a copy of this document to the OSHA Regional Office, Norfolk Area Office and OTPCA; and

(b) By January 15th of each year, NNS must provide to the Regional Office, Norfolk Area Office and OTPCA, a copy of the list of approved suspended-load operations completed the previous year.

2. NNS must:

(a) Retain all records required by the permanent variance for five years from the time it generates each such record (except when applicable regulations define a longer records-retention period); and

(b) Make all records and related documents available for inspection by affected employees, employee representatives, and OSHA upon request.

V. Onsite Variance Monitoring Inspection

NNS must permit CSHOs to enter its Newport News, VA establishment or site

[21] See footnote 11.

without delay and at reasonable times for the purpose of conducting an on-site variance monitoring inspection.

W. Notice to OSHA

NNS must:

1. Inform OTPCA as soon as it has knowledge that it will:

(a) Cease to do business; or

(b) Transfer the activities covered by this permanent variance to a successor company.

2. Submit to the Norfolk Area Office and OTPCA, a copy of any incident-investigation report and associated corrective-action plan within 15 working days of the incident.

3. Submit to OTPCA annually, a written certification indicating whether the conditions of the permanent variance are effective and remain relevant and necessary, and any recommendations for modifying these conditions.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Section 29 U.S.C. 655(6)(d), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1905.11.

Signed at Washington, DC, on July 29, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–18404 Filed 8–3–16; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Legal Services Corporation Strategic Plan Update 2017–2020; Request for Comments

AGENCY: Legal Services Corporation.

ACTION: Request for comments.

SUMMARY: The Legal Services Corporation (''LSC'') Board of Directors (''Board'') is in the process of revising the 2012–2016 LSC Strategic Plan (''Plan'') and is seeking comments on the draft 2017–2020 LSC Strategic Plan. The LSC Board previously sought comments on its Plan, including comments on whether the existing goals are appropriate and attainable and whether new goals should be added or substituted. After receiving comments and recommendations from stakeholders, LSC now solicits comments on the proposed revisions to the Plan for 2017–2020.

DATES: All comments must be received on or before the close of business on September 6, 2016.

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

- *Agency Web site: http://www.lsc.gov/contact-us.* Follow the instructions for submitting comments on the Web site.
- *Email: lscstrategicplan@lsc.gov.*
- *Fax:* (202) 337–6813.
- *Mail:* Legal Services Corporation, 3333 K Street NW., Washington, DC 20007.

Instructions: All comments should be addressed to Rebecca Fertig Cohen, Chief of Staff, Legal Services Corporation. Include ''2017–2020 Strategic Plan Update'' as the heading or subject line for all comments submitted.

FOR FURTHER INFORMATION CONTACT: Rebecca Fertig Cohen, *cohenr@lsc.gov,* (202) 295–1576.

SUPPLEMENTARY INFORMATION: As an entity created and funded by Congress, LSC has a duty to the American people to pursue its fundamental mission of equal access to justice. With this primary goal in mind, the LSC Board adopted a plan in 2012 setting forth the strategic goals that would guide LSC for five years, ending in 2016. The LSC Board is now in the process of updating and revising the strategic plan for an additional four-year period. As part of this process, the LSC Board sought input from the public and interested stakeholders on whether the goals articulated in the current LSC strategic plan for 2012–2016 are still suitable and timely and whether new goals, if any, should be considered. 81 FR 3836, Jan. 29, 2016.

Based on the feedback received from stakeholders, LSC proposes to continue working on the three goals identified in the 2012–2016 Strategic Plan over the next four years with only minor changes in focus. The three goals in the 2017–2020 strategic plan are:

1. Maximize the availability, quality, and effectiveness of the services LSC's grantees provide to eligible low-income individuals.

2. Expand the role of LSC as a convener and leading voice for civil legal services for low-income Americans.

3. Continue to achieve the highest standards of management for LSC and its grantees to sustain a capable, responsive, and accountable organization.

The full proposed Strategic Plan Update 2017–2020 is available at *https://lsc-live.box.com/v/LSC-StrategicPlan-July2016.*

Dated: July 29, 2016.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2016–18478 Filed 8–3–16; 8:45 am]

BILLING CODE 7050–01–P

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Mississippi River Commission.

TIME AND DATE: 8:00 a.m., August 8, 2016.

PLACE: On board MISSISSIPPI V at Lamberts Landing, St. Paul, Minnesota.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the St. Paul District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 2:00 p.m., August 11, 2016.

PLACE: On board MISSISSIPPI V at the Hannibal City Front, Hannibal, Missouri.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Rock Island District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., August 12, 2016.

PLACE: On board MISSISSIPPI V at Mel Price L&D 4, Alton Illinois.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District

Commander's overview of current project issues within the St. Louis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., August 15, 2016.

PLACE: On board MISSISSIPPI V at the Caruthersville City Front, Caruthersville, Missouri.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., August 16, 2016.

PLACE: On board MISSISSIPPI V at the Helena Harbor Boat Ramp, Helena, Arkansas.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., August 17, 2016.

PLACE: On board MISSISSIPPI V at the Natchez City Front, Natchez, Mississippi.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., August 19, 2016.

PLACE: On board MISSISSIPPI V at the Port Commission Dock, Morgan City, Louisiana.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the New Orleans District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles A. Camillo, telephone 601–634–7023.

Charles A. Camillo,

Director, Mississippi River Commission.

[FR Doc. 2016–18605 Filed 8–2–16; 11:15 am]

BILLING CODE 3720–58–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended, (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of meetings for the transaction of National Science Board business as follows:

DATE AND TIME: August 9, 2016 from 8:00 a.m. to 4:35 p.m., and August 10, 2016 from 8:00 a.m. to 2:20 p.m. EDT.

PLACE: These meetings will be held at the National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230. All visitors must contact the Board Office (call 703–292–7000 or send an email to *nationalsciencebrd@nsf.gov*) at least 24 hours prior to the meeting and provide your name and organizational affiliation. Visitors must report to the NSF visitor's desk in the lobby of the 9th and N. Stuart Street entrance to receive a visitor's badge.

WEBCAST INFORMATION: Public meetings and public portions of meetings will be webcast. To view the meetings, go to *http://www.tvworldwide.com/events/nsf/160809* and follow the instructions.

UPDATES: Please refer to the National Science Board Web site for additional information. Meeting information and schedule updates (time, place, subject matter, and status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp.*

AGENCY CONTACT: John Veysey, *jveysey@nsf.gov,* 703–292–7000.

PUBLIC AFFAIRS CONTACT: Nadine Lymn, *nlymn@nsf.gov,* 703–292–2490.

STATUS: Portions open; portions closed.

Open Sessions

August 9, 2016

8:00–8:30 a.m. Plenary introduction, NSB Chair and NSF Director Remarks
8:30–9:25 a.m. Joint session—Committee on Audit and Oversight and Committee on Strategy and Budget
9:25–10:25 a.m. Committee on Audit and Oversight (A&O)
10:40 a.m.–12:10 p.m. Committee on Strategy and Budget (CSB)
1:35–3:25 p.m. Committee on Programs and Plans (CPP)
3:40–4:15 p.m. CSB Subcommittee on Facilities (SCF)
4:15–4:35 p.m. Joint session—Subcommittee on Facilities and Committee on Programs and Plans

August 10, 2016

8:00–9:45 a.m. Committee on Science and Engineering Indicators (SEI)
1:15–2:20 p.m. (Plenary)

Closed Sessions

August 9, 2016

1:10–1:35 p.m. (CSB)

August 10, 2016

10:00–11:00 a.m. (CPP)
11:00–11:30 a.m. (Plenary)
11:30–11:45 a.m. (Plenary Executive)

Matters To Be Discussed

Tuesday, August 9, 2016

Plenary Board meeting

Open session: 8:00–8:30 a.m.
- NSB Chair's Opening Remarks
- NSF Director's Remarks

Joint Session of the Committee on Audit and Oversight (A&O) and Committee on Strategy and Budget

Open session: 8:30–9:25 a.m.
- Committee Chairs' Opening Remarks
- NSF FY 2015 Annual Report on Merit Review
- Committee Chairs' Closing Remarks

Committee on Audit and Oversight (A&O)

Open session: 9:25–10:25 a.m.
- A&O Chair's Opening Remarks
- Approval of Open A&O Minutes for May 2016
- Inspector General's Update
- Chief Financial Officer's Update
- Update on Intergovernmental Personnel Act Program Review
- Update on Implementation of Steps Resulting from National Academy of Public Administration Report
- A&O Chair's Closing Remarks

Committee on Strategy and Budget (CSB)

Open session: 10:40 a.m.–12:10 p.m.
- CSB Chair's Opening Remarks
- Approval of Open CSB Minutes for May 2016
- Update on FY 2017 Budget
- Discussion—NSF's Ideas for Future Investment
- Review of Planning Process to Develop the 2018–2022 Strategic Plan
- CSB Chair's Closing Remarks

Committee on Strategy and Budget

Closed session: 1:10–1:35 p.m.
- CSB Chair's Opening Remarks
- Approval of Closed CSB Minutes for May 2016
- Update on FY 2016 Budget Items Under Negotiation
- Update on NSF FY 2018 Budget Request Development
- CSB Chair's Closing Remarks

Committee on Programs and Plans

Open session: 1:35–3:25 p.m.
- CPP Chair's Opening Remarks
- Approval of Open CPP Minutes for May 2016
- Calendar Year 2017 Schedule of Planned Action and Information Items: Update for the August 2016 meeting
- National Ecological Observatory Network (NEON) Root Causes Report and NSF Response
- STEM Education: Perspectives from the Education and Human Resources Directorate
- CPP Chair's Closing Remarks

CSB Subcommittee on Facilities (SCF)

Open session: 3:40–4:15 p.m.
- SCF Chair's Opening Remarks
- Approval of Open SCF Minutes for May 2016
- Report on Facilities-related Roles and Responsibilities Meeting
- Discussion of Potential SCF Activities in 2016/2017
- SCF Chair's Closing Remarks

Joint Session of the CSB Subcommittee on Facilities and Committee on Programs and Plans

Open session: 4:15–4:35 p.m.
- Committee Chairs' Opening Remarks
- Discussion of the NEON Performance and Plans (NPP) report recommendations

Matters To Be Discussed

Wednesday, August 10, 2016

Committee on Science and Engineering Indicators (SEI)

Open session: 8:00–9:45 a.m.
- SEI Chair's Opening Remarks
- Approval of Open SEI Minutes for May 2016
- Maximizing the Effectiveness of Science and Engineering Indicators
- Introduction to *Indicators 2018* and Discussion of Chapter/Topic Narratives
- Update on the Companion Brief on Career Pathways of STEM Ph.D.s
- Discussion of the Next Companion Brief and Other Indicators Communication Mechanisms
- SEI Chair's Closing Remarks

Committee on Programs and Plans

Closed Session: 10:00–11:00 a.m.
- Committee Chair's Opening Remarks
- Approval of Closed CPP Minutes for May 2016
- Continued Discussion of Mid-scale Research Infrastructure
- Divestment Process and Status for Arecibo and Other Observatories
- Committee Chair's Closing Remarks

Plenary Board

Closed session: 11:00–11:30 a.m.
- NSB Chair's Opening Remarks
- Approval of Closed Plenary Minutes for May 2016 meeting and June 2016 teleconference
- NSF Director's Remarks
- Closed Committee Reports
- NSB Chair's Closing Remarks

Plenary Board (Executive)

Closed session: 11:30 a.m.–11:45 a.m.
- NSB Chair's Opening Remarks
- Approval of Closed Plenary Executive Minutes for May 2016
- NSF Award Involving a Board Member
- NSB Chair's Closing Remarks

Plenary Board

Open session: 1:15–2:20 p.m.
- NSB Chair's Opening Remarks
- Approval of Open Plenary Minutes for May 2016
- NSF Director's Remarks
- Impact of Brexit Regarding Science Cooperation
- Office of Legislative and Public Affairs (OLPA) Strategic Communications Plan
- Open Committee Reports
- Discussion of Materials for the Presidential Transition
- Discussion and Approval of NSB Meeting Dates for 2017
- NSB Chair's Closing Remarks

Meeting Adjourns: 2:20 p.m.

Chris Blair,

Executive Assistant, National Science Board Office.

[FR Doc. 2016–18663 Filed 8–2–16; 4:15 pm]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32195; 812–14635]

Investment Managers Series Trust and SilverPepper LLC; Notice of Application

July 28, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under Section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from Section 15(a) of the Act and Rule 18f–2 under the Act, as well as from certain disclosure requirements in Rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements''). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

APPLICANTS: Investment Managers Series Trust (the ''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and SilverPepper LLC, a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Adviser,'' and, collectively with the Trust, the ''Applicants'').

FILING DATES: The application was filed April 1, 2016, and amended on April 7, 2016, and July 6, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the application 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 August 22, 2016, and should be accompanied by proof of service on the 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: Trust: c/o John K. Carter, Esq., Law Office of John K. Carter, 9455 Koger Blvd., Suite 102, St. Petersburg, Florida 33702 and Adviser: Patrick Reinkemeyer, President, SilverPepper LLC, 570 Oakwood Avenue, Lake Forest, Illinois 60045.

FOR FURTHER INFORMATION CONTACT: Emerson Davis, Senior Counsel, at (202) 551–6868, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (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 an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. The Adviser will serve as the investment adviser to the Subabvised SP Series pursuant to an investment advisory agreement with the Trust (the ''Investment Management Agreement'').[1] The Adviser will provide the Subabvised SP Series with continuous and comprehensive investment management services subject to the supervision of, and policies established by, each Subabvised SP Series' board of trustees (''Board''). The Investment Management Agreement permits the Adviser, subject to the approval of the Board, to delegate to one or more sub-advisers (each, a ''Sub-Adviser'' and collectively, the ''Sub-Advisers'') the responsibility to provide the day-to-day portfolio investment management of each Subabvised SP Series, subject to the supervision and direction of the Adviser. The primary responsibility for managing the Subabvised SP Series will remain vested in the Adviser. The Adviser will hire, evaluate, allocate assets to and oversee the Sub-Advisers, including determining whether a Sub-Adviser should be terminated, at all times subject to the authority of the Board.

2. Applicants request an exemption to permit the Adviser, subject to Board approval, to hire certain Sub-Advisers pursuant to Sub-Advisory Agreements and materially amend existing Sub-Advisory Agreements without obtaining the shareholder approval required under Section 15(a) of the Act and Rule 18f–2 under the Act.[2] Applicants also seek an exemption from the Disclosure Requirements to permit a Subabvised SP Series to disclose (as both a dollar amount and a percentage of the Subadvised SP Series' net assets): (a) The aggregate fees paid to the Adviser; and (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, ''Aggregate Fee Disclosure'').

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the Application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Subadvised SP Series shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Subadvised SP Series' shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the Application, the Investment Management Agreements will remain subject to shareholder approval, while the role of the Sub-Advisers is substantially similar to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Subadvised SP Series. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Adviser's ability to negotiate fees paid to the Sub-Advisers that are more advantageous for the Subadvised SP Series.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–18466 Filed 8–3–16; 8:45 am]

BILLING CODE 8011–01–P

[1] Applicants request relief with respect to any existing and any future series of the Trust and any other existing or future registered open-end management company or series thereof that: (a) Is advised by the Adviser or its successor or by a person controlling, controlled by, or under common control with the Adviser or its successor (each, also an ''Adviser''); (b) uses the manager of managers structure described in the application; and (c) complies with the terms and conditions of the application (any such series, a ''Subadvised SP Series'' and collectively, the ''Subadvised SP Series''). For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] The requested relief will not extend to any sub-adviser that is an affiliated person, as defined in Section 2(a)(3) of the Act, of a Subadvised SP Series or the Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised SP Series (''Affiliated Sub-Adviser'').

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78445; File No. SR–CHX–2016–11]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt the Securities Trader Registration Category and the Series 57 Securities Trader Examination Registration Requirement

July 29, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on July 20, 2016, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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

CHX proposes to amend the Rules of the Exchange (''CHX Rules'') to adopt the Securities Trader registration

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

category and the Series 57 Securities Trader Examination registration requirement.

CHX has designated this proposed rule change as non-controversial pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(6)[4] thereunder and has provided the Commission with the notice required by Rule 19b–4(f)(6)(iii).[5]

The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes 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 CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend various provisions under Article 6 to adopt the Securities Trader registration category and the Series 57 Securities Trader Examination registration requirement and to eliminate references to the Proprietary Trader registration category and the Series 56 Proprietary Trader Examination registration requirement. The Series 56 exam was discontinued by FINRA on January 4, 2016.[6] Thus, the Exchange proposes the following amendments, as discussed in further detail below:

- Amend Rule 3(a) and Rule 3(d) to replace references to the Proprietary Trader registration category and the Series 56 exam with the Securities Trader registration category and the Series 57 exam, respectively.
- Amend Article 6, Rule 3(a) to require any Representative[7] that engages in securities trading activities, on either an agency or principal basis, for the Participant with which the Representative is associated, to register with the Exchange as a Securities Trader and to pass the Series 57 exam. The Series 7 General Securities Representative Examination will not be an acceptable qualification examination to register as a Securities Trader.
- Amend Article 6, Rule 3(b)(1) to modify the current Proprietary Trader Exception, which permits Chief Compliance Officers of Participants that engage solely in proprietary trading to maintain the Series 14, in lieu of the Series 24, as an expanded Securities Trading Exception for Participants that engage solely in securities trading activities, on either an agency or principal basis.
- Amend Article 6, Rule 2(c)(2) to replace the Limited Principal—Proprietary Trader registration category with the Securities Trader Principal registration category and update related requirements.
- Amend Article 6, Rule 11 to delete references to the S501 Series 56 Proprietary Trader Program for Series 56 registered persons and the Series 56 exam and, instead, require Securities Traders to take the S101 General Program to fulfill Regulatory Element requirements.[8]

This filing is similar to SR–FINRA–2015–017,[9] which has been approved by the Commission.

Proposed Representative Registration Requirements

Current CHX Rules provide that Representatives are required to be registered with the Exchange in the category of registration appropriate to the function to be performed.[10] As CHX Rules have not yet been updated to reflect the new Securities Trader registration category and the Series 57 exam registration requirement, CHX Rules currently require the following:

- A Representative must register with the Exchange as a General Securities Representative (Series 7) or Proprietary Trader (Series 56)[11] before such registration is effective.[12]
- Each Representative is required to register as a General Securities Representative and pass the Series 7 General Securities Representative Examination; provided that in the event a Representative's activities are confined to making trading decisions regarding, or otherwise engaging in, proprietary trading for the broker-dealer with which he or she is associated, the Representative may register as a Proprietary Trader without registering as a General Securities Representative.[13]
- In order to qualify as a Proprietary Trader, a Representative must pass either the Series 7 exam or Series 56 exam.[14]

The Exchange now proposes to amend current Article 6, Rule 3(a). Specifically, the Exchange proposes to amend paragraph (a)(1) to provide that each Representative shall be required to register with the Exchange as a General Securities Representative and pass the Series 7 General Securities Representative Examination. However, a Representative that is engaged in securities trading activities, on either an agency or principal basis, for the Participant with which the Representative is associated, must register with the Exchange as a Securities Trader and pass the Series 57 Securities Trader Examination, subject to amended paragraph (a)(2).

Amended paragraph (a)(2)[15] provides that a Representative that is engaged solely in securities trading activities, on either an agency or principal basis, for the Participant with which the Representative is associated, shall not be required to register with the

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 75783 (August 28, 2015), 80 FR 53369 (September 3, 2015) (Order Approving a Proposed Rule Change To Establish the Securities Trader and Securities Trader Principal Registration Categories) (SR–FINRA–2015–017).

[7] CHX Article 6, Rule 2(b) defines ''Representatives'' as follows:

Persons associated with a Participant who are engaged or will be engaged in the securities business of a Participant, or the management of such securities business, including the functions of supervision, solicitation, conduct of business or the training of persons associated with a Participant for any of these functions are Representatives.

A ''Participant'' is a ''member'' of the Exchange for purposes of the Act. *See* CHX Article 1, Rule 1(s).

[8] Pursuant to CHX Article 6, Rule 11(a), each registered person shall complete the Regulatory Element of the continuing education program on the occurrence of their second registration anniversary date(s), and every three years thereafter or as otherwise prescribed by the Exchange. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the ''base date,'' shall establish the cycle of anniversary dates for purposes of this rule.

[9] *See supra* note 6.

[10] *See* current CHX Article 6, Rule 2(a).

[11] The Series 56 exam was discontinued on January 4, 2016. *See supra* note 6.

[12] *See* current CHX Article 6, Rule 3(a).

[13] *See id.*

[14] *See id.; see also* Securities Exchange Act Release No. 70597 (October 2, 2013), 78 FR 62728 (October 22, 2013) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Registration, Qualification, Supervision, and Continuing Education of Individuals Associated with Participant Firms) (SR–CHX–2013–14).

[15] The Exchange proposes to delete current Article 6, Rule 3(a)(2) in its entirety as it defines the Proprietary Trader registration category, which will be eliminated pursuant to this proposed rule change.

Exchange as a General Securities Representative. Moreover, a Representative registered with the Exchange solely as a Securities Trader will not be qualified to function in any other registration category.

Current Article 6, Rule 3(d) provides, among other things, that Institutional Broker Representatives [16] at Participant Firms that do not hold customer accounts and that only execute orders from other brokers or dealers or engage in proprietary trading only may, in the alternative to passing the Series 7, pass the Series 56 Proprietary Trader Exam. The Exchange now proposes to replace all references under current Article 6, Rule 3(d) to the ''Series 56'' with the ''Series 57.'' The Exchange also proposes to replace the reference to the ''Proprietary Trader Exam'' with the ''Securities Trader Exam'' and the reference to the ''Proprietary Trader Exception'' under current Article 6, Rule 3(b)(1) with the proposed ''Securities Trading Exception'' under amended Article 6, Rule 3(b)(1), as described below. In addition, the Exchange proposes to capitalize the term ''Customer,'' as it is defined under CHX Rules.[17] Moreover, the Exchange proposes to amend the third sentence under Rule 3(d) to provide that Institutional Broker Representatives at Participant Firms that do not carry Customers accounts and that only execute orders from other brokers or dealers or engage in proprietary trading must pass the Series 57 Securities Trader Exam.

The Exchange also proposes to delete current Article 6, Rule 3(e) as it provides obsolete compliance dates.[18]

Proposed Securities Trading Exception for Certain Chief Compliance Officers

Current Article 6, Rule 3(b)(1) permits the Chief Compliance Officer of a Participant Firm to maintain the Series 14 Compliance Official qualification, in lieu of the Series 24 General Securities Principal qualification, if the Participant Firm engages solely in proprietary trading and otherwise meets the requirements listed under current Article 6, Rule 3(b) and Article 6, Rule 2(c)(1).[19] The Exchange now proposes to conform the exception to apply to firms that engage solely in securities trading activities, on either an agency or principal basis. Thus, the Exchange proposes to amend Article 6, Rule 3(b) by replacing the term ''Proprietary Trading'' with the phrase ''securities trading activities, on either an agency or principal basis'' and rename the exception as the ''Securities Trading Exception.''

Proposed Securities Trader Principal

Current Article 6, Rule 2(c)(2) provides for a limited principal registration category called the ''Limited Principal—Proprietary Trader.'' Specifically, current subparagraph (A) provides that each person associated with a Participant who is included within the definition of a Principal [20] may register with the Exchange as a Limited Principal—Proprietary Trader if: (i) His or her supervisory responsibilities in the securities business are limited solely to the activities of a Participant that involve proprietary trading; (ii) he or she is registered pursuant to Exchange Rules as a Proprietary Trader; and (iii) he or she is qualified to be so registered by passing the Series 24 examination. Current subparagraph (B) provides that a person registered in this category shall not be qualified to function in a Principal capacity with responsibility over any area of business activity not described in paragraph (c)(2)(A)(i) of this Rule.

The Exchange now proposes to amend Article 6, Rule 2(c)(2)(A) to provide that each Principal shall register with the Exchange as a Securities Trader Principal if such Principal supervises the securities trading activities of a Participant. Moreover, a Principal is required to pass the Series 57 exam as a prerequisite to registration as a Securities Trader Principal.[21]

The Exchange also proposes to amend Article 6, Rule 2(c)(2)(B) to provide that a person registered as a Securities Trader Principal shall only be qualified to supervise the securities trading activities of a Participant and shall not be qualified to supervise any other activities of a Participant. Moreover, a Principal shall not be qualified to supervise the trading activities of a Participant, unless such person is registered as a Securities Trader Principal.

The Exchange also proposes to amend Article 6, Rule 2(c) to provide that all persons engaged or to be engaged in the securities business of a Participant who are to function as a Principal shall be registered with the Exchange as a General Securities Principal, unless the Principal meets the requirements under this Rule 2(c), so as to contemplate the proposed Securities Trader Principal registration requirement. Moreover, for the purpose of clarifying the examination requirements for all Principals, the Exchange proposes to amend the last sentence of current Rule 2(c) to provide that each Principal shall pass the Series 24 or Series 14 exam, as applicable, pursuant to Article 6, Rule 3(b).[22]

Proposed Continuing Education Requirements

Current Article 6, Rule 11 provides continuing education requirements for registered persons, including Proprietary Traders. The Exchange now proposes to amend Article 6, Rule 11(a)(3) to eliminate reference to the S501 Series 56 Proprietary Trader continuing education program for Series 56 registered persons, as the S501 Series 56 Proprietary Trader continuing education program was phased out along with the Series 56 exam on January 4, 2016.[23] The Exchange now proposes to require Series 57 registered persons to take the S101 General Program to fulfill the Regulatory Element requirement. Thus, the Exchange proposes to replace current Article 6, Rule 11(a)(3) with new language that provides that the following sets forth the Regulatory Element appropriate for each registration category:

Catergory of registration	Regulatory element
General Securities Representative.	S101 General Program.
Securities Trader	S101 General Program.
General Securities Principal.	S201 Supervisor Program.
Securities Trader Principal.	S201 Supervisor Program.
Financial and Operations Principal.	S201 Supervisor Program.

The Exchange also proposes to replace a reference to ''Series 56'' with ''Series 57'' under the first sentence of

[16] *See* CHX Article 1, Rule 1(gg) defining ''Institutional Broker Representative.''

[17] *See* CHX Article [sic], Rule 1(hh) defining ''Customer.''

[18] *See supra* note 14.

[19] CHX Article 6, Rule 2(c)(1) provides as follows:

Definition of Principals. Persons associated with a Participant, enumerated in subparagraphs (A) through (E) hereafter, who are actively engaged in the management of the Participants' securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions are designated as Principals. Such persons shall include:

(A) Sole Proprietors;

(B) Officers;

(C) Partners;

(D) Branch office managers; and

(E) Directors.

[20] *See id.*

[21] All Principals are required to pass the Series 24 or Series 14 exam, as applicable, pursuant to current Article 6, Rule 3(b).

[22] *See id.*

[23] *See supra* note 6.

Article 6, Rule 11(b)(1), which describes persons subject to the Firm Element continuing education requirement.

2. Statutory Basis

The Exchange believes that proposed rule change is consistent with Section 6(b) of the Act [24] in general and Section 6(b)(5) of the Act [25] in particular, which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to 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. Additionally, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that adoption of the Securities Trader registration category and Series 57 exam registration requirement is consistent with the Act. FINRA indicated that the Series 57 exam was being developed in an effort to adopt a more tailored examination. The Exchange believes that adopting the Series 57 exam for Representatives engaging in trading activities will help ensure professionalism among market participants, prevent fraudulent and manipulative practices, and promote just and equitable principles of trade. The Exchange also believes that it is in the interests of investors and the general public to adopt a tailored qualification examination for proprietary traders and that a uniform qualification standard may help ensure fair and orderly markets. Furthermore, the Exchange believes that it is in the interests of all market participants to provide consistent qualification and registration requirements across markets. The Exchange believes that harmonizing the Exchange's qualification and registration requirements with those of FINRA and the other national securities exchanges would further such interests.

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 relating to Securities Traders, which is based upon and substantially similar to recent rule changes adopted by FINRA, which is similar to the filings of other national securities exchanges, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of these registration requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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) [26] of the Act and Rule 19b–4(f)(6) thereunder.[27]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [28] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [29] 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 upon filing. According to the Exchange, the Series 57 exam has already replaced the Series 56 exam, which was discontinued by FINRA as of January 4, 2016, and the waiver of the operative delay would permit new Representatives to register with the Exchange under registration standards similar to those of FINRA and other national securities exchanges.[30] Based on the foregoing, 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.[31]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CHX–2016–11 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 No. SR–CHX–2016–11. 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

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[28] 17 CFR 240.19b–4(f)(6).

[29] 17 CFR 240.19b–4(f)(6)(iii).

[30] *See* supra note 6.

[31] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 CHX. 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 No. SR–CHX–2016–11 and should be submitted on or before August 25, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–18472 Filed 8–3–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78443; File No. SR–NASDAQ–2016–064]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of the Shares of the First Trust Strategic Mortgage REIT ETF of First Trust Exchange-Traded Fund VIII

July 29, 2016.

I. Introduction

On May 3, 2016, The NASDAQ Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the First Trust Strategic Mortgage REIT ETF (''Fund'') of First Trust Exchange-Traded Fund VIII (''Trust'') under NASDAQ Rule 5735. The proposed rule change was published for comment in the **Federal Register** on May 12, 2016.[3] On June 15, 2016, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Exchange's Description of the Proposal

The Exchange proposes to list and trade the Shares under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund will be an actively-managed exchange-traded fund (''ETF''). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on February 22, 2016.[6] The Fund will be a series of the Trust.

First Trust Advisors L.P. will be the investment adviser (''Adviser'') to the Fund. First Trust Portfolios L.P. (''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon Corporation will act as the administrator, accounting agent, custodian, and transfer agent to the Fund. The Exchange states that the Adviser is not a broker-dealer, but it is affiliated with the Distributor, a broker-dealer.[7] The Exchange represents that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of, and changes to, the portfolio.[8] According to the Exchange, the Fund currently does not intend to use a sub-advisor.[9]

The Exchange has made the following representations and statements in describing the Fund and its investment strategy, including the Fund's portfolio holdings and investment restrictions.[10]

A. Exchange's Description of the Fund's Principal Investments

The investment objective of the Fund will be to generate high current income. Under normal market conditions,[11] the Fund will seek to achieve its investment objective by investing at least 80% of its net assets (including investment borrowings) in the exchange-traded common shares of U.S. exchange-traded mortgage real estate investment trusts (''mortgage REITs''). In general terms, a mortgage REIT makes loans to developers and owners of property and invests primarily in mortgages and similar real estate interests, and includes companies or trusts that are primarily engaged in the purchasing or servicing of commercial or residential mortgage loans or mortgage-related securities, which may include mortgage-backed securities issued by private issuers and those issued or guaranteed by U.S. Government agencies, instrumentalities, or sponsored entities.

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

B. Exchange's Description of the Fund's Other Investments

The Fund may invest (in the aggregate) up to 20% of its net assets in

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77781 (May 6, 2016), 81 FR 29590 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 78078 (Jun. 21, 2016), 81 FR 40377.

[6] The Exchange represents that the Trust is registered under the Investment Company Act of 1940 (''1940 Act''). *See* Registration Statement on Form N–1A for the Trust dated March 14, 2016 (File Nos. 333–210186 and 811–23147) (''Registration Statement''). The Exchange further states that the Trust has obtained certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 28468 (October 27, 2008) (File No. 812–13477).

[7] *See* Notice, *supra* note 3, 81 FR at 29591.

[8] *See id.* The Exchange further represents that, in the event (a) the Adviser or any sub-adviser registers as a broker-dealer, or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser registers is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement a fire wall with respect to its relevant personnel and such broker-dealer affiliate, as applicable, regarding access to information concerning the composition of, and 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.

[9] *See id.*

[10] The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value (''NAV''), distributions, and taxes, among other things, can be found in the Notice and the Registration Statement, as applicable. *See* Notice and Registration Statement, *supra* notes 3 and 6, respectively.

[11] The term ''under normal market conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. On a temporary basis, including for defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. According to the Exchange, during such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances. *See* Notice, *supra* note 3, 81 FR at 29591 n.8.

the following securities and instruments:

(1) The Fund may invest in the exchange-traded preferred shares of U.S. exchange-traded mortgage REITs.

(2) The Fund may invest in (a) U.S. exchange-traded equity and preferred securities and (b) domestic over-the-counter (''OTC'') preferred securities, in each case, of companies engaged in the U.S. real estate industry (other than mortgage REITs) (collectively, ''Real Estate Companies'').

(3) The Fund may invest in mortgage-backed securities,[12] and such investments may, from time to time, include investments in to-be-announced transactions [13] and mortgage dollar rolls [14] (collectively, ''Mortgage-Related Instruments'').

(4) The Fund may invest in (a) exchange-traded and OTC options on mortgage REITs and Real Estate Companies; (b) OTC options on mortgage TBA transactions; (c) exchange-traded U.S. Treasury and Eurodollar futures contracts; (d) exchange-traded and OTC interest rate swap agreements; (e) exchange-traded options on U.S. Treasury and Eurodollar futures contracts; and (f) exchange-traded and OTC options on interest rate swap agreements. The use of these derivative transactions may allow the Fund to obtain net long or short exposures to selected interest rates. These derivatives may also be used to hedge risks, including interest rate risks and credit risks, associated with the Fund's portfolio investments. The Exchange represents that the Fund's investments in derivative instruments will be consistent with the Fund's investment objective and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of an index. The Fund will only enter into transactions in OTC derivatives (including OTC options on mortgage REITs, Real Estate Companies, and mortgage TBA transactions; OTC interest rate swap agreements; and OTC options on interest rate swap agreements) with counterparties that the Adviser reasonably believes are capable of performing under the applicable contract or agreement.[15]

(5) The Fund may invest in short-term debt securities and other short-term debt instruments (described below), as well as cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings or held in cash will vary and will depend on several factors, including market conditions. The Fund may invest in the following short-term debt instruments: [16] (a) Fixed rate and floating rate U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities; (b) certificates of deposit issued against funds deposited in a bank or savings and loan association; (c) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (d) repurchase agreements,[17] which involve purchases of debt securities; (e) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and (f) commercial paper, which is short-term unsecured promissory notes.[18]

(6) The Fund may invest (but only, in the aggregate, up to 10% of its net assets) in the securities of money market funds and other ETFs that, in each case, will be investment companies registered under the 1940 Act.[19]

C. Exchange's Description of the Fund's Investment Restrictions

The Fund may enter into short sales as part of its overall portfolio management strategies or to offset a potential decline in the value of a security; however, the Fund will not engage in short sales with respect to more than 30% of the value of its net assets. To the extent required under applicable federal securities laws, rules, and interpretations thereof, the Fund will ''set aside'' liquid assets or engage in other measures to ''cover'' open positions and short positions held in connection with the foregoing types of transactions.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser.[20] The Fund will monitor its

[12] Mortgage-backed securities, which are securities that directly or indirectly represent a participation in, or are secured by and payable from, mortgage loans on real property, will consist of: (1) Residential mortgage-backed securities; (2) commercial mortgage-backed securities; (3) stripped mortgage-backed securities, which are mortgage-backed securities where mortgage payments are divided between paying the loan's principal and paying the loan's interest; (4) collateralized mortgage obligations and real estate mortgage investment conduits, which are mortgage-backed securities that are divided into multiple classes, with each class being entitled to a different share of the principal and interest payments received from the pool of underlying assets.

[13] A to-be-announced (''TBA'') transaction is a method of trading mortgage-backed securities. In a TBA transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount, and price. The actual pools delivered generally are determined two days prior to the settlement date.

[14] In a mortgage dollar roll, the Fund will sell (or buy) mortgage-backed securities for delivery on a specified date and simultaneously contract to repurchase (or sell) substantially similar (same type, coupon and maturity) securities on a future date. During the period between a sale and repurchase, the Fund will forgo principal and interest paid on the mortgage-backed securities. The Fund will earn or lose money on a mortgage dollar roll from any difference between the sale price and the future purchase price. In a sale and repurchase, the Fund will also earn money on the interest earned on the cash proceeds of the initial sale. According to the Exchange, the Fund intends to enter into mortgage dollar rolls only with high quality securities dealers and banks, as determined by the Adviser. *See* Notice, supra note 3, 81 FR at 29591 n.11.

[15] According to the Exchange, the Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser's analysis will evaluate each approved counterparty using various methods of analysis and may consider the Adviser's past experience with the counterparty, its known disciplinary history and its share of market participation. *See id.* at 29591 n.12.

[16] Short-term debt instruments are issued by issuers having a long-term debt rating of at least A by Standard & Poor's Ratings Services, a Division of The McGraw-Hill Companies, Inc. (''S&P Ratings''), Moody's Investors Service, Inc. (''Moody's'') or Fitch Ratings (''Fitch'') and have a maturity of one year or less.

[17] The Exchange represents that the Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust (''Trust Board''). According to the Exchange, the Adviser will review and monitor the creditworthiness of such institutions, and the Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement. *See id.* at 29592 n.14.

[18] The Exchange states that the Fund may only invest in commercial paper rated A–1 or higher by S&P Ratings, Prime-1 or higher by Moody's or F1 or higher by Fitch. *See id.* at 29592 n.15.

[19] An ETF is an investment company registered under the 1940 Act that holds a portfolio of securities. Many ETFs are designed to track the performance of a securities index, including industry, sector, country and region indexes. ETFs included in the Fund will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by other ETFs and their sponsors from the Commission. In addition, the Fund may invest in the securities of certain other investment companies in excess of the limits imposed under the 1940 Act pursuant to an exemptive order that the Trust has obtained from the Commission. *See* Investment Company Act Release No. 30377 (February 5, 2013) (File No. 812–13895). The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depository Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). The Exchange represents that while the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (*e.g.,* 2X or -3X) ETFs. *See id.* at 29592 n.16.

[20] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of

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.

The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry. This restriction does not apply to securities of issuers in the real estate sector, including real estate investment trusts; obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities; or securities of other investment companies. The Fund will be concentrated in the real estate sector.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[21] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[22] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[23] which sets forth the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association (''CTA'') plans for the Shares. Quotation and last-sale information for U.S. exchange-traded equity securities (including mortgage REITs, ETFs, and exchange-traded Real Estate Companies) will be available from the exchanges on which they are traded as well as in accordance with any applicable CTA plans. Quotation and last-sale information for U.S. exchange-traded options will be available via the Options Price Reporting Authority. On each business day, before commencement of trading in Shares in the Regular Market Session[24] on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (''Disclosed Portfolio,'' as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[25] An estimated value, defined in Nasdaq Rule 5735(c)(3) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's Disclosed Portfolio, will be disseminated. The Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,[26] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session.[27]

The Fund's NAV will be determined as of the close of trading (normally 4:00 p.m. Eastern time) on each day the New York Stock Exchange LLC is open for business.[28] Additionally, information regarding market price and trading volume of 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. Pricing information for Mortgage-Related Instruments, OTC Real Estate Companies, Short-Term Debt Instruments, repurchase agreements, certificates of deposit, bank time deposits, OTC options on mortgage REITs, Real Estate Companies and mortgage TBA transactions, OTC interest rate swap agreements, and OTC options on interest rate swap agreements will be available from major broker-dealer firms, major market data vendors, and/or Pricing Services. Pricing information for mortgage REITs (both common and preferred shares), exchange-traded Real Estate Companies, ETFs, exchange-traded options on mortgage REITs and Real Estate Companies, exchange-traded U.S. Treasury and Eurodollar futures contracts, exchange-traded interest rate swap agreements, exchange-traded options on U.S. Treasury and Eurodollar futures contracts, and exchange-traded

dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades *(e.g.,* the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

[21] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[24] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m., Eastern Time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m., Eastern Time; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m., Eastern Time).

[25] 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. The Fund's disclosure of derivative positions in the Disclosed Portfolio will include sufficient information for market participants to use to value these positions intraday. On a daily basis, the Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security or other asset or instrument underlying the holding, if any; for options, the option strike price; 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 percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

[26] Currently, the NASDAQ OMX Global Index Data Service (''GIDS'') is the Nasdaq global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. According to the Exchange, GIDS provides investment professionals with the daily information needed to track or trade Nasdaq indexes, listed ETFs, or third-party partner indexes and ETFs.

[27] According to the Exchange, the Intraday Indicative Value will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. The Exchange states that premiums and discounts between the Intraday Indicative Value and the market price may occur. The Exchange states that this should not be viewed as a ''real time'' update of the NAV per Share of the Fund, which is calculated only once a day. *See* Notice, supra note 3, 81 FR at 29594

[28] NAV per Share will be calculated for the Fund by taking the value of the Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, including accrued expenses and dividends declared but unpaid, and dividing such amount by the total number of Shares outstanding. *See* Notice, supra note 3, 81 FR at 29593–29594 (providing more detailed information on the NAV valuation methodology for each of the Fund's holdings).

options on interest rate swap agreements will be available from the applicable listing exchange and from major market data vendors. Money market funds are typically priced once each business day, and their prices will be available through the applicable fund's Web site or from major market data vendors. The Fund's Web site, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information that may be downloaded.

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange states that it 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.[29] The Exchange also represents that the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[30] Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which trading of Shares of the Fund may be halted.[31] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.[32] The Exchange also represents that the Adviser is not a broker-dealer, although it is affiliated with the Distributor, a broker-dealer, and that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.[33] Further, the Commission notes that the Reporting Authority [34] that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[35] The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also 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.[36]

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. In support of this proposal, the Exchange represented that:

(1) The Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) Trading in the Shares will be subject to the existing trading surveillances administered by both Nasdaq and FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to detect and help deter violations of Exchange rules and applicable federal securities laws.

(3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund (including mortgage REITs (both common and preferred shares); exchange-traded Real Estate Companies; ETFs; exchange-traded options on mortgage REITs and Real Estate Companies; exchange-traded U.S. Treasury and Eurodollar futures contracts; exchange-traded interest rate swap agreements; exchange-traded options on U.S. Treasury and Eurodollar futures contracts; and exchange-traded options on interest rate swap agreements) with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''),[37] and FINRA may obtain trading information regarding trading in the Shares and such exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, will be 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.

(4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(5) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (d) the risks

[29] *See id.* at 29595.

[30] These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. *See id.*

[31] *See id.*

[32] *See id.*

[33] *See id.* at 29591. *See also supra* note 8. The Exchange further represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''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. 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.

[34] Nasdaq Rule 5730(c)(4) defines ''Reporting Authority.''

[35] *See* Nasdaq Rule 5735(d)(2)(B)(ii).

[36] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[37] For a list of the current members of ISG, *see 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.

involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) For initial and continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.[38]

(7) The Fund's investments in derivative instruments will be consistent with the Fund's investment objective and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of an index, and the Fund will only enter into transactions in OTC derivatives (including OTC options on mortgage REITs, Real Estate Companies and mortgage TBA transactions; OTC interest rate swap agreements; and OTC options on interest rate swap agreements) with counterparties that the Adviser reasonably believes are capable of performing under the applicable contract or agreement.

(8) The Fund may invest (but only, in the aggregate, up to 10% of its net assets) in the securities of money market funds and other ETFs that, in each case, will be investment companies registered under the 1940 Act, and ETFs included in the Fund will be listed and traded in the U.S. on registered exchanges.

(9) The Fund will not invest in leveraged or inverse leveraged (*e.g.,* 2X or −3X) ETFs.

(10) The Fund will not engage in short sales with respect to more than 30% of the value of its net assets. To the extent required under applicable federal securities laws, rules, and interpretations thereof, the Fund will ''set aside'' liquid assets or engage in other measures to ''cover'' open positions and short positions held in connection with the foregoing types of transactions.

(11) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities deemed illiquid by the Adviser.

(12) At least 90% of the Fund's net assets that are invested in exchange-traded derivatives (including exchange-traded options on mortgage REITs and Real Estate Companies; exchange-traded U.S. Treasury and Eurodollar futures contracts; exchange-traded interest rate swap agreements; exchange-traded options on U.S. Treasury and Eurodollar futures contracts; and exchange-traded options on interest rate swap agreements) (in the aggregate) will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(13) All of the Fund's net assets that are invested in exchange-traded equity securities (including mortgage REITs (both common and preferred shares); ETFs; and exchange-traded Real Estate Companies) (in the aggregate) will be invested in securities that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(14) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

The Exchange represents that 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 listing requirements for listing the Shares on the Exchange. In addition, 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.[39] If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 to be listed and traded on the Exchange on an initial and continuing basis.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[40] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[41] that the proposed rule change (SR–NASDAQ–2016–064) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–18470 Filed 8–3–16; 8:45 am]

BILLING CODE 8011–01–P

[38] *See* 17 CFR 240.10A–3.

[39] The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428 (April 7, 2016) (Notice of Filing of Amendment No. 2, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the SPDR DoubleLine Short Duration Total Return Tactical ETF of the SSgA Active Trust), available at: *http://www.sec.gov/rules/sro/bats/2016/34-77499.pdf.* In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of the Fund's compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

[40] 15 U.S.C. 78f(b)(5).

[41] 15 U.S.C. 78s(b)(2).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78442; File No. SR–NYSE–2016–31]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Amending NYSE Rule 6A To Exclude the Physical Area Within Fully Enclosed Telephone Booths Located in 18 Broad Street From the Definition of Trading Floor

July 29, 2016.

On May 31, 2016, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 6A (''Trading Floor'') to exclude an area within fully enclosed telephone booths located in 18 Broad Street from the definition of Trading Floor. The proposed rule change was published for comment in the **Federal Register** on June 17, 2016.[3] No comments have been received on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78057 (June 13, 2016), 81 FR 39722 (June 17, 2016).

[4] 15 U.S.C. 78s(b)(2).

change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is August 1, 2016. The Commission is extending this 45-day time period for Commission action on the proposed rule change.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,[5] and for the reason noted above, designates September 15, 2016 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2016–31).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–18469 Filed 8–3–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–32198]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

July 29, 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 July 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 August 23, 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.

American Republic Variable Annuity Account

[File No. 811–04921]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. Applicant will continue to operate as a private investment fund in reliance on section 3(c)(1) of the Act.

Filing Dates: The application was filed on June 29, 2016 and amended on July 12, 2016.

Applicant's Address: 601 6th Avenue, Des Moines, Iowa 50309.

Stratus Fund Inc.

[File No. 811–06259]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 10, 2016, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $67,531.59 incurred in connection with the liquidation were paid by the applicant.

Filing Date: The application was filed on June 30, 2016.

Applicant's Address: 6801 S. 27th Street, P.O. Box 82535, Lincoln, Nebraska 68501.

Fort Dearborn Income Securities, Inc.

[File No. 811–02319]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to UBS Total Return Bond Fund and, on May 23, 2016, made a final distribution to its shareholders based on net asset value. Expenses of $430,602.97 incurred in connection with the reorganization were paid by the applicant.

Filing Dates: The application was filed on June 30, 2016 and amended on July 22, 2016.

Applicant's Address: One North Wacker Drive, Chicago, Illinois 60606.

American Real Estate Income Fund

[File No. 811–22599]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 22, 2016 and March 30, 2016, applicant made liquidating distributions to its shareholders, based on net asset value. In-kind share distributions, which required re-registrations of shares in order to complete the distributions, were effected on various dates between March 30, 2016 and June 30, 2016. Expenses of $132,000 incurred in connection with the liquidation were paid by the applicant and applicant's investment adviser.

Filing Dates: The application was filed on March 31, 2016 and June 30, 2016.

Applicant's Address: 405 Park Avenue, 14th Floor, New York, New York 10022.

Capital Southwest Venture Corporation

[File No. 811–01947]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 14, 2016, June 30, 2016, and July 8, 2016, applicant made liquidating distributions to its shareholders. Expenses of $36,944 incurred in connection with the liquidation were paid by an affiliate, Capital Southwest Corporation.

Filing Date: The application was filed on July 12, 2016.

Applicant's Address: 5400 Lyndon B. Johnson Freeway, Suite 1300, Dallas, Texas 75240.

Iowa Public Agency Investment Trust

[File No. 811–07696]

Summary: Applicant is a common law trust organized and operated as a diversified, open-end management investment company. Applicant states that it was established under Iowa law, which authorizes Iowa cities, counties, and municipal utilities to jointly invest their monies pursuant to a joint investment agreement.

Applicant states that in 1993 it voluntarily registered under the Act.

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

Applicant states that at a meeting on February 27, 2016 its Board of Trustees determined that it was in the best interests of applicant to seek an order declaring that it has ceased to be an investment company. Applicant states that it is an instrumentality of the State of Iowa. Applicant further states that if an order for deregistration is granted it will continue to operate in reliance on the Section 2(b) exemption from registration under the Act.

Filing Date: The application was filed on July 21, 2016.

Applicant's Address: 1415 28th Street, Suite 200, West Des Moines, Iowa 50266.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–18468 Filed 8–3–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–32197; File No. 812–14575]

Bain Capital Specialty Finance, Inc., et al.; Notice of Application

July 29, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to permit business development companies (''BDCs'') to co-invest in portfolio companies with each other and with affiliated investment funds.

Applicants: Bain Capital Specialty Finance, Inc. (the ''Fund''); BCSF Advisors, LP (''BCSFA''), on behalf of itself and its successors; [1] Bain Capital Credit, LP (''Bain''), Bain Capital Credit (Australia), Pty. Ltd, Bain Capital Credit Asia, LLC, Bain Capital Credit (European Advisors), Ltd., Bain Capital Credit, Ltd. (together with BCSFA, the ''Existing Bain Advisers''), on behalf of themselves and their successors; Avery Point II CLO, Limited, Avery Point III CLO, Limited, Avery Point IV CLO, Limited, Avery Point V CLO, Limited, Avery Point VI CLO, Limited, Newhaven II CLO, Designated Activity Company, Race Point IX CLO, Limited, Race Point X CLO, Limited, Race Point V CLO, Limited, Race Point VI CLO, Limited, Race Point VII CLO, Limited, Race Point VIII CLO, Limited, Bain Capital CLO Partners, L.P., Sankaty Credit Opportunities (Offshore Master) IV, L.P., Sankaty Credit Opportunities II, L.P., Sankaty Credit Opportunities III, L.P., Sankaty Credit Opportunities IV, L.P., Bain Capital Distressed and Special Situations 2013 (AIV I), L.P., Bain Capital Distressed and Special Situations 2013 (AIV II Master), L.P., Bain Capital Distressed and Special Situations 2013 (A), L.P., Sankaty Credit Opportunities V–A2 (Master), L.P., Bain Capital Distressed and Special Situations 2013 (B), L.P., Bain Capital Direct Lending 2015 (L), L.P., SDLF (L–A), LLC, Bain Capital Direct Lending 2015 (U), L.P., Sankaty Drawbridge Opportunities, L.P., Sankaty High Income Feeder II, L.P., Sankaty High Income Feeder, Ltd., Bain Capital High Income Partnership, L.P., Bain Capital Credit Managed Account (CalPERS), L.P., Bain Capital Credit Managed Account (E), L.P., Bain Capital Credit Managed Account (Newport Mobile), L.P., Sankaty Managed Account (NZSF), L.P., Bain Capital Credit Managed Account (PSERS), L.P., Bain Capital Credit Managed Account (TCCC), L.P., Bain Capital Credit Managed Account (UCAL), L.P., Sankaty Middle Market Opportunities Fund (Offshore Master II), L.P., Sankaty Middle Market Opportunities Fund (Offshore Master), L.P., Bain Capital Middle Market Credit 2014, L.P., Sankaty Middle Market Opportunities Fund II–A (Master), L.P., Bain Capital Middle Market Credit 2014 (F), L.P., Bain Capital Middle Market Credit 2010, L.P., Bain Capital Credit Rio Grande FMC, L.P., Bain Capital Senior Loan Fund (SRI), L.P., Sankaty Senior Loan Fund Public Limited Company, Bain Capital Senior Loan Fund, L.P., Warehouse Funding Avery Point VII, LLC, Queenscliff Trust, Bain Capital Credit Managed Account (CLO), L.P., Cape Schanck Direct Lending Trust, Bain Capital Distressed and Special Situations 2016 (A), L.P., Bain Capital Distressed and Special Situations 2016 (B Master), L.P., Sankaty Credit Opportunities VI–B, L.P., Sankaty Credit Opportunities VI–EU, L.P., Sankaty Credit Opportunities VI–EU (Master), L.P., Bain Capital Distressed and Special Situations 2016 (F), L.P., Sankaty Credit Opportunities (F) Europe, L.P. (collectively, the ''Existing Affiliated Funds'').

Filing Dates: The application was filed on November 6, 2015 and amended on April 1, 2016 and July 18, 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 August 23, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, 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 St. NE., Washington, DC 20549–1090. Applicants: Ranesh Ramanathan, Esq., General Counsel, Bain Capital Credit, LP, 200 Clarendon Street, 37th Floor, Boston, MA, 02116.

FOR FURTHER INFORMATION CONTACT: Elizabeth G. Miller, Senior Counsel, at (202) 551–8707 or Holly Hunter-Ceci, Branch Chief, at (202) 551–6825 (Chief Counsel's Office, Division of Investment Management).

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 Fund is a Delaware corporation organized as a closed-end management investment company that has elected to be regulated as a BDC under Section 54(a) of the Act.[2] The Fund's Objectives and Strategies [3] are to provide risk-

[1] The term ''successor,'' as applied to each Adviser (defined below), means an entity that results from a reorganization into another jurisdiction or change in the type of business organization.

[2] 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 sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[3] ''Objectives and Strategies'' means a Regulated Fund's investment objectives and strategies, as described in the Regulated Fund's registration statement on Form 10, other filings the Regulated Fund has made with the Commission under the Securities Act of 1933 (the ''Securities Act''), or under the Securities Exchange Act of 1934 and the Regulated Fund's reports to shareholders.

adjusted returns and current income to investors. The Fund invests primarily in middle-market companies with between $10 million and $150 million in annual earnings before interest, taxes, depreciation and amortization. The Fund intends to focus on senior investments with a first or second lien on collateral and strong structures and documentation intended to protect the lender.

2. The board of directors of the Fund (the ''Board'') is comprised of five directors, three of whom are not ''interested persons,'' within the meaning of Section 2(a)(19) of the 1940 Act (the ''Non-Interested Directors''), of the Fund.

3. BCSFA is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). BCSFA serves as investment adviser to the Fund. It is a wholly-owned subsidiary of Bain.

4. Bain is registered as an investment adviser under the Advisers Act. Bain serves as investment adviser to certain Existing Affiliated Funds and either it or another Adviser will serve as the investment adviser to any Future Affiliated Funds (defined below).

5. Bain Capital Credit (Australia), Pty. Ltd., an Australian proprietary company formed in 2012, is authorized and regulated by the Australian Securities and Investments Commission. It is a wholly-owned subsidiary of Bain.

6. Bain Capital Credit (European Advisors), Ltd., a United Kingdom private limited company formed in 2014, and Bain Capital Credit, Ltd., a United Kingdom private limited company formed in 2005, are authorized and regulated by the U.K. Financial Conduct Authority. They are both wholly-owned subsidiaries of Bain.

7. Bain Capital Credit Asia, LLC is a limited liability company organized in the State of Delaware in 2014 that has been registered in Hong Kong under the Hong Kong Companies Ordinance. It is a wholly-owned subsidiary of Bain.

8. As Bain Capital, LP controls Bain, and will control any other Adviser, it may be deemed to control the Regulated Funds and the Affiliated Funds. Applicants state that Bain Capital, LP is a holding company and does not currently offer investment advisory services to any person and is not expected to do so in the future. Applicants state that as a result, Bain Capital, LP has not been included as an Applicant.

9. Applicants seek an order (''Order'') to permit a Regulated Fund [4] and one or more Regulated Funds and/or one or more Affiliated Funds [5] to participate in the same investment opportunities through a proposed co-investment program (the ''Co-Investment Program'') where such participation would otherwise be prohibited under section 57(a)(4) and rule 17d–1 by (a) co-investing with each other in securities issued by issuers in private placement transactions in which an Adviser negotiates terms in addition to price; [6] and (b) making additional investments in securities of such issuers, including through the exercise of warrants, conversion privileges, and other rights to purchase securities of the issuers (''Follow-On Investments''). ''Co-Investment Transaction'' means any transaction in which a Regulated Fund (or its Wholly-Owned Investment Sub, as defined below) participated together with one or more other Regulated Funds and/or one or more Affiliated Funds in reliance on the requested Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub, as defined below) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[7]

10. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.[8] Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Affiliated Fund or Regulated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Fund and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the requested Order, as though the parent Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Sub would have no purpose other than serving as a holding vehicle for the Regulated Fund's investments and, therefore, no conflicts of interest could arise between the Regulated Fund and the Wholly-Owned Investment Sub. The Regulated Fund's Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Sub's participation in a Co-Investment Transaction, and the Regulated Fund's Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Sub in the Regulated Fund's place. If the Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subs, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Sub.

11. When considering Potential Co-Investment Transactions for any Regulated Fund, the applicable Adviser will consider only the Objectives and Strategies, investment policies, investment positions, capital available for investment, and other pertinent factors applicable to that Regulated Fund. The Regulated Fund Advisers expect that any portfolio company that is an appropriate investment for a Regulated Fund should also be an appropriate investment for one or more other Regulated Funds and/or one or more Affiliated Funds, with certain exceptions based on available capital or diversification.[9]

12. Other than pro rata dispositions and Follow-On Investments as provided in conditions 7 and 8, and after making

[4] ''Regulated Fund'' means the Fund and any Future Regulated Fund. ''Future Regulated Fund'' means any closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser is an Adviser, and (c) that intends to participate in the Co-Investment Program.

The term ''Adviser'' means BCSFA and any Existing Bain Adviser and any future investment adviser that (i) controls, is controlled by or is under common control with Bain Capital, LP, and (ii) is registered as an investment adviser under the Advisers Act and (iii) is not a Regulated Fund or a subsidiary of a Regulated Fund.

[5] ''Future Affiliated Fund'' means any entity (a) whose investment adviser is an Adviser, (b) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, and (c) that intends to participate in the Co-Investment Program.

[6] The term ''private placement transactions'' means transactions in which the offer and sale of securities by the issuer are exempt from registration under the Securities Act.

[7] All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

[8] The term ''Wholly-Owned Investment Sub'' means an entity (i) that is wholly-owned by a Regulated Fund (with the Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of the Regulated Fund; (iii) with respect to which the Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the conditions of the Application; and (iv) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act.

[9] The Regulated Funds, however, will not be obligated to invest, or co-invest, when investment opportunities are referred to them.

the determinations required in conditions 1 and 2(a), the Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the directors of the Board eligible to vote under section 57(o) of the Act (''Eligible Directors''), and the ''required majority,'' as defined in section 57(o) of the Act (''Required Majority'') [10] will approve each Co-Investment Transaction prior to any investment by the participating Regulated Fund.

13. With respect to the pro rata dispositions and Follow-On Investments provided in conditions 7 and 8, a Regulated Fund may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) the proposed participation of each Regulated Fund and Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Fund has approved that Regulated Fund's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Regulated Fund's Eligible Directors. The Board of any Regulated Fund may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Directors.

14. No Non-Interested Director of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than through share ownership in one of the Regulated Funds.

Applicants' Legal Analysis:

1. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in joint transactions with the BDC or a company controlled by a BDC in contravention of rules as prescribed by the Commission. Under section 57(b)(2) of the Act, any person who is directly or indirectly controlling, controlled by, or under common control with a BDC is subject to section 57(a)(4). Applicants submit that each of the Regulated Funds and Affiliated Funds be deemed to be a person related to each Regulated Fund in a manner described by section 57(b) by virtue of being under common control. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that in the absence of the requested relief, the Regulated Funds would be, in some circumstances, limited in their ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of each Regulated Fund's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants.

4. Applicants also represent that if the Advisers, certain employees and principals of Bain and its affiliated advisers (collectively, the ''Principals''), any person controlling, controlled by, or under common control with the Advisers or the Principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting securities of a Regulated Fund (''Shares''), then the Holders will vote such Shares as required under Condition 14. Applicants believe that this condition will ensure that the Non-Interested Directors will act independently in evaluating the Co-Investment Program, because the ability of the Advisers or the Principals to influence the Non-Interested Directors by a suggestion, explicit or implied, that the Non-Interested Directors can be removed will be limited significantly. Applicants represent that the Non-Interested Directors will evaluate and approve any such independent party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Conditions:

Applicants agree that the Order will be subject to the following conditions:

1. Each time an Adviser considers a Potential Co-Investment Transaction for an Affiliated Fund or another Regulated Fund that falls within a Regulated Fund's then-current Objectives and Strategies, the Regulated Fund's Adviser will make an independent determination of the appropriateness of the investment for such Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. (a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on each participant's capital available for investment in the asset class being allocated, up to the amount proposed to be invested by each. The applicable Adviser will provide the Eligible Directors of each participating Regulated Fund with information concerning each participating party's available capital to assist the Eligible Directors with their review of the Regulated Fund's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1 and 2(a), the applicable Adviser will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and Affiliated Fund) to the Eligible Directors of each participating Regulated Fund for their consideration. A Regulated Fund will co-invest with

[10] In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to Section 57(o).

one or more other Regulated Funds and/or one or more Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) the terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its shareholders and do not involve overreaching in respect of the Regulated Fund or its shareholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(A) the interests of the shareholders of the Regulated Fund; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Funds or Affiliated Funds would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from or less advantageous than that of other Regulated Funds or Affiliated Funds; provided that, if any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition 2(c)(iii), if:

(A) the Eligible Directors will have the right to ratify the selection of such director or board observer, if any;

(B) the applicable Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any Affiliated Fund or any Regulated Fund or any affiliated person of any Affiliated Fund or any Regulated Fund receives in connection with the right of an Affiliated Fund or a Regulated Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Funds (who each may, in turn, share its portion with its affiliated persons) and the participating Regulated Funds in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit the Advisers, the Affiliated Funds or the other Regulated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by sections 17(e) or 57(k) of the Act, as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Adviser will present to the Board of each Regulated Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies that were not made available to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8,[11] a Regulated Fund will not invest in reliance on the Order in any issuer in which another Regulated Fund, Affiliated Fund, or any affiliated person of another Regulated Fund or Affiliated Fund is an existing investor.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Fund and Affiliated Fund. The grant to an Affiliated Fund or another Regulated Fund, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7. (a) If any Affiliated Fund or any Regulated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the disposition.

(b) Each Regulated Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Affiliated Funds and any other Regulated Fund.

(c) A Regulated Fund may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each Affiliated Fund and each Regulated Fund will bear its own expenses in connection with any such disposition.

8. (a) If any Affiliated Fund or any Regulated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including

[11] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of the opportunity is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Adviser to be invested by each Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by the participating Affiliated Funds in the same transaction, exceeds the amount of the opportunity; then the amount invested by each such party will be allocated among them pro rata based on each participant's capital available for investment in the asset class being allocated, up to the amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Non-Interested Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Non-Interested Directors may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Directors will consider at least annually the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f) of the Act.

11. No Non-Interested Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an ''affiliated person'' (as defined in the Act), of an Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective investment advisory agreements with Affiliated Funds and the Regulated Funds, be shared by the Regulated Funds and the Affiliated Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee [12] (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e) or 57(k) of the Act, as applicable) received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by such Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Funds, the Advisers, the other Regulated Funds or any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of an Adviser, investment advisory fees paid in accordance with the agreement between the Adviser and the Regulated Fund or Affiliated Fund.

14. If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–18467 Filed 8–3–16; 8:45 am]

BILLING CODE 8011–01–P

[12] Applicants are not requesting and the staff is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78441; File No. 4–698]

Joint Industry Plan; Notice of Designation of Longer Period for Commission Action on the Proposed National Market System Plan Governing the Consolidated Audit Trail by BATS Exchange, Inc., BATS–Y Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, the Investors' Exchange, LLC, ISE Gemini, LLC, ISE Mercury, LLC, Miami International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

July 29, 2016.

On February 27, 2015, BATS Exchange, Inc., BATS–Y Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc.,

Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, ISE Gemini, LLC, Miami International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (collectively, ''SROs'' or ''Participants''), filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') a National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'').[1] The proposed Plan was published for comment in the **Federal Register** on May 17, 2016.[2] The Commission has received 22 comments on the proposed Plan.[3]

Rule 608[4] under Section 11A of the Act[5] provides that within 120 days of the date of publication of notice of filing of an NMS plan or an amendment to an effective NMS plan the Commission shall approve such plan or amendment, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act. The 120th day after publication of the proposed Plan is September 14, 2016. Rule 608, however, provides that the Commission may extend the period within which it must approve an NMS Plan or amendment to an effective NMS Plan up to 180 days, if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the sponsors consent.

The Commission hereby extends the time period for Commission action on the proposed Plan and designates November 10, 2016, which is the last business day before the 180th day after publication of the proposed Plan,[6] as the time period for Commission action. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed Plan to afford the Commission with additional time to consider the comments received on the proposed Plan, which are broad in scope.

Accordingly, pursuant to Section 11A of the Act[7] and Rule 608 thereunder,[8] the Commission designates November 10, 2016 as the date for Commission action on the proposed Plan.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–18477 Filed 8–3–16; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015.

[2] *See* Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614.

[3] *See* Letters to Brent J. Fields, Secretary, Commission, from Kathleen Weiss Hanley, Bolton-Perella Chair in Finance, Lehigh University, et al., dated July 12, 2016; Courtney Doyle McGuinn, FIX Operations Director, FIX Trading Community, dated July 14, 2016; Kelvin To, Founder and President, Data Boiler Technologies, LLC, dated July 15, 2016; Richard Foster, Senior Vice President and Senior Counsel for Regulatory and Legal Affairs, Financial Services Roundtable, dated July 15, 2016; David T. Bellaire, Executive Vice President & General Counsel, Financial Services Institute, dated, July 18, 2016; Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, July 18, 2016; David W. Blass, General Counsel, Investment Company Institute, dated July 18, 2016; Larry E. Thompson, Vice Chairman and General Counsel, Depository Trust & Clearing Corporation, dated July 18, 2016; Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, dated July 18, 2016; Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, Financial Services Operations, Securities Industry and Financial Markets Association, dated July 18, 2016; Anonymous, received July 18, 2016; Mary Lou Von Kaenel, Managing Director, Financial Information Forum, dated July 18, 2016; Marc R. Bryant, Senior Vice President, Deputy General Counsel, Fidelity Investments, dated July 18, 2016; Mark Husler, CEO, UniVista, and Jonathan Jachym, Head of North America Regulatory Strategy & Government Relations, London Stock Exchange Group, dated July 18, 2016; Gary Stone, Chief Strategy Officer for Trading Solutions and Global Regulatory and Policy Group, Bloomberg, L.P., dated July 18, 2016; Bonnie K. Wachtel, Wachtel Co Inc., dated July 18, 2016; Dennis M. Kelleher, President & CEO, Stephen W. Hall, Legal Director & Securities Specialist, Lev Bagramian, Senior Securities Policy Advisor, Better Markets, dated July 18, 2016; John A. McCarthy, General Counsel, KCG Holdings, Inc., dated July 20, 2016; Industry Members of the Development Advisory Group (including Financial Information Forum, Securities Industry and Financial Markets Association and Securities Traders Association), dated July 20, 2016; Joanne Moffic-Silver, EVP, General Counsel & Corporate Secretary, Chicago Board Options Exchange, Incorporated, dated July 21, 2016; Elizabeth K. King, NYSE Group, Inc., dated July 21, 2016; John Russell, Chairman of the Board, and James Toes, President & CEO, Securities Traders Association, dated July 25, 2016.

[4] 17 CFR 242.608.

[5] 15 U.S.C. 78k–1.

[6] The Commission notes that Sunday, November 13, 2016 is the 180th day after publication of the proposed Plan.

[7] 15 U.S.C. 78k–1.

[8] 17 CFR 242.608.

[9] 17 CFR 200.30–3(a)(42).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78447; File No. SR–IEX–2016–03]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct Typographical Errors in Certain Referenced Time Frames

July 29, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 27, 2016, the Investors Exchange LLC (''IEX'' 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

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''),[4] and Rule 19b–4 thereunder,[5] Investors Exchange LLC (''IEX'' or ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to make a nonsubstantive change to correct typographical errors in the referenced time frames for the Post-Market Hours and the Post-Market Session trading in Rule 1.160(aa), the referenced time frames for System Hours in Rule 1.160(oo), and the referenced time frames for the Regular Market Session, Pre-Market Session and Post-Market Session in Rule 16.105(a)(7) and (b)(7). The Exchange has designated this rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act[6] and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) thereunder.[7]

The text of the proposed rule change is available at the Exchange's Web site at *www.iextrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement [sic] may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule filing is to correct typographical errors in the referenced time frames for the Post-Market Hours and the Post-Market Session trading in Rule 1.160(aa), the referenced time frames for System Hours in Rule 1.160(oo), as well as the referenced time frames for the Regular Market Session, Pre-Market Session and Post-Market Session in Rule 16.105(a)(7) and (b)(7).

Specifically, Rule 1.160(aa) incorrectly states that the term ''Post-Market Hours'' or ''Post Market Session'' shall mean the time between 4:30 p.m. and 5:30 p.m. Eastern Time. The rule should instead state that the term ''Post-Market Hours'' or ''Post Market Session'' shall mean the time between 4:00 p.m. and 5:00 p.m. Eastern Time. Similarly, Rule 1.160(oo) incorrectly states that the term ''System Hours'' ends at 5:30 p.m. Eastern Time, rather than 5:00 p.m. Eastern Time.

In addition, Rule 16.105(a)(7) and (b)(7) incorrectly state that Regular Market Session trading occurs until 4:15 p.m. rather than 4:00 p.m. Those rule provisions also incorrectly state that the Pre-Market Session begins at 4:00 a.m. rather than 8:00 a.m. and that the Post-Market Session ends at 8:00 p.m. rather than 5:00 p.m.

The proposed rule change would correct the time frame references, and thus clarify exchange rules and alleviate any confusion among market participants.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with Section 6(b)[8] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes it is appropriate to make the specified corrections so that the correct times are referenced in its rules and alleviate any confusion among market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition because IEX is merely correcting its rules to correct inadvertent errors.

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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(6)[11] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[12] The Exchange notes that its proposal makes a non-substantive change and has asked the Commission to waive the 30-day operative delay, making this proposal operative upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the Exchange is merely correcting referenced time frames, which may alleviate any potential confusion among market participants. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[13]

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 under Section 19(b)(2)(B)[14] 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.* Please include File Number SR–IEX–2016–03 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–IEX–2016–03. 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

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2)(B).

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–IEX–2016–03 and should be submitted on or before August 25, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–18474 Filed 8–3–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78446; File No. SR–CHX–2016–12]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide Web-Based Delivery of the Continuing Education Program

July 29, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on July 20, 2016, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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

CHX proposes to amend the Rules of the Exchange (''CHX Rules'') to provide for web-based delivery of the continuing education (''CE'') program (''CE Online System'').[3]

CHX has designated this proposed rule change as non-controversial pursuant to section 19(b)(3)(A)[4] of the Act and Rule 19b–4(f)(6)[5] thereunder and has provided the Commission with the notice required by Rule 19b–4(f)(6)(iii).[6]

The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes 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 CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CE requirement under current Article 6, Rule 11 consists of a Regulatory Element[7] and a Firm Element.[8] The Regulatory Element applies to all registered persons and consists of periodic computer-based training on regulatory, compliance, ethical, and supervisory subjects and sales practice standards, which must be completed with prescribed timeframes.[9] Current Article 6, Rule 11(a)(3) provides that the Exchange offers the following Regulatory Elements for Exchange registered persons: The S201 Supervisor Program for registered principals and supervisors; The S501 Series 56 Proprietary Trader Continuing Education Program for Series 56 registered persons;[10] and the S101 General Program for Series 7 and all other registered persons.

Given that test center delivery is no longer available for individuals other than those individuals that require accommodations due to a disability,[11] the Exchange proposes to adopt Article 6, Rule 11(a)(4), which states that the continuing education Regulatory Element will be administered through Web-based delivery or such other technological manner and format as specified by the Exchange.[12] Should the Exchange determine to administer the Regulatory Element through a delivery mechanism other than as described under this proposed rule change, the Exchange would notify the Commission and would need to file a further rule change with the Commission.

Before commencing a Web-based session, each candidate will be required to agree to the Rules of Conduct for Web-based delivery. Among other things, the Rules of Conduct will require each candidate to attest that he or she is in fact the person who is taking the Web-based session. The Rules of Conduct will also require that each candidate agree that the Regulatory Element content is intellectual property and that the content cannot be copied or redistributed by any means. If the Exchange discovers that a candidate has violated the Rules of Conduct, the candidate will forfeit the results of the Web-based session and may be subject to disciplinary action by the Exchange. Violation of the Rules of Conduct will

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change is based on a recent FINRA filing adopting web-based delivery of the CE Regulatory Element program. *See* Securities Exchange Act Release No. 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (Order Approving a Proposed Rule Change to Provide a Web-based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements) (SR–FINRA–2015–015).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] *See* CHX Article 6, Rule 11(a).

[8] *See* CHX Article 6, Rule 11(b).

[9] See to CHX Article 6, Rule 11(a)

[10] The Exchange intends on filing a proposed rule change to, among other things, replace the Proprietary Trader registration category and the corresponding Series 56 exam and the S501 Proprietary Trader Continuing Education Program for Series 56 registered persons with the Securities Trader registration category and the corresponding Series 57 exam and require such Series 57 registered persons to take the S101 General Program to fulfill the Regulatory Element requirement, as the Series 56 was replaced with the Series 57 exam by FINRA, effective January 4, 2016. *See* Securities Exchange Act Release No. 75783 (August 28, 2015), 80 FR 53369 (September 3, 2015) (Order Approving a Proposed Rule Change To Establish the Securities Trader and Securities Trader Principal Registration Categories) (SR–FINRA–2015–017).

[11] As of July 1, 2016, FINRA required all participants to complete their Regulatory Element session using the CE Online System; provided that certain participants who, pursuant to the Americans with Disabilities Act, that [sic] need accommodations in completing their session due to a disability may apply for an accommodation and complete their session at a test center. *See* Securities Exchange Act Release No. 78281 (July 11, 2016), 81 FR 46133 (July 15, 2016) (SR–FINRA–2016–025); *see also* Americans with Disabilities Act of 1990, Public Law 101–336, 104 Stat. 328 (1990).

[12] The Exchange intends on filing a proposed rule change to amend its fee schedule to reduce the cost of the Regulatory Element from $100 to $55 to be consistent with Section 4(f) of the Schedule A to the FINRA By-Laws.

be considered conduct inconsistent with just and equitable principles of trade, in violation of Article 9, Rule 2. The Exchange is not proposing any changes to the Firm Element requirements under Article 6, Rule 11(b).

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act [13] in general, and furthers the objectives of section 6(b)(5) of the Act [14] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers and section 6(c)(3) [15] of the Act, which authorizes the Exchange to, among other things, prescribe standards of financial responsibility or operational capability and standards of training, experience and competence for its members and persons associated with members.

In particular, the Exchange believes that the proposed rule change will improve Participants' compliance efforts and will allow registered persons to spend a greater amount of time on the review of CE materials and potentially achieve better learning outcomes, which will in turn enhance investor protection. Further, while the proposed rule change will provide more flexibility to members and registered persons, it will maintain the integrity of the Regulatory Element program and the CE program in general.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the harmonization of the Regulatory Element delivery requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system.

[13] 15 U.S.C. 78(f)(b).

[14] 15 U.S.C. 78(f)(b)(5).

[15] 15 U.S.C. 78(f)(b)[sic](3).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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) [16] of the Act and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [18] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [19] 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 upon filing. According to the Exchange, test-center delivery of the CE Regulatory Element is no longer available for all individuals other than those who qualify for special accommodations.[20] The Exchange wishes to amend its rules to reflect this change as soon as practicable. Based on the foregoing, 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.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] *See supra* note 11.

[21] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CHX–2016–12 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 No. SR–CHX–2016–12. 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 CHX. 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 No. SR–CHX–2016–

12 and should be submitted on or before August 25, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–18473 Filed 8–3–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78448; File No. SR–ICC–2016–010]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change To Revise the ICC Risk Management Model Description Document and the ICC Risk Management Framework

July 29, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on July 15, 2016, ICE Clear Credit LLC (''ICC'') 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 ICC. 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 principal purpose of the proposed rule change is to revise the ICC Risk Management Framework to incorporate certain risk model enhancements. ICC also proposes minor clarifying edits to the ICC Risk Management Model Description document and the ICC Risk Management Framework. These revisions do not require any changes to the ICC Clearing Rules (''Rules'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ICC proposes revising its risk management framework to incorporate risk model enhancements related to the single name credit default swap (''CDS'') liquidity charge methodology. ICC believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. The proposed revisions are described in detail as follows.

ICC proposes a revised approach to computing single name CDS liquidity charges. Specifically, ICC proposes to introduce minimum instrument liquidity requirements independent of instrument maturities. ICC's current approach features instrument liquidity requirements that decay with time to maturity for fixed credit spread levels. The proposed approach introduces minimum liquidity requirements for individual instruments, independent of time to maturity for the considered instruments, and thus establishes minimum liquidity charges that do not decay over time as maturity is approached. The revised calculation for single name CDS liquidity charges at the instrument level incorporates a price-based bid-offer width floor component to provide stability of requirements, as well as a dynamic spread-based BOW component to reflect the additional risk associated with distressed market conditions. The values of such price-based BOW and spread-based BOW are fixed factors, which are subject to at least monthly reviews and updates by ICC Risk Management Department with consultation with the Risk Committee.

ICC also proposes enhancements to the liquidity charge calculation at the risk factor level. The current risk factor level liquidity requirements are based on forward CDS spread levels. Under the revised calculation, liquidity charges at the risk factor level are computed by first calculating the liquidity requirements for each individual instrument position in the portfolio, and then summing all instrument liquidity requirements for positions with the same directionality, *i.e.*, bought or sold protection. The risk factor liquidity requirement is the greatest liquidity requirement associated with either the sum of all bought protection position liquidity requirements, or the sum of all sold protection position liquidity requirements. There are no changes to the liquidity charge calculation at the portfolio level.

ICC expects these enhancements will ensure more stable liquidity requirements for instruments across the curve. Further, the enhancements simplify ICC's liquidity charge methodology, which promotes ease of understanding. As stated above, the current risk factor level liquidity requirements are based on forward CDS spread levels and are, in general, more difficult to replicate due to the inherited need for knowledge of spread levels across the entire term structure (''curve''). Additionally, to facilitate replication of the enhanced liquidity charge calculations, ICC will provide end-of-day data for instruments in which clients have open positions, allowing for additional transparency and easier replication for clients who wish to estimate liquidity charges for hypothetical and current positions.

ICC also proposes updating liquidity scaling factors to reflect the methodology enhancements. There is no price based component under the current methodology. To reflect the introduction of a price based component, the liquidity scaling factors have been decomposed and adjusted in order to maintain the same overall composition with both price and spread based components.

ICC also proposes minor clarifying edits to the ICC Risk Management Framework and the ICC Risk Management Model Description document. ICC added language to the Overview section of the Risk Management Framework to identify which ICC documents provide additional details regarding ICC's risk management approach. ICC added language to the Governance and Organization section of the Risk Management Framework to note that the reporting line of ICC's Chief Risk Officer to the Chairperson of the ICC Risk Committee, who is also a non-executive manager on the Board, allows the Chief Risk Officer to bring any issues or concerns directly to the Board without intermediation by other ICC personnel. ICC also made edits to the Governance and Organization section of the Risk Management Framework to revise the list of documents reviewed by the Risk Committee on at least an annual basis to include the ICC End-of-Day Price Discovery Policies and Procedures and the ICC Operational Risk Management

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Framework.[3] Finally, ICC added minor clarifying details to the technical calculation descriptions set forth in the ICC Risk Management Model Description document, specifically in the Recovery Rate Sensitivity Risk Analysis, Interest Rate Sensitivity Risk Analysis, Spread Risk Analysis, and Guaranty Fund Size Estimation sections.

Section 17A(b)(3)(F) of the Act[4] requires, among other things, that the rules of a clearing agency be 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 comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F),[5] because ICC believes that the proposed rule changes will promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, as the proposed changes provide clarity and enhance risk policies, resulting in enhanced stability and conservative bias of requirements, and thereby facilitate ICC's ability to promptly and accurately clear and settle its cleared CDS contracts. In addition, the proposed revisions are consistent with the relevant requirements of Rule 17Ad–22.[6] In particular, the risk model enhancements proposed in the Risk Management Model Description document will enhance the financial resources available to the clearing house by promoting stability and conservative bias of requirements, and are therefore reasonably designed to meet the margin and financial resource requirements of Rule 17Ad–22(b)(2–3).[7] The risk model enhancements will also result in a more transparent and simplified liquidity charge approach, and are therefore consistent with the requirements of Rule 17Ad–22(d)(8).[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed rule changes would have any impact, or impose any burden, on competition. The risk model enhancements and clarifying changes apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule changes impose any burden on competition that is inappropriate 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 relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2016–010 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–ICC–2016–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F 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 filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/clear-credit/regulation.*

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–ICC–2016–010 and should be submitted on or before August 25, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–18475 Filed 8–3–16; 8:45 am]

BILLING CODE 8011–01–P

[3] Staff has confirmed this statement, corrected to conform with the proposed revised Risk Management Framework filed with the Commission, with ICC via email on July 26, 2016.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] *Id.*

[6] 17 CFR 240.17Ad–22.

[7] 17 CFR 240.17Ad–22(b)(2–3).

[8] 17 CFR 240.17Ad–22(d)(8).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78444; File No. SR–BOX–2016–37]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Detail How Complex Orders Will Execute Through the Facilitation Auction Mechanism

July 29, 2016.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 26, 2016, BOX Options Exchange LLC (''BOX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to detail how Complex Orders will execute through the Facilitation Auction mechanism. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to detail how the Facilitation Auction mechanism will treat Complex Orders on the Exchange.[4] Pursuant to BOX Rule 7270, the Exchange has two block-sized auction mechanisms, the Facilitation Auction Mechanism and the Solicitation Auction Mechanism whereby Order Flow Providers (OFPs) can provide price improvement opportunities for a transaction where the OFP seeks to facilitate an order it represents as agent, and/or a transaction where the OFP solicited interest to execute against an order it represents as agent. Transactions executed through the Facilitation or Solicitation auction mechanisms are comprised of the order the OFP represents as agent (the ''Agency Order'') and the contra order for the full size of the Agency Order (either the ''Facilitation'' or ''Solicitation'' Order).[5] The contra order may represent interest for the Participant's own account or interest the Participant has solicited from one or more other parties, or a combination of both.

This proposal only addresses how the Facilitation Auction mechanism will treat Complex Orders on the Exchange. Similar to the ISE's Block-Trade rules,[6] Complex Orders [7] executed through the Facilitation auction on BOX function in substantially the same manner as single-leg orders executed through this mechanism. To detail how this mechanism treats Complex Orders, the Exchange proposes to insert IM–7270–7. IM–7270–7 will state that Participants may use the Facilitation Mechanism according to paragraph (a) of Rule 7270 to execute block-size Complex Orders at a net price. The OFP must be willing to execute the entire size of the Agency Order through the submission of a contra order; and block-size Complex Orders executed through the Facilitation Mechanism will continue to be limited to Complex Orders of fifty (50) contracts per leg or more.[8]

Upon the entry of a block-sized order into the Facilitation mechanism, a broadcast message will be sent to Options Participants, giving them one second to enter responses with the prices and sizes at which they would be willing to participate opposite the Agency Order (''Responses'').[9] Responses to a Complex Order within the Facilitation Auction mechanism may be submitted for any size up to the size of the entire Complex Order, however, the Responses must be for all Legs of the unique Complex Order. Responses must be priced at the price of the Agency Order or at a better price and must not exceed the size of the Agency Order.[10] At the end of the one second period for the entry of Responses, the block-sized Facilitation Complex Order will be automatically executed with the Agency Order.[11] However, as is also the case for single-leg orders executed through the Facilitation mechanism, if the Facilitation Price is outside the NBBO at the end of the auction, the auction will be canceled.

Identical to the process for single-leg orders, Participants may enter Responses for Complex Orders in these auctions at net prices, and bids and offers for Complex Orders will participate in the execution of an order being executed as provided in paragraphs (a) and (b) of Rule 7270. However, the execution rules for Complex Orders detailed in BOX Rule 7240(b)(2) and (3) will continue to apply.[12] For example, if there is sufficient interest on the BOX Book for the individual legs to be executed at a permissible ratio, this ''Implied Order'' [13] will have priority here and will execute against the Agency Order, provided that each of its component Legs is equal to or better than its respective NBBO.

If there is no execution against the Implied Order, the Agency Order can execute against the Complex Order interest. The priority rules for the Facilitation Auction,[14] including the surrender quantity designation, will continue to apply. The following example illustrates the execution priority of interest on the BOX Book for a Complex Order within the Facilitation Auction. An OFP submits a Complex Order through the Facilitation Order to sell 500 A+B+C at $3.00. During the one second auction, BOX receives the following bids (offers) in time priority:

(1) Market Maker Complex Order Response to buy 500 of A+B+C at $3.00

(2) Public Customer Complex Order Response to buy 40 A+B+C at $3.00

Interest on the BOX Book (Implied Order):

- Market Maker Option A—Order to buy 500 at $1.00
- Market Maker Option B—Order to buy 500 at $1.00
- Broker Dealer Option C—Order to buy 500 at $1.00

[4] Complex Orders are not currently traded through the Facilitation Auction mechanism. Prior to implementation, BOX will issue an informational circular to inform Participants of the implementation date for Complex Orders to trade through the Facilitation Auction.

[5] The Exchange notes that it does not trade stock option orders.

[6] *See* International Securities Exchange Rule 716 and Supplementary Material .08 to Rule 716.

[7] Under Rule 7240(a)(5) a ''Complex Order'' is defined as ''any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.) A Complex Order that does not meet this definition will be automatically rejected.

[8] Complex Orders comprised of less than fifty (50) contracts on each leg will automatically be rejected.

[9] The Exchange believes that 1 second is an adequate duration for the Facilitation Auction. Specifically, the Exchange believes customers are capable of responding within this duration and has not received any complaints regarding the duration of the Facilitation Auction broadcast since the mechanism was adopted in 2011.

[10] A Response that doesn't meet the requirements will be automatically rejected

[11] Assuming there are no Responses to the auction or interest on the BOX Book that could execute against the Agency Order.

[12] The Exchange notes that this includes the Complex Order Filter outlined in BOX Rule 7240(b)(3)(iii).

[13] An ''Implied Order' is a Complex Order that is derived from the orders on the BOX Book for each component leg of a strategy.

[14] *See* BOX Rule 7270(a)(3).

Since it is possible to execute the entire Complex Order against interest on the BOX Book (Implied Order) at the same price, the sell order will execute against the bids on A, B and C at $1.00 for 100 contracts each. And since this execution will exhaust the sell order, all the Responses, including the Public Customer's Response and the OFP's Facilitation Order will receive no trade allocation.

The pricing provision in BOX Rule 7270(a)(3)(i) will apply to Public Customer Complex Orders and Public Customer Responses. If there is not sufficient size to execute the entire Agency Order at a better price and there are Public Customer Complex Order bids (offers) and Public Customer Responses on BOX at the time the Agency Order is executed that are priced higher (lower) than the facilitation price, these will maintain their price priority but execute at the Facilitation Price.[15] Non-Public Customer and Market Maker bids (offers) and Non-Public Customer and Market Maker Responses on BOX at the time the Agency Order is executed that are priced higher (lower) than the facilitation price will be executed against the Agency Order at their stated price, providing the Agency Order [sic] execution at a better price for the number of contracts associated with such higher bids (lower offers) and Responses. When an Implied Order executes against an Agency Order, the Implied Order will be executed at its stated price.[16]

The following example illustrates the allocation priority of BOX Rule 7270(a)(3)(ii). An OFP submits a Complex Order through the Facilitation auction to sell 500 A+B+C at $3.00. During the one second auction, BOX receives the following bids (offers) in time priority:

(1) Public Customer #1 Complex Order Response to buy 100 A+B+C at $3.00
(2) Public Customer #2 Complex Order Response to buy 100 A+B+C at $3.02
(3) Market Maker #1 Complex Order Response to buy 105 of A+B+C at $3.06
(4) Market Maker #2 Complex Order Response to buy 95 of A+B+C at $3.04

Interest on the BOX Book (Implied Order):

- Market Maker Option A—Order to buy 125 at $1.00
- Market Maker Option B—Order to buy 125 at $1.00
- Public Customer Option C—Order to buy 125 at $1.00

The Facilitated Complex Order will be allocated in the following order:

(1) 105 contracts at $3.06 to Market Maker #1 (price priority)
(2) 95 contracts at $3.04 to Market Maker #2 (price priority)
(3) 100 contracts at $3.00 to Public Customer #2 (the Public Customer retains its price priority, but executes at the facilitation price because there was not sufficient interest to execute the entire Agency Order at a Better Price)
(4) 125 contracts at $3.00 to BOX Book Interest (Implied Order)[17]
(5) 75 contracts at $3.00 to Public Customer #1 (remaining interest is allocated to the Public Customer at the facilitation price)

The following example illustrates allocation priority of interest on the BOX Book over an OFP's allocation priority.[18] An OFP submits a Complex Order through the Facilitation auction to sell 500 A+B+C at $3.00. During the one second auction, BOX receives the following bids (offers) in time priority:

(1) Market Maker #1 Complex Order Response to buy 95 of A+B+C at $3.02
(2) Market Maker #2 Complex Order Response to buy 150 of A+B+C at $3.00

Interest on the BOX Book (Implied Order):

- Market Maker Option A—Order to buy 300 at $1.00
- Market Maker Option B—Order to buy 300 at $1.00
- Public Customer Option C—Order to buy 300 at $1.00

The Facilitated Complex Order will be allocated in the following order:

(1) 95 contracts at $3.02 to Market Maker #1 (price priority)
(2) 300 contracts at $3.00 to BOX Book Interest (Implied Order)
(3) 105 contracts at $3.00 to OFP's Facilitation Order (the OFP receives the remaining contracts as there is insufficient size to satisfy the full 40% allocation)

The final example below illustrates allocation priority when the OFP has designated a surrender quantity under BOX Rule 7270(a)(3)(iii). An OFP submits a Complex Order through the Facilitation auction to sell 300 A+B+C at $3.00 with a surrender quantity of 220. During the one second auction, BOX receives the following bids (offers) in time priority:

(1) Market Maker #1 Complex Order Response to buy 120 of A+B+C at $3.00

Interest on the BOX Book (Implied Order):

- Market Maker Option A—Order to buy 100 at $1.00
- Market Maker Option B—Order to buy 100 at $1.00
- Public Customer Option C—Order to buy 100 at $1.00

The Facilitated Complex Order will be allocated in the following order:

(1) 100 contracts at $3.00 to BOX Book Interest (Implied Order Priority)
(2) 80 contracts at $3.00 to OFP's Facilitation Order with a Surrender Quantity
(3) 120 contracts at $3.00 to Market Maker #1

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,[19] in general, and section 6(b)(5) of the Act,[20] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposed rule change to amend BOX Rule 7270 to provide for the execution of Complex Orders through the Facilitation Auction mechanism on BOX. [sic] This proposed rule change is designed to help BOX remain competitive among options exchanges and provide market participants additional opportunities to execute block-size crossing transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed change provides for the execution of Complex Orders through the Facilitation auction mechanism. As such, the Exchange does not believe that the proposed rule change will impose any burden on competition not

[15] If there is sufficient interest to execute the Agency Order at a better price, Public Customer Complex Order bids (offers) will receive their stated price.

[16] *See* IM–7270–7. The Exchange notes that the provisions of BOX Rule 7270(a)(3)(i) do not apply to Implied Orders created from BOX Book interest.

[17] The Exchange notes that once an Implied Order is created from BOX Book interest, the Participant types composing the Implied Order are no longer relevant, and have no impact on execution and allocation priority.

[18] Under BOX Rule 7270(a)(3)(ii) the OFP is entitled to at least 40% of the original size of the Facilitation Order after better-priced bids (offers) and Responses on BOX, as well as Public Customer bids (offers) and Responses at the facilitation price.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposal will impose any burden on intermarket competition, as the proposed rule will allow BOX to compete with other options exchanges in the industry. Specifically, ISE has a similar mechanism in place.[21] Additionally, the Exchange does not believe the proposal will impose any burden on intramarket competition, as the Facilitation Auction mechanism is available to all Participants and all OFPs may submit orders through the mechanism.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

(a) This proposed rule change is filed pursuant to paragraph (A) of section 19(b)(3) of the Exchange Act [22] and Rule 19b–4(f)(6) thereunder.[23]

(b) Because this proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2016–37 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–BOX–2016–37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–37 and should be submitted on or before August 25, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–18471 Filed 8–3–16; 8:45 am]

BILLING CODE 8011–01–P

[21] *See supra* note 5.

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) under the Exchange Act 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. BOX has satisfied this requirement.

[24] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 9661]

60-Day Notice of Proposed Information Collection: Statement of Claim Related to Pensions Provided by the Kingdom of Belgium

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to October 3, 2016.

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

- *Web:* Persons with access to the Internet may comment on this notice by going to *www.Regulations.gov*. You can search for the document by entering ''Docket Number: DOS–2016–0055'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: kottmyeram@state.gov*.
- *Regular Mail:* Send written comments to: Office of the Assistant Legal Adviser for Management, ATTN: Belgium Claim Form, Room 4325, 2201 C Street NW., Washington, DC 20520.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Alice Kottmyer, Office of the Legal Adviser for Management, who may be reached on 202–647–2318 or *kottmyeram@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Statement of Claim Related to Pensions Provided by the Kingdom of Belgium.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Office of the Legal Adviser.
- *Form Number:* DS–7792.
- *Respondents:* Individuals who earned a pension from the Government of Belgium for work in one of its overseas territories.

- *Estimated Number of Respondents:* 20.
- *Estimated Number of Responses:* 20.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 10 hours.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to obtain a benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: This collection will implement the 1982 *Agreement Between the Government of the United States of America and the Kingdom of Belgium on Social Security,* and related agreements. This information collection will facilitate compensation for eligible claimants in situations where the pension provided by the Government of Belgium needs to be supplemented.

Methodology: The information will be collected on a form, the DS–7792, Statement of Claim, which can be submitted by mail, email, or fax.

Dated: July 29, 2016.

Lisa J. Grosh,

Assistant Legal Adviser, International Claims and Investment Disputes.

[FR Doc. 2016–18529 Filed 8–3–16; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice: 9649]

U.S. Nationals Entitled to Pension From the Government of Belgium

AGENCY: Department of State.

ACTION: Notice of request for contact information.

SUMMARY: This notice concerns all U.S. nationals who are entitled to pension payments from the Government of Belgium due to their work in the former Belgian overseas territories or as survivors of those who worked in such territories.

DATES: All submissions must be postmarked by October 3, 2016 in order to receive consideration.

ADDRESSES: Submissions may be emailed to *BelgiumClaims@state.gov* or mailed to: U.S. Department of State, Office of the Legal Adviser, Suite 203, South Building, 2430 E. Street NW., Washington, DC 20037–2851.

FOR FURTHER INFORMATION CONTACT: Office of International Claims and Investment Disputes, at (202) 776–8360.

SUPPLEMENTARY INFORMATION: This notice concerns all U.S. nationals who are entitled to pension payments from the Government of Belgium due to their work in the former Belgian overseas territories or as survivors of those who worked in such territories. These individuals, along with the estates of such individuals who died between January 1, 2012 and September 15, 2015, may be entitled to additional amounts in connection with their pension payments.

In order to evaluate whether compensation can be granted, the Department of State requests all such individuals, or their estate representatives, to contact the Department of State in writing and provide their contact information.

Individuals who have forwarded information regarding their pensions to the Department of State at the request of the Government of Belgium need not do so again.

The information is sought pursuant to the State Department Basic Authorities Act, 22 U.S.C. 2651a, 2656 and 2668a, as well as the 1982 Agreement between the United States of America and the Kingdom of Belgium on Social Security and related agreements. The information solicited will be used to determine whether persons are entitled to compensation under the Belgium Claims program. Certain information may be made available to other government agencies that might be involved in the processing of claims, principally the Department of the Treasury. The information may also be released to other government agencies having statutory or other lawful authority to maintain such information. More information on the Routine Uses for the system can be found in the System of Records Notice for Records of the Office of the Assistant Legal Adviser for International Claims and Investment Disputes (STATE–54). Providing this information is voluntary, but if you do not provide this information, we may not be able to determine whether you are entitled to compensation under this program.

Dated: July 29, 2016.

Lisa J. Grosh,

Assistant Legal Adviser International Claims and Investment Disputes.

[FR Doc. 2016–18536 Filed 8–3–16; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

2016 Meetings of the Equip 2020 Plenary and Working Groups; Supplemental Notice

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of meeting.

SUMMARY: Due to scheduling conflicts, the FAA is rescheduling meeting dates that were published in the notice May 6, 2016, announcing the 2016 meetings of the Equip 2020 Plenary and Working Groups.

DATES: Meeting 2 is rescheduled for Thursday, September 29, at 8:30 a.m.; and meeting 3 is rescheduled for Tuesday, December 6, at 8:30 a.m.

ADDRESSES: Meetings 2 and 3 will be held at Helicopter Association International, 1920 Ballenger Ave., Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Elisabeth Auld, Program Support—FAA AVS Safety Technical Support Services Flight Technologies and Procedures Division; Email: *Elisabeth.ctr.auld@faa.gov,* Phone: 202–267–4976. More information on ADS–B Out can be found at *https://www.faa.gov/nextgen/equipadsb/.*

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) Meeting attendance is by invitation only, and is generally limited to those that have participated in previous meetings or are a proxy from their organization.

(b) All meetings start at 8:30 a.m. and conclude at approximately 3:30 p.m. Doors open 30 minutes prior to the beginning of each meeting

(c) Equip 2020 meetings generally start with 2 hours of Plenary briefings/discussion, 2–3 hours of working group meetings and 1–2 hours of Plenary for working group out briefs. Working groups are currently: Air Carrier Equipage, General Aviation Equipage

and Engagement, Benefits and ADS–B In and Installation and Approvals.

(d) Contact Elisabeth Auld (*elisabeth.ctr.auld@faa.gov*) to request an invitation. There are no plans for telecon/webex access to these meetings.

(e) The meetings will not be formally recorded. However, minutes are posted approximately 2–3 weeks after the meeting on the Equip 2020 SharePoint site *https://avssp.faa.gov/avs/afs400/EQUIP2020/SitePages/Equip2020.aspx.*

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9665, 3 CFR, 1959–1963 Comp., p.389.

Issued in Washington, DC, on July 20, 2016.

Mark Steinbicker,

Assistant Manager, Flight Technologies and Procedures Division.

[FR Doc. 2016–18525 Filed 8–3–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0323]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 21 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs for up to 2 years in interstate commerce.

DATES: Comments must be received on or before September 6, 2016.

ADDRESSES: You may submit comments to the Federal Docket Management System (FDMS) Docket No. FMCSA–2015–0323 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* 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:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov* as described in the system records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, or via email at *fmcsamedical@dot.gov*, or by letter to FMCSA, Room W64–113, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for up to a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statutes allow the Agency to renew exemptions at the end of the 2-year period. The 21 individuals listed in this notice have requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person:

> Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section *H. Epilepsy: § 391.41(b)(8)*, paragraphs 3, 4, and 5.]

The advisory criteria states that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.*, drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure

[1] See *http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391_171.a* and *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

As a result of medical examiners misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner based on the physical qualification standards and medical best practices.

II. Qualifications of Applicants

Jason J. Amoriello

Mr. Amoriello is a 42 year-old driver in Wisconsin. He has a history of a seizure disorder and has remained seizure free since 1984. He takes anti-seizure medication with the dosage and frequency remaining the same since 2012. His physician states that he is supportive of Mr. Amoriello receiving an exemption.

Mark Douglas Anderson

Mr. Anderson is a 52 year-old class B CDL holder in North Carolina. He has a history of a seizure disorder and has remained seizure free since 1991. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Anderson receiving an exemption.

Jeffrey Neal Bienstock

Mr. Bienstock is a 48 year-old class A CDL holder in Arizona. He has a history of a seizure disorder and has remained seizure-free since 2003. He discontinued anti-seizure medication in 2008. His physician states that he is supportive of Mr. Bienstock receiving an exemption.

Jeremy Neal Bradford

Mr. Bradbord is a 39 year-old class A CDL holder in Alabama. He has a history of epilepsy and has remained seizure-free since 2004. He takes anti-seizure medication with the dosage and frequency remaining the same since 2013. His physician states that he is supportive of Mr. Bradford receiving an exemption.

Joseph Steven Drion

Mr. Drion is a 52 year-old class B CDL holder in Missouri. He has a history of a seizure disorder and has remained seizure-free since 2002. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Drion receiving an exemption.

Kenneth B. Elder

Mr. Elder is a 49 year-old class A CDL holder in Kentucky. He has a history of a seizure disorder and has remained seizure-free since 2002. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Elder receiving an exemption.

Steven W. Farver

Mr. Farver is a 50 year-old driver in Pennsylvania. He has a history of a seizure disorder and has remained seizure-free since 2008. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Farver receiving an exemption.

Richard M. Foster

Mr. Foster is a 49 year-old driver in Oklahoma. He has a history of a seizure disorder and has remained seizure-free since 2007. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Foster receiving an exemption.

Jeffrey Brett Green

Mr. Green is a 42 year-old class B CDL holder in California. He has a history of a seizure disorder and has remained seizure-free since 2008. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Green receiving an exemption.

Stephen M. Harmon

Mr. Harmon is a 39 year-old driver in West Virginia. He has a history of a seizure disorder and has remained seizure-free since January 2005. He takes anti-seizure medication with the dosage and frequency remaining the same since 2010. His physician states that he is supportive of Mr. Harmon receiving an exemption.

Donald Horst

Mr. Horst is a 66 year-old driver in Maryland. He has a history of a single seizure in 2009. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Horst receiving an exemption.

Jordan M. Hyster

Mr. Hyster is a 27 year-old class A CDL holder in Ohio. He has a history of a seizure disorder and has remained seizure-free since January 2009. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Hyster receiving an exemption.

Christopher A. Koger

Mr. Koger is a 42 year-old class A CDL holder in Pennsylvania. He has a history of a seizure disorder and has remained seizure-free since 2007. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Koger receiving an exemption.

Kyle Philip Loney

Mr. Loney is a 32 year-old driver in Washington. He has a history of a seizure disorder and has remained seizure-free since January 2004. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Loney receiving an exemption.

Leigh P. Mallory

Mr. Mallory is a 65 year-old driver in Vermont. He has a history of a seizure disorder and has remained seizure-free since 1997. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Mallory receiving an exemption.

Sean Nesbitt

Mr. Nesbitt is a 44 year-old driver in New York. He has a history of a seizure disorder and has remained seizure-free since 2009. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Nesbitt receiving an exemption.

Ashley Nicole Rialson

Ms. Rialson is a 28 year-old driver in Minnesota. She has a history of epilepsy and has remained seizure-free since 2005. She takes anti-seizure medication with the dosage and frequency remaining the same since that time. Her physician states that she is supportive of Ms. Rialson receiving an exemption.

Gonzalin Sanabria

Mr. Sanabria is a 61 year-old class B CDL holder in New York. He has a history of a seizure disorder as the result of brain lymphoma that was diagnosed in 2003. He remains in remission and has been seizure free since 2004. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Sanabria receiving an exemption.

David Sica

Mr. Sica is a 53 year-old driver in Connecticut. He has a history of a seizure disorder and has remained seizure free since 1985. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Sica receiving an exemption.

Raymond H. Van De Mark

Mr. Van De Mark is a 62 class A CDL holder in New Jersey. He has a history of a seizure disorder and has remained seizure free since 1986. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Van De Mark receiving an exemption.

William Frederick Youse

Mr. Youse is a 24 year-old driver in North Carolina. He has a history of childhood epilepsy and has been seizure free since 2002. He has not taken anti-seizure medication since 2005. His physician states that he is supportive of Mr. Youse receiving an exemption.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA 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 FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2015–0323'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2015–0323 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: July 27, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–18499 Filed 8–3–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0217]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its denial of 88 applications from individuals who requested an exemption from the Federal diabetes standard applicable to interstate truck and bus drivers and the reasons for the denials. FMCSA has statutory authority to exempt individuals from the diabetes requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions does not provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal diabetes standard for a renewable 2-year period if it finds ''such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption.'' The procedures for requesting an exemption are set forth in 49 CFR part 381.

Accordingly, FMCSA evaluated 88 individual exemption requests on their merits and made a determination that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption program. Each applicant has, prior to this notice, received a letter of final disposition on the exemption request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published in this notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following 8 applicants met the diabetes requirements of 49 CFR 391.41(b)(3) and do not need an exemption:

Elbi Aguado
Neil R. Boss
Matthew A. Bunce
Harm A. Gibson
Willie Hammond
Tommy M. Harris
Burke J. Minns
Robert R. Roy

The following 39 applicants were not operating CMVs in interstate commerce:

Steven G. Alvarez
Gary L. Atchley
Taja T. Barnett
David E. Benavides
John K. Bottkol
Donald L. Conklin
Timothy P. Conner
Tyrone O. Cooke
Garrett M. Cooper
Roy L. Cox
Isaac K. Danso
Robert C. Davis
Clarence Evans

Carmine Ferraro
Anthony P. Fortuna
Kenneth E. Fralin
Angel Fuentes
Arnulfo Garcia
Nan W. Hendley
Sharon M. Henry
Jesse D. Hensley
Christopher J. Hundt
Richard M. Jackimowicz
Thomas W. Johnson
David E. Kessling
Robert D. Knoblauch
Stephanie I. Leisure
Nelson F. Meythaler
Henry J. Mioduszewski
George K. Namauu
Nicholas Nigro
Terry J. Nihart
Wilfredo Padin
Oquilla Royster
Vincent Shanks
Donna E. Smith
Jeffrey D. Spoden
Michael T. Stremkowski
Alvin G. Welch

The following 2 applicants had renal insufficiency:

Manuel M. Loreto
Olga N. Richards

The following 8 applicants have had more than one hypoglycemic episode requiring hospitalization or the assistance of others, or has had one such episode but has not had one year of stability following the episode:

Gyorgy Kovacs
Allen Lara
John L. Moreno
William T. Phipps, Jr.
Jose L. Ramos
Michael J. Scheresky
Roger M. Smith, Jr.
Michael H. Zimmerman

The following 4 applicants had other medical conditions making the applicant otherwise unqualified under the Federal Motor Carrier Safety Regulations:

Philip M. Burroughs
Conrad V. Gooding
Eugene R. Huelskamp
Santito Zamot, Jr.

The following 2 applicants were unable to have an endocrinologist state the applicant is able to operate a CMV from a diabetes standpoint:

Kenneth B. Golden, Jr.
Michael P. Kruimer

The following applicant, Kenneth M. Zakaib, currently resides in Canada. He is not eligible because the Federal exemption is for drivers operating only in the United States.

The following applicant, Jeffrey W. Sgrignoli, is unable or has not demonstrated willingness to properly monitor and manage his or her diabetes, whether by personal decision or medical inability.

The following applicant, Larry Bush, has peripheral neuropathy or circulatory insufficiency of the extremities likely to interfere with his or her ability to operate a CMV.

The following 2 applicants did not meet the minimum age criteria outlined in 49 CFR 391.41(b)(1) which states that an individual must be at least 21 years old to operate a CMV in interstate commerce:

Ronald D. Kestner
Kyle J. Russell

The following 20 applicants were exempt from the diabetes standard:

Guanny T. Bradley
Scott D. Butler
Bryan R. Clines
Allan J. Clune
Earl L. Combs
David A. Comeau
Robert N. Costa
Frank J. Fregoni
William Garcia
John T. Maher
Bart J. Meyer
William B. Piver
Audrey E. Platt-Carroll
Ronald W. Rein
Calvin J. Rose
Steven A. Traver
Robert C. Tucker
Wesley G. Walton
Caleb K. Whitlock
Anthony L. Wingfield

Issued on: July 27, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–18498 Filed 8–3–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA—2016–0043]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 47 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before September 6, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2016–0043 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* 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:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t.,

Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 47 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Larry S. Ankerson

Mr. Ankerson, 47, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ankerson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ankerson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wisconsin.

Kenneth D. Beatty

Mr. Beatty, 62, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Beatty understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Beatty meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Mississippi.

Christopher R. Bianco

Mr. Bianco, 46, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bianco understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bianco meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

John J. Bittner

Mr. Bittner, 40, has had ITDM since 2003. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bittner understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bittner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Dakota.

Brandon J. Brown

Mr. Brown, 35, has had ITDM since 1992. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brown understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Tennessee.

Justin D. Campbell

Mr. Campbell, 27, has had ITDM since 1993. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Campbell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Campbell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Alabama.

Anthony Cicciari

Mr. Cicciari, 50, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cicciari understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cicciari meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from New York.

Noah F. Cockman

Mr. Cockman, 67, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist

certifies that Mr. Cockman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cockman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Vito J. Dambra

Mr. Dambra, 59, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Dambra understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dambra meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Linda D. Davis

Ms. Davis, 51, has had ITDM since 2016. Her endocrinologist examined her in 2016 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Davis understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Davis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2016 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Indiana.

Frank A. DeCarolis

Mr. DeCarolis, 58, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. DeCarolis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. DeCarolis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Kansas.

Orlando Dominguez

Mr. Dominguez, 35, has had ITDM since 1994. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Dominguez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dominguez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from California.

Scott L. Fetzer

Mr. Fetzer, 61, has had ITDM since 2005. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fetzer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fetzer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Carl E. Fisher

Mr. Fisher, 64, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fisher understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fisher meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Ryan A. Gehrke

Mr. Gehrke, 34, has had ITDM since 1985. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gehrke understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gehrke meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Minnesota.

Davy O. Glanville

Mr. Glanville, 54, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Glanville understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Glanville meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from the District of Columbia.

George S. Goanos

Mr. Goanos, 44, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Goanos understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Goanos meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class C CDL from Georgia.

Shane R. Gousie

Mr. Gousie, 22, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gousie understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gousie meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Massachusetts.

Randal E. Hampton

Mr. Hampton, 50, has had ITDM since 1998. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hampton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hampton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Nevada.

Lindell O. Hart

Mr. Hart, 72, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hart understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hart meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Michigan.

Reginald M. Hart

Mr. Hart, 31, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hart understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hart meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

David R. Holbert

Mr. Holbert, 29, has had ITDM since 2008. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Holbert understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Holbert meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from New York.

Robert J. King

Mr. King, 54, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. King understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. King meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Carolina.

Dennis J. Kniffen

Mr. Kniffen, 57, has had ITDM since 2010. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kniffen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kniffen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

Scott D. Lazzell

Mr. Lazzell, 47, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lazzell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lazzell meets the

requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arizona.

Allen E. Lemaster

Mr. Lemaster, 36, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lemaster understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lemaster meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Carolina.

Wayne F. Leonard

Mr. Leonard, 52, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Leonard understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Leonard meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

Joshua W. Lockwood

Mr. Lockwood, 32, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lockwood understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lockwood meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maryland.

Ryan D. Mace

Mr. Mace, 26, has had ITDM since 2005. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mace understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mace meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Washington.

Brian P. McCabe

Mr. McCabe, 43, has had ITDM since 1980. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McCabe understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McCabe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Washington.

Charles M. McKenzie

Mr. McKenzie, 53, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McKenzie understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McKenzie meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Michael C. McNamara

Mr. McNamara, 57, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McNamara understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McNamara meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from South Carolina.

Michael S. Meulenberg

Mr. Meulenberg, 60, has had ITDM since 2010. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Meulenberg understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Meulenberg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class C CDL from Michigan.

Adam P. Neppl

Mr. Neppl, 40, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or

resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Neppl understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Neppl meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Dakota.

Timothy J. Newton

Mr. Newton, 38, has had ITDM since 2005. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Newton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Newton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Iowa.

Harold N.J. Pennington III

Mr. Pennington, 36, has had ITDM since 1986. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pennington understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Pennington meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

David T. Petty

Mr. Petty, 70, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Petty understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Petty meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

William T. Phipps, Jr.

Mr. Phipps, 46, has had ITDM since 2010. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Phipps understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Phipps meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Maryland.

Ronald K. Roe

Mr. Roe, 59, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Roe understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Roe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Harry W. Roebuck

Mr. Roebuck, 71, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Roebuck understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Roebuck meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Jeffrey M. Shipley

Mr. Shipley, 48, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shipley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shipley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from South Dakota.

Glenn M. Shockley, Jr.

Mr. Shockley, 32, has had ITDM since 1994. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shockley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shockley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016

and certified that he does not have diabetic retinopathy. He holds an operator's license from Maryland.

Carl G. Stafford

Mr. Stafford, 48, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Stafford understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stafford meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from West Virginia.

James D. Tichnor

Mr. Tichnor, 56, has had ITDM since 2010. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Tichnor understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tichnor meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from New Jersey.

Scott W. Waterman

Mr. Waterman, 51, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Waterman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Waterman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from South Dakota.

Richard A. Wojciak

Mr. Wojciak, 62, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wojciak understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wojciak meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Connecticut.

Ricky L. Young

Mr. Young, 50, has had ITDM since 2008. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Young understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Young meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C.. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA 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 FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0043 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0043 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: July 27, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–18501 Filed 8–3–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0022]

Pipeline Safety: Information Collection Activities

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

ACTION: Notice and request for comments on a previously approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection under Office of Management and Budget (OMB) Control No. 2137–0605, titled ''Integrity Management in High Consequence Areas for Operators of Hazardous Liquid Pipelines'' is being forwarded to the OMB for review and approval. A **Federal Register** notice with a 60-day comment period soliciting comments on this information collection was published on March 9, 2016, (81 FR 12563), under docket number PHMSA–2016–0022. No comments were received. The purpose of this notice is to allow the public 30 days to send comments to OMB on the information collection as detailed below.

DATES: Comments must be submitted on or before September 6, 2016.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to OMB, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503. You may also send comments by email to *OIRA-submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Angela Dow by telephone at 202–366–1246, by fax at 202–366–4566, or by mail at U.S. Department of Transportation, PHMSA, 1200 New Jersey Avenue SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Title: Integrity Management in High Consequence Areas for Operators of Hazardous Liquid Pipelines.

OMB Control Number: 2137–0605.

Current Expiration Date: 11/30/16.

Abstract: Hazardous liquid operators with pipelines located in or that could affect high consequence areas, (*i.e.,* commercially navigable waterways, high population areas, other populated areas, and unusually sensitive areas as defined in 49 CFR 195.450), are subject to certain information collection requirements relative to the Integrity Management Program provisions of 49 CFR 195.452.

Affected Public: All pipeline operators of hazardous liquid pipelines located in or that could affect high consequence areas.

Annual Reporting and Recordkeeping Burden:

Annual Responses: 203.

Annual Burden Hours: 325,470.

Frequency of collection: On Occasion.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 1, 2016, under authority delegated in 49 CFR 1.97.

John A. Gale,

Director, Office of Standards and Rulemaking.

[FR Doc. 2016–18513 Filed 8–3–16; 8:45 am]

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Amending the Formats of the Lists of Endangered and Threatened Wildlife and Plants; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2008–0063; 92300–1113–0000–9B]

RIN 1018–AU62

Endangered and Threatened Wildlife and Plants; Amending the Formats of the Lists of Endangered and Threatened Wildlife and Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, amend the format of the Lists of Endangered and Threatened Wildlife and Plants (Lists) to reflect current practices and standards that will make the regulations and Lists easier to understand. The Lists, in the new format, are included in their entirety and have been updated to correct identified errors.

DATES: This rule is effective August 4, 2016.

FOR FURTHER INFORMATION CONTACT: Don Morgan, Ecological Services Program, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, Falls Church, VA 22041; telephone 703–358–2171. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Lists of Endangered and Threatened Wildlife and Plants (Lists), found in title 50 of the Code of Federal Regulations (CFR) at 50 CFR 17.11 for wildlife and 50 CFR 17.12 for plants, contain the names of endangered species and threatened species officially listed pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.,* (ESA)). The most recent compilation of Lists appeared in the 2015 edition of title 50 CFR, which was issued in early 2016. That compilation included regulatory amendments effective as of October 1, 2015.

The species were placed on the Lists as the result of rulemaking promulgated by the U.S. Fish and Wildlife Service (FWS), by the National Marine Fisheries Service (NMFS) of the Department of Commerce's National Oceanic and Atmospheric Administration, or by both agencies via joint rulemaking actions. References to ''Services'' in the text of §§ 17.11 and 17.12 refer to both of these agencies.

The Lists represent the official Federal Government record of which species are listed and where they are considered listed under the ESA. The Lists also contain information regarding other designations and regulations issued under specific provisions of the ESA, such as section 4(d) regarding threatened species, section 10(j) regarding experimental populations, and critical habitat.

Over time, we have noted numerous unintentional errors, ambiguous entries, and confusing format and column titles in the Lists. After detailed research on the origin, history, and purpose of the Lists, we determined that the format, references, and standards needed to be updated to better reflect current practices and standards. Consequently, we published a proposed rule in the **Federal Register** on August 5, 2008, to address these observed problems and make corrections to enhance the clarity of the Lists (73 FR 45383). In the rule portion of this document, we set forth the corrected Lists in entirety in the new format.

Summary of Changes From Proposed Rule

The following adjustments have been made which are different from the proposed document. We have decreased the total columns to 5 instead of 8 for both Lists by removing the ''Historical range'' columns, and combining the ''When listed'', ''Critical habitat'' and ''Special rules'' columns.

History of the Lists of Endangered and Threatened Species

The first endangered species list was published March 11, 1967 (32 FR 4001), pursuant to the Endangered Species Preservation Act of 1966, and included only two columns, Common Name and Scientific Name. In 1970, after passage of the Endangered Species Conservation Act in 1969, that list was added to title 50 CFR in the newly created part 17. In 1971, that list was divided into two separate lists with appendix A being the ''U.S. List of Endangered Foreign Fish and Wildlife'' with three columns (Common Name, Scientific Name, and Where Found) and appendix D being the ''United States' List of Endangered Native Fish and Wildlife'' with only the original two columns (Common Name and Scientific Name).

In 1974, after enactment of the ESA, the two appendices were moved to § 17.11 and § 17.12, with appendix A becoming § 17.11 (Foreign) and appendix D becoming § 17.12 (Native). In 1975, the two lists were combined into one list at § 17.11 (Wildlife), and the columns were expanded from three to eight (Common Name, Scientific Name, Population, Known Distribution, Portion of Range Where Endangered or Threatened, Status, When Listed, and Special Rules). See figure 1, below. The footnote system denoting ''When Listed'' found in the current CFR was created with 11 footnotes. Section 17.12 was reserved for ''Endangered and Threatened Plants''.

FIGURE 1—FORMAT FOR THE ESA LIST FOR WILDLIFE IN THE 1975 VERSION OF 50 CFR 17.11

Species		Population	Range		Status	When listed	Special rules
Common name	Scientific name		Known distribution	Portion of range where endangered or threatened			

In 1977, § 17.12 was populated with only seven columns (Common Name, Scientific Name, Known Distribution, Portion of Range Where Threatened or Endangered, Status, When Listed, and Special Rules). See figure 2, below. The § 17.12 List had its own footnote system, which was only one footnote at that time.

FIGURE 2—FORMAT FOR THE ESA LIST FOR PLANTS IN THE 1977 VERSION OF 50 CFR 17.12

Species		Range		Status	When listed	Special rules
Common name	Scientific name	Known distribution	Portion of range where threatened or endangered			

In 1980, the Lists underwent the last major formatting change prior to this current rulemaking action. A proposed rule was published on August 15, 1979 (44 FR 47862), proposing to include the following columns for § 17.11 (Wildlife): Common name, Scientific name, Historic range, Population where endangered or threatened, Status, When listed, Critical habitat, and Special rules; and the following columns for § 17.12 (Plants): Scientific name, Common name, Historic range, Status, When listed, Critical habitat, and Special rules. A final rule that published on February 27, 1980 (45 FR 13010), set forth the following columns for § 17.11: Common name, Scientific name, Historic range, Vertebrate population where endangered or threatened, Status, When listed, Critical habitat, and Special rules. The final rule adopted the columns for § 17.12 as they had appeared in the proposed rule. See figures 3 and 4.

FIGURE 3—FORMAT FOR THE ESA LIST FOR WILDLIFE IN THE 1980 VERSION OF 50 CFR 17.11

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						

FIGURE 4—FORMAT FOR THE ESA LIST FOR PLANTS IN THE 1980 VERSION OF 50 CFR 17.12

Species		Historic Range	Status	When listed	Critical habitat	Special rules
Common name	Scientific name					

Neither the August 1979 proposed rule nor the February 1980 final rule included the entire contents of the Lists. The Lists in their entirety were published in the new format with corrections to technical errors on May 20, 1980 (45 FR 33767). On September 30, 1994 (59 FR 49848), the family grouping of the plants, which had resided in the scientific name column, was moved to a new column named ''Family.'' See figure 5.

FIGURE 5—FORMAT FOR THE ESA LIST FOR PLANTS IN THE 1994 VERSION OF 50 CFR 17.12

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						

Rule Purpose

Through this rulemaking, we are changing the format of the Lists to include current practices and standards, thereby ensuring that the regulations and Lists are easy for the public to understand. We are also standardizing entries and correcting numerous errors and ambiguous entries. Technical corrections in this rulemaking include updating or correcting footnotes, references to certain other applicable portions of title 50 CFR, synonyms, and the spelling of species' names. We also provide more current common names. Textual descriptions of the List format, such as the meaning of the column titles, are included within these changes to the regulations at §§ 17.11 and 17.12. None of the changes are regulatory in nature with respect to the entities on the List; these changes are for the purpose of clarity. These revisions do not alter species' protections or status in any way. Such actions would require separate rulemaking actions following the procedures of 50 CFR part 424.

Renaming and Reorganizing the Lists' Columns

With this rule, we are renaming, reorganizing, and removing columns in the Lists to clarify the types of information being presented. The following paragraphs describe the new columns.

Changing ''When Listed'' to ''Listing Citations and Applicable Rules''

For both Lists, we are replacing the column heading ''When listed'' with ''Listing citations and applicable rules.'' This column currently contains footnote numbers referencing a table of citations for final listing rules. When we proposed the changes to the format of the Lists in 1979 that instituted this footnote system, the Lists contained only 44 footnotes. The Lists now have more than 800 footnotes, and, consequently, the footnote system has become hard for us to manage and for the public to use. To correct this situation, we are replacing the footnote numbers that currently populate this column with the actual **Federal Register** citation (volume and document starting page number) and publication date of the listing rule and other applicable rulemaking actions. We are also correcting any errors contained in the previous footnotes or referenced citations. For example, some existing footnotes included the wrong date, wrong page numbers, or were missing a citation reference. Please note that all the referenced citations are available through the Services' Web sites for each listed species (*http://www.fws.gov/*

endangered/ and *http://www.nmfs.noaa.gov/pr/species/esa/listed.htm*).

Moving ''Critical Habitat'' and ''Special Rules'' Entries Into New ''Listing Citations and Applicable Rules'' Column

These columns provide the citations for pertinent regulations for the listed species and were created solely for the convenience of the public. To consolidate these purely navigational columns, we are combining the ''Special rules,'' ''Critical habitat,'' and ''When listed'' columns into the renamed ''Listing citations and applicable rules'' column. Superscripts utilized in this column are identified in the revised regulatory text at §§ 17.11(f)(1) and 17.12(f)(1). For additional information concerning these entries and downloadable maps of proposed and designated critical habitat, please visit the Services' Web sites (*http://www.fws.gov/endangered/* and *http://www.nmfs.noaa.gov/pr/species/esa/listed.htm*).

Changing ''Vertebrate Population Where Endangered or Threatened'' and ''Family'' to ''Where Listed''

We originally published the entries for invertebrate species indicating ''not applicable'' (shown as ''NA'') in the column ''Vertebrate population where endangered or threatened'' because that column applied only to distinct population segments of vertebrate species. In the October 1, 2000, edition of the CFR, in the Lists found at § 17.11(h), all of the entries for invertebrate species within the column ''Vertebrate population where endangered or threatened'' were erroneously changed to ''Entire.'' While it is generally true that the invertebrate species are listed wherever found thus, throughout their entire range, except where listed as experimental populations, it is more accurate to state that this column is not applicable since it pertains to vertebrate populations. The error was purely editorial; it in no way changed any of the applicable provisions of law. As indicated in the prior regulations at § 17.11(e), all individuals of the invertebrate species are protected wherever found, regardless of whether ''NA'' or ''Entire'' appeared in the column. However, amendments to the Act in 1982 included the addition of section 10(j) which allows for the designation of reintroduced populations of listed species as ''experimental populations.'' Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range. The format of the Lists published in 1980, prior to the 1982 amendments, did not envision this change and therefore did not provide specifically for indicating experimental population designations. When the Service published regulations regarding experimental population at 50 CFR 17.80 (49 FR 33885, August 27, 1984), we stated that experimental population designations would be indicated by a separate line in the Lists at §§ 17.11 and 17.12. Thus, the location information for experimental population designations of listed species began to be placed in the column originally intended to indicate species listed as distinct population segments of vertebrate species. Additionally, as the Service began to expand our use of section 10(j) in recovery of listed species, we also included location information for experimental population designations of invertebrate species, causing an inconsistency between the column's title and its application.

To address these issues, for the wildlife list (§ 17.11(h)) only, we are replacing the column heading ''Vertebrate population where endangered or threatened'' with ''Where listed,'' to more broadly accommodate the information regarding the geographic specificity of both distinct population segments of vertebrate species and experimental population designations. Thus, the new name ''Where listed'' better reflects the data within the column. We are also changing all the current ''NA'' entries to ''Wherever found'' to reflect the change in the column title. All current entries that have the word ''Entire'' will be changed to ''Wherever found'' to standardize all entries to the same format. And, lastly, we will no longer use the ''ditto'' system (shown as ''do'' in the current tables) to indicate duplicative information.

For the plants list (§ 17.12(h)), we are replacing the ''Family'' column with a ''Where listed'' column to standardize both Lists to identical columns and structure. We are also populating each entry for that column with ''Wherever found'' because the ESA protection for all of the plants currently on the list applies to all individuals of a plant species wherever found. Future additions to the list may have a more limited entry under the ''Where listed'' column if experimental populations of plant species are designated. Including the ''Where listed'' column in the List of plants facilitates our ability to provide more specific information in the future, if applicable. While we are no longer including a plant species' taxonomic family in order to standardize the format between the Lists, information regarding a species taxonomy is readily available through links provided on our species profile pages. A link to the Integrated Taxonomic Information System (ITIS), which displays the taxonomic hierarchy of a species, including its family name, is provided on each species' profile page accessible through the Services' Web sites (*http://www.fws.gov/endangered/* and *http://www.nmfs.noaa.gov/pr/species/esa/listed.htm*) or information is available directly through the ITIS. (These amendments to the Lists are editorial in nature and involve no substantive changes to the List of Endangered and Threatened Wildlife found at 50 CFR 17.11(h) or the List of Endangered and Threatened Plants found at 50 CFR 17.12(h), nor to any applicable regulations. While we have changed the name of the column to better reflect its current content, we do not intend to change the use of this column. Unless the column is used to define a distinct population segment of a vertebrate species or an experimental population designation of any taxa, the entry in this column will be ''Wherever found,'' indicating that the protections of the Act will apply to all individuals of the species wherever found.

Adding ESU and DPS Subtitles to ''Common Name''

The ESA defines ''species'' to include any ''distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' (16 U.S.C. 1532(16)). NMFS's Evolutionarily Significant Unit (ESU) policy (56 FR 58612, November 20, 1991) defines how it will apply this definition of ''species'' in evaluating Pacific salmon stocks for listing under the ESA. The Services' interagency Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS) (61 FR 4721, February 7, 1996) clarifies their interpretation of the phrase ''distinct population segment of any species of vertebrate fish or wildlife'' for the purpose of listing, delisting, and reclassifying species under the ESA. Currently, the ''Vertebrate population where endangered or threatened'' column distinguishes the different ESU and DPS entries for the same species by describing the geographic area where it is found, but without providing a name for the population or indicating it is an ESU or DPS listing. We are adding the ESU or DPS subtitle to the Common

Name column in brackets to clarify when it is an ESU or DPS listing.

Removing Historic Range Columns

The ''Historic range'' column is not required by the ESA (see section 4(c)(1)) and is part of the ''other data in the list'' currently referenced in 50 CFR 17.11(d) and 17.12(d) as ''nonregulatory in nature'' and ''provided for the information of the reader.'' However, since its creation in 1980, it has been a source of contention and confusion, leading to questions of how it is defined; its regulatory use; what time period it represents; and should it instead be changed to ''Historical Range''. These and similar concerns were raised in the 1980 reformat (see 45 FR 13011, February 27, 1980), for which the Services took the following position regarding suggestions for specific criteria to define this column: ''In light of this broad diversity and the guidance of both the Act and the legislative history, the Services find it inadvisable to establish new criteria as suggested. The Services will continue to consider this issue, however, and will propose criteria at a later date, if warranted.'' Given prior concerns regarding this column in the 1980 reformat and continued long-standing confusion regarding its use and meaning, we revisited this issue in making our final determination on this action. The Services have consistently indicated that information provided regarding historic range is purely informational and does not alter or imply any limitation on the application of the prohibitions in the Act or implementing rules. Additionally, historic range information often only represented the Service's best approximation of historic range based on the scientific literature, given that past range was not always well or thoroughly documented for many species. We also indicated that only the columns entitled ''Common Name,'' ''Scientific Name,'' and ''Vertebrate Population Where Endangered or Threatened'' define the species of wildlife for purposes of implementing the Act. Despite this, the column ''Historic range'' column continued to be a point of confusion with regard to where protections of the Act apply to a species. Based on concerns raised by commenters on the 2008 proposed rule (See ''Summary of Comments Received'') and to help alleviate confusion to the public, the Services have decided to remove the ''Historic range'' column from both tables. However, to provide further clarification regarding where protections of the Act apply, we state in our revised §§ 17.11(d) and 17.12(d) that unless the new ''where listed'' column indicates a distinct population segment of a vertebrate species, or an experimental population, prohibitions of the Act apply to all individuals of the species, wherever found. Please note that the general information regarding the historic range of a species, as previously provided in this column, is discussed in listing determinations and is available in the listing rule documents provided in the ''Listing citations and applicable rules'' column. See figures 6 and 7 for the new format of the tables.

FIGURE 6—NEW FORMAT FOR THE ESA LIST FOR WILDLIFE (COLUMN HEADINGS) IN 50 CFR 17.11

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules

FIGURE 7—NEW FORMAT FOR THE ESA LIST FOR PLANTS (COLUMN HEADINGS) IN 50 CFR 17.12

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules

Updating Standards for Scientific Nomenclature References

For species' nomenclature (scientific and common names), we are changing the primary source upon which we rely. The current text introducing the lists in §§ 17.11 and 17.12 references two standards for scientific nomenclature: The International Code of Zoological Nomenclature and The International Code of Botanical Nomenclature. Respectfully, instead of referencing those International Codes, the Service now relies, to the extent practicable, on the Integrated Taxonomic Information System (ITIS), which incorporates both of the International Code standards and the standard references adopted for the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

ITIS is an authoritative taxonomic database (*http://www.itis.gov*) maintained by a partnership of U.S., Canadian, and Mexican agencies; other organizations; and taxonomic specialists. The U.S. partners include the National Oceanic and Atmospheric Administration of the Department of Commerce; the U.S. Fish and Wildlife Service, U.S. Geological Survey, and National Park Service of the Department of the Interior; the Environmental Protection Agency; the Agricultural Research Service and Natural Resources Conservation Service of the Department of Agriculture; the Smithsonian Institution; and NatureServe (a nonprofit organization representing the Natural Heritage programs in the States).

CITES is an international convention among 182 signatory countries (Parties) to ensure that international trade in specimens of wild animals and plants does not threaten their survival (50 CFR part 23). The CITES Parties have adopted standard nomenclatural and taxonomic references for species included in the CITES Appendices, which are listed in the most recent CITES resolution on standard nomenclature. (*http://www.cites.org/eng/res/index.shtml*)

Removing Unnecessary Examples, Updating Regulations, and Removing Entries Pursuant to Court Order

Upon review of the regulations connected to the Lists, we noted that § 17.50 had three examples that were pre-1980 table format. Rather than update them to the new format, we determined that these examples are not necessary and are, therefore, removing them. We have also determined that the introductory paragraph of § 17.52 should read as set forth in the rule portion of this document to provide more specific cross-references within part 17. The revised language specifies the sections in part 17 that may include language that differs from the provisions in § 17.52. These changes to the regulations are nonsubstantive.

Additionally, in 50 CFR 17.11(h), the List of Endangered and Threatened Wildlife, we are removing the Beringia DPS of the bearded seal to comply with the U.S. District Court for the District of Alaska's decision vacating the December 28, 2012, final rule by NMFS that listed the Beringia DPS of the *Erignathus barbatus nauticus* subspecies of the bearded seal as a threatened species (77 FR 76740) (*Alaska Oil & Gas Ass'n* v. *Pritzker,* 4:13–cv–00018–RRB, 2014 WL 3726121, 2014 U.S. Dist. Lexis 101446 (D. Alaska July 25, 2014), *appeal docketed,* No. 14–35806 (9th Cir. 2014)). NMFS has appealed the district court's decision to the U.S. Court of Appeals for the Ninth Circuit, but as a result of the court decision the species is not currently listed. Depending on the outcome of that litigation, we may issue a technical rule to reinstate the listing.

We are removing the Arctic subspecies of the ringed seal to comply with the U.S. District Court for the District of Alaska's decision vacating the December 28, 2012, final rule by NMFS that listed the Arctic subspecies of the ringed seal, *Phoca hispida hispida,* as a threatened species (77 FR 76706) (*Alaska Oil & Gas Ass'n* v. *NMFS,* 4:14–cv–00029–RRB, 2016 WL 1125744, 2016 U.S. Dist. Lexis 34848 (D. Alaska Mar. 17, 2016), *appeal docketed,* No. 16–35380 (9th Cir. 2016)). NMFS has appealed the district court's decision to the U.S. Court of Appeals for the Ninth Circuit, but as a result of the court decision the species is not currently listed. Depending on the outcome of that litigation, we may issue a technical rule to reinstate the listing.

We are removing slickspot peppergrass from the List of Endangered and Threatened Plants to comply with the decision of the U.S. District Court for the District of Idaho (*Otter* v. *Salazar,* Case No. 1:11–cv–358–CWD, 2012 U.S. Dist. Lexis 111743 (D. Idaho Aug. 8, 2012)) vacating the previous listing rule (74 FR 52014; October 8, 2009). The Service has already proposed to reinstate the listing (79 FR 8416; February 12, 2014) and will make a final determination shortly. This is a clerical change to comply with a court order, and not a final listing determination on the outstanding new proposal to list.

Summary of Comments Received

In our proposed rule (73 FR 45383, August 5, 2008), we requested that all interested parties submit information, data, and comments regarding the format of the Lists. The comment period ended September 4, 2008. During the 30-day comment period, we received a total of 14 comments, of which we consider 8 to be substantive. The following paragraphs discuss the comments received.

Solicitor's Opinion and ''Where Listed''

Several commenters were concerned that changing the ''Vertebrate population where endangered or threatened'' and ''Family'' columns to ''Where listed'' would allow for applying the protections of the Act to only limited geographic areas of a species' range. Commenters expressed concern that the proposed rule was an attempt to codify the March 16, 2007, opinion of the Solicitor of the Department of the Interior regarding ''The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of the Range','' which would have allowed in some cases applying protections to less than all members of the species (*i.e.,* applying protections only to a portion of a species' range). As explained above, the intent of altering the column heading was to better align the column's title and definition with the current use of the column to indicate both distinct population segments of vertebrate species and experimental population designations for all taxa (invertebrates and plants as well as vertebrate species); we did not intend to alter its use. While this rulemaking never attempted to ''codify'' the 2007 opinion of the Solicitor, we believe the underlying concerns of the commenters have nevertheless been resolved by subsequent developments. Two district court decisions have addressed whether the ESA's language allows the Services to list or protect less than all members of a defined species: *Defenders of Wildlife* v. *Salazar,* 729 F. Supp. 2d 1207 (D. Mont. 2010), concerning FWS's delisting of the Northern Rocky Mountain gray wolf (74 FR 15123, Apr. 12, 2009); and *WildEarth Guardians* v. *Salazar,* 2010 U.S. Dist. LEXIS 105253 (D. Ariz. Sept. 30, 2010), concerning the Service's 2008 finding on a petition to list the Gunnison's prairie dog (73 FR 6660, Feb. 5, 2008). The courts concluded that reading the ESA's language to allow protecting only a portion of a species' range is inconsistent with the definition of ''species,'' which forecloses listing any population that does not qualify as a taxonomic species, subspecies, or DPS. These two decisions held that the ''significant portion of its range'' language may not be used as a basis for listing less than all members of a species. Rather, the ESA's language requires rangewide listing of species whenever they are endangered or threatened in a significant portion of the range, even if they are healthy in other areas.

On May 4, 2011, the Solicitor of the U.S. Department of the Interior (''Interior'') withdrew the 2007 opinion. On July 1, 2014, the Service published a new policy to clarify the interpretation of the phrase ''significant portion of its range'' in the ESA as it applies to decisions to list species as threatened or endangered (79 FR 37578). This policy stated that if a species is determined to be neither endangered nor threatened throughout all its range and a subsequent analysis reveals it is endangered or threatened within a significant portion of that range, then the entire species will be listed as an endangered species or threatened species and the Act's protections apply to all individuals of the species wherever found. To address this concern and to further clarify how the ''Where listed'' column will be used and protections applied, we have added language to §§ 17.11(d) and 17.12(d) to indicate that except when providing a geographic description of a DPS or ESU, or an experimental population designation, ''Wherever found'' will be used to indicate the Act's protections apply to all individuals of the species, wherever found.

Historic Range Column

One commenter suggested that the ''Historic range'' column is not ''nonregulatory'' nor ''for informational purposes only'' because it reinforced that a listed species may only receive protections in a portion of its range if it were found to be threatened or endangered in a significant portion of its current range.

Response: We disagree. The ''Historic range'' column is not required by the ESA (see section 4(c)(1)) and is part of the ''other data in the list'' currently referenced in 50 CFR 17.11(d) and 17.12(d) as ''nonregulatory in nature'' and ''provided for the information of the reader.'' Similar concerns were addressed in the 1980 reformat (see 45 FR 13011, February 27, 1980.). Please note that the general information regarding the historic range of a species, as previously provided in this column, is discussed in listing determinations and is available in the listing rule documents provided in the ''Listing citations and applicable rules'' column.

Where Listed Column

Several commenters suggested that, by changing ''Vertebrate population where endangered or threatened'' to ''Where Listed,'' the Service was limiting the protection of the listed species.

Response: We disagree. None of the changes encompassed in this rule are substantive in nature or in any way alter protections for listed species. As noted earlier in this rule, such actions would require separate rulemaking actions following the procedures of 50 CFR part 424. As stated previously, by changing ''Vertebrate population where endangered or threatened'' to ''Where Listed,'' the Service is allowing for the inclusion of invertebrate species and invertebrate experimental population entries that have been in the table since 2001. Also, by replacing ''endangered or threatened'' with ''listed,'' the Service is allowing for all the statuses recognized by the ''Status'' column. See §§ 17.11(d) and 17.12(d).

Several commenters also suggested that defining the ''Where listed'' column as ''the geographic area where the species is listed for purposes of the Act'' also narrowed the protection of the listed species.

Response: While we understand the concern, this was not our intent. This column is intended only to provide a geographic description for distinct population segments of vertebrate, and invertebrate, vertebrate and plant experimental population designations. We added this column to § 17.12 to allow for indicating plant experimental population designations. Again, as we explain above, except for DPSs and experimental population designations, entries in this column will be ''Wherever found.'' None of the changes encompassed in this rule are substantive in nature or in any way alter protections for listed species. Such actions would require separate rulemaking actions following the procedures of 50 CFR part 424.

ITIS and CITES

One commenter suggested that relying on the Integrated Taxonomic Information System (ITIS) could pose problems by being more limiting than, and not as comprehensive as, the previous standards, especially for foreign species.

Response: We addressed the adoption of the previous standards in our rule of February 27, 1980 (45 FR 13010, 13012). At that time, we stated that: ''In deciding which alternative taxonomic interpretations to accept, the Director will rely on the professional judgment available both within the Service and the scientific community and from the most recent taxonomic studies available pertaining to the subject species. However, no criteria other than these very general ones can be established for acceptance of taxonomic treatments. As a matter of practice, the Services review current taxonomic literature in considering the appropriateness of present and proposed listings. Although professional societies maintain lists of accepted taxa for some taxonomic groups, this is not true of all groups. The Services will rely on the generally accepted lists of taxa when they are available.'' This is still the Services' current standard, as indicated in our regulations. See 50 CFR 424.11(a), which states that the Secretary must rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community in determining whether a particular taxon or population is a species for the purposes of the Act. To the cases where ITIS may not be sufficiently comprehensive, we may consult other sources or experts regarding appropriate taxonomic interpretations.

The Services have determined that ITIS is a reviewer of current taxonomic literature and maintains generally accepted lists of taxa that are determined to be both valid and verified. As such, to the extent practicable, the Services, in combination with the professional judgment available both within the Services and the scientific community (§ 424.11(a)), will utilize ITIS and, for international species not covered by ITIS, the taxonomic nomenclature adopted for use under CITES. In cases where taxonomy is in dispute or there is a newly described taxa that might not be updated in ITIS, we will use our own best professional judgment and the expertise of the scientific community.

Need for Immediate Effective Date

We find good cause pursuant to 5 U.S.C. 553(d)(3) to make this rule effective upon the date set forth in **DATES** due to the continual changes being made to the Lists via new rulemaking actions. To ensure that we provide the most accurate and up-to-date information to the public, we must set forth the Lists in their entirety as soon as possible. The public would not be served by a 30-day delay in the effective date, particularly because this rule does not affect any legal rights.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

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

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends.

The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this final rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The changes we are making are intended primarily to update the standards of scientific naming used in the Lists of Endangered and Threatened Wildlife and Plants and to clarify language in our regulations. These changes will not have a substantive impact on the scope of the regulation, and thus would not affect businesses or other small entities as defined in the RFA.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

1. Will not have an annual effect on the economy of $100 million or more.

2. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

3. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. Our rule simply reorganizes and clarifies

existing regulations and provides new standard references for species' nomenclature. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this rule will not have significant takings implications. We are only reorganizing and clarifying existing regulations and providing new standard references for species' nomenclature. This action will, therefore, not interfere with constitutionally protected private property rights. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with E.O. 13132, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. As our rule involves reorganizing and clarifying existing regulations, and providing new standard references for species' nomenclature, we do not expect it will have any effect on State or local governments or their activities. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Department of the Interior has determined that this rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995 (PRA)

This rule does not contain any information collection requirements for which Office of Management and Budget approval is required under the PRA (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act (NEPA) and the Department of the Interior Manual. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. We have determined this rule is categorically excluded under the Department of the Interior's NEPA regulations in 43 CFR 46.210(i). This categorical exclusion addresses policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature.

Government-to-Government Relationship With Tribes

Under the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), and the Department of the Interior's Manual at 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects. Our rule will simply reorganize and clarify existing regulations and provide new standards references for species' nomenclature.

Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions that significantly affect energy supply, distribution, and use. This rule revises the formats of the Lists of Endangered and Threatened Wildlife and Plants and will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Author

Michael Franz, Ecological Services, Headquarters, compiled this document.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons set forth in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Revise § 17.11 to read as follows:

§ 17.11 Endangered and threatened wildlife.

(a) The list in paragraph (h) of this section contains the wildlife species determined by the Service or the National Marine Fisheries Service (NMFS) of the Department of Commerce's National Oceanic and Atmospheric Administration (hereafter in this section referred to as ''the Services'') to be endangered species or threatened species. It also contains the wildlife species treated as endangered species or threatened species because they are similar in appearance to and may be confused with endangered or threatened species (see §§ 17.50 through 17.52). The ''Common name,'' ''Scientific name,'' ''Where listed,'' and ''Status'' columns provide regulatory information; together, they identify listed wildlife species within the meaning of the Act and describe where they are protected. When a taxon has more than one entry, the ''Where listed'' or ''Status'' column will identify its status in each relevant geographic area. The listing of a particular taxon includes all lower taxonomic units.

(b) *''Common name'' column.* Although common names are included, they cannot be relied upon for identification of any specimen, since they may vary greatly in local usage. In cases where confusion might arise, one or more synonyms are provided in parentheses within the ''Common name'' column. If a species has been listed as an Evolutionarily Significant Unit (ESU) or a Distinct Vertebrate Population Segment (DPS), the ESU or DPS names will be provided in brackets ''[ ]'' following the common name.

(c) *''Scientific name'' column.* The Services use the most recently accepted scientific name. In cases where confusion might arise, one or more synonyms are provided in parentheses within the ''Scientific name'' column. The Services rely, to the extent practicable, on the Integrated Taxonomic Information System (ITIS) to determine a species' scientific name. ITIS incorporates the naming principles established by the *International Code of Zoological Nomenclature* (see paragraph (g) of this section). If the scientific name in ITIS differs from the scientific name adopted for use under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the CITES nomenclature is provided in brackets ''[ ]'' within the ''Scientific name'' column following the ITIS nomenclature.

(d) *''Where listed'' column.* The ''Where listed'' column sets forth the geographic area where the species is listed for purposes of the Act. Except when providing a geographic description of a DPS or ESU, or an experimental population designation, ''Wherever found'' will be used to indicate the Act's protections apply to all individuals of the species, wherever found.

(e) *''Status'' column.* Within the ''Status'' column, the following abbreviations are used:

Abbreviation	Regulatory status the abbreviation represents
E	Endangered species.
T	Threatened species.
E (S/A)	Endangered based on similarity of appearance to an existing listed species.
T (S/A)	Threatened based on similarity of appearance to an existing listed species.
XE	Essential experimental population (See subpart H of this part).
XN	Nonessential experimental population (See subpart H of this part).

(f) *''Listing Citations and Applicable Rules'' column.* The ''Listing Citations and Applicable Rules'' column is nonregulatory in nature and is provided for informational and navigational purposes only.

(1) Within the ''Listing Citations and Applicable Rules'' column, the following superscripts are used:

Superscript	Description of citation or rule
N	NMFS listing citation (NMFS Lead).
J	Both FWS and NMFS listing citation (Joint Jurisdiction).
CH	Critical habitat rule.
4d	Species-specific ''4(d)'' rule (a rule issued under the authority of section 4(d) of the Act).
10j	Species-specific ''10(j)'' rule (a rule issued under the authority of section 10(j) of the Act).

(2) Listing citations contain the volume, document starting page number, and publication date of the **Federal Register** publication(s) in which a species was given status, listed, or reclassified. At least since 1973, these documents have included a statement indicating the basis for the listing, as well as the effective date(s) of the listing or other rules that changed how the species was identified in the List in paragraph (h) of this section.

(3) ''Critical habitat'' and ''Species-specific'' rules superscripts provide cross-references to other sections in this part or part 222, 223, or 226 of chapter II of this title where critical habitat and species-specific rules are found. The species-specific superscripts also identify experimental populations. Experimental populations (superscript ''10j'') are a separate citation, with one of the following symbols in the ''Status'' column: ''XE'' for an essential experimental population and ''XN'' for a nonessential experimental population.

(4) This column is for reference and navigational purposes only. All other appropriate rules in this part, parts 217 through 226 of chapter II of this title, and part 402 of chapter IV of this title apply, if no species-specific rules are referenced. In addition, other rules in this title could relate to such species (for example, port-of-entry requirements). The references in the ''Listing Citations and Applicable Rules'' column do not comprise a comprehensive list of all regulations that the Services might apply to the species or to the regulations of other Federal agencies or State or local governments.

(g) The Services will rely to the extent practicable on ITIS (*http://www.itis.gov*) and standard references adopted for CITES (*http://cites.org*).

(h) The ''List of Endangered and Threatened Wildlife'' is provided in the table in this paragraph (h):

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
Addax	*Addax nasomaculatus*	Wherever found	E	70 FR 52319; 9/2/2005.
Anoa, lowland	*Bubalus depressicornis*	Wherever found	E	35 FR 8491; 6/2/1970.
Anoa, mountain	*Bubalus quarlesi*	Wherever found	E	41 FR 24061; 6/14/1976.
Antelope, giant sable	*Hippotragus niger variani*	Wherever found	E	41 FR 24061; 6/14/1976.
Antelope, Tibetan	*Panthalops hodgsonii*	Wherever found	E	71 FR 15620; 3/29/2006.
Argali [All populations except Kyrgyzstan, Mongolia, and Tajikistan].	*Ovis ammon*	Wherever found except Kyrgyzstan, Mongolia, and Tajikistan.	E	41 FR 24061; 6/14/1976, 57 FR 28014; 6/23/1992.
Argali [Kyrgyzstan, Mongolia, and Tajikistan]	*Ovis ammon*	Kyrgyzstan, Mongolia, and Tajikistan	T	41 FR 24061; 6/14/1976, 57 FR 28014; 6/23/1992, 50 CFR 17.40(j) 4d.
Armadillo, giant	*Priodontes maximus*	Wherever found	E	41 FR 24061; 6/14/1976.
Armadillo, pink fairy	*Chlamyphorus truncatus*	Wherever found	E	35 FR 8491; 6/2/1970.
Ass, African wild	*Equus africanus*	Wherever found	E	35 FR 8491; 6/2/1970, 42 FR 15971; 3/24/1977.
Ass, Asian wild	*Equus hemionus*	Wherever found	E	35 FR 8491; 6/2/1970.
Avahi	*Avahi laniger* (=entire genus)	Wherever found	E	35 FR 8491; 6/2/1970.
Aye-aye	*Daubentonia madagascariensis*	Wherever found	E	35 FR 8491; 6/2/1970.
Babirusa	*Babyrousa babyrussa*	Wherever found	E	41 FR 24061; 6/14/1976.
Baboon, gelada	*Theropithecus gelada*	Wherever found	T	41 FR 45990; 10/19/1976, 50 CFR 17.40(c) 4d.
Bandicoot, barred	*Perameles bougainville*	Wherever found	E	35 FR 18319; 12/2/1970.
Bandicoot, desert	*Perameles eremiana*	Wherever found	E	38 FR 14678; 6/4/1973.
Bandicoot, lesser rabbit	*Macrotis leucura*	Wherever found	E	35 FR 18319; 12/2/1970.
Bandicoot, pig-footed	*Chaeropus ecaudatus*	Wherever found	E	35 FR 18319; 12/2/1970.
Bandicoot, rabbit	*Macrotis lagotis*	Wherever found	E	35 FR 18319; 12/2/1970.
Banteng	*Bos javanicus*	Wherever found	E	35 FR 8491; 6/2/1970.
Bat, Bulmer's fruit (flying fox)	*Aproteles bulmerae*	Wherever found	E	49 FR 2779; 1/23/1984.
Bat, bumblebee	*Craseonycteris thonglongyai*	Wherever found	E	49 FR 2779; 1/23/1984.
Bat, Florida bonneted	*Eumops floridanus*	Wherever found	E	78 FR 61003; 10/2/2013.
Bat, gray	*Myotis grisescens*	Wherever found	E	41 FR 17736; 4/28/1976.
Bat, Hawaiian hoary	*Lasiurus cinereus semotus*	Wherever found	E	35 FR 16047; 10/13/1970.
Bat, Indiana	*Myotis sodalis*	Wherever found	E	32 FR 4001; 3/11/1967, 50 CFR 17.95(a) CH.
Bat, lesser long-nosed	*Leptonycteris curasoae yerbabuenae*	Wherever found	E	53 FR 38456; 9/30/1988.
Bat, little Mariana fruit	*Pteropus tokudae*	Wherever found	E	49 FR 33881; 8/27/1984.
Fruit Bat, Mariana (=fanihi, Mariana flying fox)	*Pteropus mariannus mariannus*	Wherever found	T	49 FR 33881; 8/27/1984, 70 FR 1190; 1/6/2005, 50 CFR 17.95(a) CH.
Bat, Mexican long-nosed	*Leptonycteris nivalis*	Wherever found	E	53 FR 38456; 9/30/1988.
Bat, northern long-eared	*Myotis septentrionalis*	Wherever found	T	80 FR 17973; 4/2/2015, 50 CFR 17.40(o) 4d.
Bat, Ozark big-eared	*Corynorhinus (=Plecotus) townsendii ingens.*	Wherever found	E	44 FR 69206; 11/30/1979.
Bat, Pacific sheath-tailed (Mariana subspecies) (Payeyi, Paischeey).	*Emballonura semicaudata rotensis*	Wherever found	E	80 FR 59423; 10/1/2015.
Bat, Rodrigues fruit (flying fox)	*Pteropus rodricensis*	Wherever found	E	49 FR 2779; 1/23/1984.
Bat, Singapore roundleaf horseshoe	*Hipposideros ridleyi*	Wherever found	E	49 FR 2779; 1/23/1984.
Bat, Virginia big-eared	*Corynorhinus (=Plecotus) townsendii virginianus.*	Wherever found	E	44 FR 69206; 11/30/1979, 50 CFR 17.95(a) CH.
Bear, Baluchistan	*Ursus thibetanus gedrosianus*	Wherever found	E	51 FR 17977; 5/16/1986.
Bear, brown [Italy]	*Ursus arctos arctos*	Italy	E	41 FR 24062; 6/14/1976, 41 FR 26019; 6/24/1976.
Bear, brown	*Ursus arctos pruinosus*	Wherever found	E	41 FR 24062; 6/14/1976.

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
Bear, grizzly [Lower 48 States DPS]	*Ursus arctos horribilis*	U.S.A., conterminous (lower 48) States, except where listed as an experimental population.	T	32 FR 4001; 3/11/1967, 35 FR 16047; 10/13/1970, 40 FR 31734; 7/28/1975, 72 FR 14866; 3/29/2007, 50 CFR 17.40(b)[4d].
Bear, grizzly	*Ursus arctos horribilis*	U.S.A. (portions of ID and MT, see § 17.84(l)).	XN	70 FR 69854; 11/17/2005, 50 CFR 17.84(l)[10j].
Bear, Mexican grizzly	*Ursus arctos*	Mexico	E	35 FR 8491; 6/2/1970.
Bear, polar	*Ursus maritimus*	Wherever found	T	73 FR 28212; 5/15/2008, 50 CFR 17.40(q)[4d], 50 CFR 17.95(a)[CH].
Beaver (Mongolia)	*Castor fiber birulai*	Wherever found	E	41 FR 24062; 6/14/1976.
Bison, wood	*Bison bison athabascae*	Wherever found, except where listed as an experimental population.	T	35 FR 8491; 6/2/1970, 77 FR 26191; 5/3/2012.
Bison, wood	*Bison bison athabascae*	U.S.A. (Alaska)	XN	79 FR 26175; 5/7/2014, 50 CFR 17.84(x)[10j].
Bobcat, Mexican	*Lynx (=Felis) rufus escuinapae*	Wherever found	E	41 FR 24062; 6/14/1976.
Bontebok (antelope)	*Damaliscus pygarus (=dorcas) dorcas*	Wherever found	E	41 FR 24062; 6/14/1976.
Camel, Bactrian	*Camelus bactrianus*	Wherever found	E	41 FR 24062; 6/14/1976.
Caribou, woodland [Southern Selkirk Mountains DPS].	*Rangifer tarandus caribou*	Canada (southeastern British Columbia bounded by the Canada-U.S. border, Columbia River, Kootenay River, Kootenay Lake, and Kootenai River), U.S. (ID, WA).	E	48 FR 1722; 1/14/1983, 48 FR 49245; 10/25/1983, 49 FR 7390; 2/29/1984, 50 CFR 17.95(a)[CH].
Cat, Andean	*Felis jacobita*	Wherever found	E	41 FR 24062; 6/14/1976.
Cat, Asian golden (=Temminck's)	*Catopuma (=Felis) temminckii*	Wherever found	E	41 FR 24062; 6/14/1976.
Cat, black-footed	*Felis nigripes*	Wherever found	E	41 FR 24062; 6/14/1976.
Cat, flat-headed	*Prionailurus (=Felis) planiceps*	Wherever found	E	41 FR 24062; 6/14/1976.
Cat, Iriomote	*Prionailurus (=Felis) bengalensis iriomotensis.*	Wherever found	E	44 FR 37124; 6/25/1979.
Cat, leopard	*Prionailurus (=Felis) bengalensis bengalensis.*	Wherever found	E	41 FR 24062; 6/14/1976.
Cat, marbled	*Pardofelis (=Felis) marmorata*	Wherever found	E	41 FR 24062; 6/14/1976.
Cat, Pakistan sand	*Felis margarita scheffeli*	Wherever found	E	49 FR 2779; 1/23/1984.
Cat, tiger	*Leopardus (=Felis) tigrinus*	Wherever found	E	37 FR 6476; 3/30/1972.
Chamois, Apennine	*Rupicapra rupicapra ornata*	Wherever found	E	41 FR 24062; 6/14/1976.
Cheetah	*Acinonyx jubatus*	Wherever found	E	35 FR 8491; 6/2/1970, 37 FR 6476; 3/30/1972.
Chimpanzee	*Pan troglodytes*	Wherever found	E	41 FR 45990; 10/19/1976, 55 FR 9129; 3/12/1990, 80 FR 34500; 6/16/2015.
Chimpanzee, pygmy	*Pan paniscus*	Wherever found	E	41 FR 45990; 10/19/1976, 55 FR 9129; 3/12/1990.
Chinchilla	*Chinchilla brevicaudata boliviana*	Wherever found	E	41 FR 24062; 6/14/1976.
Civet, Malabar large-spotted	*Viverra civettina (=megaspila c.)*	Wherever found	E	44 FR 37124; 6/25/1979.
Deer, Bactrian	*Cervus elaphus bactrianus*	Wherever found	E	44 FR 37124; 6/25/1979.
Deer, Barbary	*Cervus elaphus barbarus*	Wherever found	E	44 FR 37124; 6/25/1979.
Deer, Calamianes (=Philippine)	*Axis porcinus calamianensis*	Wherever found	E	41 FR 24062; 6/14/1976.
Deer, Cedros Island mule	*Odocoileus hemionus cedrosensis*	Wherever found	E	40 FR 44149; 9/25/1975.
Deer, Columbian white-tailed [Columbia River DPS].	*Odocoileus virginianus leucurus*	Columbia River (Clark, Cowlitz, Pacific, Skamania, and Wahkiakum Counties, WA, and Clatsop, Columbia, and Multnomah Counties, OR).	E	32 FR 4001; 3/11/1967, 68 FR 43647; 7/24/2003.
Deer, Corsican red	*Cervus elaphus corsicanus*	Wherever found	E	44 FR 37124; 6/25/1979.
Deer, Eld's brow-antlered	*Cervus eldi*	Wherever found	E	35 FR 8491; 6/2/1970.
Deer, Formosan sika	*Cervus nippon taiouanus*	Wherever found	E	44 FR 37124; 6/25/1979.
Deer, Indochina hog	*Axis (=Cervus) porcinus annamiticus*	Wherever found	E	41 FR 24062; 6/14/1976.
Deer, key	*Odocoileus virginianus clavium*	Wherever found	E	32 FR 4001; 3/11/1967.
Deer, Kuhl's (=Bawean)	*Axis porcinus kuhli*	Wherever found	E	35 FR 8491; 6/2/1970.
Deer, marsh	*Blastocerus dichotomus*	Wherever found	E	35 FR 8491; 6/2/1970.
Deer, McNeill's	*Cervus elaphus macneilii*	Wherever found	E	35 FR 8491; 6/2/1970.
Deer, musk	*Moschus* spp. (all species)	Afghanistan, Bhutan, Burma, China (Tibet, Yunnan), India, Nepal, Pakistan, Sikkim.	E	41 FR 24062; 6/14/1976.
Deer, North China sika	*Cervus nippon mandarinus*	Wherever found	E	44 FR 37124; 6/25/1979.
Deer, pampas	*Ozotoceros bezoarticus*	Wherever found	E	41 FR 24062; 6/14/1976.
Deer, Persian fallow	*Dama mesopotamica (=dama m.)*	Wherever found	E	35 FR 8491; 6/2/1970.
Deer, Ryukyu sika	*Cervus nippon keramae*	Wherever found	E	44 FR 37124; 6/25/1979.
Deer, Shansi sika	*Cervus nippon grassianus*	Wherever found	E	44 FR 37124; 6/25/1979.
Deer, South China sika	*Cervus nippon kopschi*	Wherever found	E	44 FR 37124; 6/25/1979.
Deer, swamp	*Cervus duvaucelli*	Wherever found	E	35 FR 8491; 6/2/1970.
Deer, Visayan	*Cervus alfredi*	Wherever found	E	53 FR 33990; 9/1/1988.
Deer, Yarkand	*Cervus elaphus yarkandensis*	Wherever found	E	44 FR 37124; 6/25/1979.
Dhole	*Cuon alpinus*	Wherever found	E	35 FR 8491; 6/2/1970.
Dibbler	*Antechinus apicalis*	Wherever found	E	35 FR 18319; 12/2/1970.
Dog, African wild	*Lycaon pictus*	Wherever found	E	49 FR 2779; 1/23/1984.
Dolphin, Chinese river	*Lipotes vexillifer*	Wherever found	E	54 FR 22906; 5/30/1989[N], 54 FR 22905; 5/30/1989.
Dolphin, South Asian River (Indus River subspecies).	*Platanista gangetica minor*	Wherever found	E	55 FR 50835; 12/11/1990[N], 56 FR 1463; 1/14/1991.
Drill	*Mandrillus (=Papio) leucophaeus*	Wherever found	E	41 FR 45990; 10/19/1976.
Dugong	*Dugong dugon*	Wherever found	E	35 FR 18319; 12/2/1970, 68 FR 70185; 12/17/2003.
Duiker, Jentink's	*Cephalophus jentinki*	Wherever found	E	44 FR 37124; 6/25/1979.
Eland, western giant	*Taurotragus derbianus derbianus*	Wherever found	E	44 FR 37124; 6/25/1979.
Elephant, African	*Loxodonta africana*	Wherever found	T	43 FR 20499; 5/12/1978, 50 CFR 17.40(e)[4d].
Elephant, Asian	*Elephas maximus*	Wherever found	E	41 FR 24062; 6/14/1976.
Ferret, black-footed	*Mustela nigripes*	Wherever found, except where listed as an experimental population.	E	32 FR 4001; 3/11/1967, 35 FR 8491; 6/2/1970, 56 FR 41473; 9/21/1979, 59 FR 42682; 8/18/1994, 59 FR 42696; 8/18/1994, 61 FR 11320/3/20/1996, 63 FR 52824; 10/1/1998, 65 FR 60879; 10/13/2000, 68 FR 26498; 5/16/2003, 80 FR 66821; 10/30/2015.

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
Ferret, black-footed	*Mustela nigripes*	U.S.A. (WY and specified portions of AZ, CO, MT, SD, and UT, see § 17.84(g)(9)).	XN	56 FR 41473; 8/21/1991, 59 FR 42682; 8/18/1994, 59 FR 42696; 8/18/1994, 61 FR 11320; 3/20/1996, 63 FR 52824; 10/1/1998, 65 FR 60879; 10/13/2000, 68 FR 26498; 5/16/2003, 80 FR 66821; 10/30/2015, 50 CFR 17.84(g) [10j].
Fox, northern swift	*Vulpes velox hebes*	Canada	E	35 FR 8491; 6/2/1970.
Fox, San Joaquin kit	*Vulpes macrotis mutica*	Wherever found	E	32 FR 4001; 3/11/1967.
Fox, San Miguel Island	*Urocyon littoralis littoralis*	Wherever found	E	69 FR 10335; 3/5/2004, 50 CFR 17.95(a) [CH].
Fox, Santa Catalina Island	*Urocyon littoralis catalinae*	Wherever found	E	69 FR 10335; 3/5/2004, 50 CFR 17.95(a) [CH].
Fox, Santa Cruz Island	*Urocyon littoralis santacruzae*	Wherever found	E	69 FR 10335; 3/5/2004, 50 CFR 17.95(a) [CH].
Fox, Santa Rosa Island	*Urocyon littoralis santarosae*	Wherever found	E	69 FR 10335; 3/5/2004, 50 CFR 17.95(a) [CH].
Fox, Simien	*Canis simensis*	Wherever found	E	44 FR 37124; 6/25/1979.
Gazelle, Arabian	*Gazella gazella*	Wherever found	E	44 FR 37124; 6/25/1979.
Gazelle, Clark's	*Ammodorcas clarkei*	Wherever found	E	35 FR 8491, 6/2/1970.
Gazelle, dama	*Gazella dama*	Wherever found	E	70 FR 52319; 9/2/2005, 35 FR 8491; 6/2/1970.
Gazelle, Moroccan	*Gazella dorcas massaesyla*	Wherever found	E	35 FR 8491; 6/2/1970.
Gazelle, mountain (=Cuvier's)	*Gazella cuvieri*	Wherever found	E	35 FR 8491; 6/2/1970.
Gazelle, Pelzeln's	*Gazella dorcas pelzelni*	Wherever found	E	44 FR 37124; 6/25/1979.
Gazelle, sand	*Gazella subgutturosa marica*	Wherever found	E	44 FR 37124; 6/25/1979.
Gazelle, Saudi Arabian	*Gazella dorcas saudiya*	Wherever found	E	44 FR 37124; 6/25/1979.
Gazelle, slender-horned	*Gazella leptoceros*	Wherever found	E	35 FR 8491; 6/2/1970.
Gibbons	*Hylobates* spp. (including *Nomascus*)	Wherever found	E	35 FR 8491; 6/2/1970, 41 FR 24062; 6/14/1976.
Goral	*Nemorhaedus goral*	Wherever found	E	41 FR 24062; 6/14/1976.
Gorilla	*Gorilla gorilla*	Wherever found	E	35 FR 8491; 6/2/1970.
Hare, hispid	*Caprolagus hispidus*	Wherever found	E	41 FR 24062; 6/14/1976.
Hartebeest, Swayne's	*Alcelaphus buselaphus swaynei*	Wherever found	E	35 FR 8491; 6/2/1970, 41 FR 24062; 6/14/1976.
Hartebeest, Tora	*Alcelaphus buselaphus tora*	Wherever found	E	41 FR 24062; 6/14/1976.
Hog, pygmy	*Sus salvanius*	Wherever found	E	35 FR 8491; 6/2/1970.
Horse, Przewalski's	*Equus przewalskii*	Wherever found	E	41 FR 24062; 6/14/1976.
Huemul, north Andean	*Hippocamelus antisensis*	Wherever found	E	41 FR 24062; 6/14/1976.
Huemul, south Andean	*Hippocamelus bisulcus*	Wherever found	E	41 FR 24062; 6/14/1976.
Hutia, Cabrera's	*Capromys angelcabrerai*	Wherever found	E	51 FR 17977; 5/16/1986.
Hutia, dwarf	*Capromys nana*	Wherever found	E	51 FR 17977; 5/16/1986.
Hutia, large-eared	*Capromys auritus*	Wherever found	E	51 FR 17977; 5/16/1986.
Hutia, little earth	*Capromys sanfelipensis*	Wherever found	E	51 FR 17977; 5/16/1986.
Hyena, Barbary	*Hyaena hyaena barbara*	Wherever found	E	35 FR 8491; 6/2/1970.
Hyena, brown	*Parahyaena (=Hyaena) brunnea*	Wherever found	E	35 FR 8491, 6/2/1970.
Ibex, Pyrenean	*Capra pyrenaica pyrenaica*	Wherever found	E	35 FR 8491; 6/2/1970.
Ibex, Walia	*Capra walie*	Wherever found	E	35 FR 8491; 6/2/1970.
Impala, black-faced	*Aepyceros melampus petersi*	Wherever found	E	35 FR 8491; 6/2/1970.
Indri	*Indri indri* (=entire genus)	Wherever found	E	35 FR 8491; 6/2/1970.
Jaguar	*Panthera onca*	Wherever found	E	37 FR 6476; 3/30/1972, 62 FR 39147; 7/22/1997, 50 CFR 17.95(a) [CH].
Jaguarundi, Guatemalan	*Herpailurus (=Felis) yagouaroundi fossata.*	Wherever found	E	41 FR 24062; 6/14/1976.
Jaguarundi, Gulf Coast	*Herpailurus (=Felis) yagouaroundi cacomitli.*	Wherever found	E	41 FR 24062; 6/14/1976.
Jaguarundi, Panamanian	*Herpailurus (=Felis) yagouaroundi panamensis.*	Wherever found	E	41 FR 24062; 6/14/1976.
Jaguarundi, Sinaloan	*Herpailurus (=Felis) yagouaroundi tolteca.*	Wherever found	E	41 FR 24062; 6/14/1976.
Kangaroo rat, Fresno	*Dipodomys nitratoides exilis*	Wherever found	E	50 FR 4222; 1/30/1985, 50 CFR 17.95(a) [CH].
Kangaroo rat, giant	*Dipodomys ingens*	Wherever found	E	52 FR 283; 1/5/1987.
Kangaroo rat, Morro Bay	*Dipodomys heermanni morroensis*	Wherever found	E	35 FR 16047; 10/13/1970, 50 CFR 17.95(a) [CH].
Kangaroo rat, San Bernardino Merriam's	*Dipodomys merriami parvus*	Wherever found	E	63 FR 3835; 1/27/1988, 63 FR 51005; 9/24/1988, 50 CFR 17.95(a) [CH].
Kangaroo rat, Stephens'	*Dipodomys stephensi* (incl. *D. cascus*)	Wherever found	E	53 FR 38465; 9/30/1988.
Kangaroo rat, Tipton	*Dipodomys nitratoides nitratoides*	Wherever found	E	53 FR 25608; 7/8/1988.
Kangaroo, Tasmanian forester	*Macropus giganteus tasmaniensis*	Wherever found	E	38 FR 14678; 6/4/1973.
Koala	*Phascolarctos cinereus*	Australia	T	65 FR 26762; 5/9/2000.
Kouprey	*Bos sauveli*	Wherever found	E	35 FR 8491; 6/2/1970.
Langur, capped	*Trachypithecus (=Presbytis) pileatus*	Wherever found	E	41 FR 24062; 6/14/1976.
Langur, Douc	*Pygathrix nemaeus*	Wherever found	E	35 FR 8491; 6/2/1970.
Langur, Francois'	*Trachypithecus (=Presbytis) francoisi*	Wherever found	E	41 FR 45990; 10/19/1976.
Langur, golden	*Trachypithecus (=Presbytis) geei*	Wherever found	E	41 FR 24062; 6/14/1976.
Langur, gray (=entellus)	*Semnopithecus (=Presbytis) entellus*	Wherever found	E	41 FR 24062; 6/14/1976.
Langur, long-tailed	*Presbytis potenziani*	Wherever found	T	41 FR 45990; 10/19/1976, 50 CFR 17.40(c) [4d].
Langur, Pagi Island	*Nasalis concolor*	Wherever found	E	35 FR 8491; 6/2/1970.
Langur, purple-faced	*Presbytis senex*	Wherever found	T	41 FR 45990; 10/19/1976, 50 CFR 17.40(c) [4d].
Lechwe, red	*Kobus leche*	Wherever found	T	35 FR 8491; 6/2/1970, 41 FR 24062; 6/14/1976, 45 FR 65132; 10/1/1980.
Lemurs	*Lemuridae* (incl. genera *Lemur, Phaner, Hapalemur, Lepilemur, Microcebus, Allocebus, Cheirogaleus, Varecia*).	Wherever found	E	35 FR 8491; 6/2/1970, 41 FR 24062; 6/14/1976, 41 FR 26019; 6/24/1976.
Leopard	*Panthera pardus*	Wherever found, except where it is listed as threatened.	E	35 FR 8491; 6/2/1970, 37 FR 6476; 3/30/1972, 47 FR 4204; 1/28/1982.
Leopard [Southern Africa populations]	*Panthera pardus*	In Africa, in the wild, south of, and including, the following countries: Gabon, Congo, Zaire, Uganda, Kenya.	T	35 FR 8491: 6/2/1970, 37 FR 6476; 3/30/1972, 47 FR 4204; 1/28/1982, 50 CFR 17.40(f) [4d].
Leopard, clouded	*Neofelis nebulosa*	Wherever found	E	35 FR 8491; 6/2/1970, 41 FR 24062; 6/14/1976.
Leopard, snow	*Uncia (=Panthera) uncia*	Wherever found	E	37 FR 6476; 3/30/1972.
Linsang, spotted	*Prionodon pardicolor*	Wherever found	E	41 FR 24062; 6/14/1976.

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Lion	*Panthera leo leo*	Wherever found	E	80 FR 79999; 12/23/2015.
Lion	*Panthera leo melanochaita*	Wherever found	T	80 FR 79999; 12/23/2015, 50 CFR 17.40(r) [4d].
Loris, lesser slow	*Nycticebus pygmaeus*	Wherever found	T	41 FR 45990; 10/19/1976, 50 CFR 17.40(c) [4d].
Lynx, Canada [Contiguous U.S. DPS]	*Lynx canadensis*	Where found within contiguous U.S.A.	T	65 FR 16053; 3/24/2000, 50 CFR 17.40(k) [4d], 50 CFR 17.95(a) [CH].
Lynx, Spanish	*Felis pardina*	Wherever found	E	35 FR 8491; 6/2/1970.
Macaque, Formosan rock	*Macaca cyclopis*	Wherever found	T	41 FR 45990; 10/19/1976, 50 CFR 17.40(c) [4d].
Macaque, Japanese	*Macaca fuscata*	Wherever found	T	41 FR 45990; 10/19/1976, 50 CFR 17.40(c) [4d].
Macaque, lion-tailed	*Macaca silenus*	Wherever found	E	35 FR 8491; 6/2/1970.
Macaque, stump-tailed	*Macaca arctoides*	Wherever found	T	41 FR 45990; 10/19/1976, 50 CFR 17.40(c) [4d].
Macaque, Toque	*Macaca sinica*	Wherever found	T	41 FR 45990; 10/19/1976, 50 CFR 17.40(c) [4d].
Manatee, Amazonian	*Trichechus inunguis*	Wherever found	E	35 FR 8491; 6/2/1970.
Manatee, West African	*Trichechus senegalensis*	Wherever found	T	44 FR 42910; 7/20/1979.
Manatee, West Indian	*Trichechus manatus*	Wherever found	E	32 FR 4001; 3/11/1967, 35 FR 8491; 6/2/1970, 50 CFR 17.108(a), 50 CFR 17.95(a) [CH].
Mandrill	*Mandrillus (=Papio) sphinx*	Wherever found	E	41 FR 45990; 10/19/1976.
Mangabey, Tana River	*Cercocebus galeritus galeritus*	Wherever found	E	35 FR 8491; 6/2/1970.
Mangabey, white-collared	*Cercocebus torquatus*	Wherever found	E	41 FR 45990; 10/19/1976.
Margay	*Leopardus (=Felis) wiedii*	Mexico southward	E	37 FR 6476; 3/30/1972.
Markhor, chiltan (=wild goat)	*Capra falconeri (=aegagrus) chiltanensis*	Wherever found	E	41 FR 24062; 6/14/1976.
Markhor, straight-horned	*Capra falconeri megaceros*	Wherever found	T	41 FR 24062; 6/14/1976, 79 FR 60365; 10/7/2014, 50 CFR 17.40(d) [4d].
Marmoset, buff-headed	*Callithrix flaviceps*	Wherever found	E	49 FR 2779; 1/23/1984.
Marmoset, cotton-top	*Saguinus oedipus*	Wherever found	E	41 FR 45990; 10/19/1976.
Marmoset, Goeldi's	*Callimico goeldii*	Wherever found	E	35 FR 8491; 6/2/1970.
Marmoset, white-eared (=buffy tufted-ear)	*Callithrix aurita (=jacchus a.)*	Wherever found	E	51 FR 17977; 5/16/1986.
Marmot, Vancouver Island	*Marmota vancouverensis*	Wherever found	E	49 FR 2779; 1/23/1984.
Marsupial, eastern jerboa	*Antechinomys laniger*	Wherever found	E	35 FR 18319; 6/2/1970.
Marsupial-mouse, large desert	*Sminthopsis psammophila*	Wherever found	E	35 FR 18319; 6/2/1970.
Marsupial-mouse, long-tailed	*Sminthopsis longicaudata*	Wherever found	E	35 FR 18319; 6/2/1970.
Marten, Formosan yellow-throated	*Martes flavigula chrysospila*	Wherever found	E	35 FR 8491; 6/2/1970.
Monkey, black colobus	*Colobus satanas*	Wherever found	E	41 FR 45990; 10/19/1976.
Monkey, black howler	*Alouatta pigra*	Wherever found	T	41 FR 45990; 10/19/1976, 50 CFR 17.40(c) [4d].
Monkey, Diana	*Cercopithecus diana*	Wherever found	E	41 FR 45990; 10/19/1976.
Monkey, Guizhou snub-nosed	*Rhinopithecus brelichi*	Wherever found	E	55 FR 39414; 9/27/1990.
Monkey, L'hoest's	*Cercopithecus lhoesti*	Wherever found	E	41 FR 45990; 10/19/1976.
Monkey, mantled howler	*Alouatta palliata*	Wherever found	E	41 FR 24062; 6/14/1976.
Monkey, Preuss' red colobus	*Procolobus (=Colobus) preussi (=badius p.).*	Wherever found	E	49 FR 2779; 1/23/1984.
Monkey, proboscis	*Nasalis larvatus*	Wherever found	E	41 FR 24062; 6/14/1976.
Monkey, red-backed squirrel	*Saimiri oerstedii*	Wherever found	E	35 FR 8491; 6/2/1970.
Monkey, red-bellied	*Cercopithecus erythrogaster*	Wherever found	E	41 FR 45990; 10/19/1976.
Monkey, red-eared nose-spotted	*Cercopithecus erythrotis*	Wherever found	E	41 FR 45990; 10/19/1976.
Monkey, Sichuan snub-nosed	*Rhinopithecus roxellana*	Wherever found	E	55 FR 39414; 9/27/1990.
Monkey, spider	*Ateles geoffroyi frontatus*	Wherever found	E	35 FR 8491; 6/2/1970.
Monkey, spider	*Ateles geoffroyl panamensis*	Wherever found	E	35 FR 8491; 6/2/1970.
Monkey, Tana River red colobus	*Procolobus (=Colobus) rufomitratus (=badius r.).*	Wherever found	E	35 FR 8491; 6/2/1970.
Monkey, Tonkin snub-nosed	*Rhinopithecus avunculus*	Wherever found	E	41 FR 45990; 10/19/1976, 55 FR 39414; 9/27/1990.
Monkey, woolly spider	*Brachyteles arachnoides*	Wherever found	E	35 FR 8491; 6/2/1970.
Monkey, yellow-tailed woolly	*Lagothrix flavicauda*	Wherever found	E	41 FR 45990; 10/19/1976.
Monkey, Yunnan snub-nosed	*Rhinopithecus bieti*	Wherever found	E	55 FR 39414; 9/27/1990.
Monkey, Zanzibar red colobus	*Procolobus (=Colobus) pennantii (=kirki) kirki.*	Wherever found	E	35 FR 8491; 6/2/1970.
Mountain beaver, Point Arena	*Aplodontia rufa nigra*	Wherever found	E	56 FR 64716; 12/12/1991.
Mouse, Alabama beach	*Peromyscus polionotus ammobates*	Wherever found	E	50 FR 23872; 6/6/1985, 50 CFR 17.95(a) [CH].
Mouse, Anastasia Island beach	*Peromyscus polionotus phasma*	Wherever found	E	54 FR 20598; 5/12/1989.
Mouse, Australian native	*Notomys aquilo*	Wherever found	E	41 FR 24062; 6/14/1976.
Mouse, Australian native	*Zyzomys pedunculatus*	Wherever found	E	41 FR 24062; 6/14/1976.
Mouse, Choctawhatchee beach	*Peromyscus polionotus allophrys*	Wherever found	E	50 FR 23872; 6/6/1985, 50 CFR 17.95(a) [CH].
Mouse, Field's	*Pseudomys fieldi*	Wherever found	E	35 FR 18319; 12/2/1970.
Mouse, Gould's	*Pseudomys gouldii*	Wherever found	E	38 FR 14678; 6/4/1973.
Mouse, Key Largo cotton	*Peromyscus gossypinus allapaticola*	Wherever found	E	48 FR 43040; 9/21/1983, 49 FR 34504; 8/31/1984.
Mouse, New Holland	*Pseudomys novaehollandiae*	Wherever found	E	35 FR 18319; 12/2/1970.
Mouse, New Mexico meadow jumping	*Zapus hudsonius luteus*	Wherever found	E	79 FR 33119; 6/10/2014, 50 CFR 17.95(a) [CH].
Mouse, Pacific pocket	*Perognathus longimembris pacificus*	Wherever found	E	59 FR 5306; 2/3/1994, 59 FR 49752; 9/29/1994.
Mouse, Perdido Key beach	*Peromyscus polionotus trissyllepsis*	Wherever found	E	50 FR 23872; 6/6/1985, 50 CFR 17.95(a) [CH].
Mouse, Preble's meadow jumping	*Zapus hudsonius preblei*	Wherever found	T	63 FR 26517; 5/13/1998, 78 FR 31679; 5/24/2013, 50 CFR 17.40(l) [4d], 50 CFR 17.95(a) [CH].
Mouse, salt marsh harvest	*Reithrodontomys raviventris*	Wherever found	E	35 FR 16047; 10/13/1970.
Mouse, Shark Bay	*Pseudomys praeconis*	Wherever found	E	35 FR 18319; 12/2/1970.
Mouse, Shortridge's	*Pseudomys shortridgei*	Wherever found	E	35 FR 18319; 12/2/1970.
Mouse, smoky	*Pseudomys fumeus*	Wherever found	E	35 FR 18319; 12/2/1970.
Mouse, southeastern beach	*Peromyscus polionotus niveiventris*	Wherever found	T	54 FR 20598; 5/12/1989.
Mouse, St. Andrew beach	*Peromyscus polionotus peninsularis*	Wherever found	E	63 FR 70053; 12/18/1998, 50 CFR 17.95(a) [CH].
Mouse, western	*Pseudomys occidentalis*	Wherever found	E	35 FR 18319; 12/2/1970.
Muntjac, Fea's	*Muntiacus feae*	Wherever found	E	44 FR 37124; 6/25/1979.
Native-cat, eastern	*Dasyurus viverrinus*	Wherever found	E	38 FR 14678; 6/4/1973.
Numbat	*Myrmecobius fasciatus*	Wherever found	E	35 FR 18319; 12/2/1970, 38 FR 14678; 6/4/1973.

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Ocelot	*Leopardus (=Felis) pardalis*	Wherever found	E	37 FR 6476; 3/30/1972, 47 FR 31670; 7/21/1982.
Orangutan	*Pongo pygmaeus*	Wherever found	E	35 FR 8491; 6/2/1970.
Oryx, Arabian	*Oryx leucoryx*	Wherever found	E	35 FR 8491; 6/2/1970.
Oryx, scimitar-horned	*Oryx dammah*	Wherever found	E	70 FR 52319; 9/2/2005.
Otter, Cameroon clawless	*Aonyx congicus (=congica) microdon*	Wherever found	E	35 FR 8491; 6/2/1970.
Otter, giant	*Pteronura brasiliensis*	Wherever found	E	35 FR 8491; 6/2/1970.
Otter, long-tailed	*Lontra (=Lutra) longicaudis* (incl. *platensis*).	Wherever found	E	35 FR 8491; 6/2/1970, 41 FR 24062; 6/24/1976.
Otter, marine	*Lontra (=Lutra) felina*	Wherever found	E	41 FR 24062; 6/24/1976.
Otter, northern sea [Southwest Alaska DPS]	*Enhydra lutris kenyoni*	Southwest Alaska, from Attu Island to Western Cook Inlet, including Bristol Bay, the Kodiak Archipelago, and the Barren Islands.	T	70 FR 46366; 8/9/2005, 50 CFR 17.40(p) [4d], 50 CFR 17.95(a) [CH].
Otter, southern river	*Lontra (=Lutra) provocax*	Wherever found	E	41 FR 24062; 6/14/1976.
Otter, southern sea	*Enhydra lutris nereis*	Wherever found	T	42 FR 2965; 1/14/1977.
Panda, giant	*Ailuropoda melanoleuca*	Wherever found	E	49 FR 2779; 1/23/1984.
Pangolin, Temnick's ground	*Manis temminckii*	Wherever found	E	41 FR 24062; 6/14/1976.
Panther, Florida	*Puma (=Felis) concolor coryi*	Wherever found	E	32 FR 4001; 3/11/1967.
Planigale, little	*Planigale ingrami subtilissima*	Wherever found	E	35 FR 18319; 12/2/1970.
Planigale, southern	*Planigale tenuirostris*	Wherever found	E	35 FR 18319; 12/2. 1970.
Pocket gopher, Olympia	*Thomomys mazama pugetensis*	Wherever found	T	79 FR 19759; 4/9/2014, 50 CFR 17.40(a) [4d], 50 CFR 17.95(a) [CH].
Pocket gopher, Roy Prairie	*Thomomys mazama glacialis*	Wherever found	T	79 FR 19759; 4/9/2014, 50 CFR 17.40(a) [4d].
Pocket gopher, Tenino	*Thomomys mazama tumuli*	Wherever found	T	79 FR 19759; 4/9/2014, 50 CFR 17.40(a) [4d], 50 CFR 17.95(a) [CH].
Pocket gopher, Yelm	*Thomomys mazama yelmensis*	Wherever found	T	79 FR 19759; 4/9/2014, 50 CFR 17.40(a) [4d], 50 CFR 17.95(a) [CH].
Porcupine, thin-spined	*Chaetomys subspinosus*	Wherever found	E	35 FR 8491; 6/2/1970.
Porpoise, Gulf of California harbor (cochito, vaquita).	*Phocoena sinus*	Wherever found	E	50 FR 1056; 1/9/1985 [N], 50 FR 1056; 1/9/1985.
Possum, Leadbeater's	*Gymnobelideus leadbeateri*	Wherever found	E	51 FR 17977; 5/16/1986.
Possum, mountain pygmy	*Burramys parvus*	Wherever found	E	35 FR 18319; 12/2/1970.
Possum, scaly-tailed	*Wyulda squamicaudata*	Wherever found	E	35 FR 18319; 12/2/1970.
Prairie dog, Mexican	*Cynomys mexicanus*	Wherever found	E	35 FR 8491; 6/2/1970.
Prairie dog, Utah	*Cynomys parvidens*	Wherever found	T	38 FR 14678; 6/4/1973, 49 FR 22330; 5/29/1984, 50 CFR 17.40(g) [4d].
Pronghorn, peninsular	*Antilocapra americana peninsularis*	Wherever found	E	40 FR 44149; 9/25/1975.
Pronghorn, Sonoran	*Antilocapra americana sonoriensis*	Wherever found, except where listed as an experimental population.	E	32 FR 4001; 3/11/1967, 35 FR 8491; 6/2/1970.
Pronghorn, Sonoran	*Antilocapra americana sonoriensis*	In Arizona, an area north of Interstate 8 and south of Interstate 10, bounded by the Colorado River on the west and Interstate 10 on the east; and an area south of Interstate 8, bounded by Highway 85 on the west, Interstates 10 and 19 on the east, and the U.S.-Mexico border on the south.	XN	76 FR 25593; 5/5/2011, 50 CFR 17.84(v) [10j].
Pudu	*Pudu pudu*	Wherever found	E	41 FR 24062; 6/14/1976.
Puma (=mountain lion)	*Puma (=Felis) concolor* (all subsp. except *coryi*).	U.S.A. (FL)	T(S/A)	56 FR 40265; 8/14/1991, 50 CFR 17.40(h) [4d].
Puma, Costa Rican	*Puma (=Felis) concolor costaricensis*	Wherever found	E	41 FR 24062; 6/14/1976.
Puma (=cougar), eastern	*Puma (=Felis) concolor couguar*	Wherever found	E	38 FR 14678; 6/4/1973.
Quokka	*Setonix brachyurus*	Wherever found	E	38 FR 14678; 6/4/1973.
Rabbit, Columbia Basin pygmy [Columbia Basin DPS].	*Brachylagus idahoensis*	U.S.A. (WA—Douglas, Grant, Lincoln, Adams, Benton Counties).	E	68 FR 10388; 3/5/2003.
Rabbit, Lower Keys	*Sylvilagus palustris hefneri*	Wherever found	E	55 FR 25588; 6/21/1990.
Rabbit, riparian brush	*Sylvilagus bachmani riparius*	Wherever found	E	65 FR 8881; 2/23/2000.
Rabbit, Ryukyu	*Pentalagus furnessi*	Wherever found	E	44 FR 37124; 6/25/1979.
Rabbit, volcano	*Romerolagus diazi*	Wherever found	E	35 FR 8491; 6/2/1970.
Rat, false water	*Xeromys myoides*	Wherever found	E	35 FR 18319; 12/2/1970.
Rat, stick-nest	*Leporillus conditor*	Wherever found	E	38 FR 14678; 6/4/1970.
Rat-kangaroo, brush-tailed	*Bettongia penicillata*	Wherever found	E	35 FR 18319; 12/2/1970.
Rat-kangaroo, desert (=plain)	*Caloprymnus campestris*	Wherever found	E	35 FR 18319; 12/2/1970.
Rat-kangaroo, Gaimard's	*Bettongia gaimardi*	Wherever found	E	38 FR 14678; 6/4/1970.
Rat-kangaroo, Lesuer's	*Bettongia lesueur*	Wherever found	E	35 FR 18319; 12/2/1970.
Rat-kangaroo, Queensland	*Bettongia tropica*	Wherever found	E	35 FR 18319; 12/2/1970.
Rhinoceros, black	*Diceros bicornis*	Wherever found	E	45 FR 47352; 7/14/1980.
Rhinoceros, great Indian	*Rhinoceros unicornis*	Wherever found	E	35 FR 18319; 12/2/1970.
Rhinoceros, Javan	*Rhinoceros sondaicus*	Wherever found	E	35 FR 8491; 6/2/1970.
Rhinoceros, northern white	*Ceratotherium simum cottoni*	Wherever found	E	35 FR 8491; 6/2/1970.
Rhinoceros, southern white	*Ceratotherium simum simum*	Wherever found	T(S/A)	79 FR 28847; 5/20/2014.
Rhinoceros, Sumatran	*Dicerorhinus sumatrensis*	Wherever found	E	35 FR 8491; 6/2/1970.
Rice rat [Lower FL Keys DPS]	*Oryzomys palustris natator*	Lower FL Keys (west of Seven Mile Bridge).	E	56 FR 19809; 4/30/1990, 50 CFR 17.95(a) [CH].
Saiga, Mongolian (antelope)	*Saiga tatarica mongolica*	Wherever found	E	41 FR 24062; 6/14/1976.
Saki, southern bearded	*Chiropotes satanas satanas*	Wherever found	E	51 FR 17977; 5/16/1986.
Saki, white-nosed	*Chiropotes albinasus*	Wherever found	E	35 FR 8491; 6/2/1970.
Sea lion, Steller [Western DPS]	*Eumetopias jubatus*	Western DPS—see 50 CFR 224.101	E	55 FR 13488; 4/10/1990, 55 FR 50005; 12/4/1990, 62 FR 24345; 5/5/1997 [N], 62 FR 30772; 6/5/1997, 50 CFR 226.202 [CH], 50 CFR 224.103.
Seal, bearded [Beringia DPS]	*Erignathus barbatus nauticus*	Beringia DPS—see 50 CFR 223.102	T	77 FR 76739; 12/28/2012 [N], 79 FR 42687; 7/23/2014.
Seal, bearded [Okhotsk DPS]	*Erignathus barbatus nauticus*	Okhotsk DPS—see 50 CFR 223.102	T	77 FR 76739; 12/28/2012 [N], 79 FR 42687; 7/23/2014.
Seal, Guadalupe fur	*Arctocephalus townsendi*	Wherever found	T	32 FR 4001; 3/11/1967, 35 FR 16047; 10/13/1970, 50 FR 51251; 12/16/1985, 55 FR 14051; 3/23/1999 [N], 50 CFR 223.201 [4d].
Seal, Hawaiian monk	*Neomonachus schauinslandi (=Monachus schauinslandi).*	Wherever found	E	41 FR 51611; 11/23/1976, 55 FR 14051; 3/23/1999 [N], 50 CFR 226.201 [CH].
Seal, Mediterranean monk	*Monachus monachus*	Wherever found	E	35 FR 8491; 6/2/1970, 55 FR 14051; 3/23/1999 [N].

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Seal, ringed (Arctic subspecies)	*Phoca* (=*Pusa*) *hispida hispida*	Wherever found	T	77 FR 76705; 12/28/2012 [N], 79 FR 42687; 7/23/2014.
Seal, ringed (Baltic subspecies)	*Phoca* (=*Pusa*) *hispida botnica*	Wherever found	T	77 FR 76705; 12/28/2012 [N], 79 FR 42687; 7/23/2014.
Seal, ringed (Ladoga subspecies)	*Phoca* (=*Pusa*) *hispida ladogensis*	Wherever found	E	77 FR 76705; 12/28/2012 [N], 79 FR 42687; 7/23/2014.
Seal, ringed (Okhotsk subspecies)	*Phoca* (=*Pusa*) *hispida ochotensis*	Wherever found	T	77 FR 76705; 12/28/2012 [N], 79 FR 42687; 7/23/2014.
Seal, ringed (Saimaa subspecies)	*Phoca hispida saimensis*	Wherever found	E	58 FR 26920; 5/6/1993 [N], 58 FR 40538; 7/28/1993.
Seal, spotted [Southern DPS]	*Phoca largha*	Southern DPS—see 50 CFR 223.102	T	75 FR 65239; 10/22/2010 [N], 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.212 [4d].
Seledang	*Bos gaurus*	Wherever found	E	35 FR 8491; 6/2/1970.
Serow	*Naemorhedus* (=*Capricornis*) *sumatraensis*.	Wherever found	E	41 FR 26019; 6/24/1976.
Serval, Barbary	*Leptailurus* (=*Felis*) *serval constantina*	Wherever found	E	35 FR 8491; 6/2/1970.
Shapo	*Ovis vignei vignei*	Wherever found	E	41 FR 26019; 6/24/1976.
Sheep, Peninsular bighorn [Peninsular CA DPS]	*Ovis canadensis nelsoni*	U.S.A. (CA) Peninsular Ranges	E	63 FR 13134; 3/18/1998, 50 CFR 17.95(a) [CH].
Sheep, Sierra Nevada bighorn	*Ovis canadensis sierrae*	U.S.A. (CA)—Sierra Nevada	E	64 FR 19300; 4/20/1999, 65 FR 20; 1/3/2000, 73 FR 45534; 8/5/2008, 50 CFR 17.95(a) [CH].
Shou	*Cervus elaphus wallichi*	Wherever found	E	35 FR 8491; 6/2/1970.
Shrew, Buena Vista Lake	*Sorex ornatus relictus*	Wherever found	E	67 FR 10101; 3/6/2002, 50 CFR 17.95(a) [CH].
Siamang	*Symphalangus syndactylus*	Wherever found	E	41 FR 24062; 6/14/1976.
Sifakas	*Propithecus spp.*	Wherever found	E	35 FR 18319; 12/2/1970.
Sloth, Brazilian three-toed	*Bradypus torquatus*	Wherever found	E	35 FR 8491; 6/2/1970.
Solenodon, Cuban	*Solenodon cubanus*	Wherever found	E	35 FR 8491; 6/2/1970.
Solenodon, Haitian	*Solenodon paradoxus*	Wherever found	E	35 FR 8491; 6/2/1970.
Squirrel, Carolina northern flying	*Glaucomys sabrinus coloratus*	Wherever found	E	50 FR 26999; 7/1/1985.
Squirrel, Mount Graham red	*Tamiasciurus hudsonicus grahamensis*	Wherever found	E	52 FR 20994; 6/3/1987, 50 CFR 17.95(a) [CH].
Squirrel, northern Idaho ground	*Spermophilus brunneus brunneus*	Wherever found	T	65 FR 17780; 4/5/2000.
Stag, Barbary	*Cervus elaphus barbarus*	Wherever found	E	35 FR 8491; 6/2/1970.
Stag, Kashmir	*Cervus elaphus hanglu*	Wherever found	E	35 FR 8491; 6/2/1970.
Suni, Zanzibar	*Neotragus moschatus moschatus*	Wherever found	E	44 FR 37124; 6/25/1979.
Tahr, Arabian	*Hemitragus jayakari*	Wherever found	E	44 FR 37124; 6/25/1979.
Tamaraw	*Bubalus mindorensis*	Wherever found	E	35 FR 18319; 12/2/1970.
Tamarin, golden-rumped	*Leontopithecus spp.*	Wherever found	E	35 FR 8491; 6/2/1970.
Tamarin, pied	*Saguinus bicolor*	Wherever found	E	41 FR 45990; 10/19/1976.
Tamarin, white-footed	*Saguinus leucopus*	Wherever found	T	41 FR 45990; 10/19/1976, 50 CFR 17.40(c) [4d].
Tapir, Asian	*Tapirus indicus*	Wherever found	E	41 FR 24062; 6/14/1976.
Tapir, Central American	*Tapirus bairdii*	Wherever found	E	35 FR 8491; 6/2/1970.
Tapir, mountain	*Tapirus pinchaque*	Wherever found	E	35 FR 8491; 6/2/1970.
Tapir, South American (=Brazilian)	*Tapirus terrestris*	Wherever found	E	35 FR 8491; 6/2/1970.
Tarsier, Philippine	*Tarsius syrichta*	Wherever found	T	41 FR 45990; 10/19/1976, 50 CFR 17.40(c) [4d].
Tiger	*Panthera tigris*	Wherever found	E	35 FR 8491; 6/2/1970, 37 FR 6476; 3/30/1972.
Tiger, Tasmanian	*Thylacinus cynocephalus*	Wherever found	E	35 FR 8491; 6/2/1970.
Uakari (all species)	*Cacajao* spp.	Wherever found	E	35 FR 8491; 6/2/1970.
Urial	*Ovis musimon ophion*	Wherever found	E	41 FR 24062; 6/14/1976.
Vicuna [Argentina, Bolivia, Chile and Peru]	*Vicugna vicugna*	Wherever found, except Ecudator	T	35 FR 8491; 6/2/1970, 67 FR 37695; 5/30/2002, 50 CFR 17.40(m) [4d].
Vicuna [Ecuador DPS]	*Vicugna vicugna*	Ecuador	E	35 FR 8491; 6/2/1970, 67 FR 37695; 5/30/2002.
Vole, Amargosa	*Microtus californicus scirpensis*	Wherever found	E	49 FR 45160; 11/15/1984, 50 CFR 17.95(a) [CH].
Vole, Florida salt marsh	*Microtus pennsylvanicus dukecampbelli*	Wherever found	E	56 FR 1457; 1/14/1991.
Vole, Hualapai Mexican	*Microtus mexicanus hualpaiensis*	Wherever found	E	52 FR 36776; 10/1/1987.
Wallaby, banded hare	*Lagostrophus fasciatus*	Wherever found	E	35 FR 18319; 12/2/1970.
Wallaby, brindled nail-tailed	*Onychogalea fraenata*	Wherever found	E	35 FR 18319; 12/2/1970.
Wallaby, crescent nail-tailed	*Onychogalea lunata*	Wherever found	E	35 FR 18319; 12/2/1970.
Wallaby, Parma	*Macropus parma*	Wherever found	E	35 FR 18319; 12/2/1970.
Wallaby, western hare	*Lagorchestes hirsutus*	Wherever found	E	35 FR 18319; 12/2/1970.
Wallaby, yellow-footed rock	*Petrogale xanthopus*	Wherever found	E	38 FR 14678; 6/4/1973.
Whale, beluga [Cook Inlet DPS]	*Delphinapterus leucas*	Cook Inlet DPS—see 50 CFR 224.101	E	73 FR 62919; 10/22/2008 [N], 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 226.220 [CH].
Whale, blue	*Balaenoptera musculus*	Wherever found	E	35 FR 8491; 6/2/1970.
Whale, bowhead	*Balaena mysticetus*	Wherever found	E	35 FR 8491; 6/2/1970.
Whale, false killer [Main Hawaiian Islands Insular DPS].	*Pseudorca crassidens*	Main Hawaiian Islands Insular DPS—see 50 CFR 224.101.	E	77 FR 70915; 11/28/2012 [N], 79 FR 42687; 7/23/2014.
Whale, finback	*Balaenoptera physalus*	Wherever found	E	35 FR 8491; 6/2/1970.
Whale, gray [Western North Pacific DPS]	*Eschrichtius robustus*	Western North Pacific DPS—see 50 CFR 224.101.	E	35 FR 8491; 6/2/1970, 59 FR 31094; 6/16/1994 [N], 79 FR 42687; 7/23/2014.
Whale, humpback	*Megaptera novaeangliae*	Wherever found	E	35 FR 8491; 6/2/1970, 50 CFR 224.103.
Whale, killer [Southern Resident DPS]	*Orcinus orca*	Southern Resident DPS—see 50 CFR 224.101.	E	70 FR 69903; 11/18/2005 [N], 72 FR 16284; 4/4/2007, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 80 CFR 7380; 2/10/2015 [N], 50 CFR 224.103, 50 CFR 226.206 [CH].
Whale, North Atlantic right	*Eubalaena glacialis*	Wherever found	E	35 FR 8491; 6/2/1970, 73 FR 12024; 3/6/2008 [N], 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 224.103, 50 CFR 226.203 [CH].
Whale, North Pacific right	*Eubalaena japonica*	Wherever found	E	35 FR 8491; 6/2/1970, 73 FR 12024; 3/6/2008 [N], 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 226.215 [CH].
Whale, sei	*Balaenoptera borealis*	Wherever found	E	35 FR 8491; 6/2/1970.
Whale, Southern right	*Eubalaena australis*	Wherever found	E	35 FR 8491; 6/2/1970, 73 FR 12024; 3/6/2008 [N], 76 FR 20558; 4/13/2011.

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Whale, sperm	*Physeter catodon (=macrocephalus)*	Wherever found	E	35 FR 8491; 6/2/1970.
Wolf, gray	*Canis lupus*	U.S.A.: All of AL, AR, CA, CO, CT, DE, FL, GA, IA, IN, IL, KS, KY, LA, MA, MD, ME, MI, MO, MS, NC, ND, NE, NH, NJ, NV, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, and WV; and portions of AZ, NM, OR, UT, and WA as follows: (1) Northern AZ (that portion north of the centerline of Interstate Highway 40); (2) Northern NM (that portion north of the centerline of Interstate Highway 40); (3) Western OR (that portion of OR west of the centerline of Highway 395 and Highway 78 north of Burns Junction and that portion of OR west of the centerline of Highway 95 south of Burns Junction); (4) Most of Utah (that portion of UT south and west of the centerline of Highway 84 and that portion of UT south of Highway 80 from Echo to the UT/WY Stateline); and (5) Western WA (that portion of WA west of the centerline of Highway 97 and Highway 17 north of Mesa and that portion of WA west of the centerline of Highway 395 south of Mesa). Mexico.	E	32 FR 4001; 3/11/1967, 38 FR 14678; 6/4/1973, 41 FR 17736; 4/28/1976, 41 FR 24062; 6/14/1976, 43 FR 9607; 3/9/1978, 80 FR 9218; 2/20/2015, 50 CFR 17.95(a) [CH].
Wolf, gray [MN DPS]	*Canis lupus*	U.S.A. (MN)	T	43 FR 9607; 3/9/1978, 50 CFR 17.40(d) [4d], 50 CFR 17.95(a) [CH].
Wolf, gray [Northern Rocky Mountain DPS]	*Canis lupus*	Northern Rocky Mountain DPS—U.S.A. (WY—see § 17.84(i) and (n)).	XN	59 FR 60252; 11/22/1994, 59 FR 60266; 11/22/1994, 70 FR 1286; 1/16/2005, 73 FR 4720; 1/28/2008, 50 CFR 17.84(i) [10j], 50 CFR 17.84(n) [10j].
Wolf, maned	*Chrysocyon brachyurus*	Wherever found	E	35 FR 18319; 12/2/1970.
Wolf, Mexican	*Canis lupus baileyi*	Wherever found, except where included in an experimental population as set forth in § 17.84(k).	E	40 FR 17590; 4/21/1975, 80 FR 2488; 1/16/2015.
Wolf, Mexican	*Canis lupus baileyi*	U.S.A. (portions of AZ and NM)—see § 17.84(k).	XN	63 FR 1752; 1/12/1998, 80 FR 2512; 1/16/2015, 50 CFR 17.84(k) [10j].
Wolf, red	*Canis rufus*	Wherever found, except where listed as an experimental population.	E	32 FR 4001; 3/11/1967, 51 FR 41790; 11/19/1986, 56 FR 56325; 11/4/1991, 60 FR 18941; 4/13/1995.
Wolf, red	*Canis rufus*	U.S.A. (portions of NC and TN—see § 17.84(c)(9)).	XN	51 FR 41790; 11/19/1986, 56 FR 56325; 11/4/1991, 60 FR 18941; 4/13/1995, 50 CFR 17.84(c) [10j].
Wombat, Queensland hairy-nosed (incl. Barnard's).	*Lasiorhinus krefftii* (formerly *L. barnardi* and *L. gillespiei*).	Wherever found	E	35 FR 18319; 12/2/1970, 38 FR 14678; 6/4/1973.
Woodrat, Key Largo	*Neotoma floridana smalli*	Wherever found	E	48 FR 43040; 9/21/1983, 49 FR 34504; 8/31/1984.
Woodrat, riparian (San Joaquin Valley)	*Neotoma fuscipes riparia*	Wherever found	E	65 FR 8881; 2/23/2000.
Yak, wild	*Bos mutus (=grunniens m.)*	Wherever found	E	35 FR 8491; 6/2/1970.
Zebra, Grevy's	*Equus grevyi*	Wherever found	T	44 FR 49218; 8/21/1979.
Zebra, Hartmann's mountain	*Equus zebra hartmannae*	Wherever found	T	44 FR 49218; 8/21/1979 46 FR 11665; 2/10/1981.
Zebra, mountain	*Equus zebra zebra*	Wherever found	E	41 FR 24062; 6/14/1976 46 FR 11665; 2/10/1981.
BIRDS				
Adjutant, greater	*Leptoptilos dubius*	Wherever found	E	76 FR 50052; 8/11/2011.
Akekee (honeycreeper)	*Loxops caeruleirostris*	Wherever found	E	75 FR 18960; 4/13/2010 50 CFR 17.95(b) [CH].
Akepa, Hawaii	*Loxops coccineus*	Wherever found	E	35 FR 16047; 10/13/1970.
Akepa, Maui	*Loxops ochraceus*	Wherever found	E	35 FR 16047; 10/13/1970.
Akialoa, Kauai	*Hemignathus stejnegeri*	Wherever found	E	32 FR 4001; 3/11/1967.
Akiapolaau	*Hemignathus wilsoni*	Wherever found	E	32 FR 4001; 3/11/1967.
Akikiki (honeycreeper)	*Oreomystis bairdi*	Wherever found	E	75 FR 18960; 4/13/2010 50 CFR 17.95(b) [CH].
Albatross, Amsterdam	*Diomedea amsterdamensis*	Wherever found	E	60 FR 2899; 1/12/1995.
Albatross, short-tailed	*Phoebastria (=Diomedea) albatrus*	Wherever found	E	35 FR 8491; 6/2/1970, 65 FR 46643; 7/31/2000.
Alethe, Thyolo	*Alethe choloensis*	Wherever found	E	60 FR 2899; 1/12/1995.
Antpitta, brown-banded	*Grallaria milleri*	Wherever found	E	78 FR 64637; 10/29/2013.
Antwren, black-hooded	*Formicivora erythronotos*	Wherever found	E	75 FR 81794; 12/28/2010.
Blackbird, yellow-shouldered	*Agelaius xanthomus*	Wherever found	E	41 FR 51019; 11/19/1976, 50 CFR 17.95(b) [CH].
Bobwhite, masked (quail)	*Colinus virginianus ridgwayi*	Wherever found	E	32 FR 4001; 3/11/1967, 35 FR 8491; 6/2/1970.
Booby, Abbott's	*Papasula (=Sula) abbotti*	Wherever found	E	41 FR 24062; 6/14/1976.
Bristlebird, western	*Dasyornis longirostris (=brachypterus l.)*	Wherever found	E	35 FR 8491; 6/2/1970.
Bristlebird, western rufous	*Dasyornis broadbenti littoralis*	Wherever found	E	41 FR 24062; 6/14/1976.
Bulbul, Mauritius olivaceous	*Hypsipetes borbonicus olivaceus*	Wherever found	E	35 FR 8491; 6/2/1970.
Bullfinch, Sao Miguel (finch)	*Pyrrhula pyrrhula murina*	Wherever found	E	35 FR 8491; 6/2/1970.
Bush-shrike, Ulugura	*Malaconotus alius*	Wherever found	T	60 FR 2899; 1/12/1995.
Bushwren, New Zealand	*Xenicus longipes*	Wherever found	E	35 FR 8491; 6/2/1970.
Bustard, great Indian	*Ardeotis (=Choriotis) nigriceps*	Wherever found	E	35 FR 8491; 6/2/1970.
Cahow	*Pterodroma cahow*	Wherever found	E	35 FR 8491; 6/2/1970.
Capercaillie, Cantabrian	*Tetrao urogallus cantabricus*	Wherever found	E	76 FR 50052; 8/11/2011.
Caracara, crested, (Audubon's) [FL DPS]	*Polyborus plancus audubonii*	U.S.A. (FL)	T	52 FR 25229; 7/6/1987.
Cinclodes, royal	*Cinclodes aricomae*	Wherever found	E	77 FR 43434; 7/24/2012.
Cockatoo, Philippine	*Cacatua haematuropygia*	Wherever found	E	79 FR 35870; 6/24/2014.
Cockatoo, salmon-crested	*Cacatua moluccensis*	Wherever found	T	76 FR 30758; 5/26/2011 50 CFR 17.41(c) [4d].

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Cockatoo, white	*Cacatua alba*	Wherever found	T	79 FR 35870; 6/24/2014 50 CFR 17.41(c) [4d].
Cockatoo, yellow-crested	*Cacatua sulphurea*	Wherever found	E	79 FR 35870; 6/24/2014.
Condor, Andean	*Vultur gryphus*	Wherever found	E	35 FR 18319; 12/2/1970.
Condor, California	*Gymnogyps californianus*	U.S.A. only, except where listed as an experimental population.	E	32 FR 4001; 3/11/1967, 61 FR 54045; 10/16/1996, 50 CFR 17.95(b) [CH].
Condor, California	*Gymnogyps californianus*	U.S.A. (specific portions of Arizona, Nevada, and Utah)—see § 17.84(j).	XN	61 FR 54045; 10/16/1996, 50 CFR 17.84(j) [10j].
Coot, Hawaiian	*Fulica americana alai*	Wherever found	E	35 FR 16047/10/13/1970.
Cotinga, banded	*Cotinga maculata*	Wherever found	E	41 FR 24062; 6/14/1976.
Cotinga, white-winged	*Xipholena atropurpurea*	Wherever found	E	41 FR 24062; 6/14/1976.
Courser, Jerdon's	*Rhinoptilus bitorquatus*	Wherever found	E	76 FR 50052; 8/11/2011.
Crane, black-necked	*Grus nigricollis*	Wherever found	E	41 FR 24062; 6/14/1976.
Crane, Cuba sandhill	*Grus canadensis nesiotes*	Wherever found	E	41 FR 24062; 6/14/1976.
Crane, hooded	*Grus monacha*	Wherever found	E	35 FR 18319; 12/2/1970.
Crane, Japanese	*Grus japonensis*	Wherever found	E	35 FR 8491; 6/2/1970.
Crane, Mississippi sandhill	*Grus canadensis pulla*	Wherever found	E	38 FR 14678; 6/4/1973, 50 CFR 17.95(b) [CH].
Crane, Siberian white	*Grus leucogeranus*	Wherever found	E	35 FR 18319; 12/2/1970.
Crane, white-naped	*Grus vipio*	Wherever found	E	41 FR 24062; 6/14/1976.
Crane, whooping	*Grus americana*	Wherever found, except where listed as an experimental population.	E	32 FR 4001; 3/11/1967, 35 FR 8491; 3/9/1978 50 CFR 17.95(b) [CH].
Crane, whooping	*Grus americana*	U.S.A. (AL, AR, CO, FL, GA, ID, IL, IN, IA, KY, LA, MI, MN, MS, MO, NC, NM, OH, SC, TN, UT, VA, WI, WV, western half of WY).	XN	58 FR 5561; 1/22/1993, 62 FR 38932; 7/21/1997, 66 FR 33903; 6/26/2001, 76 FR 6066; 2/3/2011, 50 CFR 17.84(h) [10j].
Creeper, Hawaii	*Oreomystis mana*	Wherever found	E	40 FR 44149; 9/25/1975.
Creeper, Molokai	*Paroreomyza flammea*	Wherever found	E	35 FR 16047; 10/13/1970.
Creeper, Oahu	*Paroreomyza maculata*	Wherever found	E	35 FR 16047; 10/13/1970.
Crow, Hawaiian	*Corvus hawaiiensis*	Wherever found	E	32 FR 4001; 3/11/1967.
Crow, Mariana	*Corvus kubaryi*	Wherever found	E	49 FR 33881; 8/27/1984, 50 CFR 17.95(b) [CH].
Crow, white-necked	*Corvus leucognaphalus*	Wherever found	E	56 FR 13598; 4/3/1991.
Cuckoo, yellow-billed [Western DPS]	*Coccyzus americanus*	Western DPS: U.S.A. (AZ, CA, CO (western), ID, MT (western), NM (western), NV, OR, TX (western), UT, WA, WY (western)); Canada (British Columbia (southwestern); Mexico (Baja California, Baja California Sur, Chihuahua, Durango (western), Sinaloa, Sonora).	T	79 FR 59991; 10/3/2014.
Cuckoo-shrike, Mauritius	*Coquus typicus*	Wherever found	E	35 FR 8491; 6/2/1970.
Cuckoo-shrike, Reunion	*Coquus newtoni*	Wherever found	E	35 FR 8491; 6/2/1970.
Curassow, blue-billed	*Crax alberti*	Wherever found	E	78 FR 64637; 10/29/2013.
Curassow, razor-billed	*Mitu mitu mitu*	Wherever found	E	41 FR 24062; 6/14/1976.
Curassow, red-billed	*Crax blumenbachii*	Wherever found	E	35 FR 18319; 12/2/1970.
Curassow, Trinidad white-headed	*Pipile pipile pipile*	Wherever found	E	35 FR 8491; 6/2/1970.
Curlew, Eskimo	*Numenius borealis*	Wherever found	E	32 FR 4001; 3/11/1967, 35 FR 8491; 6/2/1970.
Curlew, slender-billed	*Numenius tenuirostris*	Wherever found	E	76 FR 50052; 8/11/2011.
Dove, cloven-feathered	*Drepanoptila holosericea*	Wherever found	E	35 FR 8491; 6/2/1970.
Dove, Grenada gray-fronted	*Leptotila rufaxilla wellsi*	Wherever found	E	35 FR 8491; 6/2/1970.
Duck, Hawaiian	*Anas wyvilliana*	Wherever found	E	32 FR 4001; 3/11/1967.
Duck, Laysan	*Anas laysanensis*	Wherever found	E	32 FR 4001; 3/11/1967.
Duck, pink-headed	*Rhodonessa caryophyllacea*	Wherever found	E	41 FR 24062; 6/14/1976.
Duck, white-winged wood	*Cairina scutulata*	Wherever found	E	35 FR 8491; 6/2/1970.
Eagle, Greenland white-tailed	*Haliaeetus albicilla groenlandicus*	Wherever found	E	41 FR 24062; 6/14/1976.
Eagle, harpy	*Harpia harpyja*	Wherever found	E	41 FR 24062; 6/14/1976.
Eagle, Madagascar sea	*Haliaeetus vociferoides*	Wherever found	E	60 FR 2899; 1/12/1995.
Eagle, Madagascar serpent	*Eutriorchis astur*	Wherever found	E	60 FR 2899; 1/12/1995.
Eagle, Philippine	*Pithecophaga jefferyi*	Wherever found	E	35 FR 8491; 6/2/1970.
Eagle, Spanish imperial	*Aquila heliaca adalberti*	Wherever found	E	35 FR 8491; 6/2/1970.
Egret, Chinese	*Egretta eulophotes*	Wherever found	E	35 FR 8491; 6/2/1970.
Eider, spectacled	*Somateria fischeri*	Wherever found	T	58 FR 27474; 5/10/1993, 50 CFR 17.95(b) [CH].
Eider, Steller's [AK Breeding DPS]	*Polysticta stelleri*	U.S.A. (AK breeding population only)	T	62 FR 31748; 6/11/1997, 50 CFR 17.95(b) [CH].
Elepaio, Oahu	*Chasiempis ibidis*	Wherever found	E	65 FR 20760; 4/18/2000, 50 CFR 17.95(b) [CH].
Falcon, Eurasian peregrine	*Falco peregrinus peregrinus*	Wherever found	E	41 FR 24062; 6/14/1976.
Falcon, northern aplomado	*Falco femoralis septentrionalis*	Wherever found, except where listed as an experimental population.	E	51 FR 6686; 2/25/1986.
Falcon, northern aplomado	*Falco femoralis septentrionalis*	U.S.A. (AZ, NM)	XN	71 FR 42298; 7/26/2006, 50 CFR 17.84(p) [10j].
Finch, Laysan (honeycreeper)	*Telespyza cantans*	Wherever found	E	32 FR 4001; 3/11/1967.
Finch, Nihoa (honeycreeper)	*Telespyza ultima*	Wherever found	E	32 FR 4001; 3/11/1967.
Fire-eye, fringed-backed	*Pyriglena atra*	Wherever found	E	75 FR 81794; 12/28/2010.
Flamingo, Andean	*Phoenicoparrus andinus*	Wherever found	E	75 FR 50814; 8/17/2010.
Flycatcher, Euler's	*Empidonax euleri johnstonei*	Wherever found	E	35 FR 8491; 6/2/1970.
Flycatcher, Seychelles paradise	*Terpsiphone corvina*	Wherever found	E	35 FR 8491; 6/2/1970.
Flycatcher, southwestern willow	*Empidonax traillii extimus*	Wherever found	E	60 FR 10695; 2/27/1995, 50 CFR 17.95(b) [CH].
Flycatcher, Tahiti	*Pomarea nigra*	Wherever found	E	35 FR 8491; 6/2/1970.
Fody, Mauritius	*Foudia rubra*	Wherever found	E	60 FR 2899; 1/12/1995.
Fody, Rodrigues	*Foudia flavicans*	Wherever found	E	60 FR 2899; 1/12/1995.
Fody, Seychelles (weaver-finch)	*Foudia sechellarum*	Wherever found	E	35 FR 8491; 6/2/1970.
Francolin, Djibouti	*Francolinus ochropectus*	Wherever found	E	60 FR 2899; 1/12/1995.
Frigatebird, Andrew's	*Fregata andrewsi*	Wherever found	E	41 FR 24062; 6/14/1976.
Gallinule, Hawaiian common (Alae ula)	*Gallinula chloropus (=galeata) sandvicensis.*	Wherever found	E	32 FR 4001; 3/11/1967.
Gnatcatcher, coastal California	*Polioptila californica californica*	Wherever found	T	58 FR 16742; 3/30/1993, 50 CFR 17.41(b) [4d], 50 CFR 17.95(b) [CH].
Goose, Hawaiian	*Branta (=Nesochen) sandvicensis*	Wherever found	E	32 FR 4001; 3/11/1967.
Goshawk, Christmas Island	*Accipiter fasciatus natalis*	Wherever found	E	35 FR 8491; 6/2/1970.
Goshawk, Queen Charlotte [British Columbia DPS].	*Accipiter gentilis laingi*	British Columbia, Canada	T	77 FR 45870; 8/1/2012.

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
Grackle, slender-billed	*Quisicalus palustris*	Wherever found	E	35 FR 8491; 6/2/1970.
Grasswren, Eyrean (flycatcher)	*Amytornis goyderi*	Wherever found	E	35 FR 8491; 6/2/1970.
Grebe, Alaotra	*Tachybaptus rufoflavatus*	Wherever found	E	60 FR 2899; 1/12/1995.
Grebe, Atitlan	*Podilymbus gigas*	Wherever found	E	35 FR 8491; 6/2/1970.
Grebe, Junín	*Podiceps taczanowskii*	Wherever found	E	77 FR 43434; 7/24/2012.
Greenshank, Nordmann's	*Tringa guttifer*	Wherever found	E	41 FR 24062; 6/14/1976.
Ground-cuckoo, southeastern rufous-vented	*Neomorphus geoffroyi dulcis*	Wherever found	E	75 FR 81794; 12/28/2010.
Guan, cauca	*Penelope perspicax*	Wherever found	E	78 FR 64637; 10/29/2013.
Guan, horned	*Oreophasis derbianus*	Wherever found	E	35 FR 8491; 6/2/1970.
Guan, white-winged	*Penelope albipennis*	Wherever found	E	55 FR 39858; 9/28/1990.
Guineafowl, white-breasted	*Agelastes meleagrides*	Wherever found	T	60 FR 2899; 1/12/1995.
Gull, Audouin's	*Larus audouinii*	Wherever found	E	35 FR 8491; 6/2/1970.
Gull, relict	*Larus relictus*	Wherever found	E	41 FR 24062; 6/14/1976.
Hawk, Galapagos	*Buteo galapagoensis*	Wherever found	E	35 FR 8491; 6/2/1970.
Hawk, Hawaiian	*Buteo solitarius*	Wherever found	E	32 FR 4001; 3/11/1967.
Hawk, Puerto Rican broad-winged	*Buteo platypterus brunnescens*	Wherever found	E	59 FR 46710; 9/9/1994.
Hawk, Puerto Rican sharp-shinned	*Accipiter striatus venator*	Wherever found	E	59 FR 46710; 9/9/1994.
Hermit, hook-billed (hummingbird)	*Ramphodon (=Glaucis) dohrnii*	Wherever found	E	41 FR 24062; 6/14/1976.
Hermit, Margaretta's	*Phaethornis malaris margarettae*	Wherever found	E	75 FR 81794; 12/28/2010.
Honeycreeper, crested (Akohekohe)	*Palmeria dolei*	Wherever found	E	32 FR 4001; 3/11/1967, 50 CFR 17.95(b) [CH].
Honeyeater, helmeted	*Lichenostomus melanops cassidix (=Meliphaga c.).*	Wherever found	E	35 FR 18319; 12/2/1970.
Hornbill, helmeted	*Buceros (=Rhinoplax) vigil*	Wherever found	E	41 FR 24062; 6/14/1976.
Hummingbird, Honduran emerald	*Amazilia luciae*	Wherever found	E	80 FR 45086; 7/29/2015.
Ibis, giant	*Pseudibis gigantea*	Wherever found	E	73 FR 3146; 1/16/2008.
Ibis, Japanese crested	*Nipponia nippon*	Wherever found	E	35 FR 8491; 6/2/1970.
Ibis, northern bald	*Geronticus eremita*	Wherever found	E	55 FR 39858; 9/28/1990.
Kagu	*Rhynochetos jubatus*	Wherever found	E	35 FR 8491; 6/2/1970.
Kakapo	*Strigops habroptilus*	Wherever found	E	35 FR 8491; 6/2/1970.
Kestrel, Mauritius	*Falco punctatus*	Wherever found	E	35 FR 8491; 6/2/1970.
Kestrel, Seychelles	*Falco araea*	Wherever found	E	35 FR 8491; 6/2/1970.
Kingfisher, Guam Micronesian	*Halcyon cinnamomina cinnamomina*	Wherever found	E	49 FR 33881; 8/27/1984, 69 FR 62943; 10/28/2004, 50 CFR 17.95(b) [CH].
Kite, Cuba hook-billed	*Chondrohierax uncinatus wilsonii*	Wherever found	E	35 FR 8491; 6/2/1970.
Kite, Grenada hook-billed	*Chondrohierax uncinatus mirus*	Wherever found	E	35 FR 8491; 6/2/1970.
Kite, snail (Everglade)	*Rostrhamus sociabilis plumbeus*	U.S.A. (FL)	E	32 FR 4001; 3/11/1967, 50 CFR 17.95(b) [CH].
Knot, rufa red	*Calidris canutus rufa*	Wherever found	T	79 FR 73705; 12/11/2014.
Kokako (wattlebird)	*Callaeas cinerea*	Wherever found	E	35 FR 8491; 6/2/1970.
Lark, Raso	*Alauda razae*	Wherever found	E	60 FR 2899; 1/12/1995.
Lark, streaked horned	*Eremophila alpestris strigata*	Wherever found	T	78 FR 61451; 10/3/2013, 50 CFR 17.41(a) [4d], 50 CFR 17.95(b) [CH].
Macaw, blue-throated	*Ara glaucogularis*	Wherever found	E	78 FR 61208; 10/3/2013.
Macaw, glaucous	*Anodorhynchus glaucus*	Wherever found	E	41 FR 24062; 6/14/1976.
Macaw, great green	*Ara ambiguus*	Wherever found	E	80 FR 59975; 10/2/2015.
Macaw, indigo	*Anodorhynchus leari*	Wherever found	E	41 FR 24062; 6/14/1976.
Macaw, little blue	*Cyanopsitta spixii*	Wherever found	E	41 FR 24062; 6/14/1976.
Macaw, military	*Ara militaris*	Wherever found	E	80 FR 59975; 10/2/2015.
Magpie-robin, Seychelles (thrush)	*Copsychus sechellarum*	Wherever found	E	35 FR 8491; 6/2/1970.
Malimbe, Ibadan	*Malimbus ibadanensis*	Wherever found	E	60 FR 2899; 1/12/1995.
Malkoha, red-faced (cuckoo)	*Phaenicophaeus pyrrhocephalus*	Wherever found	E	35 FR 8491; 6/2/1970.
Megapode, Maleo	*Macrocephalon maleo*	Wherever found	E	35 FR 8491; 6/2/1970.
Megapode, Micronesian (=La Perouse's)	*Megapodius laperouse*	Wherever found	E	35 FR 8491; 6/2/1970.
Merganser, Brazilian	*Mergus octosetaceus*	Wherever found	E	75 FR 81794; 12/28/2010.
Millerbird, Nihoa (old world warbler)	*Acrocephalus familiaris kingi*	Wherever found	E	32 FR 4001; 3/11/1967.
Mockingbird, Socorro	*Mimus Graysoni*	Wherever found	E	73 FR 3146; 1/16/2008.
Moorhen, Mariana common	*Gallinula chloropus guami*	Wherever found	E	49 FR 33881; 8/27/1984.
Murrelet, marbled [CA, OR, WA DPS]	*Brachyramphus marmoratus*	U.S.A. (CA, OR, WA)	T	57 FR 45337; Oct 1/1992, 50 CFR 17.95(b) [CH].
Nightjar, Puerto Rican	*Caprimulgus noctitherus*	Wherever found	E	38 FR 14678; 6/4/1973.
Nukupuu, Kauai	*Hemignathus hanapepe*	Wherever found	E	32 FR 4001; 3/11/1967, 35 FR 16047; 10/13/1970.
Nukupuu, Maui	*Hemignathus affinis*	Wherever found	E	35 FR 16047; 10/13/1970.
Nuthatch, Algerian	*Sitta ledanti*	Wherever found	E	60 FR 2899; 1/12/1995.
'O'o, Kauai (honeyeater)	*Moho braccatus*	Wherever found	E	32 FR 4001; 3/11/1967.
Ostrich, Arabian	*Struthio camelus syriacus*	Wherever found	E	35 FR 8491; 6/2/1970.
Ostrich, West African	*Struthio camelus spatzi*	Wherever found	E	35 FR 8491; 6/2/1970.
'O'u (honeycreeper)	*Psittirostra psittacea*	Wherever found	E	32 FR 4001; 3/11/1967.
Owl, Anjouan scops	*Otus rutilus capnodes*	Wherever found	E	35 FR 8491; 6/2/1970.
Owl, giant scops	*Mimizuku (=Otus) gurneyi*	Wherever found	E	41 FR 24062; 6/14/1976.
Owl, Madagascar red	*Tyto soumagnei*	Wherever found	E	55 FR 39858; 9/28/1990.
Owl, Mexican spotted	*Strix occidentalis lucida*	Wherever found	T	58 FR 14248; 3/16/1993 50 CFR 17.95(b) [CH].
Owl, northern spotted	*Strix occidentalis caurina*	Wherever found	T	55 FR 26114; 6/26/1990, 50 CFR 17.95(b) [CH].
Owl, Seychelles scops	*Otus magicus (=insularis) insularis*	Wherever found	E	35 FR 8491; 6/2/1970.
Owlet, Morden's	*Otus ireneae*	Wherever found	E	35 FR 8491; 6/2/1970.
Oystercatcher, Canarian black	*Haematopus meadewaldoi*	Wherever found	E	60 FR 2899; 1/12/1995.
Palila (honeycreeper)	*Loxioides bailleui*	Wherever found	E	32 FR 4001; 3/11/1967, 50 CFR 17.95(b) [CH].
Paradise-flycatcher, caerulean	*Eutrichomyias rowleyi*	Wherever found	E	73 FR 3146; 1/16/2008.
Parakeet, blue-throated (=ochre-marked)	*Pyrrhura cruentata*	Wherever found	E	35 FR 8491; 6/2/1970.
Parakeet, Forbes'	*Cyanoramphus auriceps forbesi*	Wherever found	E	35 FR 8491; 6/2/1970.
Parakeet, golden	*Aratinga guarouba*	Wherever found	E	41 FR 24062; 6/14/1976.
Parakeet, golden-shouldered	*Psephotus chrysopterygius*	Wherever found	E	35 FR 8491; 6/2/1970.
Parakeet, Mauritius	*Psittacula echo*	Wherever found	E	35 FR 8491; 6/2/1970.
Parakeet, Norfolk Island	*Cyanoramphus cookii (=novaezelandiae c.).*	Wherever found	E	55 FR 39858; 9/28/1990.
Parakeet, orange-bellied	*Neophema chrysogaster*	Wherever found	E	35 FR 18319; 12/2/1970.
Parakeet, paradise	*Psephotus pulcherrimus*	Wherever found	E	35 FR 18319; 12/2/1970.
Parakeet, scarlet-chested	*Neophema splendida*	Wherever found	E	35 FR 18319; 12/2/1970.
Parakeet, turquoise	*Neophema pulchella*	Wherever found	E	35 FR 8491; 6/2/1970.
Parrot, Bahaman or Cuban	*Amazona leucocephala*	Wherever found	E	35 FR 8491; 6/2/1970, 41 FR 24062; 6/14/1976.
Parrot, ground	*Pezoporus wallicus*	Wherever found	E	38 FR 14678; 6/4/1973.

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
Parrot, imperial	*Amazona imperialis*	Wherever found	E	35 FR 8491; 6/2/1970.
Parrot, night (=Australian)	*Geopsittacus occidentalis*	Wherever found	E	35 FR 8491; 6/2/1970.
Parrot, Puerto Rican	*Amazona vittata*	Wherever found	E	32 FR 4001; 3/11/1967.
Parrot, red-browed	*Amazona rhodocorytha*	Wherever found	E	35 FR 8491; 6/2/1970.
Parrot, red-capped	*Pionopsitta pileata*	Wherever found	E	41 FR 24062; 6/14/1976.
Parrot, red-necked	*Amazona arausiaca*	Wherever found	E	44 FR 37124; 6/25/1979.
Parrot, red-spectacled	*Amazona pretrei pretrei*	Wherever found	E	41 FR 24062; 6/14/1976.
Parrot, red-tailed	*Amazona brasiliensis*	Wherever found	E	55 FR 39858; 9/28/1990.
Parrot, Seychelles lesser vasa	*Coracopsis nigra barklyi*	Wherever found	E	60 FR 2899; 1/12/1995.
Parrot, St. Vincent	*Amazona guildingii*	Wherever found	E	35 FR 8491; 6/2/1970.
Parrot, St. Lucia	*Amazona versicolor*	Wherever found	E	35 FR 8491; 6/2/1970.
Parrot, thick-billed	*Rhynchopsitta pachyrhyncha*	Mexico	E	35 FR 8491; 6/2/1970.
Parrot, vinaceous-breasted	*Amazona vinacea*	Wherever found	E	41 FR 24062; 6/14/1976.
Parrot, yellow-billed	*Amazona collaria*	Wherever found	T	78 FR 15624; 3/12/2013, 50 CFR 17.41(c) [4d].
Parrotbill, Maui (Kiwikiu)	*Pseudonestor xanthophrys*	Wherever found	E	32 FR 4001; 3/11/1967, 50 CFR 17.95(b) [CH].
Penguin, African	*Spheniscus demersus*	Wherever found	E	75 FR 59645; 9/28/2010.
Penguin, erect-crested	*Eudyptes sclateri*	Wherever found	T	75 FR 45497; 8/3/2010.
Penguin, Fiordland crested	*Eudyptes pachyrhynchus*	Wherever found	T	75 FR 45497; 8/3/2010.
Penguin, Galapagos	*Spheniscus mendiculus*	Wherever found	E	35 FR 8491; 6/2/1970.
Penguin, Humboldt	*Spheniscus humboldti*	Wherever found	T	75 FR 45497; 8/3/2010.
Penguin, southern rockhopper [New Zealand-Australia DPS].	*Eudyptes chrysocome*	New Zealand-Australia DPS, associated with the Campbell Plateau and Macquarie Island.	T	76 FR 9681; 2/22/2011.
Penguin, white-flippered	*Eudyptula minor albosignata*	Wherever found	T	75 FR 45497; 8/3/2010.
Penguin, yellow-eyed	*Megadyptes antipodes*	Wherever found	T	75 FR 45497; 8/3/2010.
Petrel, Chatham	*Pterodroma axillaris*	Wherever found	E	74 FR 46914; 9/14/2009.
Petrel, Fiji	*Pseudobulweria macgillivrayi*	Wherever found	E	74 FR 46914; 9/14/2009.
Petrel, Galapagos	*Pterodroma phaeopygia*	Wherever found	T	75 FR 235; 1/5/2010.
Petrel, Hawaiian	*Pterodroma sandwichensis*	Wherever found	E	32 FR 4001; 3/11/1967.
Petrel, Madeira	*Pterodroma madeira*	Wherever found	E	60 FR 2899; 1/12/1995.
Petrel, magenta	*Pterodroma magentae*	Wherever found	E	74 FR 46914; 9/14/2009.
Petrel, Mascarene black	*Pterodroma aterrima*	Wherever found	E	60 FR 2899; 1/12/1995.
Pheasant, bar-tailed	*Syrmaticus humaie*	Wherever found	E	35 FR 8491; 6/2/1970.
Pheasant, Blyth's tragopan	*Tragopan blythii*	Wherever found	E	35 FR 8491; 6/2/1970.
Pheasant, brown eared	*Crossoptilon mantchuricum*	Wherever found	E	35 FR 8491; 6/2/1970.
Pheasant, Cabot's tragopan	*Tragopan caboti*	Wherever found	E	35 FR 8491; 6/2/1970.
Pheasant, cheer	*Catreus wallichii*	Wherever found	E	55 FR 39858; 9/28/1990.
Pheasant, Chinese monal	*Lophophorus lhuysii*	Wherever found	E	35 FR 8491; 6/2/1970.
Pheasant, Edward's	*Lophura edwardsi*	Wherever found	E	35 FR 8491; 6/2/1970.
Pheasant, Elliot's	*Syrmaticus ellioti*	Wherever found	E	41 FR 24062; 6/14/1976.
Pheasant, imperial	*Lophura imperialis*	Wherever found	E	35 FR 8491; 6/2/1970.
Pheasant, Mikado	*Syrmaticus mikado*	Wherever found	E	35 FR 8491; 6/2/1970.
Pheasant, Palawan peacock	*Polyplectron emphanum*	Wherever found	E	35 FR 8491; 6/2/1970.
Pheasant, Sclater's monal	*Lophophorus sclateri*	Wherever found	E	35 FR 8491; 6/2/1970.
Pheasant, Swinhoe's	*Lophura swinhoii*	Wherever found	E	35 FR 8491; 6/2/1970.
Pheasant, western tragopan	*Tragopan melanocephalus*	Wherever found	E	35 FR 8491; 6/2/1970.
Pheasant, white eared	*Crossoptilon crossoptilon*	Wherever found	E	35 FR 18319; 12/2/1970.
Pigeon, Azores wood	*Columba palumbus azorica*	Wherever found	E	35 FR 8491; 6/2/1970.
Pigeon, Chatham Island	*Hemiphaga novaeseelandiae chathamensis.*	Wherever found	E	35 FR 8491; 6/2/1970.
Pigeon, Marquesan imperial	*Ducula galeata*	Wherever found	E	76 FR 50052; 8/11/2011.
Pigeon, Mindoro imperial (=zone-tailed)	*Ducula mindorensis*	Wherever found	E	41 FR 24062; 6/14/1976.
Pigeon, pink	*Columba mayeri*	Wherever found	E	60 FR 2899; 1/12/1995.
Pigeon, Puerto Rican plain	*Columba inornata wetmorei*	Wherever found	E	35 FR 16047; 10/13/1970.
Pigeon, white-tailed laurel	*Columba junoniae*	Wherever found	T	60 FR 2899; 1/12/1995.
Piping-guan, black-fronted	*Pipile jacutinga*	Wherever found	E	41 FR 24062; 6/14/1976.
Pitta, Gurney's	*Pitta gurneyi*	Wherever found	E	73 FR 3146; 1/16/2008.
Pitta, Koch's	*Pitta kochi*	Wherever found	E	41 FR 24062; 6/14/1976.
Plantcutter, Peruvian	*Phytotoma raimondii*	Wherever found	E	77 FR 43434; 7/24/2012.
Plover, New Zealand shore	*Thinornis novaeseelandiae*	Wherever found	E	35 FR 8491; 6/2/1970.
Plover, piping [Great Lakes watershed DPS]	*Charadrius melodus*	Great Lakes, watershed in States of IL, IN, MI, MN, NY, OH, PA, and WI and Canada (Ont.).	E	50 FR 50726; 12/11/1985, 50 CFR 17.95(b) [CH].
Plover, piping [Atlantic Coast and Northern Great Plains populations].	*Charadrius melodus*	Wherever found, except those areas where listed as endangered.	T	50 FR 50726; 12/11/1985, 50 CFR 17.95(b) [CH].
Plover, western snowy [Pacific Coast population DPS].	*Charadrius alexandrinus nivosus*	Pacific Coast population DPS—U.S.A. (CA, OR, WA), Mexico (within 50 miles of Pacific coast).	T	58 FR 12864; 3/5/1993, 50 CFR 17.95(b) [CH].
Pochard, Madagascar	*Aythya innotata*	Wherever found	E	60 FR 2899; 1/12/1995.
Po'ouli (honeycreeper)	*Melamprosops phaeosoma*	Wherever found	E	40 FR 44149; 9/25/1975.
Prairie-chicken, Attwater's greater	*Tympanuchus cupido attwateri*	Wherever found	E	32 FR 4001; 3/11/1967.
Puffleg, black-breasted	*Eriocnemis nigrivestis*	Wherever found	E	75 FR 43844; 7/27/2010.
Quail, Merriam's Montezuma	*Cyrtonyx montezumae merriami*	Wherever found	E	41 FR 24062; 6/14/1976.
Quetzel, resplendent	*Pharomachrus mocinno*	Wherever found	E	41 FR 24062; 6/14/1976.
Rail, Aukland Island	*Rallus pectoralis muelleri*	Wherever found	E	35 FR 8491; 6/2/1970.
Rail, California clapper	*Rallus longirostris obsoletus*	Wherever found	E	35 FR 16047; 10/13/1970.
Rail, Guam	*Rallus owstoni*	Wherever found, except where listed as an experimental population.	E	49 FR 14354; 4/11/1984, 49 FR 33881; 8/27/1984, 54 FR 43966; 10/30/1989.
Rail, Guam	*Rallus owstoni*	Rota	XN	54 FR 43966; 10/30/1989, 50 CFR 17.84(f) [10j].
Rail, Junín	*Laterallus tuerosi*	Wherever found	E	77 FR 43434; 7/24/2012.
Rail, light-footed clapper	*Rallus longirostris levipes*	U.S.A. only	E	34 FR 5034; 3/8/1969, 35 FR 16047; 10/13/1970.
Rail, Lord Howe wood	*Gallirallus (=Tricholimnas) sylvestris*	Wherever found	E	41 FR 24062; 6/14/1976.
Rail, Yuma clapper	*Rallus longirostris yumanensis*	U.S.A. only	E	32 FR 4001; 3/11/1967.
Rhea, lesser (incl. Darwin's)	*Rhea (=Pterocnemia) pennata*	Wherever found	E	35 FR 8491; 6/2/1970.
Robin, Chatham Island	*Petroica traversi*	Wherever found	E	35 FR 8491; 6/2/1970.
Robin, dappled mountain	*Arcanator orostruthus*	Wherever found	T	60 FR 2899; 1/12/1995.
Robin, scarlet-breasted (flycatcher)	*Petroica multicolor multicolor*	Wherever found	E	35 FR 8491; 6/2/1970.
Rockfowl, grey-necked	*Picathartes oreas*	Wherever found	E	35 FR 8491; 6/2/1970.
Rockfowl, white-necked	*Picathartes gymnocephalus*	Wherever found	E	35 FR 8491; 6/2/1970.
Roller, long-tailed ground	*Uratelornis chimaera*	Wherever found	E	35 FR 8491; 6/2/1970.
Sage-grouse, Gunnison	*Centrocercus minimus*	Wherever found	T	79 FR 69191; 11/20/2014, 50 CFR 17.95(b) [CH].

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
Scrub-bird, noisy	*Atrichornis clamosus*	Wherever found	E	35 FR 8491; 6/2/1970.
Scrub-jay, Florida	*Aphelocoma coerulescens*	Wherever found	T	52 FR 20715; 6/3/1987.
Shama, Cebu black (thrush)	*Copsychus niger cebuensis*	Wherever found	E	35 FR 8491; 6/2/1970.
Shearwater, Heinroth's	*Puffinus heinrothi*	Wherever found	T	75 FR 235; 1/5/2010.
Shearwater, Newell's Townsend's	*Puffinus auricularis newelli*	Wherever found	T	40 FR 44149; 9/25/1975.
Shrike, San Clemente loggerhead	*Lanius ludovicianus mearnsi*	Wherever found	E	42 FR 40682; 8/11/1977.
Siskin, red	*Carduelis cucullata*	Wherever found	E	41 FR 24062; 6/14/1976.
Sparrow, Cape Sable seaside	*Ammodramus maritimus mirabilis*	Wherever found	E	32 FR 4001; 3/11/1967, 50 CFR 17.95(b) [CH].
Sparrow, Florida grasshopper	*Ammodramus savannarum floridanus*	Wherever found	E	51 FR 27492; 7/31/1986.
Sparrow, San Clemente sage	*Amphispiza belli clementeae*	Wherever found	T	42 FR 40682; 8/11/1977.
Sparrowhawk, Anjouan Island	*Accipiter francesii pusillus*	Wherever found	E	35 FR 8491; 6/2/1970.
Starling, Ponape mountain	*Aplonis pelzelni*	Wherever found	E	35 FR 8491; 6/2/1970.
Starling, Rothschild's (myna)	*Leucopsar rothschildi*	Wherever found	E	35 FR 8491; 6/2/1970.
Stilt, black	*Himantopus novaezelandiae*	Wherever found	E	73 FR 3146; 1/16/2008.
Stilt, Hawaiian	*Himantopus mexicanus (=himantopus) knudseni.*	Wherever found	E	35 FR 16047; 10/13/1970.
Stork, oriental white	*Ciconia boyciana (=ciconia b.)*	Wherever found	E	35 FR 8491; 6/2/1970.
Stork, wood [Southeast U.S. DPS]	*Mycteria americana*	U.S.A. (AL, FL, GA, MS, NC, SC)	T	49 FR 7332; 2/28/1984, 79 FR 37077; 6/30/2014.
Sunbird, Marungu	*Nectarinia prigoginei*	Wherever found	E	60 FR 2899; 1/12/1995.
Swiftlet, Mariana gray	*Aerodramus vanikorensis bartschi*	Wherever found	E	49 FR 33881; 8/27/1984.
Tanager, cherry-throated	*Nemosia rourei*	Wherever found	E	75 FR 81794; 12/28/2010.
Teal, Campbell Island flightless	*Anas aucklandica nesiotis*	Wherever found	E	41 FR 24062; 6/14/1976.
Tern, California least	*Sterna antillarum browni*	Wherever found	E	35 FR 16047; 10/13/1970, 35 FR 8491; 6/2/1970.
Tern, least [Interior DPS]	*Sterna antillarum*	U.S.A. (AR, CO, IA, IL, IN, KS, KY, LA—Miss. R. and tribs. N of Baton Rouge, MS—Miss. R., MO, MT, ND, NE, NM, OK, SD, TN, TX—except within 50 miles of coast).	E	50 FR 21784; 5/28/1985.
Tern, roseate [Northeast U.S. nesting population DPS].	*Sterna dougallii dougallii*	U.S.A. (Atlantic Coast south to NC), Canada (Newf., N.S, Que.), Bermuda.	E	52 FR 42064; 11/2/1987.
Tern, roseate [Western Hemisphere DPS]	*Sterna dougallii dougallii*	Western Hemisphere and adjacent oceans, incl. U.S.A. (FL, PR, VI), where not listed as endangered.	T	52 FR 42064; 11/2/1987.
Thicketbird, long-legged	*Trichocichla rufa*	Wherever found	E	73 FR 3146; 1/16/2008.
Thrasher, white-breasted	*Ramphocinclus brachyurus*	Wherever found	E	35 FR 8491; 6/2/1970.
Thrush, large Kauai	*Myadestes myadestinus*	Wherever found	E	35 FR 16047; 10/13/1970.
Thrush, Molokai	*Myadestes lanaiensis rutha*	Wherever found	E	35 FR 16047; 10/13/1970.
Thrush, New Zealand (wattlebird)	*Turnagra capensis*	Wherever found	E	35 FR 8491; 6/2/1970.
Thrush, small Kauai	*Myadestes palmeri*	Wherever found	E	32 FR 4001; 3/11/1967.
Thrush, St. Lucia forest	*Cichlherminia lherminieri sanctaeluciae*	Wherever found	E	75 FR 50814; 8/17/2010.
Thrush, Taita	*Turdus olivaceous helleri*	Wherever found	E	60 FR 2899; 1/12/1995.
Tinamou, solitary	*Tinamus solitarius*	Wherever found	E	41 FR 24062; 6/14/1976.
Tit-spinetail, white-browed	*Leptasthenura xenothorax*	Wherever found	E	77 FR 43434; 7/24/2012.
Tit-tyrant, ash-breasted	*Anairetes alpinus*	Wherever found	E	77 FR 43434; 7/24/2012.
Tody-tyrant, Kaempfer's	*Hemitriccus kaempferi*	Wherever found	E	75 FR 81794; 12/28/2010.
Towhee, Inyo California	*Pipilo crissalis eremophilus*	Wherever found	T	52 FR 28780; 8/3/1987, 50 CFR 17.95(b) [CH].
Tree-finch, medium	*Camarhynchus pauper*	Wherever found	E	75 FR 43853; 7/27/2010.
Trembler, Martinique (thrasher)	*Cinclocerthia ruficauda gutturalis*	Wherever found	E	35 FR 8491; 6/2/1970.
Turaco, Bannerman's	*Tauraco bannermani*	Wherever found	E	60 FR 2899; 1/12/1995.
Turtle-dove, Seychelles	*Streptopelia picturata rostrata*	Wherever found	E	60 FR 2899; 1/12/1995.
Vanga, Pollen's	*Xenopirostris polleni*	Wherever found	T	60 FR 2899; 1/12/1995.
Vanga, Van Dam's	*Xenopirostris damii*	Wherever found	T	60 FR 2899; 1/12/1995.
Vireo, black-capped	*Vireo atricapillus*	Wherever found	E	52 FR 37420; 10/6/1987.
Vireo, least Bell's	*Vireo bellii pusillus*	Wherever found	E	51 FR 16474; 5/2/1986, 50 CFR 17.95(b) [CH].
Wanderer, plain (collared-hemipode)	*Pedionomous torquatus*	Wherever found	E	38 FR 14678; 6/4/1973.
Warbler, Aldabra (old world warbler)	*Nesillas aldabranus*	Wherever found	E	60 FR 2899; 1/12/1995.
Warbler (wood), Bachman's	*Vermivora bachmanii*	Wherever found	E	32 FR 4001; 3/11/1967, 35 FR 8491; 6/2/1970.
Warbler (wood), Barbados yellow	*Dendroica petechia petechia*	Wherever found	E	35 FR 8491; 6/2/1970.
Warbler, elfin-woods	*Setophaga angelae*	Wherever found	T	81 FR 40534; 6/22/2016, 50 CFR 17.41(e) [4d].
Warbler (wood), golden-cheeked	*Dendroica chrysoparia*	Wherever found	E	55 FR 18844; 5/4/1990, 55 FR 53153; 12/27/1990.
Warbler (wood), Kirtland's	*Dendroica kirtlandii*	Wherever found	E	32 FR 4001; 3/11/1967, 35 FR 8491; 6/2/1970.
Warbler, Eiao Marquesas reed-	*Acrocephalus percernis aquilonis*	Wherever found	E	76 FR 50052; 8/11/2011.
Warbler, nightingale reed, (old world warbler)	*Acrocephalus luscinia*	Wherever found	E	35 FR 8491; 6/2/1970, 35 FR 18319; 12/2/1970.
Warbler, Rodrigues (old world warbler)	*Bebrornis rodericanus*	Wherever found	E	35 FR 8491; 6/2/1970.
Warbler (wood), Semper's	*Leucopeza semperi*	Wherever found	E	35 FR 8491; 6/2/1970.
Warbler, Seychelles (old world warbler)	*Bebrornis sechellensis*	Wherever found	E	35 FR 8491; 6/2/1970.
Wattle-eye, banded	*Platysteira laticincta*	Wherever found	E	60 FR 2899; 1/12/1995.
Weaver, Clarke's	*Ploceus golandi*	Wherever found	E	60 FR 2899; 1/12/1995.
Whipbird, western	*Psophodes nigrogularis*	Wherever found	E	35 FR 8491; 6/2/1970.
White-eye, bridled	*Zosterops conspicillatus conspicillatus*	Wherever found	E	49 FR 33881; 8/27/1984.
White-eye, Norfolk Island	*Zosterops albogularis*	Wherever found	E	41 FR 24062; 6/14/1976.
White-eye, Ponape greater	*Rukia longirostra*	Wherever found	E	35 FR 8491; 6/2/1970.
White-eye, Rota bridled	*Zosterops rotensis*	Wherever found	E	69 FR 3022; 1/22/2004, 50 CFR 17.95(b) [CH].
White-eye, Seychelles	*Zosterops modesta*	Wherever found	E	35 FR 8491; 6/2/1970.
Woodpecker, imperial	*Campephilus imperialis*	Wherever found	E	35 FR 8491; 6/2/1970.
Woodpecker, ivory-billed	*Campephilus principalis*	Wherever found	E	32 FR 4001; 3/11/1967, 35 FR 8491; 6/2/1970.
Woodpecker, red-cockaded	*Picoides borealis*	Wherever found	E	35 FR 16047; 10/13/1970.
Woodpecker, Tristam's	*Dryocopus javensis richardsi*	Wherever found	E	35 FR 8491; 6/2/1970.
Wood-quail, gorgeted	*Odontophorus strophium*	Wherever found	E	78 FR 64637; 10/29/2013.
Woodstar, Chilean	*Eulidia yarrellii*	Wherever found	E	75 FR 50814; 8/17/2010.
Woodstar, Esmeraldas	*Chaetocercus berlepschi*	Wherever found	E	78 FR 64637; 10/29/2013.
Wren, Guadeloupe house	*Troglodytes aedon guadeloupensis*	Wherever found	E	35 FR 8491; 6/2/1970.
Wren, St. Lucia house	*Troglodytes aedon mesoleucus*	Wherever found	E	35 FR 8491; 6/2/1970.

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
REPTILES				
Alligator, American	*Alligator mississippiensis*	Wherever found	T(S/A)	32 FR 4001; 3/11/1967, 40 FR 44412; 9/26/1975, 42 FR 2071; 1/10/1977, 44 FR 37130; 6/25/1979, 44 FR 59080; 10/12/1979, 46 FR 40664; 8/10/1981, 48 FR 46332; 10/12/1983, 50 FR 25672; 6/20/1985, 52 FR 21059; 6/4/1987, 50 CFR 17.42(a) [4d].
Alligator, Chinese	*Alligator sinensis*	Wherever found	E	41 FR 24062; 6/14/1976.
Anole, Culebra Island giant	*Anolis roosevelti*	Wherever found	E	42 FR 37371; 7/21/1977, 50 CFR 17.95(c) [CH].
Boa, Jamaican	*Epicrates subflavus*	Wherever found	E	35 FR 8491; 6/2/1970.
Boa, Mona	*Epicrates monensis monensis*	Wherever found	T	43 FR 4618; 2/3/1978, 50 CFR 17.95(c) [CH].
Boa, Puerto Rican	*Epicrates inornatus*	Wherever found	E	35 FR 16047; 10/13/1970.
Boa, Round Island (unnamed)	*Bolyeria multocarinata*	Wherever found	E	45 FR 18009; 3/20/1980.
Boa, Round Island (unnamed)	*Casarea dussumieri*	Wherever found	E	45 FR 18009; 3/20/1980.
Boa, Virgin Islands tree	*Epicrates monensis granti*	Wherever found	E	35 FR 16047; 10/13/1970, 44 FR 70677; 12/7/1979.
Caiman, Apaporis River	*Caiman crocodilus apaporiensis*	Wherever found	E	41 FR 24062; 6/14/1976.
Caiman, black	*Melanosuchus niger*	Wherever found	E	41 FR 24062; 6/14/1976.
Caiman, broad-snouted [Bolivia, Brazil, Paraguay, Uruguay DPS].	*Caiman latirostris*	Bolivia, Brazil, Paraguay, Uruguay	E	41 FR 24062; 6/14/1976.
Caiman, broad-snouted [Argentina DPS]	*Caiman latirostris*	Argentina	T	78 FR 38162; 6/25/2013, 50 CFR 17.42(c) [4d].
Caiman, brown	*Caiman crocodilus fuscus* (includes *Caiman crocodilus chiapasius*).	Wherever found	T(S/A)	65 FR 25867; 5/4/2000, 50 CFR 17.42(c) [4d].
Caiman, common	*Caiman crocodilus crocodilus*	Wherever found	T(S/A)	65 FR 25867; 5/4/2000, 50 CFR 17.42(c) [4d].
Caiman, yacare	*Caiman yacare*	Wherever found	T	35 FR 8491; 6/2/1970, 65 FR 25867; 5/4/2000, 50 CFR 17.42(c) [4d].
Chuckwalla, San Esteban Island	*Sauromalus varius*	Wherever found	E	45 FR 18009; 3/20/1980.
Crocodile, African dwarf	*Osteolaemus tetraspis tetraspis*	Wherever found	E	41 FR 24062; 6/14/1976.
Crocodile, African slender-snouted	*Crocodylus cataphractus*	Wherever found	E	37 FR 6476; 3/30/1972.
Crocodile, American [Non-U.S. populations]	*Crocodylus acutus*	Wherever found, except in U.S.A. (FL)	E	40 FR 44149; 9/25/1975, 44 FR 75074; 12/18/1979 72 FR 13027; 3/20/2007.
Crocodile, American [FL DPS]	*Crocodylus acutus*	U.S.A. (FL)	T	40 FR 44149; 9/25/1975, 72 FR 13027; 3/20/2007, 50 CFR 17.95(c) [CH].
Crocodile, Ceylon mugger	*Crocodylus palustris kimbula*	Wherever found	E	41 FR 24062; 6/14/1976.
Crocodile, Congo dwarf	*Osteolaemus tetraspis osborni*	Wherever found	E	41 FR 24062; 6/14/1976.
Crocodile, Cuban	*Crocodylus rhombifer*	Wherever found	E	35 FR 8491; 6/2/1970.
Crocodile, mugger	*Crocodylus palustris palustris*	Wherever found	E	41 FR 24062; 6/14/1976.
Crocodile, Nile	*Crocodylus niloticus*	Wherever found	T	35 FR 8491; 6/2/1970, 52 FR 23148; 6/17/1987, 53 FR 38451; 9/30/1988, 58 FR 49870; 9/23/1993, 61 FR 32356; 6/24/1996, 50 CFR 17.42(c) [4d].
Crocodile, Orinoco	*Crocodylus intermedius*	Wherever found	E	35 FR 8491; 6/2/1970.
Crocodile, Philippine	*Crocodylus novaeguineae mindorensis*	Wherever found	E	41 FR 24062; 6/14/1976.
Crocodile, saltwater [All populations except Papua New Guinea and Australia].	*Crocodylus porosus*	Wherever found, except Papua New Guinea and Australia.	E	44 FR 75074; 12/18/1979, 61 FR 32356;6/24/1996.
Crocodile, saltwater [Australia DPS]	*Crocodylus porosus*	Australia	T	44 FR 75074; 12/18/1979, 61 FR 32356; 6/24/1996, 50 CFR 17.42(c) [4d].
Crocodile, Siamese	*Crocodylus siamensis*	Wherever found	E	41 FR 24062; 6/4/1976.
Gartersnake, narrow-headed	*Thamnophis rufipunctatus*	Wherever found	T	79 FR 38677; 7/8/2014.
Gartersnake, northern Mexican	*Thamnophis eques megalops*	Wherever found	T	79 FR 38677; 7/8/2014, 50 CFR 17.42(g) [4d].
Gavial	*Gavialis gangeticus*	Wherever found	E	35 FR 8491; 6/2/1970.
Gecko, day	*Phelsuma edwardnewtoni*	Wherever found	E	35 FR 8491; 6/2/1970.
Gecko, Monito	*Sphaerodactylus micropithecus*	Wherever found	E	47 FR 46090; 10/15/1982, 50 CFR 17.95(c) [CH].
Gecko, Round Island day	*Phelsuma guentheri*	Wherever found	E	35 FR 8491; 6/2/1970.
Gecko, Serpent Island	*Cyrtodactylus serpensinsula*	Wherever found	T	48 FR 28460; 6/22/1983.
Iguana, Acklins ground	*Cyclura rileyi nuchalis*	Wherever found	T	48 FR 28460; 6/22/1983.
Iguana, Allen's Cay	*Cyclura cychlura inornata*	Wherever found	T	48 FR 28460; 6/22/1983.
Iguana, Andros Island ground	*Cyclura cychlura cychlura*	Wherever found	T	48 FR 28460; 6/22/1983.
Iguana, Anegada ground	*Cyclura pinguis*	Wherever found	E	35 FR 8491; 6/2/1970.
Iguana, Barrington land	*Conolophus pallidus*	Wherever found	E	35 FR 8491; 6/2/1970.
Iguana, Cayman Brac ground	*Cyclura nubila caymanensis*	Wherever found	T	48 FR 28460; 6/22/1983.
Iguana, Cuban ground	*Cyclura nubila nubila*	Wherever found (exluding population introduced in Puerto Rico).	T	48 FR 28460; 6/22/1983.
Iguana, Exuma Island	*Cyclura cychlura figginsi*	Wherever found	T	48 FR 28460; 6/22/1983.
Iguana, Fiji banded	*Brachylophus fasciatus*	Wherever found	E	45 FR 18009; 3/20/1980.
Iguana, Fiji crested	*Brachylophus vitiensis*	Wherever found	E	45 FR 18009; 3/20/1980.
Iguana, Grand Cayman ground	*Cyclura nubila lewisi*	Wherever found	E	48 FR 28460; 6/22/1983.
Iguana, Jamaican	*Cyclura collei*	Wherever found	E	48 FR 28460; 6/22/1983.
Iguana, Mayaguana	*Cyclura carinata bartschi*	Wherever found	T	48 FR 28460; 6/22/1983.
Iguana, Mona ground	*Cyclura stejnegeri*	Wherever found	T	43 FR 4618; 2/3/1978, 50 CFR 17.95(c) [CH].
Iguana, Turks and Caicos	*Cyclura carinata carinata*	Wherever found	T	48 FR 28460; 6/22/1983.
Iguana, Watling Island ground	*Cyclura rileyi rileyi*	Wherever found	E	48 FR 28460; 6/22/1983.
Iguana, White Cay ground	*Cyclura rileyi cristata*	Wherever found	T	48 FR 28460; 6/22/1983.
Lizard, blunt-nosed leopard	*Gambelia silus*	Wherever found	E	32 FR 4001; 3/11/1967.
Lizard, Coachella Valley fringe-toed	*Uma inornata*	Wherever found	T	45 FR 63812; 9/25/1980, 50 CFR 17.95(c) [CH].
Lizard, Hierro giant	*Gallotia simonyi simonyi*	Wherever found	E	49 FR 7394; 2/29/1984.
Lizard, Ibiza wall	*Podarcis pityusensis*	Wherever found	T	49 FR 7394; 2/29/1984.
Lizard, Maria Island ground	*Cnemidophorus vanzoi*	Wherever found	E	56 FR 49469; 9/30/1991.
Lizard, St. Croix ground	*Ameiva polops*	Wherever found	E	42 FR 28543; 6/3/1977, 50 CFR 17.95(c) [CH].
Monitor, desert	*Varanus griseus*	Wherever found	E	41 FR 24062; 6/14/1976.
Monitor, Indian (=Bengal)	*Varanus bengalensis*	Wherever found	E	41 FR 24062; 6/14/1976.
Monitor, Komodo Island	*Varanus komodoensis*	Wherever found	E	41 FR 24062; 6/14/1976.
Monitor, yellow	*Varanus flavescens*	Wherever found	E	41 FR 24062; 6/14/1976.
Pinesnake, black	*Pituophis melanoleucus lodingi*	Wherever found	T	80 FR 60467; 10/6/2015, 50 CFR 17.42(h) [4d].
Python, Indian	*Python molurus molurus*	Wherever found	E	41 FR 24062; 6/14/1976.

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Rattlesnake, Aruba Island	*Crotalus unicolor*	Wherever found	T	48 FR 28460; 6/22/1983.
Rattlesnake, New Mexican ridge-nosed	*Crotalus willardi obscurus*	Wherever found	T	43 FR 34476; 8/4/1978, 50 CFR 17.95(c) [CH].
Sea turtle, green [Central North Pacific DPS]	*Chelonia mydas*	Green sea turtles originating from the Central North Pacific Ocean, bounded by the following coordinates: 41° N., 169° E. in the northwest; 41° N., 143° W. in the northeast; 9° N., 125° W. in the southeast; and 9° N., 175° W. in the southwest Pacific coast of Mexico.	T	81 FR 20057; 4/6/2016 [J], 50 CFR 223.205, 50 CFR 223.206, 50 CFR 223.207.
Sea turtle, green [Central South Pacific DPS]	*Chelonia mydas*	Green sea turtles originating from the Central South Pacific Ocean, bounded by the following coordinates: 9° N., 175° W. in the northwest; 9° N., 125° W. in the northeast; 40° S., 96° W. in the southeast; 40° S., 176° E. in the southwest; and 13° S., 171° E. in the west.	E	81 FR 20057; 4/6/2016 [J], 50 CFR 224.104.
Sea turtle, green [Central West Pacific DPS]	*Chelonia mydas*	Green sea turtles originating from the Central West Pacific Ocean, bounded by the following coordinates: 41° N., 146° E. in the northwest; 41° N., 169° E. in the northeast; 9° N., 175° W. in the east; 13° S., 171° E. in the southeast; along the northern coast of the island of New Guinea; and 4.5° N., 129° E. in the west.	E	81 FR 20057; 4/6/2016 [J], 50 CFR 224.104.
Sea turtle, green [East Indian—West Pacific DPS]	*Chelonia mydas*	Green sea turtles originating from the Eastern Indian and Western Pacific Oceans, bounded by the following lines and coordinates: 41° N. Lat. in the north, 41° N., 146° E. in the northeast; 4.5° N., 129° E. in the southeast; along the southern coast of the island of New Guinea; along the western coast of Australia (west of 142° E. Long.); 40° S. Lat. in the south; and 84° E. Long. in the east.	T	81 FR 20057; 4/6/2016 [J], 50 CFR 17.42(b) [4d], 50 CFR 223.205, 50 CFR 223.206, 50 CFR 223.207.
Sea turtle, green [East Pacific DPS]	*Chelonia mydas*	Green sea turtles originating from the East Pacific Ocean, bounded by the following lines and coordinates: 41° N., 143° W. in the northwest; 41° N. Lat. in the north; along the western coasts of the Americas; 40° S. Lat. in the south; and 40° S., 96° W. in the southwest.	T	81 FR 20057; 4/6/2016 [J], 50 CFR 17.42(b) [4d], 50 CFR 223.205, 50 CFR 223.206, 50 CFR 223.207.
Sea turtle, green [Mediterranean DPS]	*Chelonia mydas*	Green sea turtles originating from the Mediterranean Sea, bounded by 5.5° W. Long. in the west.	E	81 FR 20057; 4/6/2016 [J], 50 CFR 224.104.
Sea turtle, green [North Atlantic DPS]	*Chelonia mydas*	Green sea turtles originating from the North Atlantic Ocean, bounded by the following lines and coordinates: 48° N. Lat. in the north, along the western coasts of Europe and Africa (west of 5.5° W. Long.); north of 19° N. Lat. in the east; bounded by 19° N., 65.1° W. to 14° N., 65.1° W. then 14° N., 77° W. in the south and west; and along the eastern coasts of the Americas (north of 7.5° N., 77° W.).	T	81 FR 20057; 4/6/2016 [J], 50 CFR 17.42(b) [4d], 50 CFR 223.205, 50 CFR 223.206, 50 CFR 223.207.
Sea turtle, green [North Indian DPS]	*Chelonia mydas*	Green sea turtles originating from the North Indian Ocean, bounded by: Africa and Asia in the west and north; 84° E. Long. in the east; and the equator in the south.	T	81 FR 20057; 4/6/2016 [J], 50 CFR 17.42(b) [4d], 50 CFR 223.205, 50 CFR 223.206, 50 CFR 223.207.
Sea turtle, green [South Atlantic DPS]	*Chelonia mydas*	Green sea turtles originating from the South Atlantic Ocean, bounded by the following lines and coordinates: along the northern and eastern coasts of South America (east of 7.5° N., 77° W.); 14° N., 77° W. to 14° N., 65.1° W. to 19° N., 65.1° W. in the north and west; 19° N. Lat. in the northeast; 40° S., 19° E. in the southeast; and 40° S. Lat. in the south.	T	81 FR 20057; 4/6/2016 [J], 50 CFR 17.42(b) [4d], 50 CFR 223.205, 50 CFR 223.206, 50 CFR 223.207.
Sea turtle, green [Southwest Indian DPS]	*Chelonia mydas*	Green sea turtles originating from the Southwest Indian Ocean, bounded by the following lines: the equator to the north; 84° E. Long. to the east; 40° S. Lat. to the south; and 19° E. Long (and along the eastern coast of Africa) in the west.	T	81 FR 20057; 4/6/2016 [J], 50 CFR 17.42(b) [4d], 50 CFR 223.205, 50 CFR 223.206, 50 CFR 223.207.
Sea turtle, green [Southwest Pacific DPS]	*Chelonia mydas*	Green sea turtles originating from the Southwest Pacific Ocean, bounded by the following lines and coordinates: along the southern coast of the island of New Guinea and the Torres Strait (east of 142° E Long.); 13° S., 171° E. in the northeast; 40° S., 176° E. in the southeast; and 40° S., 142° E. in the southwest.	T	81 FR 20057; 4/6/2016 [J], 50 CFR 17.42(b) [4d], 50 CFR 223.205, 50 CFR 223.206, 50 CFR 223.207.
Sea turtle, hawksbill	*Eretmochelys imbricata*	Wherever found	E	35 FR 8491; 6/2/1970 [J], 50 CFR 224.104 [4d], 50 CFR 17.95(c) [CH], 50 CFR 226.209 [CH].

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
Sea turtle, Kemp's ridley	*Lepidochelys kempii*	Wherever found	E	35 FR 18319; 12/2/1970 [J], 50 CFR 224.104 [4d].
Sea turtle, leatherback	*Dermochelys coriacea*	Wherever found	E	35 FR 8491; 6/2/1970 [J], 50 CFR 224.104 [4d], 50 CFR 17.95(c) [CH], 50 CFR 226.207 [CH].
Sea turtle, loggerhead [Mediterranean Sea DPS]	*Caretta caretta*	Mediterranean Sea DPS—Loggerhead sea turtles originating from the Mediterranean Sea east of 5°36′ W. Long.	E	76 FR 58868; 9/22/2011 [J], 50 CFR 224.104 [4d].
Sea turtle, loggerhead [North Indian Ocean DPS]	*Caretta caretta*	North Indian Ocean DPS—Loggerhead sea turtles originating from the North Indian Ocean north of the equator and south of 30° N. Lat.	E	76 FR 58868; 9/22/2011 [J], 50 CFR 224.104 [4d].
Sea turtle, loggerhead [North Pacific Ocean DPS]	*Caretta caretta*	North Pacific Ocean DPS—Loggerhead sea turtles originating from the North Pacific north of the equator and south of 60° N. Lat.	E	76 FR 58868; 9/22/2011 [J], 50 CFR 224.104 [4d].
Sea turtle, loggerhead [Northeast Atlantic Ocean DPS].	*Caretta caretta*	Northeast Atlantic Ocean DPS—Loggerhead sea turtles originating from the Northeast Atlantic Ocean north of the equator, south of 60° N. Lat., and east of 40° W. Long., except in the vicinity of the Strait of Gibraltar where the eastern boundary is 5°36′ W. Long.	E	76 FR 58868; 9/22/2011 [J], 50 CFR 224.104 [4d].
Sea turtle, loggerhead [Northwest Atlantic Ocean DPS].	*Caretta caretta*	Northwest Atlantic Ocean DPS—Loggerhead sea turtles originating from the Northwest Atlantic Ocean north of the equator, south of 60° N. Lat., and west of 40° W. Long..	T	76 FR 58868; 9/22/2011 [J], 50 CFR 223.205, 50 CFR 223.206, 50 CFR 223.207, 50 CFR 17.95(c) [CH], 50 CFR 226.223 [CH].
Sea turtle, loggerhead [South Atlantic Ocean DPS].	*Caretta caretta*	South Atlantic Ocean DPS—Loggerhead sea turtles originating from the South Atlantic Ocean south of the equator, north of 60° S. Lat., west of 20° E. Long., and east of 67° W. Long.	T	76 FR 58868; 9/22/2011 [J], 50 CFR 223.205, 50 CFR 223.206, 50 CFR 223.207.
Sea turtle, loggerhead [South Pacific Ocean DPS]	*Caretta caretta*	South Pacific Ocean DPS—Loggerhead sea turtles originating from the South Pacific south of the equator, north of 60° S. Lat., west of 67° W. Long., and east of 141° E. Long.	E	76 FR 58868; 9/22/2011 [J], 50 CFR 224.104 [4d].
Sea turtle, loggerhead [Southeast Indo-Pacific Ocean DPS].	*Caretta caretta*	Southeast Indo-Pacific Ocean DPS—Loggerhead sea turtles originating from the Southeast Indian Ocean south of the equator, north of 60° S. Lat., and east of 80° E. Long.; South Pacific Ocean south of the equator, north of 60° S. Lat., and west of 141° E. Long.	T	76 FR 58868; 9/22/2011 [J], 50 CFR 223.205, 50 CFR 223.206, 50 CFR 223.207.
Sea turtle, loggerhead [Southwest Indian Ocean DPS].	*Caretta caretta*	Southwest Indian Ocean DPS—Loggerhead sea turtles originating from the Southwest Indian Ocean north of the equator, south of 30° N. Lat., east of 20° E. Long., and west of 80° E. Long.	T	76 FR 58868; 9/22/2011 [J], 50 CFR 223.205, 50 CFR 223.206, 50 CFR 223.207.
Sea turtle, olive ridley [Pacific coast of Mexico breeding DPS].	*Lepidochelys olivacea*	Breeding colony populations on Pacific coast of Mexico.	E	43 FR 32800; 7/28/1978 [J], 50 CFR 224.104 [4d].
Sea turtle, olive ridley	*Lepidochelys olivacea*	Wherever found except when listed as endangered under 50 CFR 224.101.	T	43 FR 32800; 7/28/1978 [J], 50 CFR 17.42(b) [4d], 50 CFR 223.205, 50 CFR 223.206, 50 CFR 223.207.
Skink, blue-tail mole	*Eumeces egregius lividus*	Wherever found	T	52 FR 42658; 11/6/1987, 50 CFR 17.42(b) [4d].
Skink, Round Island	*Leiolopisma telfairi*	Wherever found	T	48 FR 28460; 6/22/1983.
Skink, sand	*Neoseps reynoldsi*	Wherever found	T	52 FR 42658; 11/6/1987, 50 CFR 17.42(b) [4d].
Skink, Slevin's (Gualiik halumtanu, Gholuuf)	*Emoia slevini*	Wherever found	E	80 FR 59423; 10/1/2015.
Snake, Atlantic salt marsh	*Nerodia clarkii taeniata*	Wherever found	T	42 FR 60743; 11/29/1977.
Snake, copperbelly water [Northern DPS]	*Nerodia erythrogaster neglecta*	U.S.A. (IN north of 40° N. Lat., MI, OH)	T	62 FR 4183; 1/29/1997.
Snake, eastern indigo	*Drymarchon corais couperi*	Wherever found	T	43 FR 4026; 1/31/1978.
Snake, giant garter	*Thamnophis gigas*	Wherever found	T	58 FR 54053; 10/20/1993.
Snake, Maria Island	*Liophus ornatus*	Wherever found	E	56 FR 49469; 9/30/1991.
Snake, San Francisco garter	*Thamnophis sirtalis tetrataenia*	Wherever found	E	32 FR 4001; 3/11/1967.
Tartaruga	*Podocnemis expansa*	Wherever found	E	35 FR 8491; 6/2/1970.
Terrapin, river	*Batagur baska*	Wherever found	E	35 FR 8491; 6/2/1970.
Tomistoma	*Tomistoma schlegelii*	Wherever found	E	41 FR 24062; 6/14/1976.
Tortoise, angulated	*Geochelone yniphora*	Wherever found	E	41 FR 24062; 6/14/1976.
Tortoise, Bolson	*Gopherus flavomarginatus*	Wherever found	E	44 FR 23062; 4/17/1979.
Tortoise, desert [Mojave DPS]	*Gopherus agassizii*	Wherever found, except AZ south and east of Colorado R., and Mexico.	T	45 FR 55654; 8/20/1980, 54 FR 32326; 8/4/1989, 55 FR 12178; 4/2/1990, 50 CFR 17.95(c) [CH].
Tortoise, desert	*Gopherus agassizii*	AZ south and east of Colorado R., and Mexico, when found outside of Mexico or said range in AZ.	T(S/A)	55 FR 12178; 4/2/1990, 50 CFR 17.42(e) [4d].
Tortoise, Galapagos	*Geochelone nigra (=elephantopus)*	Wherever found	E	35 FR 8491; 6/2/1970.
Tortoise, gopher [West of Mobile and Tombigbee Rivers DPS].	*Gopherus polyphemus*	Wherever found west of Mobile and Tombigbee Rivers in AL, MS, and LA.	T	52 FR 25376; 7/7/1987.
Tortoise, Madagascar radiated	*Geochelone radiata*	Wherever found	E	35 FR 8491; 6/2/1970.
Tracaja	*Podocnemis unifilis*	Wherever found	E	35 FR 8491; 6/2/1970.
Tuatara	*Sphenodon punctatus*	Wherever found	E	35 FR 8491; 6/2/1970, 65 FR 16053; 3/24/2000.
Tuatara, Brother's Island	*Sphenodon guntheri*	Wherever found	E	35 FR 8491; 6/2/1970, 65 FR 16053; 3/24/2000.
Turtle, Alabama redbellied	*Pseudemys alabamensis*	Wherever found	E	52 FR 22939; 6/16/1987.
Turtle, aquatic box	*Terrapene coahuila*	Wherever found	E	38 FR 14678; 6/4/1973.
Turtle, black softshell	*Trionyx nigricans*	Wherever found	E	41 FR 24062; 6/14/1976.
Turtle, bog (=Muhlenberg) [Northen DPS]	*Clemmys muhlenbergii*	Wherever found, except GA, NC, SC, TN, VA.	T	62 FR 59605; 11/4/1997.
Turtle, bog (=Muhlenberg)	*Clemmys muhlenbergii*	U.S.A. (GA, NC, SC, TN, VA)	T(S/A)	62 FR 59605; 11/4/1997, 50 CFR 17.42(f) [4d].
Turtle, Brazilian sideneck	*Phrynops hogei*	Wherever found	E	56 FR 49469; 9/30/1991.

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Turtle, Burmese peacock	*Morenia ocellata*	Wherever found	E	41 FR 24062; 6/14/1976.
Turtle, Cat Island	*Trachemys terrapen*	Cat Island in the Bahamas	E	56 FR 49469; 9/30/1991.
Turtle, Central American river	*Dermatemys mawii*	Wherever found	E	48 FR 28460; 6/22/1983.
Turtle, Cuatro Cienegas softshell	*Trionyx ater*	Wherever found	E	41 FR 24062; 6/14/1976.
Turtle, flattened musk [Black Warrior River DPS]	*Sternotherus depressus*	Black Warrior R. system upstream from Bankhead Dam.	T	52 FR 22418; 6/11/1987.
Turtle, geometric	*Psammobates geometricus*	Wherever found	E	41 FR 24062; 6/14/1976.
Turtle, Inagua Island	*Trachemys stejnegeri malonei*	Wherever found	E	56 FR 49469; 9/30/1991.
Turtle, Indian sawback	*Kachuga tecta tecta*	Wherever found	E	41 FR 24062; 6/14/1976.
Turtle, Indian softshell	*Trionyx gangeticus*	Wherever found	E	41 FR 24062; 6/14/1976.
Turtle, peacock softshell	*Trionyx hurum*	Wherever found	E	41 FR 24062; 6/14/1976.
Turtle, Plymouth redbelly	*Pseudemys rubriventris bangsi*	Wherever found	E	45 FR 21828; 4/2/1980, 50 CFR 17.95(c) CH.
Turtle, ringed map	*Graptemys oculifera*	Wherever found	T	51 FR 45907; 12/23/1986.
Turtle, short-necked or western swamp	*Pseudemydura umbrina*	Wherever found	E	35 FR 8491; 6/2/1970.
Turtle, South American red-lined	*Trachemys scripta callirostris*	Wherever found	E	56 FR 49469; 9/30/1991.
Turtle, spotted pond	*Geoclemys hamiltonii*	Wherever found	E	41 FR 24062; 6/14/1976.
Turtle, three-keeled Asian	*Melanochelys tricarinata*	Wherever found	E	41 FR 24062; 6/14/1976.
Turtle, yellow-blotched map	*Graptemys flavimaculata*	Wherever found	T	56 FR 1459; 1/14/1991.
Viper, Lar Valley	*Vipera latifii*	Wherever found	E	48 FR 28460; 6/22/1983.
Whipsnake, Alameda (=striped racer)	*Masticophis lateralis euryxanthus*	Wherever found	T	62 FR 64306; 12/5/1997 50 CFR 17.95(c) CH.
AMPHIBIANS				
Coqui, golden	*Eleutherodactylus jasperi*	Wherever found	T	42 FR 58756; 11/11/1977, 50 CFR 17.95(d) CH.
Coqui, llanero	*Eleutherodactylus juanariveroi*	Wherever found	E	77 FR 60777; 10/4/2012, 50 CFR 17.95(d) CH.
Frog, California red-legged	*Rana draytonii*	Wherever found	T	61 FR 25813; 5/23/1996, 50 CFR 17.43(b) 4d, 50 CFR 17.95(d) CH.
Frog, Chiricahua leopard	*Rana chiricahuensis*	Wherever found	T	67 FR 40790; 6/13/2002, 50 CFR 17.43(b) 4d.
Frog, dusky gopher	*Rana sevosa (= Lithobates sevosus)*	Wherever found	E	66 FR 63002; 12/4/2001, 50 CFR 17.95(d) CH.
Frog, Goliath	*Conraua goliath*	Wherever found	T	59 FR 63261; 12/8/1994.
Frog, Israel painted	*Discoglossus nigriventer*	Wherever found	E	35 FR 8491; 6/2/1970.
Frog, mountain yellow-legged [Northern California DPS].	*Rana muscosa*	Northern California DPS—U.S.A., northern California.	E	79 FR 24255; 4/29/2014.
Frog, mountain yellow-legged [Southern California DPS].	*Rana muscosa*	Southern California DPS—U.S.A., southern California.	E	67 FR 44382; 7/2/2002, 50 CFR 17.95(d) CH.
Frog, Oregon spotted	*Rana pretiosa*	Wherever found	T	79 FR 51657; 8/29/2014, 50 CFR 17.95(d) CH.
Frog, Panamanian golden	*Atelopus varius zeteki*	Wherever found	E	41 FR 24062; 6/14/1976.
Frog, Sierra Nevada yellow-legged	*Rana sierrae*	Wherever found	E	79 FR 24255; 4/29/2014.
Frog, Stephen Island	*Leiopelma hamiltoni*	Wherever found	E	35 FR 8491; 6/2/1970.
Guajón	*Eleutherodactylus cooki*	Wherever found	T	62 FR 31757; 6/11/1997, 50 CFR 17.95(d) CH.
Hellbender, Ozark	*Cryptobranchus alleganiensis bishopi*	Wherever found	E	76 FR 61956; 10/6/2011.
Salamander, Austin blind	*Eurycea waterlooensis*	Wherever found	E	78 FR 51277; 8/20/2013 50 CFR 17.95(d) CH.
Salamander, Barton Springs	*Eurycea sosorum*	Wherever found	E	62 FR 23377; 4/30/1997.
Salamander, California tiger [Santa Barbara County DPS].	*Ambystoma californiense*	Santa Barbara County DPS—U.S.A. (CA–Santa Barbara County).	E	65 FR 3109; 1/19/2000, 65 FR 57242; 9/21/2000, 50 CFR 17.95(d) CH.
Salamander, California tiger [Central California DPS].	*Ambystoma californiense*	Central California DPS—U.S.A. (CA–Central California).	T	69 FR 47248; 8/4/2004, 50 CFR 17.43(c) 4d, 50 CFR 17.95(d) CH.
Salamander, California tiger [Sonoma County DPS].	*Ambystoma californiense*	Sonoma County DPS—U.S.A. (CA–Sonoma County).	E	67 FR 47739; 7/22/2002, 68 FR 13520; 3/19/2003, 50 CFR 17.95(d) CH.
Salamander, Cheat Mountain	*Plethodon nettingi*	Wherever found	T	54 FR 34464; 8/18/1989.
Salamander, Chinese giant	*Andrias davidianus (=davidianus d.)*	Wherever found	E	41 FR 24062; 6/14/1976.
Salamander, desert slender	*Batrachoseps aridus*	Wherever found	E	38 FR 14678; 6/4/1973.
Salamander, frosted flatwoods	*Ambystoma cingulatum*	Wherever found	T	64 FR 15691; 4/1/1999, 50 CFR 17.95(d) CH.
Salamander, Georgetown	*Eurycea naufragia*	Wherever found	T	79 FR 20107; 4/11/2014, 50 CFR 17.43(e) 4d.
Salamander, Japanese giant	*Andrias japonicus (=davidianus j.)*	Wherever found	E	41 FR 24062; 6/14/1976.
Salamander, Jemez Mountains	*Plethodon neomexicanus*	Wherever found	E	78 FR 55599; 9/10/2013, 50 CFR 17.95(d) CH.
Salamander, Jollyville Plateau	*Eurycea tonkawae*	Wherever found	T	78 FR 51277; 8/20/2013, 50 CFR 17.95(d) CH.
Salamander, Red Hills	*Phaeognathus hubrichti*	Wherever found	T	41 FR 53032; 12/3/1976.
Salamander, reticulated flatwoods	*Ambystoma bishopi*	Wherever found	E	74 FR 6700; 2/10/2009, 50 CFR 17.95(d) CH.
Salamander, Salado	*Eurycea chisholmensis*	Wherever found	T	79 FR 20107; 4/11/2014.
Salamander, San Marcos	*Eurycea nana*	Wherever found	T	45 FR 47355; 7/14/1980, 50 CFR 17.43(a) 4d, 50 CFR 17.95(d) CH.
Salamander, Santa Cruz long-toed	*Ambystoma macrodactylum croceum*	Wherever found	E	32 FR 4001; 3/11/1967.
Salamander, Shenandoah	*Plethodon shenandoah*	Wherever found	E	54 FR 34464; 8/18/1989.
Salamander, Sonoran tiger	*Ambystoma tigrinum stebbinsi*	Wherever found	E	62 FR 665; 1/6/1997.
Salamander, Texas blind	*Typhlomolge rathbuni*	Wherever found	E	32 FR 4001; 3/11/1967.
Toad, arroyo (=arroyo southwestern)	*Anaxyrus californicus*	Wherever found	E	59 FR 64859; 12/16/1994, 50 CFR 17.95(d) CH.
Toad, Cameroon	*Bufo superciliaris*	Wherever found	E	41 FR 24062; 6/14/1976.
Toad, Houston	*Bufo houstonensis*	Wherever found	E	35 FR 16047; 10/13/1970, 50 CFR 17.95(d) CH.
Toad, Monte Verde golden	*Bufo periglenes*	Wherever found	E	41 FR 24062; 6/14/1976.
Toad, Puerto Rican crested	*Peltophryne lemur*	Wherever found	T	52 FR 28828; 8/4/1987.
Toad, Wyoming	*Bufo hemiophrys baxteri*	Wherever found	E	49 FR 1992; 1/17/1984.
Toad, Yosemite	*Anaxyrus canorus*	Wherever found	T	79 FR 24255; 4/29/2014.
Toads, African viviparous	*Nectophrynoides* spp.	Wherever found	E	41 FR 24062; 6/14/1976.
FISHES				
Ala Balik (trout)	*Salmo platycephalus*	Wherever found	E	35 FR 8491; 6/2/1970.
Ayumodoki (loach)	*Hymenophysa curta*	Wherever found	E	35 FR 8491; 6/2/1970.
Blindcat, Mexican (catfish)	*Prietella phreatophila*	Wherever found	E	35 FR 8491; 6/2/1970.
Bocaccio [Puget Sound–Georgia Basin DPS]	*Sebastes paucispinis*	Puget Sound–Georgia Basin DPS—see 50 CFR 224.101.	E	75 FR 22276; 4/28/2010 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 226.224 CH.
Bonytongue, Asian	*Scleropages formosus*	Wherever found	E	41 FR 24062; 6/14/1976.

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Catfish (Thailand)	*Pangasius sanitwongsei*	Wherever found	E	35 FR 8491; 6/2/1970.
Catfish, Thailand giant	*Pangasianodon gigas*	Wherever found	E	35 FR 8491; 6/2/1970.
Catfish, Yaqui	*Ictalurus pricei*	Wherever found	T	49 FR 34490; 8/31/1984, 50 CFR 17.44(h)[4d], 50 CFR 17.95(e)[CH].
Cavefish, Alabama	*Speoplatyrhinus poulsoni*	Wherever found	E	42 FR 45526; 9/9/1977, 53 FR 37968; 9/28/1988, 50 CFR 17.95(e)[CH].
Cavefish, Ozark	*Amblyopsis rosae*	Wherever found	T	49 FR 43965; 11/1/1984.
Chub, bonytail	*Gila elegans*	Wherever found	E	45 FR 27710; 4/23/1980, 50 CFR 17.95(e)[CH].
Chub, Borax Lake	*Gila boraxobius*	Wherever found	E	45 FR 35821; 5/28/1980, 47 FR 43957; 10/5/1982, 50 CFR 17.95(e)[CH].
Chub, Chihuahua	*Gila nigrescens*	Wherever found	T	48 FR 46053; 10/11/1983, 50 CFR 17.44(g)[4d].
Chub, Gila	*Gila intermedia*	Wherever found	E	70 FR 66664; 11/2/2005, 50 CFR 17.95(e)[CH].
Chub, humpback	*Gila cypha*	Wherever found	E	32 FR 4001; 3/11/1967, 50 CFR 17.95(e)[CH].
Chub, Hutton tui	*Gila bicolor ssp.*	Wherever found	T	50 FR 12302; 3/28/1985, 50 CFR 17.44(j)[4d].
Chub, Mohave tui	*Gila bicolor mohavensis*	Wherever found	E	35 FR 16047; 10/13/1970.
Chub, Owens tui	*Gila bicolor snyderi*	Wherever found	E	50 FR 31592; 8/5/1985, 50 CFR 17.95(e)[CH].
Chub, Pahranagat roundtail	*Gila robusta jordani*	Wherever found	E	35 FR 16047; 10/13/1970.
Chub, slender	*Erimystax cahni*	Wherever found, except where listed as an experimental population.	T	42 FR 45526; 9/9/1977, 50 CFR 17.44(c)[4d], 50 CFR 17.95(e)[CH].
Chub, slender	*Erimystax cahni*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.84(s)(1)(i)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.84(sr)[10j].
Chub, Sonora	*Gila ditaenia*	Wherever found	T	51 FR 16042; 4/30/1986, 50 CFR 17.44(o)[4d], 50 CFR 17.95(e)[CH].
Chub, spotfin	*Erimonax monachus*	Wherever found, except where listed as an experimental population.	T	42 FR 45526; 9/9/1977, 50 CFR 17.44(c)[4d], 50 CFR 17.95(e)[CH].
Chub, spotfin	*Erimonax monachus*	U.S.A. (TN—specified portions of the Tellico River; see § 17.84(m)(1)(i)).	XN	67 FR 52420; 8/12/2002, 50 CFR 17.84(m)[10j].
Chub, spotfin	*Erimonax monachus*	U.S.A. (AL, TN—specified portions of Shoal Creek; see § 17.84(m)(1)(ii)).	XN	70 FR 1286; 1/6/2005, 50 CFR 17.84(m)[10j].
Chub, spotfin	*Erimonax monachus*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.84(m)(1)(iii)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.84(m)[10j].
Chub, Virgin River	*Gila robusta semidnuda*	Wherever found	E	54 FR 35305; 8/24/1989, 50 CFR 17.95(e)[CH].
Chub, Yaqui	*Gila purpurea*	Wherever found	E	49 FR 34490; 8/31/1984, 50 CFR 17.95(e)[CH].
Cicek (minnow)	*Acanthorutilus handlirschi*	Wherever found	E	35 FR 8491; 6/2/1970.
Cui-ui	*Chasmistes cujus*	Wherever found	E	32 FR 4001; 3/11/1967.
Dace, Ash Meadows speckled	*Rhinichthys osculus nevadensis*	Wherever found	E	47 FR 19995; 5/10/1982, 48 FR 608; 1/5/1983, 48 FR 40178; 9/2/1983, 50 CFR 17.95(e)[CH].
Dace, blackside	*Phoxinus (=Chrosomus), cumberlandensis.*	Wherever found	T	52 FR 22580; 6/12/1987.
Dace, Clover Valley speckled	*Rhinichthys osculus oligoporus*	Wherever found	E	54 FR 41448; 10/10/1989.
Dace, desert	*Eremichthys acros*	Wherever found	T	32 FR 4001; 3/11/1967, 35 FR 16047; 10/13/1970, 50 FR 50304; 12/10/1985, 50 CFR 17.44(m)[4d], 50 CFR 17.95(e)[CH].
Dace, Foskett speckled	*Rhinichthys osculus* ssp.	Wherever found	T	50 FR 12302; 3/28/1985, 50 CFR 17.44(j)[4d].
Dace, Independence Valley speckled	*Rhinichthys osculus lethoporus*	Wherever found	E	54 FR 41448; 10/10//1989, 54 FR 47861; 11/17/1989.
Dace, Kendall Warm Springs	*Rhinichthys osculus thermalis*	Wherever found	E	35 FR 16047; 10/13/1970.
Dace, laurel	*Chrosomus saylori*	Wherever found	E	76 FR 48722; 8/9/2011, 50 CFR 17.95(e)[CH].
Dace, Moapa	*Moapa coriacea*	Wherever found	E	32 FR 4001; 3/11/1967.
Darter, amber	*Percina antesella*	Wherever found	E	50 FR 31597; 8/5/1985, 50 CFR 17.95(e)[CH].
Darter, bayou	*Etheostoma rubrum*	Wherever found	T	40 FR 44149; 9/25/1975, 50 CFR 17.44(b)[4d].
Darter, bluemask	*Etheostoma akatulo*	Wherever found	E	58 FR 68480; 12/27/1993.
Darter, boulder	*Etheostoma wapiti*	Wherever found, except where listed as an experimental population.	E	53 FR 33996; 9/1/1988.
Darter, boulder	*Etheostoma wapiti*	Shoal Creek (from Shoal Creek mile 41.7 (66.7 km)) at the mouth of Long Branch, Lawrence County, TN, downstream to the backwaters of Wilson Reservoir (Shoal Creek mile 14 (22 km)) at Goose Shoals, Lauderdale County, AL, including the lower 5 miles (8 km) of all tributaries that enter this reach.	XN	70 FR 1286; 1/6/2005, 50 CFR 17.84(o)[10j].
Darter, Cherokee	*Etheostoma scotti*	Wherever found	T	59 FR 65505; 12/20/1994.
Darter, Cumberland	*Etheostoma susanae*	Wherever found	E	76 FR 48722; 8/9/2011, 50 CFR 17.95(e)[CH].
Darter, diamond	*Crystallaria cincotta*	Wherever found	E	78 FR 45074; 7/26/2013, 50 CFR 17.95(e)[CH].
Darter, duskytail	*Etheostoma percnurum*	Wherever found, except where listed as an experimental population.	E	58 FR 25758; 4/27/1993.
Darter, duskytail	*Etheostoma percnurum*	U.S.A. (TN—specified portions of the Tellico River; see § 17.84(p)(1)(i)).	XN	67 FR 52420; 8/12/2002, 50 CFR 17.84(q)[10j].
Darter, duskytail	*Etheostoma percnurum*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.84(q)(1)(ii)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.84(q)[10j].
Darter, Etowah	*Etheostoma etowahae*	Wherever found	E	59 FR 65505; 12/20/1994.
Darter, fountain	*Etheostoma fonticola*	Wherever found	E	35 FR 16047; 10/13/1970, 50 CFR 17.95(e)[CH].
Darter, goldline	*Percina aurolineata*	Wherever found	T	57 FR 14786; 4/22/1992.

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Darter, leopard	*Percina pantherina*	Wherever found	T	43 FR 3711; 1/27/1978, 50 CFR 17.44(d)[4d], 50 CFR 17.95(e)[CH].
Darter, Maryland	*Etheostoma sellare*	Wherever found	E	32 FR 4001; 3/11/1967, 50 CFR 17.95(e)[CH].
Darter, Niangua	*Etheostoma nianguae*	Wherever found	T	50 FR 24649; 6/12/1985, 50 CFR 17.44(k)[4d], 50 CFR 17.95(e)[CH].
Darter, Okaloosa	*Etheostoma okaloosae*	Wherever found	T	38 FR 14678; 6/4/1973, 76 FR 18087; 4/1/2011, 50 CFR 17.44(bb)[4d].
Darter, relict	*Etheostoma chienense*	Wherever found	E	58 FR 68480; 12/27/1993.
Darter, rush	*Etheostoma phytophilum*	Wherever found	E	76 FR 48722; 8/9/2011, 50 CFR 17.95(e)[CH].
Darter, slackwater	*Etheostoma boschungi*	Wherever found	T	42 FR 45526; 9/9/1977, 50 CFR 17.44(c)[4d], 50 CFR 17.95(e)[CH].
Darter, snail	*Percina tanasi*	Wherever found	T	40 FR 47505; 10/9/1975, 49 FR 27510; 7/5/1984.
Darter, vermilion	*Etheostoma chermocki*	Wherever found	E	66 FR 59367; 11/28/2001, 50 CFR 17.95(e)[CH].
Darter, watercress	*Etheostoma nuchale*	Wherever found	E	35 FR 16047; 10/13/1970.
Darter, yellowcheek	*Etheostoma moorei*	Wherever found	E	76 FR 48722; 8/9/2011, 50 CFR 17.95(e)[CH].
Eulachon [Southern DPS]	*Thaleichthys pacificus*	Southern DPS—see 50 CFR 223.102	T	75 FR 13012; 3/18/2010[N], 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 226.222[CH].
Gambusia, Big Bend	*Gambusia gaigei*	Wherever found	E	32 FR 4001; 3/11/1967.
Gambusia, Clear Creek	*Gambusia heterochir*	Wherever found	E	32 FR 4001; 3/11/1967.
Gambusia, Pecos	*Gambusia nobilis*	Wherever found	E	35 FR 16047; 10/13/1970.
Gambusia, San Marcos	*Gambusia georgei*	Wherever found	E	45 FR 47355; 7/14/1980, 50 CFR 17.95(e)[CH].
Goby, tidewater	*Eucyclogobius newberryi*	Wherever found	E	59 FR 5494; 2/4/1994, 50 CFR 17.95(e)[CH].
Logperch, Conasauga	*Percina jenkinsi*	Wherever found	E	50 FR 31597; 8/5/1985, 50 CFR 17.95(e)[CH].
Logperch, Roanoke	*Percina rex*	Wherever found	E	54 FR 34468; 8/18/1989.
Madtom, Chucky	*Noturus crypticus*	Wherever found	E	76 FR 48722; 8/9/2011, 50 CFR 17.95(e)[CH].
Madtom, Neosho	*Noturus placidus*	Wherever found	T	55 FR 21148; 5/22/1990.
Madtom, pygmy	*Noturus stanauli*	Wherever found, except where listed as an experimental population.	E	58 FR 25758; 4/27/1993.
Madtom, pygmy	*Noturus stanauli*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.84(t)(1)(i)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.84(t)[10j].
Madtom, Scioto	*Noturus trautmani*	Wherever found	E	40 FR 44149; 9/25/1975.
Madtom, smoky	*Noturus baileyi*	Wherever found, except where listed as an experimental population.	E	49 FR 43065; 10/26/1984, 50 CFR 17.95(e)[CH].
Madtom, smoky	*Noturus baileyi*	U.S.A. (TN—specified portions of the Tellico River; see § 17.84(r)(1)(i)).	XN	67 FR 52420; 8/12/2002, 50 CFR 17.84(r)[10j].
Madtom, yellowfin	*Noturus flavipinnis*	Wherever found, except where listed as an experimental population.	T	42 FR 45526; 9/9/1977, 50 CFR 17.44(c)[4d], 50 CFR 17.95(e)[CH].
Madtom, yellowfin	*Noturus flavipinnis*	U.S.A. (TN, VA—specified portions of the Holston River and watershed; see § 17.84(e)(1)(i)).	XN	53 FR 29335; 8/4/1988, 50 CFR 17.84(e)[10j].
Madtom, yellowfin	*Noturus flavipinnis*	U.S.A. (TN—specified portions of the Tellico River; see § 17.84(e)(1)(ii)).	XN	67 FR 52420; 8/12/2002, 50 CFR 17.84(e)[10j].
Madtom, yellowfin	*Noturus flavipinnis*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.84(e)(1)(iii)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.84(e)[10j].
Minnow, Devils River	*Dionda diaboli*	Wherever found	T	64 FR 56596; 10/20/1999, 50 CFR 17.95(e)[CH].
Minnow, loach	*Rhinichthys cobitis*	Wherever found	E	51 FR 39468; 10/28/1986, 77 FR 10810; 2/23/2012, 50 CFR 17.95(e)[CH].
Minnow, Rio Grande silvery	*Hybognathus amarus*	Wherever found, except where listed as an experimental population.	E	59 FR 36988; 7/20/1994, 50 CFR 17.95(e)[CH].
Minnow, Rio Grande silvery	*Hybognathus amarus*	Rio Grande, from Little Box Canyon (approximately 10.4 river miles downstream of Fort Quitman, TX) to Amistad Dam; and on the Pecos River, from its confluence with Independence Creek to its confluence with the Rio Grande.	XN	73 FR 74357; 12/8/2008, 50 CFR 17.84(u)[10j].
Nekogigi (catfish)	*Coreobagrus ichikawai*	Wherever found	E	35 FR 8491; 6/2/1970.
Pikeminnow, Colorado	*Ptychocheilus lucius*	Wherever found, except where listed as an experimental population.	E	32 FR 4001; 3/11/1967, 50 FR 30188; 7/24/1985, 50 CFR 17.95(e)[CH].
Pikeminnow, Colorado	*Ptychocheilus lucius*	Salt and Verde R. drainages, AZ	XN	50 FR 30188; 7/24/1985, 50 CFR 17.84(b)[10j].
Poolfish, Pahrump	*Empetrichthys latos*	Wherever found	E	32 FR 4001; 3/11/1967.
Pupfish, Ash Meadows Amargosa	*Cyprinodon nevadensis mionectes*	Wherever found	E	47 FR 19995; 5/10/1982, 48 FR 608; 1/5/1983, 48 FR 40178; 9/2/1983, 50 CFR 17.95(e)[CH].
Pupfish, Comanche Springs	*Cyprinodon elegans*	Wherever found	E	32 FR 4001; 3/11/1967.
Pupfish, desert	*Cyprinodon macularius*	Wherever found	E	51 FR 10842; 3/31/1986, 50 CFR 17.95(e)[CH].
Pupfish, Devils Hole	*Cyprinodon diabolis*	Wherever found	E	32 FR 4001; 3/11/1967.
Pupfish, Leon Springs	*Cyprinodon bovinus*	Wherever found	E	45 FR 54678; 8/15/1980, 50 CFR 17.95(e)[CH].
Pupfish, Owens	*Cyprinodon radiosus*	Wherever found	E	32 FR 4001; 3/11/1967.
Pupfish, Warm Springs	*Cyprinodon nevadensis pectoralis*	Wherever found	E	35 FR 16047; 10/13/1970.
Rockfish, canary [Puget Sound–Georgia Basin DPS].	*Sebastes pinniger*	Puget Sound–Georgia Basin DPS—see 50 CFR 223.102.	T	75 FR 22276; 4/28/2010[N], 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014.
Rockfish, yelloweye [Puget Sound–Georgia Basin DPS].	*Sebastes ruberrimus*	Puget Sound–Georgia Basin DPS—see 50 CFR 223.102.	T	75 FR 22276; 4/28/2010[N], 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014.
Salmon, Atlantic [Gulf of Maine DPS]	*Salmo salar*	Gulf of Maine DPS—see 50 CFR 224.101.	E	65 FR 69459; 11/17/2000[J], 74 FR 29344; 6/19/2009[J], 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 226.217[CH].

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Salmon, Chinook [California Coastal ESU]	*Oncorhynchus tshawytscha*	California Coastal ESU—see 50 CFR 223.102.	T	64 FR 50394; 9/16/1999 N, 64 FR 72960; 12/29/1999, 70 FR 37160, 6/28/2005 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.211 CH.
Salmon, Chinook [Central Valley spring-run ESU]	*Oncorhynchus tshawytscha*	Central Valley spring-run ESU—see 50 CFR 223.102.	T	64 FR 50394; 9/16/1999 N, 64 FR 72960; 12/29/1999, 70 FR 37160, 6/28/2005 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.211 CH.
Salmon, Chinook [Central Valley spring-run ESU—XN].	*Oncorhynchus tshawytscha*	Central Valley spring-run ESU–XN—see 50 CFR 223.102.	XN	78 FR 79622; 12/31/2013 N, 79 FR 42687; 7/23/2014, 50 CFR 223.301 10j.
Salmon, Chinook [Lower Columbia River ESU]	*Oncorhynchus tshawytscha*	Lower Columbia River ESU—see 50 CFR 223.102.	T	64 FR 14308; 3/24/1999 N, 64 FR 41835; 8/2/1999, 70 FR 37160, 6/28/2005 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.212 CH.
Salmon, Chinook [Puget Sound ESU]	*Oncorhynchus tshawytscha*	Puget Sound ESU—see 50 CFR 223.102.	T	64 FR 14308; 3/24/1999 N, 64 FR 41835; 8/2/1999, 70 FR 37160, 6/28/2005 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.212 CH.
Salmon, Chinook [Sacramento River winter-run ESU].	*Oncorhynchus tshawytscha*	Sacramento River winter-run ESU—see 50 CFR 224.101.	E	55 FR 12191; 4/2/1990 N, 55 FR 12831; 4/6/1990, 55 FR 46515; 11/4/1990 N, 55 FR 49623; 11/30/1990, 59 FR 440; 1/4/1994 N, 59 FR 13836; 3/23/1994, 70 FR 37160; 6/28/2005 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 226.204 CH.
Salmon, Chinook [Snake River fall-run ESU]	*Oncorhynchus tshawytscha*	Snake River fall-run ESU—see 50 CFR 223.102.	T	57 FR 14653; 4/22/1992 N, 58 FR 49880; 9/23/1993, 59 FR 42529; 8/18/1994 N, 59 FR 54840; 11/2/1994, 70 FR 37160, 6/28/2005 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.205 CH.
Salmon, Chinook [Snake River spring/summer-run ESU].	*Oncorhynchus tshawytscha*	Snake River spring/summer-run ESU—see 50 CFR 223.102.	T	57 FR 14653; 4/22/1992 N, 58 FR 49880; 9/23/1993, 59 FR 42529; 8/18/1994 N, 59 FR 54840; 11/2/1994, 70 FR 37160, 6/28/2005 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.205 CH.
Salmon, Chinook [Upper Columbia River spring-run ESU].	*Oncorhynchus tshawytscha*	Upper Columbia River spring-run ESU—see 50 CFR 224.101.	E	64 FR 14308; 3/24/1999 N, 64 FR 41835; 8/2/1999, 70 FR 37160; 6/28/2005 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 226.212 CH.
Salmon, Chinook [Upper Columbia River spring-run ESU–XN].	*Oncorhynchus tshawytscha*	Upper Columbia River spring-run ESU–XN—see 50 CFR 223.102.	XN	79 FR 40004, 7/11/2014 N, 79 FR 52576; 9/4/2014, 50 CFR 223.301 10j.
Salmon, Chinook [Upper Willamette River ESU]	*Oncorhynchus tshawytscha*	Upper Willamette River ESU—see 50 CFR 223.102.	T	64 FR 14308; 3/24/1999 N, 64 FR 41835; 8/2/1999, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.212 CH.
Salmon, chum [Columbia River ESU]	*Oncorhynchus keta*	Columbia River ESU—see 50 CFR 223.102.	T	64 FR 14508; 3/25/1999 N, 64 FR 41835; 8/2/1999, 70 FR 37160; 6/28/2005 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.212 CH.
Salmon, chum [Hood Canal summer-run ESU]	*Oncorhynchus keta*	Hood Canal summer-run ESU—see 50 CFR 223.102.	T	64 FR 14508; 3/25/1999 N, 64 FR 41835; 8/2/1999, 70 FR 37160; 6/28/2005 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.212 CH.
Salmon, coho [Central California Coast ESU]	*Oncorhynchus kisutch*	Central California Coast ESU—see 50 CFR 224.101.	E	61 FR 56138; 10/31/1996 N, 61 FR 59028; 11/20/1996, 70 FR 37160; 6/28/2005 N, 77 FR 19552; 4/2/2012 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 226.210 CH.
Salmon, coho [Lower Columbia River ESU]	*Oncorhynchus kisutch*	Lower Columbia River ESU—see 50 CFR 223.102.	T	70 FR 37160; 6/28/2005 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d.
Salmon, coho [Oregon Coast ESU]	*Oncorhynchus kisutch*	Oregon Coast ESU—see 50 CFR 223.102.	T	75 FR 29489; 5/26/2010 N, 76 FR 20558; 4/13/2011, 76 FR 35755; 6/20/2011 N, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.212 CH.
Salmon, coho [Southern Oregon–Northern California Coast ESU].	*Oncorhynchus kisutch*	Southern Oregon—Northern California Coast ESU—see 50 CFR 223.102.	T	62 FR 24588; 5/6/1997 N, 62 FR 33038; 6/18/1997, 70 FR 37160; 6/28/2005 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.210 CH.
Salmon, sockeye [Ozette Lake ESU]	*Oncorhynchus nerka*	Ozette Lake ESU—see 50 CFR 223.102	T	64 FR 14528; 3/25/1999 N, 64 FR 41835; 8/2/1999, 70 FR 37160; 6/28/2005 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.212 CH.
Salmon, sockeye [Snake River ESU]	*Oncorhynchus nerka*	Snake River ESU—see 50 CFR 224.101	E	56 FR 58619; 11/20/1991 N, 57 FR 212; 1/3/1992, 70 FR 37160; 6/28/2005 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 226.205 CH.
Sawfish, dwarf	*Pristis clavata*	Wherever found	E	79 FR 73978; 12/12/2014 N, 79 FR 3914; 1/26/2015.

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Sawfish, green	*Pristis zijsron*	Wherever found	E	79 FR 73978; 12/12/2014 N, 79 FR 3914; 1/26/2015.
Sawfish, largetooth	*Pristis pristis* (formerly *Pristis perotteti, Pristis pristis,* and *Pristis microdon).*	Wherever found	E	76 FR 40822; 9/12/2011 N, 79 FR 42687; 7/23/2014, 79 FR 73978; 12/12/2014 N, 79 FR 3914; 1/26/2015.
Sawfish, narrow	*Anoxypristis cuspidata*	Wherever found	E	79 FR 73978; 12/12/2014 N, 79 FR 3914; 1/26/2015.
Sawfish, smalltooth [Non-U.S. DPS]	*Pristis pectinata*	Non-U.S. DPS—Smalltooth sawfish originating from non-U.S. waters.	E	79 FR 73978; 12/12/2014 N, 79 FR 3914; 1/26/2015.
Sawfish, smalltooth [U.S. DPS]	*Pristis pectinata*	U.S. DPS—Smalltooth sawfish originating from U.S. waters.	E	68 FR 15674; 4/1/2003 N, 70 FR 69464; 11/16/2005, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 226.218 CH.
Sculpin, grotto	*Cottus specus*	Wherever found	E	78 FR 58938; 9/25/2013, 50 CFR 17.95(e) CH.
Sculpin, pygmy	*Cottus pygmaeus*	Wherever found	T	54 FR 39846; 9/28/1989, 50 CFR 17.44(u) 4d.
Shark, scalloped hammerhead [Central & SW Atlantic DPS].	*Sphyrna lewini*	Central & SW Atlantic DPS—see 50 CFR 223.102.	T	79 FR 38214; 7/3/2014 N, 79 FR 52576; 9/4/2014.
Shark, scalloped hammerhead [Eastern Atlantic DPS].	*Sphyrna lewini*	Eastern Atlantic DPS—see 50 CFR 224.101.	E	79 FR 38214; 7/3/2014 N, 79 FR 52576; 9/4/2014.
Shark, scalloped hammerhead [Eastern Pacific DPS].	*Sphyrna lewini*	Eastern Pacific DPS—see 50 CFR 224.101.	E	79 FR 38214; 7/3/2014 N, 79 FR 52576; 9/4/2014.
Shark, scalloped hammerhead [Indo-West Pacific DPS].	*Sphyrna lewini*	Indo-West Pacific DPS—see 50 CFR 223.102.	T	79 FR 38214; 7/3/2014 N, 79 FR 52576; 9/4/2014.
Shiner, Arkansas River [Arkansas River Basin DPS].	*Notropis girardi*	Arkansas River Basin (AR, KS, NM, OK, TX).	T	63 FR 64772; 11/23/1998, 50 CFR 17.95(e) CH.
Shiner, beautiful	*Cyprinella formosa*	Wherever found	T	49 FR 34490; 8/31/1984, 50 CFR 17.44(h) 4d, 50 CFR 17.95(e) CH.
Shiner, blue	*Cyprinella caerulea*	Wherever found	T	57 FR 14786; 4/22/1992.
Shiner, Cahaba	*Notropis cahabae*	Wherever found	E	55 FR 42961; 10/25/1990.
Shiner, Cape Fear	*Notropis mekistocholas*	Wherever found	E	52 FR 36034; 9/25/1987, 50 CFR 17.95(e) CH.
Shiner, palezone	*Notropis albizonatus.*	Wherever found	E	58 FR 25758; 4/27/1993.
Shiner, Pecos bluntnose	*Notropis simus pecosensis*	Wherever found	T	52 FR 5295; 2/20/1987, 50 CFR 17.44(r) 4d, 50 CFR 17.95(e) CH.
Shiner, sharpnose	*Notropis oxyrhynchus*	Wherever found	E	79 FR 45273; 8/4/2014, 50 CFR 17.95(e) CH.
Shiner, smalleye	*Notropis buccula*	Wherever found	E	79 FR 45273; 8/4/2014, 50 CFR 17.95(e) CH.
Shiner, Topeka	*Notropis topeka*	Wherever found, except where listed as an experimental population.	E	63 FR 69008; 12/15/1998, 50 CFR 17.95(e) CH.
Shiner, Topeka	*Notropis topeka*	U.S.A. (MO—specified portions of Little Creek, Big Muddy Creek, and Spring Creek watersheds in Adair, Gentry, Harrison, Putnam, Sullivan, and Worth Counties; see § 17.84(d)(1)(i)).	XN	78 FR 42702; 7/17/2013, 50 CFR 17.84(d) 10j.
Silverside, Waccamaw	*Menidia extensa*	Wherever found	T	52 FR 11277; 4/8/1987, 50 CFR 17.44(s) 4d, 50 CFR 17.95(e) CH.
Smelt, delta	*Hypomesus transpacificus*	Wherever found	T	58 FR 12854; 3/5/1993, 50 CFR 17.95(e) CH.
Spikedace	*Meda fulgida*	Wherever found	E	51 FR 23769; 7/1/1986, 77 FR 10810; 2/23/2012, 50 CFR 17.95(e) CH.
Spinedace, Big Spring	*Lepidomeda mollispinis pratensis*	Wherever found	T	50 FR 12298; 3/28/1985, 50 CFR 17.44(i) 4d, 50 CFR 17.95(e) CH.
Spinedace, Little Colorado	*Lepidomeda vittata*	Wherever found	T	32 FR 4001; 3/11/1967, 35 FR 16047; 10/13/1970, 52 FR 35034; 9/16/1987, 50 CFR 17.44(t) 4d, 50 CFR 17.95(e) CH.
Spinedace, White River	*Lepidomeda albivallis*	Wherever found	E	50 FR 37194; 9/12/1985, 50 CFR 17.95(e) CH.
Springfish, Hiko White River	*Crenichthys baileyi grandis*	Wherever found	E	50 FR 39123; 9/27/1985, 50 CFR 17.95(e) CH.
Springfish, Railroad Valley	*Crenichthys nevadae*	Wherever found	T	51 FR 10857; 3/31/1986, 50 CFR 17.44(n) 4d, 50 CFR 17.95(e) CH.
Springfish, White River	*Crenichthys baileyi baileyi*	Wherever found	E	50 FR 39123; 9/27/1985, 50 CFR 17.95(e) CH.
Steelhead [California Central Valley DPS]	*Oncorhynchus mykiss*	California Central Valley DPS—see 50 CFR 223.102.	T	63 FR 13347; 3/19/1998 N, 63 FR 32996; 6/17/1998, 71 FR 834; 1/5/2006 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.211 CH.
Steelhead [Central California Coast DPS]	*Oncorhynchus mykiss*	Central California Coast DPS—see 50 CFR 223.102.	T	62 FR 43937; 8/18/1997 N, 63 FR 32996; 6/17/1998, 71 FR 834; 1/5/2006 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.211 CH.
Steelhead [Lower Columbia River DPS]	*Oncorhynchus mykiss*	Lower Columbia River DPS—see 50 CFR 223.102.	T	63 FR 13347; 3/19/1998 N, 63 FR 32996; 6/17/1998, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.212 CH.
Steelhead [Middle Columbia River DPS]	*Oncorhynchus mykiss*	Middle Columbia River DPS—see 50 CFR 223.102.	T	64 FR 14517; 3/25/1999 N, 64 FR 41835; 8/2/1999, 71 FR 834; 1/5/2006 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.212 CH.
Steelhead [Middle Columbia River DPS—XN]	*Oncorhynchus mykiss*	Middle Columbia River DPS—XN—see 50 CFR 223.102.	XN	78 FR 2893, 1/15/2013 N, 79 FR 42687; 7/23/2014, 50 CFR 223.301 10j.
Steelhead [Northern California DPS]	*Oncorhynchus mykiss*	Northern California DPS—see 50 CFR 223.102.	T	65 FR 36075; 6/7/2000 N, 65 FR 54177; 9/7/2000, 71 FR 834; 1/5/2006 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.211 CH.
Steelhead [Puget Sound DPS]	*Oncorhynchus mykiss*	Puget Sound DPS—see 50 CFR 223.102.	T	72 FR 26722; 5/11/2007 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d.

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
Steelhead [Snake River Basin DPS]	*Oncorhynchus mykiss*	Snake River Basin DPS—see 50 CFR 223.102.	T	62 FR 43937; 8/18/1997 N, 63 FR 32996; 6/17/1998, 71 FR 834; 1/5/2006 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.212 CH.
Steelhead [South Central California Coast DPS]	*Oncorhynchus mykiss*	South-Central California Coast DPS—see 50 CFR 223.102.	T	62 FR 43937; 8/18/1997 N, 63 FR 32996; 6/17/1998, 71 FR 834; 1/5/2006 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.211 CH.
Steelhead [Southern California DPS]	*Oncorhynchus mykiss*	Southern California DPS—see 50 CFR 224.101.	E	62 FR 43937; 8/18/1997 N, 63 FR 32996; 6/17/1998, 71 FR 834; 1/5/2006 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 226.211 CH.
Steelhead [Upper Columbia River DPS]	*Oncorhynchus mykiss*	Upper Columbia River DPS—see 50 CFR 223.102.	T	62 FR 43937; 8/18/1997 N, 63 FR 32996; 6/17/1998, 71 FR 834; 1/5/2006 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.212 CH.
Steelhead [Upper Willamette River DPS]	*Oncorhynchus mykiss*	Upper Willamette River DPS—see 50 CFR 223.102.	T	64 FR 14517; 3/25/1999 N, 64 FR 41835; 8/2/1999, 71 FR 834; 1/5/2006 N, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.203 4d, 50 CFR 226.212 CH.
Stickleback, unarmored threespine	*Gasterosteus aculeatus williamsoni*	Wherever found	E	35 FR 16047; 10/13/1970.
Sturgeon, Adriatic	*Acipenser naccarii*	Wherever found	E	79 FR 31222; 6/2/2014 N, 79 FR 52576; 9/4/2014.
Sturgeon, Alabama	*Scaphirhynchus suttkusi*	Wherever found	E	65 FR 26438; 5/5/2000, 50 CFR 17.95(e) CH.
Sturgeon, Atlantic (Atlantic subspecies)[Carolina DPS].	*Acipenser oxyrinchus oxyrinchus*	Carolina DPS—see 50 CFR 224.101	E	77 FR 5914; 2/6/2012 N, 79 FR 42687; 7/23/2014.
Sturgeon, Atlantic (Atlantic subspecies)[Chesapeake Bay DPS].	*Acipenser oxyrinchus oxyrinchus*	Chesapeake Bay DPS—see 50 CFR 224.101.	E	77 FR 5880; 2/6/2012 N, 79 FR 42687; 7/23/2014.
Sturgeon, Atlantic (Atlantic subspecies)[Gulf of Maine DPS].	*Acipenser oxyrinchus oxyrinchus*	Gulf of Maine DPS—see 50 CFR 223.102.	T	77 FR 5880; 2/6/2012 N, 79 FR 42687; 7/23/2014, 50 CFR 223.211 4d.
Sturgeon, Atlantic (Atlantic subspecies)[New York Bight DPS].	*Acipenser oxyrinchus oxyrinchus*	New York Bight DPS—see 50 CFR 224.101.	E	77 FR 5880; 2/6/2012 N, 79 FR 42687; 7/23/2014.
Sturgeon, Atlantic (Atlantic subspecies)[South Atlantic DPS].	*Acipenser oxyrinchus oxyrinchus*	South Atlantic DPS—see 50 CFR 224.101.	E	77 FR 5914; 2/6/2012 N, 79 FR 42687; 7/23/2014.
Sturgeon, Atlantic (Gulf subspecies)	*Acipenser oxyrinchus desotoi*	Wherever found	T	56 FR 49653; 9/30/1991 N, 56 FR 49658; 9/30/1991, 50 CFR 17.44 4d, 50 CFR 17.95(e) CH, 50 CFR 226.214 CH.
Sturgeon, beluga	*Huso huso*	Wherever found	T	69 FR 18499; 4/8/2004, 50 CFR 17.44(y) 4d.
Sturgeon, Chinese	*Acipenser sinensis*	Wherever found	E	79 FR 31222; 6/2/2014 N, 79 FR 52576; 9/4/2014.
Sturgeon, European	*Acipenser sturio*	Wherever found	E	79 FR 31222; 6/2/2014 N, 79 FR 52576; 9/4/2014.
Sturgeon, green [Southern DPS]	*Acipenser medirostris*	Southern DPS—see 50 CFR 223.102	T	71 FR 26835; 5/9/2006, 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 223.210 4d, 50 CFR 226.219 CH.
Sturgeon, Kaluga	*Huso dauricus*	Wherever found	E	79 FR 31222; 6/2/2014 N, 79 FR 52576; 9/4/2014.
Sturgeon, pallid	*Scaphirhynchus albus*	Wherever found	E	55 FR 36641; 9/6/1990.
Sturgeon, Sakhalin	*Acipenser mikadoi*	Wherever found	E	79 FR 31222; 6/2/2014 N, 79 FR 52576; 9/4/2014.
Sturgeon, shortnose	*Acipenser brevirostrum*	Wherever found	E	32 FR 4001; 3/11/1967.
Sturgeon, shovelnose	*Scaphirhynchus platorynchus*	Wherever found	T (S/A)	75 FR 53598; 9/1/2010, 50 CFR 17.44(aa) 4d.
Sturgeon, white [Kootenai River DPS]	*Acipenser transmontanus*	Kootenai River DPS—U.S.A. (ID, MT), Canada (BC), (Kootenai R. system).	E	59 FR 45989; 9/6/1994, 50 CFR 17.95(e) CH.
Sucker, June	*Chasmistes liorus*	Wherever found	E	51 FR 10851; 3/31/1986, 50 CFR 17.95(e) CH.
Sucker, Lost River	*Deltistes luxatus*	Wherever found	E	53 FR 27130; 7/18/1988, 50 CFR 17.95(e) CH.
Sucker, razorback	*Xyrauchen texanus*	Wherever found	E	56 FR 54957; 10/23/1991, 50 CFR 17.95(e) CH.
Sucker, Santa Ana [Three CA river basins DPS]	*Catostomus santaanae*	Los Angeles River basin, San Gabriel River basin, Santa Ana River basin.	T	65 FR 19686; 4/12/2000, 50 CFR 17.95(e) CH.
Sucker, shortnose	*Chasmistes brevirostris*	Wherever found	E	53 FR 27130; 7/18/1988, 50 CFR 17.95(e) CH.
Sucker, Warner	*Catostomus warnerensis*	Wherever found	T	50 FR 39117; 9/27/1985, 50 CFR 17.44(l) 4d, 50 CFR 17.95(e) CH.
Sucker, Zuni bluehead	*Catostomus discobolus yarrowi*	Wherever found	E	79 FR 43131; 7/24/2014, 50 CFR 17.95(e) CH.
Sunfish, spring pygmy	*Elassoma alabamae*	Wherever found	T	78 FR 60766; 10/2/2013.
Tango, Miyako (Tokyo bitterling)	*Tanakia tanago*	Wherever found	E	35 FR 8491; 6/2/1970.
Temoleh, Ikan (minnow)	*Probarbus jullieni*	Wherever found	E	41 FR 24062; 6/14/1976.
Topminnow, Gila (incl. Yaqui)	*Poeciliopsis occidentalis*	U.S.A. only	E	32 FR 4001; 3/11/1967.
Totoaba (seatrout or weakfish)	*Cynoscion macdonaldi*	Wherever found	E	44 FR 29478; 5/21/1979.
Trout, Apache	*Oncorhynchus apache*	Wherever found	T	32 FR 4001; 3/11/1967, 40 FR 29863; 7/16/1975, 50 CFR 17.44(a) 4d.
Trout, bull [Lower 48 States DPS]	*Salvelinus confluentus*	U.S.A., coterminous (lower 48 states), except where listed as an experimental population.	T	63 FR 31647; 6/10/1998, 63 FR 42757; 8/11/1998, 64 FR 17110; 4/8/1999, 64 FR 58910; 11/1/1999, 50 CFR 17.44(w) 4d, 50 CFR 17.44(x) 4d, 50 CFR 17.95(e) CH.
Trout, bull	*Salvelinus confluentus*	Clackamas River subbasin and the mainstem Willamette River, from Willamette Falls to its points of confluence with the Columbia River, including Multnomah Channel.	XN	76 FR 35979; 6/21/2011, 50 CFR 17.84(v) 10j.
Trout, Gila	*Oncorhynchus gilae*	Wherever found	T	32 FR 4001; 3/11/1967, 71 FR 40657; 7/18/2006, 50 CFR 17.44(z) 4d.

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Trout, greenback cutthroat	*Oncorhynchus clarkii stomias*	Wherever found	T	32 FR 4001; 3/11/1967, 43 FR 16343; 4/18/1978, 50 CFR 17.44(f) [4d].
Trout, Lahontan cutthroat	*Oncorhynchus clarkii henshawi*	Wherever found	T	35 FR 16047; 10/13/1970, 40 FR 29863; 7/16/1975, 50 CFR 17.44(a) [4d].
Trout, Little Kern golden	*Oncorhynchus aguabonita whitei*	Wherever found	T	43 FR 15427; 4/13/1978, 50 CFR 17.44(e) [4d], 50 CFR 17.95(e) [CH].
Trout, Paiute cutthroat	*Oncorhynchus clarkii seleniris*	Wherever found	T	32 FR 4001; 3/11/1967, 40 FR 29863; 7/16/1975, 50 CFR 17.44(a) [4d].
Woundfin	*Plagopterus argentissimus*	Wherever found, except where listed as an experimental population.	E	35 FR 16047; 10/13/1970, 50 FR 30188; 7/24/1985, 50 CFR 17.95(e) [CH].
Woundfin	*Plagopterus argentissimus*	Gila R. drainage, AZ, NM	XN	50 FR 30188; 7/24/1985, 50 CFR 17.84(b) [10j].
CLAMS				
Acornshell, southern	*Epioblasma othcaloogensis*	Wherever found	E	58 FR 14330; 3/17/1993, 50 CFR 17.95(f) [CH].
Bankclimber, purple	*Elliptoideus sloatianus*	Wherever found	T	63 FR 12664; 3/16/1998, 50 CFR 17.95(f) [CH].
Bean, Choctaw	*Villosa choctawensis*	Wherever found	E	77 FR 61663; 10/10/2012, 50 CFR 17.95(f) [CH].
Bean, Cumberland	*Villosa trabalis*	Wherever found, except where listed as an experimental population.	E	41 FR 24062; 6/14/1976.
Bean, Cumberland	*Villosa trabalis*	U.S.A. (AL—specified portions of the Tennessee River; see § 17.85(a)(1)).	XN	66 FR 32250; 6/14/2001, 50 CFR 17.85(a) [10j].
Bean, Cumberland	*Villosa trabalis*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.85(b)(1)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.85(b) [10j].
Bean, Purple	*Villosa perpurpurea*	Wherever found	E	62 FR 1647; 1/10/1997, 50 CFR 17.95(f) [CH].
Blossom, green	*Epioblasma torulosa gubernaculum*	Wherever found	E	41 FR 24062; 6/14/1976.
Blossom, tubercled	*Epioblasma torulosa torulosa*	Wherever found, except where listed as an experimental population.	E	41 FR 24062; 6/14/1976.
Blossom, tubercled	*Epioblasma torulosa torulosa*	U.S.A. (AL—specified portions of the Tennessee River; see § 17.85(a)(1)).	XN	66 FR 32250; 6/14/2001, 50 CFR 17.85(a) [10j].
Blossom, turgid	*Epioblasma turgidula*	Wherever found, except where listed as an experimental population.	E	41 FR 24062; 6/14/1976.
Blossom, turgid	*Epioblasma turgidula*	U.S.A. (AL—specified portions of the Tennessee River; see § 17.85(a)(1)).	XN	66 FR 32250; 6/14/2001, 50 CFR 17.85(a) [10j].
Blossom, yellow	*Epioblasma florentina florentina*	Wherever found, except where listed as an experimental population.	E	41 FR 24062; 6/14/1976.
Blossom, yellow	*Epioblasma florentina florentina*	U.S.A. (AL—specified portions of the Tennessee River; see § 17.85(a)(1)).	XN	66 FR 32250; 6/14/2001, 50 CFR 17.85(a) [10j].
Purple cat's paw (pearlymussel)	*Epioblasma obliquata obliquata*	Wherever found, except where listed as an experimental population.	E	55 FR 28209; 7/10/1990.
Purple cat's paw (pearlymussel)	*Epioblasma obliquata obliquata*	U.S.A. (AL—specified portions of the Tennessee River; see § 17.85(a)(1)).	XN	66 FR 32250; 6/14/2001, 50 CFR 17.85(a) [10j].
Catspaw, white (pearlymussel)	*Epioblasma obliquata perobliqua*	Wherever found	E	41 FR 24062; 6/14/1976.
Clubshell	*Pleurobema clava*	Wherever found, except where listed as an experimental population.	E	58 FR 5638; 1/22/1993.
Clubshell	Pleurobema clava	U.S.A. (AL—specified portions of the Tennessee River; see § 17.85(a)(1)).	XN	66 FR 32250; 6/14/2001, 50 CFR 17.85(a) [10j].
Clubshell, black	*Pleurobema curtum*	Wherever found	E	52 FR 11162; 4/7/1987.
Clubshell, ovate	*Pleurobema perovatum*	Wherever found	E	58 FR 14330; 3/17/1993, 50 CFR 17.95(f) [CH].
Clubshell, southern	*Pleurobema decisum*	Wherever found	E	58 FR 14330; 3/17/1993, 50 CFR 17.95(f) [CH].
Combshell, Cumberlandian	*Epioblasma brevidens*	Wherever found, except where listed as an experimental population.	E	62 FR 1647; 1/10/1997, 50 CFR 17.95(f) [CH].
Combshell, Cumberlandian	*Epioblasma brevidens*	U.S.A. (AL—specified portions of the Tennessee River; see § 17.85(a)(1)).	XN	66 FR 32250; 6/14/2001, 50 CFR 17.85(a) [10j].
Combshell, Cumberlandian	*Epioblasma brevidens*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.85(b)(1).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.85(b) [10j].
Combshell, southern	*Epioblasma (=Dysnomia) penita*	Wherever found	E	52 FR 11162; 4/7/1987.
Combshell, upland	*Epioblasma metastriata*	Wherever found	E	77 FR 61663; 10/10/2012, 50 CFR 17.95(f) [CH].
Ebonyshell, round	*Fusconaia rotulata*	Wherever found	E	58 FR 14330; 3/17/1993, 50 CFR 17.95(f) [CH].
Elktoe, Appalachian	*Alasmidonta raveneliana*	Wherever found	E	59 FR 60324; 11/23/1994, 50 CFR 17.95(f) [CH].
Elktoe, Cumberland	*Alasmidonta atropurpurea*	Wherever found	E	62 FR 1647; 1/10/1997, 50 CFR 17.95(f) [CH].
Fanshell	*Cyprogenia stegaria*	Wherever found, except where listed as an experimental population.	E	55 FR 25591; 6/21/1990.
Fanshell	*Cyprogenia stegaria*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.85(b)(1)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.85(b) [10j].
Fatmucket, Arkansas	*Lampsilis powelli*	Wherever found	T	55 FR 12797; 4/5/1990.
Heelsplitter, inflated	*Potamilus inflatus*	Wherever found	T	55 FR 39868; 9/28/1990.
Heelsplitter, Carolina	*Lasmigona decorata*	Wherever found	E	58 FR 34926; 6/30/1993, 50 CFR 17.95(f) [CH].
Higgins eye (pearlymussel)	*Lampsilis higginsii*	Wherever found	E	41 FR 24062; 6/14/1976.
Kidneyshell, fluted	*Ptychobranchus subtentus*	Wherever found	E	78 FR 59269; 9/26/2013, 50 CFR 17.95(f) [CH].
Kidneyshell, southern	*Ptychobranchus jonesi*	Wherever found	E	77 FR 61663; 10/10/2012, 50 CFR 17.95(f) [CH].
Kidneyshell, triangular	*Ptychobranchus greenii*	Wherever found	E	58 FR 14330; 3/17/1993, 50 CFR 17.95(f) [CH].
Lampmussel, Alabama	*Lampsilis virescens*	Wherever found, except where listed as an experimental population.	E	41 FR 24062; 6/14/1976.
Lampmussel, Alabama	*Lampsilis virescens*	U.S.A. (AL—specified portions of the Tennessee River; see § 17.85(a)(1)).	XN	66 FR 32250; 6/14/2001, 50 CFR 17.85(a) [10j].
Lilliput, pale	*Toxolasma cylindrellus*	Wherever found	E	41 FR 24062; 6/14/1976.
Mapleleaf, winged (mussel)	*Quadrula fragosa*	Wherever found, except where listed as an experimental population.	E	56 FR 28345; 6/20/1991.
Mapleleaf, winged (mussel)	*Quadrula fragosa*	U.S.A. (AL—specified portions of the Tennessee River; see § 17.85(a)(1)).	XN	66 FR 32250; 6/14/2001, 50 CFR 17.85(a) [10j].

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Moccasinshell, Alabama	*Medionidus acutissimus*	Wherever found	T	58 FR 14330; 3/17/1993, 50 CFR 17.95(f) [CH].
Moccasinshell, Coosa	*Medionidus parvulus*	Wherever found	E	58 FR 14330; 3/17/1993, 50 CFR 17.95(f) [CH].
Moccasinshell, Gulf	*Medionidus penicillatus*	Wherever found	E	63 FR 12664; 3/16/1998, 50 CFR 17.95(f) [CH].
Moccasinshell, Ochlockonee	*Medionidus simpsonianus*	Wherever found	E	63 FR 12664; 3/16/1998, 50 CFR 17.95(f) [CH].
Monkeyface, Appalachian (pearlymussel)	*Quadrula sparsa*	Wherever found, except where listed as an experimental population.	E	41 FR 24062; 6/14/1976.
Monkeyface, Appalachian (pearlymussel)	*Quadrula sparsa*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.85(b)(1)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.85(b) [10j].
Monkeyface, Cumberland	*Quadrula intermedia*	Wherever found, except where listed as an experimental population.	E	41 FR 24062; 6/14/1976.
Monkeyface, Cumberland	*Quadrula intermedia*	U.S.A. (AL—specified portions of the Tennessee River; see § 17.85(a)(1)).	XN	66 FR 32250; 6/14/2001, 50 CFR 17.85(a) [10j].
Monkeyface, Cumberland	*Quadrula intermedia*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.85(b)(1)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.85(b) [10j].
Mucket, Neosho	*Lampsilis rafinesqueana*	Wherever found	E	78 FR 57076; 9/17/2013, 50 CFR 17.95(f) [CH].
Mucket, orangenacre	*Lampsilis perovalis*	Wherever found	T	58 FR 14330; 3/17/1993, 50 CFR 17.95(f) [CH].
Mucket, pink (pearlymussel)	*Lampsilis abrupta*	Wherever found	E	41 FR 24062; 6/14/1976.
Mussel, oyster	*Epioblasma capsaeformis*	Wherever found, except where listed as an experimental population.	E	62 FR 1647; 1/10/1997, 50 CFR 17.95(f) [CH].
Mussel, oyster	*Epioblasma capsaeformis*	U.S.A. (AL—specified portions of the Tennessee River; see § 17.85(a)(1)).	XN	66 FR 32250; 6/14/2001, 50 CFR 17.85(a) [10j].
Mussel, oyster	*Epioblasma capsaeformis*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.85(b)(1)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.85(b) [10j].
Mussel, rayed bean	*Villosa fabalis*	Wherever found	E	77 FR 8632; 2/14/2012.
Mussel, scaleshell	*Leptodea leptodon*	Wherever found	E	66 FR 51322; 10/9/2001.
Pearlshell, Alabama	*Margaritifera marrianae*	Wherever found	E	77 FR 61663; 10/10/2012, 50 CFR 17.95(f) [CH].
Pearlshell, Louisiana	*Margaritifera hembeli*	Wherever found	T	53 FR 3567; 2/5/1988, 58 FR 49935; 9/24/1993.
Pearlymussel, birdwing	*Lemiox rimosus*	Wherever found, except where listed as an experimental population.	E	41 FR 24062; 6/14/1976.
Pearlymussel, birdwing	*Lemiox rimosus*	U.S.A. (AL—specified portions of the Tennessee River; see § 17.85(a)(1)).	XN	66 FR 32250; 6/14/2001, 50 CFR 17.85(a) [10j].
Pearlymussel, birdwing	*Lemiox rimosus*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.85(b)(1)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.85(b) [10j].
Pearlymussel, cracking	*Hemistena lata*	Wherever found, except where listed as an experimental population.	E	54 FR 39850; 9/28/1989.
Pearlymussel, cracking	*Hemistena lata*	U.S.A. (AL—specified portions of the Tennessee River; see § 17.85(a)(1)).	XN	66 FR 32250; 6/14/2001, 50 CFR 17.85(a) [10j].
Pearlymussel, cracking	*Hemistena lata*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.85(b)(1)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.85(b) [10j].
Pearlymussel, Curtis	*Epioblasma florentina curtisii*	Wherever found	E	41 FR 24062; 6/14/1976.
Pearlymussel, dromedary	*Dromus dromas*	Wherever found, except where listed as an experimental population.	E	41 FR 24062; 6/14/1976.
Pearlymussel, dromedary	*Dromus dromas*	U.S.A. (AL—specified portions of the Tennessee River; see § 17.85(a)(1)).	XN	66 FR 32250; 6/14/2001, 50 CFR 17.85(a) [10j].
Pearlymussel, dromedary	*Dromus dromas*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.85(b)(1)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.85(b) [10j].
Pearlymussel, littlewing	*Pegias fabula*	Wherever found	E	53 FR 45861; 11/14/1988.
Pearlymussel, Nicklin's	*Megalonaias nicklineana*	Wherever found	E	41 FR 24062; 6/14/1976.
Pearlymussel, slabside	*Pleuronaia dolabelloides*	Wherever found	E	78 FR 59269; 9/26/2013, 50 CFR 17.95(f) [CH].
Pearlymussel, Tampico	*Cyrtonaias tampicoensis tecomatensis*	Wherever found	E	41 FR 24062; 6/14/1976.
Pigtoe, Cumberland	*Pleurobema gibberum*	Wherever found	E	56 FR 21084; 5/7/1991.
Pigtoe, dark	*Pleurobema furvum*	Wherever found	E	58 FR 14330; 3/17/1993, 50 CFR 17.95(f) [CH].
Pigtoe, finerayed	*Fusconaia cuneolus*	Wherever found, except where listed as an experimental population.	E	41 FR 24062; 6/14/1976.
Pigtoe, finerayed	*Fusconaia cuneolus*	U.S.A. (AL—specified portions of the Tennessee River; see § 17.85(a)(1)).	XN	66 FR 32250; 6/14/2001, 50 CFR 17.85(a) [10j].
Pigtoe, finerayed	*Fusconaia cuneolus*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.85(b)(1)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.85(b) [10j].
Pigtoe, flat	*Pleurobema marshalli*	Wherever found	E	52 FR 11162; 4/7/1987.
Pigtoe, fuzzy	*Pleurobema strodeanum*	Wherever found	T	77 FR 61663; 10/10/2012, 50 CFR 17.95(f) [CH].
Pigtoe, Georgia	*Pleurobema hanleyianum*	Wherever found	E	75 FR 67512; 11/2/2010, 50 CFR 17.95(f) [CH].
Pigtoe, heavy	*Pleurobema taitianum*	Wherever found	E	52 FR 11162; 4/7/1987.
Pigtoe, narrow	*Fusconaia escambia*	Wherever found	T	77 FR 61663; 10/10/2012, 50 CFR 17.95(f) [CH].
Pigtoe, oval	*Pleurobema pyriforme*	Wherever found	E	63 FR 12664; 3/16/1998, 50 CFR 17.95(f) [CH].
Pigtoe, rough	*Pleurobema plenum*	Wherever found, except where listed as an experimental population.	E	41 FR 24062; 6/14/1976.
Pigtoe, rough	*Pleurobema plenum*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.85(b)(1)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.85(b) [10j].
Pigtoe, shiny	*Fusconaia cor*	Wherever found, except where listed as an experimental population.	E	41 FR 24062; 6/14/1976.
Pigtoe, shiny	*Fusconaia cor*	U.S.A. (AL—specified portions of the Tennessee River; see § 17.85(a)(1)).	XN	66 FR 32250; 6/14/2001, 50 CFR 17.85(a) [10j].

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Pigtoe, shiny	*Fusconaia cor*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.85(b)(1)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.85(b) [10j].
Pigtoe, southern	*Pleurobema georgianum*	Wherever found	E	58 FR 14330; 3/17/1993, 50 CFR 17.95(f) [CH].
Pigtoe, tapered	*Fusconaia burkei*	Wherever found	T	77 FR 61663; 10/10/2012, 50 CFR 17.95(f) [CH].
Pimpleback, orangefoot	*Plethobasus cooperianus*	Wherever found, except where listed as an experimental population.	E	41 FR 24062; 6/14/1976.
Pimpleback, orangefoot	*Plethobasus cooperianus*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.85(b)(1)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.85(b) [10j].
Pink, ring	*Obovaria retusa*	Wherever found, except where listed as an experimental population.	E	54 FR 40109; 9/29/1989.
Pink, ring	*Obovaria retusa*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.85(b)(1)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.85(b) [10j].
Pocketbook, fat	*Potamilus capax*	Wherever found	E	41 FR 24062; 6/14/1976.
Pocketbook, finelined	*Lampsilis altilis*	Wherever found	T	58 FR 14330; 3/17/1993, 50 CFR 17.95(f) [CH].
Rock-pocketbook, Ouachita	*Arkansia wheeleri*	Wherever found	E	56 FR 54950; 10/23/1991.
Pocketbook, shinyrayed	*Lampsilis subangulata*	Wherever found	E	63 FR 12664; 3/16/1998, 50 CFR 17.95(f) [CH].
Pocketbook, speckled	*Lampsilis streckeri*	Wherever found	E	54 FR 8339; 2/28/1989.
Rabbitsfoot	*Quadrula cylindrica cylindrica*	Wherever found	T	78 FR 57076; 9/17/2013, 50 CFR 17.95(f) [CH].
Rabbitsfoot, rough	*Quadrula cylindrica strigillata*	Wherever found	E	62 FR 1647; 1/10/1997, 50 CFR 17.95(f) [CH].
Riffleshell, northern	*Epioblasma torulosa rangiana*	Wherever found	E	58 FR 5638; 1/22/1993.
Riffleshell, tan	*Epioblasma florentina walkeri (=E. walkeri).*	Wherever found	E	42 FR 42351; 8/23/1977.
Sandshell, southern	*Hamiota australis*	Wherever found	T	77 FR 61663; 10/10/2012, 50 CFR 17.95(f) [CH].
Sheepnose	*Plethobasus cyphyus*	Wherever found	E	77 FR 14914;3/13/2012.
Slabshell, Chipola	*Elliptio chipolaensis*	Wherever found	T	63 FR 12664; 3/16/1998, 50 CFR 17.95(f) [CH].
Snuffbox (mussel)	*Epioblasma triquetra*	Wherever found	E	77 FR 8632; 2/14/2012.
Spectaclecase	*Cumberlandia monodonta*	Wherever found	E	77 FR 14914; 3/13/2012.
Spinymussel, Altamaha	*Elliptio spinosa*	Wherever found	E	76 FR 62928; 10/11/2011, 50 CFR 17.95(f) [CH].
Spinymussel, James	*Pleurobema collina*	Wherever found	E	53 FR 27689; 7/22/1988.
Spinymussel, Tar River	*Elliptio steinstansana*	Wherever found	E	50 FR 26572; 6/27/1985.
Stirrupshell	*Quadrula stapes*	Wherever found	E	52 FR 11162; 4/7/1987.
Threeridge, fat	*Amblema neislerii*	Wherever found	E	63 FR 12664; 3/16/1998, 50 CFR 17.95(f) [CH].
Wartyback, white	*Plethobasus cicatricosus*	Wherever found, except where listed as an experimental population.	E	41 FR 24062; 6/14/1976.
Wartyback, white	*Plethobasus cicatricosus*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.85(b)(1)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.85(b) [10j].
Wedgemussel, dwarf	*Alasmidonta heterodon*	Wherever found	E	55 FR 9447; 3/14/1990.
SNAILS				
Abalone, Black	*Haliotis cracherodii*	Wherever found	E	74 FR 1937; 1/14/2009 [N], 76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 50 CFR 226.221 [CH].
Abalone, white	*Haliotis sorenseni*	Wherever found	E	66 FR 29054; 5/29/2001 [N], 70 FR 69464; 11/16/2005.
Ambersnail, Kanab	*Oxyloma haydeni kanabensis*	Wherever found	E	56 FR 37668; 8/8/1991, 57 FR 13657; 4/17/1992, 57 FR 44340; 9/25/1992.
Campeloma, slender	*Campeloma decampi*	Wherever found	E	65 FR 10033; 2/25/2000.
Cavesnail, Tumbling Creek	*Antrobia culveri*	Wherever found	E	67 FR 52879; 8/14/2002, 50 CFR 17.95(f) [CH].
Elimia, lacy	*Elimia crenatella*	Wherever found	T	63 FR 57610; 10/28/1998.
Hornsnail, rough	*Pleurocera foremani*	Wherever found	E	75 FR 67512; 11/2/2010, 50 CFR 17.95(f) [CH].
Limpet, Banbury Springs	*Lanx* sp.	Wherever found	E	57 FR 59244; 12/14/1992.
Lioplax, cylindrical	*Lioplax cyclostomaformis*	Wherever found	E	63 FR 57610; 10/28/1998.
Marstonia, armored (snail)	*Pyrgulopsis (=Marstonia) pachyta*	Wherever found	E	65 FR 10033; 2/25/2000.
Marstonia, royal	*Pyrgulopsis ogmorhaphe*	Wherever found	E	59 FR 17994; 4/15/1994.
Pebblesnail, flat	*Lepyrium showalteri*	Wherever found	E	63 FR 57610; 10/28/1998.
Pecos assiminea	*Assiminea pecos*	Wherever found	E	76 FR 33036; 6/7/2011, 50 CFR 17.95(f) [CH].
Riversnail, Anthony's	*Athearnia anthonyi*	Wherever found, except where listed as an experimental population.	E	59 FR 17994; 4/15/1994.
Riversnail, Anthony's	*Athearnia anthonyi*	U.S.A. (AL—specified portions of the Tennessee River; see § 17.85(a)(1)).	XN	66 FR 32250; 6/14/2001, 50 CFR 17.85(a) [10j].
Riversnail, Anthony's	*Athearnia anthonyi*	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see § 17.85(b)(1)).	XN	72 FR 52434; 9/13/2007, 50 CFR 17.85(b) [10j].
Rocksnail, interrupted	*Leptoxis foremani*	Wherever found	E	75 FR 67512; 11/2/2010, 50 CFR 17.95(f) [CH].
Rocksnail, painted	*Leptoxis taeniata*	Wherever found	T	63 FR 57610; 10/28/1998.
Rocksnail, plicate	*Leptoxis plicata*	Wherever found	E	63 FR 57610; 10/28/1998.
Rocksnail, round	*Leptoxis ampla*	Wherever found	T	63 FR 57610; 10/28/1998.
Snail, Bliss Rapids	*Taylorconcha serpenticola*	Wherever found	T	57 FR 59244; 12/14/1992.
Snail, Chittenango ovate amber	*Succinea chittenangoensis*	Wherever found	T	43 FR 28932; 7/3/1978.
Snail, flat-spired three-toothed	*Triodopsis platysayoides*	Wherever found	T	43 FR 28932; 7/3/1978.
Snail, fragile tree (Akaleha dogas, Denden)	*Samoana fragilis*	Wherever found	E	80 FR 59423; 10/1/2015.
Snail, Guam tree (Akaleha, Denden)	*Partula radiolata*	Wherever found	E	80 FR 59423; 10/1/2015.
Snail, humped tree (Akaleha, Denden)	*Partula gibba*	Wherever found	E	80 FR 59423; 10/1/2015.
Snail, Iowa Pleistocene	*Discus macclintocki*	Wherever found	E	43 FR 28932; 7/3/1978.
Snail, Lanai tree	*Partulina semicarinata*	Wherever found	E	78 FR 32013; 5/28/2013.
Snail, Lanai tree	*Partulina variabilis*	Wherever found	E	78 FR 32013; 5/28/2013.
Snail, Langford's tree (Akaleha, Denden)	*Partula langfordi*	Wherever found	E	80 FR 59423; 10/1/2015.
Snail, Manus Island tree	*Papustyla pulcherrima*	Wherever found	E	35 FR 8491; 6/2/1970.

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Snail, Morro shoulderband (=Banded dune)	*Helminthoglypta walkeriana*	Wherever found	E	59 FR 64613; 12/15/1994, 50 CFR 17.95(f) [CH].
Snail, Newcomb's	*Erinna newcombi*	Wherever found	T	65 FR 4162; 1/26/2000, 50 CFR 17.95(f) [CH].
Snail, Newcomb's tree	*Newcombia cumingi*	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.95(f) [CH].
Snail, noonday	*Mesodon clarki nantahala*	Wherever found	T	43 FR 28932; 7/3/1978.
Snail, painted snake coiled forest	*Anguispira picta*	Wherever found	T	43 FR 28932; 7/3/1978.
Snail, Snake River physa	*Physa natricina*	Wherever found	E	57 FR 59244; 12/14/1992.
Snail, Stock Island tree	*Orthalicus reses* (not incl. *nesodryas*)	Wherever found	T	43 FR 28932; 7/3/1978.
Snail, tulotoma	*Tulotoma magnifica*	Wherever found	T	56 FR 797; 1/9/1991, 76 FR 31866; 6/2/2011.
Snail, Virginia fringed mountain	*Polygyriscus virginianus*	Wherever found	E	43 FR 28932; 7/3/1978.
Snails, Oahu tree	*Achatinella* spp.	Wherever found	E	46 FR 3178; 1/13/1981, 46 FR 40025; 8/6/1981.
Springsnail, Alamosa	*Tryonia alamosae*	Wherever found	E	56 FR 49646; 9/30/1991.
Springsnail, Bruneau Hot	*Pyrgulopsis bruneauensis*	Wherever found	E	58 FR 5938; 1/25/1993.
Springsnail, Chupadera	*Pyrgulopsis chupaderae*	Wherever found	E	77 FR 41088; 7/12/2012, 50 CFR 17.95(f) [CH].
Springsnail, Koster's	*Juturnia kosteria*	Wherever found	E	76 FR 33036; 6/7/2011, 50 CFR 17.95(f) [CH].
Springsnail, Phantom	*Pyrgulopsis texana*	Wherever found	E	78 FR 41227; 7/9/2013, 50 CFR 17.95(f) [CH].
Springsnail, Roswell	*Pyrgulopsis roswellensis*	Wherever found	E	76 FR 33036; 6/7/2011, 50 CFR 17.95(f) [CH].
Springsnail, San Bernardino	*Pyrgulopsis bernardina*	Wherever found	T	77 FR 23060; 4/17/2012, 50 CFR 17.95(f) [CH].
Springsnail, Socorro	*Pyrgulopsis neomexicana*	Wherever found	E	56 FR 49646; 9/30/1991.
Springsnail, Three Forks	*Pyrgulopsis trivialis*	Wherever found	E	77 FR 23060; 4/17/2012, 50 CFR 17.95(f) [CH].
Tryonia, Diamond	*Pseudotryonia adamantina*	Wherever found	E	78 FR 41227; 7/9/2013, 50 CFR 17.95(f) [CH].
Tryonia, Gonzales	*Tryonia circumstriata*	Wherever found	E	78 FR 41227; 7/9/2013, 50 CFR 17.95(f) [CH].
Tryonia, Phantom	*Tryonia cheatumi*	Wherever found	E	78 FR 41227; 7/9/2013, 50 CFR 17.95(f) [CH].
INSECTS				
Beetle, American burying	*Nicrophorus americanus*	Entire, except where listed as an experimental population.	E	54 FR 29652; 7/13/1989.
Beetle, American burying	*Nicrophorus americanus*	In southwestern Missouri, the counties of Cedar, St. Clair, Bates, and Vernon.	XN	77 FR 16712; 3/22/2012, 50 CFR 17.85(c) [10j].
Beetle, Casey's June	*Dinacoma caseyi*	Wherever found	E	76 FR 58954; 9/22/2011, 50 CFR 17.95(i) [CH].
Beetle, Coffin Cave mold	*Batrisodes texanus*	Wherever found	E	53 FR 36029; 9/16/1988, 58 FR 43818; 8/18/1993.
Beetle, Comal Springs dryopid	*Stygoparnus comalensis*	Wherever found	E	62 FR 66295; 12/18/1997, 50 CFR 17.95(i) [CH].
Beetle, Comal Springs riffle	*Heterelmis comalensis*	Wherever found	E	62 FR 66295; 12/18/1997, 50 CFR 17.95(i) [CH].
Beetle, delta green ground	*Elaphrus viridis*	Wherever found	T	45 FR 52807; 8/8/1980, 50 CFR 17.95(i) [CH].
Beetle, Helotes mold	*Batrisodes venyivi*	Wherever found	E	70 FR 69854; 11/17/2005, 50 CFR 17.95(i) [CH].
Beetle, Hungerford's crawling water	*Brychius hungerfordi*	Wherever found	E	59 FR 10580; 3/7/1994.
Beetle, Kretschmarr Cave mold	*Texamaurops reddelli*	Wherever found	E	53 FR 36029; 9/16/1988, 58 FR 43818; 8/18/1993.
Beetle, Mount Hermon June	*Polyphylla barbata*	Wherever found	E	62 FR 3616; 1/24/1997.
Beetle, (no common name)	*Rhadine exilis*	Wherever found	E	70 FR 69854; 11/17/2005, 50 CFR 17.95(i) [CH].
Beetle, (no common name)	*Rhadine infernalis*	Wherever found	E	70 FR 69854; 11/17/2005, 50 CFR 17.95(i) [CH].
Beetle, Northeastern beach tiger	*Cicindela dorsalis dorsalis*	Wherever found	T	55 FR 32088; 8/7/1990.
Beetle, Ohlone tiger	*Cicindela ohlone*	Wherever found	E	66 FR 50340; 8/3/2001.
Beetle, Puritan tiger	*Cicindela puritana*	Wherever found	T	55 FR 32088; 8/7/1990.
Beetle, Salt Creek tiger	*Cicindela nevadica lincolniana*	Wherever found	E	70 FR 58335; 10/6/2005, 50 CFR 17.95(i) [CH].
Beetle, Tooth Cave ground	*Rhadine persephone*	Wherever found	E	53 FR 36029; 9/16/1988.
Beetle, valley elderberry longhorn	*Desmocerus californicus dimorphus*	Wherever found	T	45 FR 52803; 8/8/1980, 50 CFR 17.95(i) [CH].
Butterfly, Bartram's scrub-hairstreak	*Strymon acis bartrami*	Wherever found	E	79 FR 47221; 8/12/2014, 50 CFR 17.95(i) [CH].
Butterfly, bay checkerspot	*Euphydryas editha bayensis*	Wherever found	T	52 FR 35366; 9/18/1987, 50 CFR 17.95(i) [CH].
Butterfly, Behren's silverspot	*Speyeria zerene behrensii*	Wherever found	E	62 FR 64306; 12/5/1997.
Butterfly, callippe silverspot	*Speyeria callippe callippe*	Wherever found	E	62 FR 64306; 12/5/1997.
Butterfly, cassius blue	*Leptotes cassius theonus*	Coastal south and central FL	T (S/A)	77 FR 20948; 4/6/2012.
Butterfly, ceraunus blue	*Hemiargus ceraunus antibubastus*	Coastal south and central FL	T (S/A)	77 FR 20948; 4/6/2012.
Butterfly, Corsican swallowtail	*Papilio hospiton*	Wherever found	E	58 FR 4356; 1/14/1993.
Butterfly, El Segundo blue	*Euphilotes battoides allyni*	Wherever found	E	41 FR 22041; 6/14/1976.
Butterfly, Fender's blue	*Icaricia icarioides fenderi*	Wherever found	E	65 FR 3875; 1/25/2000, 50 CFR 17.95(i) [CH].
Butterfly, Florida leafwing	*Anaea troglodyta floridalis*	Wherever found	E	79 FR 47221; 8/12/2014, 50 CFR 17.95(i) [CH].
Butterfly, Homerus swallowtail	*Papilio homerus*	Wherever found	E	58 FR 4356; 1/14/1993.
Butterfly, Karner blue	*Lycaeides melissa samuelis*	Wherever found	E	57 FR 59236; 12/14/1992.
Butterfly, Lange's metalmark	*Apodemia mormo langei*	Wherever found	E	41 FR 22041; 6/14/1976.
Butterfly, lotis blue	*Lycaeides argyrognomon lotis*	Wherever found	E	41 FR 22041; 6/14/1976.
Butterfly, Luzon peacock swallowtail	*Papilio chikae*	Wherever found	E	58 FR 4356; 1/14/1993.
Butterfly, Mariana eight-spot (Ababbang, Libweibwogh).	*Hypolimnas octocula marianensis*	Wherever found	E	80 FR 59423; 10/1/2015.
Butterfly, Mariana wandering (Ababbang, Libweibwogh).	*Vagrans egistina*	Wherever found	E	80 FR 59423; 10/1/2015.
Butterfly, Miami blue	*Cyclargus thomasi bethunebakeri*	Wherever found	E	77 FR 20948; 4/6/2012.
Butterfly, mission blue	*Icaricia icarioides missionensis*	Wherever found	E	41 FR 22041; 6/14/1976.
Butterfly, Mitchell's satyr	*Neonympha mitchellii mitchellii*	Wherever found	E	56 FR 28825; 6/25/1991, 57 FR 21564; 5/20/1992.

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Butterfly, Mount Charleston blue	*Icaricia (Plebejus) shasta charlestonensis.*	Wherever found	E	78 FR 57749; 9/19/2013, 50 CFR 17.95(i) [CH].
Butterfly, Myrtle's silverspot	*Speyeria zerene myrtleae*	Wherever found	E	57 FR 27848; 6/22/1992.
Butterfly, nickerbean blue	*Cyclargus ammon*	Coastal south and central FL	T (S/A)	77 FR 20948; 4/6/2012, 50 CFR 17.47(a) [4d].
Butterfly, Oregon silverspot	*Speyeria zerene hippolyta*	Wherever found	T	45 FR 44935; 7/2/1980, 50 CFR 17.95(i) [CH].
Butterfly, Palos Verdes blue	*Glaucopsyche lygdamus palosverdesensis.*	Wherever found	E	45 FR 44935; 7/2/1980, 50 CFR 17.95(i) [CH].
Butterfly, Queen Alexandra's birdwing	*Troides alexandrae*	Wherever found	E	54 FR 38950; 9/21/1989.
Butterfly, Quino checkerspot	*Euphydryas editha quino*	Wherever found	E	62 FR 2313; 1/16/1997, 50 CFR 17.95(i) [CH].
Butterfly, Saint Francis' satyr	*Neonympha mitchellii francisci*	Wherever found	E	59 FR 18324; 4/18/1994, 60 FR 5264; 1/26/1995.
Butterfly, San Bruno elfin	*Callophrys mossii bayensis*	Wherever found	E	41 FR 22041; 6/14/1976.
Butterfly, Schaus swallowtail	*Heraclides aristodemus ponceanus*	Wherever found	E	41 FR 17736; 4/28/1976, 49 FR 34501; 8/31/1984.
Butterfly, Smith's blue	*Euphilotes enoptes smithi*	Wherever found	E	41 FR 22041; 6/14/1976.
Butterfly, Taylor's checkerspot	*Euphydryas editha taylori*	Wherever found	E	78 FR 61451; 10/3/2013, 50 CFR 17.95(i) [CH].
Butterfly, Uncompahgre fritillary	*Boloria acrocnema*	Wherever found	E	56 FR 28712; 6/24/1991.
Damselfly, blackline Hawaiian	*Megalagrion nigrohamatum nigrolineatum.*	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.95(i) [CH].
Damselfly, crimson Hawaiian	*Megalagrion leptodemas*	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.95(i) [CH].
Damselfly, flying earwig Hawaiian	*Megalagrion nesiotes*	Wherever found	E	52 FR 21481; 6/5/1987, 50 CFR 17.95(i) [CH].
Damselfly, oceanic Hawaiian	*Megalagrion oceanicum*	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.95(i) [CH].
Damselfly, Pacific Hawaiian	*Megalagrion pacificum*	Wherever found	E	52 FR 21481; 6/5/1987, 50 CFR 17.95(i) [CH].
Damselfly, Rota blue (Dulalas Luta, Dulalas Luuta).	*Ischnura luta*	Wherever found	E	80 FR 59423; 10/1/2015.
Dragonfly, Hine's emerald	*Somatochlora hineana*	Wherever found	E	60 FR 5267; 1/26/1995, 50 CFR 17.95(i) [CH].
Fly, Delhi Sands flower-loving	*Rhaphiomidas terminatus abdominalis*	Wherever found	E	58 FR 49881; 9/23/1993.
Fly, Hawaiian picture-wing	*Drosophila aglaia*	Wherever found	E	71 FR 26835; 5/9/2006, 50 CFR 17.95(i) [CH].
Fly, Hawaiian picture-wing	*Drosophila differens*	Wherever found	E	71 FR 26835; 5/9/2006, 50 CFR 17.95(i) [CH].
Fly, Hawaiian picture-wing	*Drosophila digressa*	Wherever found	E	78 FR 64637; 10/29/2013.
Fly, Hawaiian picture-wing	*Drosophila hemipeza*	Wherever found	E	71 FR 26835; 5/9/2006, 50 CFR 17.95(i) [CH].
Fly, Hawaiian picture-wing	*Drosophila heteroneura*	Wherever found	E	71 FR 26835; 5/9/2006, 50 CFR 17.95(i) [CH].
Fly, Hawaiian picture-wing	*Drosophila montgomeryi*	Wherever found	E	71 FR 26835; 5/9/2006, 50 CFR 17.95(i) [CH].
Fly, Hawaiian picture-wing	*Drosophila mulli*	Wherever found	T	71 FR 26835; 5/9/2006, 50 CFR 17.95(i) [CH].
Fly, Hawaiian picture-wing	*Drosophila musaphilia*	Wherever found	E	71 FR 26835; 5/9/2006, 50 CFR 17.95(i) [CH].
Fly, Hawaiian picture-wing	*Drosophila neoclavisetae*	Wherever found	E	71 FR 26835; 5/9/2006, 50 CFR 17.95(i) [CH].
Fly, Hawaiian picture-wing	*Drosophila obatai*	Wherever found	E	71 FR 26835; 5/9/2006, 50 CFR 17.95(i) [CH].
Fly, Hawaiian picture-wing	*Drosophila ochrobasis*	Wherever found	E	71 FR 26835; 5/9/2006, 50 CFR 17.95(i) [CH].
Fly, Hawaiian picture-wing	*Drosophila sharpi*	Wherever found	E	71 FR 26835; 5/9/2006, 50 CFR 17.95(i) [CH].
Fly, Hawaiian picture-wing	*Drosophila substenoptera*	Wherever found	E	71 FR 26835; 5/9/2006, 50 CFR 17.95(i) [CH].
Fly, Hawaiian picture-wing	*Drosophila tarphytrichia*	Wherever found	E	71 FR 26835; 5/9/2006, 50 CFR 17.95(i) [CH].
Grasshopper, Zayante band-winged	*Trimerotropis infantilis*	Wherever found	E	62 FR 3616; 1/24/1997, 50 CFR 17.95(i) [CH].
Moth, Blackburn's sphinx	*Manduca blackburni*	Wherever found	E	65 FR 4770; 2/1/2000, 50 CFR 17.95(i) [CH].
Moth, Kern primrose sphinx	*Euproserpinus euterpe*	Wherever found	T	45 FR 24088; 4/8/1980.
Naucorid, Ash Meadows	*Ambrysus amargosus*	Wherever found	T	50 FR 20777; 5/20/1985, 50 CFR 17.95(i) [CH].
Skipper, Carson wandering	*Pseudocopaeodes eunus obscurus*	U.S.A., (Lassen County, CA; Washoe County, NV).	E	67 FR 51116; 8/7/2002.
Skipper, Dakota	*Hesperia dacotae*	Wherever found	T	79 FR 63671;10/24/2014, 50 CFR 17.95(i) [CH], 50 CFR 17.47(b) [4d].
Skipper, Laguna Mountains	*Pyrgus ruralis lagunae*	Wherever found	E	62 FR 2313; 1/16/1997, 50 CFR 17.95(i) [CH].
Skipper, Pawnee montane	*Hesperia leonardus montana*	Wherever found	T	52 FR 36176; 9/25/1987.
Skipperling, Poweshiek	*Oarisma poweshiek*	Wherever found	E	79 FR 63671;10/24/2014, 50 CFR 17.95(i) [CH].
ARACHNIDS				
Harvestman, Bee Creek Cave	*Texella reddelli*	Wherever found	E	53 FR 36029; 9/16/1988, 58 FR 43818; 8/18/1993.
Harvestman, Bone Cave	*Texella reyesi*	Wherever found	E	53 FR 36029; 9/16/1988, 58 FR 43818; 8/18/1993.
Harvestman, Cokendolpher cave	*Texella cokendolpheri*	Wherever found	E	65 FR 69624; 11/17/2000, 50 CFR 17.95(g) [CH].
Meshweaver, Braken Bat Cave	*Circurina venii*	Wherever found	E	65 FR 69624; 11/17/2000, 50 CFR 17.95(g) [CH].
Meshweaver, Government Canyon Bat Cave	*Circurina vespera*	Wherever found	E	65 FR 69624; 11/17/2000, 50 CFR 17.95(g) [CH].
Meshweaver, Madla Cave	*Cicurina madla*	Wherever found	E	65 FR 69624; 11/17/2000, 50 CFR 17.95(g) [CH].
Meshweaver, Robber Baron Cave	*Cicurina baronia*	Wherever found	E	65 FR 69624; 11/17/2000, 50 CFR 17.95(g) [CH].
Pseudoscorpion, Tooth Cave	*Tartarocreagris texana*	Wherever found	E	53 FR 36029; 9/16/1988.

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
Spider, Government Canyon Bat Cave	*Neoleptoneta microps*	Wherever found	E	65 FR 69624; 11/17/2000, 50 CFR 17.95(g) [CH].
Spider, Kauai cave wolf	*Adelocosa anops*	Wherever found	E	65 FR 2348; 1/14/2000, 50 CFR 17.95(g) [CH].
Spider, spruce-fir moss	*Microhexura montivaga*	Wherever found	E	60 FR 6968; 2/6/1995, 50 CFR 17.95(g) [CH].
Spider, Tooth Cave	*Neoleptoneta myopica*	Wherever found	E	53 FR 36029; 9/16/1988.
CRUSTACEANS				
Amphipod, diminutive	*Gammarus hyalleloides*	Wherever found	E	78 FR 41227; 7/9/2013, 50 CFR 17.95(h) [CH].
Amphipod, Hay's Spring	*Stygobromus hayi*	Wherever found	E	47 FR 5425; 2/5/1982.
Amphipod, Illinois Cave	*Gammarus acherondytes*	Wherever found	E	63 FR 46900; 9/3/1998.
Amphipod, Kauai cave	*Spelaeorchestia koloana*	Wherever found	E	65 FR 2348; 1/14/2000, 50 CFR 17.95(h) [CH].
Amphipod, Noel's	*Gammarus desperatus*	Wherever found	E	76 FR 33036; 6/7/2011, 50 CFR 17.95(h) [CH].
Amphipod, Peck's cave	*Stygobromus (=Stygonectes) Pecki*	Wherever found	E	62 FR 66295; 12/18/1997, 50 CFR 17.95(h) [CH].
Amphipod, Pecos	*Gammarus pecos*	Wherever found	E	78 FR 41227; 7/9/2013, 50 CFR 17.95(h) [CH].
Crayfish, Big Sandy	*Cambarus callainus*	Wherever found	T	81 FR 20449; 4/7/2016.
Crayfish, cave	*Cambarus aculabrum*	Wherever found	E	58 FR 25742; 4/27/1993.
Crayfish, cave	*Cambarus zophonastes*	Wherever found	E	52 FR 11170; 4/7/1987.
Crayfish, Guyandotte River	*ambarus veteranus*	Wherever found	E	81 FR 20449; 4/7/2016.
Crayfish, Nashville	*Orconectes shoupi*	Wherever found	E	51 FR 34410; 9/3/1986.
Crayfish, Shasta	*Pacifastacus fortis*	Wherever found	E	53 FR 38460; 9/30/1988.
Fairy shrimp, Conservancy	*Branchinecta conservatio*	Wherever found	E	59 FR 48136; 9/19/1994, 50 CFR 17.95(h) [CH].
Fairy shrimp, longhorn	*Branchinecta longiantenna*	Wherever found	E	59 FR 48136; 9/19/1994, 50 CFR 17.95(h) [CH].
Fairy shrimp, Riverside	*Streptocephalus woottoni*	Wherever found	E	58 FR 41384; 8/3/1993, 50 CFR 17.95(h) [CH].
Fairy shrimp, San Diego	*Branchinecta sandiegonensis*	Wherever found	E	62 FR 4925; 2/3/1997, 50 CFR 17.95(h) [CH].
Fairy shrimp, vernal pool	*Branchinecta lynchi*	Wherever found	E	59 FR 48136; 9/19/1994, 50 CFR 17.95(h) [CH].
Isopod, Lee County cave	*Lirceus usdagalun*	Wherever found	E	57 FR 54722; 11/20/1992.
Isopod, Madison Cave	*Antrolana lira*	Wherever found	T	47 FR 43699; 10/4/1982, 50 CFR 17.46(a) [4d].
Isopod, Socorro	*Thermosphaeroma thermophilus*	Wherever found	E	43 FR 12690; 3/27/1978.
Shrimp, Alabama cave	*Palaemonias alabamae*	Wherever found	E	53 FR 34696; 9/7/1988.
Shrimp, anchialine pool	*Vetericaris chaceorum*	Wherever found	E	78 FR 64637; 10/29/2013.
Shrimp, California freshwater	*Syncaris pacifica*	Wherever found	E	53 FR 43884; 10/31/1988.
Shrimp, Kentucky cave	*Palaemonias ganteri*	Wherever found	E	48 FR 46337; 10/12/1983, 50 CFR 17.95(h) [CH].
Shrimp, Squirrel Chimney cave	*Palaemonetes cummingi*	Wherever found	T	55 FR 25588; 6/21/1990.
Tadpole shrimp, vernal pool	*Lepidurus packardi*	Wherever found	E	59 FR 48136; 9/19/1994, 50 CFR 17.95(h) [CH].
CORALS				
Coral, (no common name)	*Acropora globiceps*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.
Coral, (no common name)	*Acropora jacquelineae*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.
Coral, (no common name)	*Acropora lokani*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.
Coral, (no common name)	*Acropora pharaonis*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.
Coral, (no common name)	*Acropora retusa*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.
Coral, (no common name)	*Acropora rudis*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.
Coral, (no common name)	*Acropora speciosa*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.
Coral, (no common name)	*Acropora tenella*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.
Coral, (no common name)	*Anacropora spinosa*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.
Coral, (no common name)	*Euphyllia paradivisa*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.
Coral, (no common name)	*Isopora crateriformis*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.
Coral, (no common name)	*Montipora australiensis*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.
Coral, (no common name)	*Pavona diffluens*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.
Coral, (no common name)	*Porites napopora*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.
Coral, (no common name)	*Seriatopora aculeata*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.
Coral, boulder star	*Orbicella franksi*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.
Coral, elkhorn	*Acropora palmata*	Wherever found	T	76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014, 50 CFR 223.208 [4d], 50 CFR 226.216 [CH].
Coral, lobed star	*Orbicella annularis*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.
Coral, mountainous star	*Orbicella faveolata*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.
Coral, pillar	*Dendrogyra cylindrus*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.
Coral, rough cactus	*Mycetophyllia ferox*	Wherever found	T	79 FR 53852; 9/10/2014 [N], 79 FR 67356; 11/13/2014.

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
Coral, staghorn	*Acropora cervicornis*	Wherever found	T	76 FR 20558; 4/13/2011, 79 FR 42687; 7/23/2014, 79 FR 53852; 9/10/2014 N, 79 FR 67356; 11/13/2014, 50 CFR 223.208 4d, 50 CFR 226.216 CH.

■ 3. Revise § 17.12 to read as follows:

§ 17.12 Endangered and threatened plants.

(a) The list in paragraph (h) of this section contains the plant species determined by the Service or the National Marine Fisheries Service (NMFS) of the Department of Commerce's National Oceanic and Atmospheric Administration (hereafter in this section referred to as ''the Services'') to be endangered species or threatened species. It also contains the plant species treated as endangered or threatened because they are similar in appearance to and may be confused with endangered or threatened species (see §§ 17.50 through 17.52). The ''Common name,'' ''Scientific name,'' ''Where listed,'' and ''Status'' columns provide regulatory information; together, they identify listed plant species within the meaning of the Act and describe where they are protected. When a taxon has more than one entry, the ''Where listed'' or ''Status'' column will identify its status in each relevant geographic area. The listing of a particular taxon includes all lower taxonomic units.

(b) *''Scientific name'' column.* The Services use the most recently accepted scientific name. In cases where confusion might arise, one or more synonyms are provided in parentheses within the ''Scientific name'' column. The Services will rely to the extent practicable on the Integrated Taxonomic Information System (ITIS) to determine a species' scientific name. ITIS incorporates the naming principles established by the *International Code of Nomenclature for algae, fungi, and plants* (see paragraph (g) of this section). If the scientific name in ITIS differs from the scientific name adopted for use under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the CITES nomenclature will be provided in brackets ''[ ]'' within the ''Scientific name'' column following the ITIS nomenclature.

(c) *''Common name'' column.* Although common names are included, they cannot be relied upon for identification of any specimen, since they may vary greatly in local usage. In cases where confusion might arise, one or more synonyms are provided in parentheses within the ''Common name'' column.

(d) *''Where listed'' column.* The ''Where listed'' column sets forth the geographic area where the species is listed for purposes of the Act. Except when providing a geographic description of an experimental population designation, ''Wherever found'' will be used to indicate the Act's protections apply to all individuals of the species, wherever found.

(e) *''Status'' column.* Within the ''Status'' column, the following abbreviations are used:

Abbreviation	Regulatory status the abbreviation represents
E	Endangered species.
T	Threatened species.
E (S/A)	Endangered based on similarity of appearance to an existing listed species.
T (S/A)	Threatened based on similarity of appearance to an existing listed species.
XE	Essential experimental population (See subpart H of this part).
XN	Nonessential experimental population (See subpart H of this part).

(f) *''Listing Citations and Applicable Rules'' column.* The ''Listing Citations and Applicable Rules'' column is nonregulatory in nature and is provided for informational and navigational purposes only. Please note that the sections of part 17 that include designations of critical habitat for plants are organized by family name. A link to the Integrated Taxonomic Information System (ITIS), which displays the taxonomic hierarchy of a species, including its family name, is provided on each species' profile page accessible through the Service's Web site (*http://www.fws.gov/endangered/*) or information is available directly through the ITIS (*http://www.itis.gov/*).

(1) Within the ''Listing Citations and Applicable Rules'' column, the following superscripts are used:

Superscript	Description of citation or rule
N	NMFS listing citation (NMFS Lead).
J	Both FWS and NMFS listing citation (Joint Jurisdiction).
CH	Critical habitat rule.
4d	Species-specific ''4(d)'' rule (a rule issued under the authority of section 4(d) of the Act).
10j	Species-specific ''10(j)'' rule (a rule issued under the authority of section 10(j) of the Act).

(2) Listing citations contain the volume, document starting page number, and publication date of the **Federal Register** publication(s) in which a species' status was assessed. At least since 1973, these documents have included a statement indicating the basis for the listing or reclassification, as well as the effective date(s) of the listing or other rules that changed how the species was identified in the list in paragraph (h) of this section.

(3) ''Critical habitat'' and ''Species-specific'' rules superscripts provide cross-references to other sections in part 17 or part 222, 223, or 226 of chapter II of this title where critical habitat and species-specific rules are found. The species-specific superscripts also identify experimental populations. Experimental populations (superscript ''10j'') are a separate citation, with one of the following symbols in the ''Status'' column: ''XE'' for an essential experimental population and ''XN'' for a nonessential experimental population.

(4) This column is for reference and navigational purposes only. All other appropriate rules in part 17, parts 217 through 226 of chapter II of this title, and part 402 of chapter IV of this title apply, if no species-specific rules are referenced. In addition, other rules in this title could relate to such species (for example, port-of-entry requirements). The references in the ''Listing Citations and Applicable Rules'' column do not comprise a comprehensive list of all regulations that the Services might apply to the species or to the regulations of other Federal agencies or State or local governments.

(g) The Services will rely to the extent practicable on ITIS (*http://www.itis.gov*) and standard references adopted for CITES (*http://cites.org*).

(h) The ''List of Endangered and Threatened Plants'' is provided in the table in this paragraph (h):

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
Abronia macrocarpa	Large-fruited sand-verbena	Wherever found	E	53 FR 37975; 9/28/1988.
Abutilon eremitopetalum	No common name	Wherever found	E	56 FR 47686; 9/20/1991.
Abutilon menziesii	Ko'oloa'ula	Wherever found	E	51 FR 34412; 9/26/1986.
Abutilon sandwicense	No common name	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(i)[CH].
Acaena exigua	Liliwai	Wherever found	E	57 FR 20772; 5/15/1992, 50 CFR 17.99(e)(1)[CH].
Acanthomintha ilicifolia	San Diego thornmint	Wherever found	T	63 FR 54938; 10/13/1998, 50 CFR 17.96(a)[CH].
Acanthomintha obovata ssp. *duttonii*.	San Mateo thornmint	Wherever found	E	50 FR 37858; 9/18/1985.
Achyranthes mutica	No common name	Wherever found	E	61 FR 53108; 10/10/1996, 50 CFR 17.99(k)[CH].
Achyranthes splendens var. *rotundata*.	Round-leaved chaff-flower	Wherever found	E	51 FR 10518; 3/26/1986, 50 CFR 17.99(i)[CH].
Acmispon dendroideus var. traskiae.	San Clemente Island lotus	Wherever found	T	42 FR 40685; 8/11/1977.
Aconitum noveboracense	Northern wild monkshood	Wherever found	T	43 FR 17910; 4/26/1978.
Aeschynomene virginica	Sensitive joint-vetch	Wherever found	T	57 FR 21569; 5/20/1992.
Agalinis acuta	Sandplain gerardia	Wherever found	E	53 FR 34701; 9/7/1988.
Agave eggersiana	No common name	Wherever found	E	79 FR 53303; 9/9/2014, 50 CFR 17.96(a)[CH].
Alectryon macrococcus	Mahoe	Wherever found	E	57 FR 20772; 5/15/1992, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)[CH], 50 CFR 17.99(i)[CH].
Allium munzii	Munz's onion	Wherever found	E	63 FR 54975; 10/13/1998, 50 CFR 17.96(a)[CH].
Alopecurus aequalis var. *sonomensis*.	Sonoma alopecurus	Wherever found	E	62 FR 54791; 10/22/1997.
Amaranthus brownii	No common name	Wherever found	E	61 FR 43178; 8/21/1996, 50 CFR 17.99(g)[CH].
Amaranthus pumilus	Seabeach amaranth	Wherever found	T	58 FR 18035; 4/7/1993.
Ambrosia cheiranthifolia	South Texas ambrosia	Wherever found	E	59 FR 43648; 8/24/1994.
Ambrosia pumila	San Diego ambrosia	Wherever found	E	67 FR 44372; 7/2/2002, 50 CFR 17.96[CH].
Amorpha crenulata	Crenulate lead-plant	Wherever found	E	50 FR 29345; 7/18/1985.
Amphianthus pusillus	Little amphianthus	Wherever found	T	53 FR 3560; 2/5/1988.
Amsinckia grandiflora	Large-flowered fiddleneck	Wherever found	E	50 FR 19374; 5/8/1985, 50 CFR 17.96(a)[CH].
Amsonia kearneyana	Kearney's blue-star	Wherever found	E	54 FR 2131; 1/19/1989.
Ancistrocactus tobuschii	Tobusch fishhook cactus	Wherever found	E	44 FR 64736; 11/7/1979.
Apios priceana	Price's potato-bean	Wherever found	T	55 FR 429; 1/5/1990.
Arabis georgiana	Georgia rockcress	Wherever found	T	79 FR 54627; 9/12/2014, 50 CFR 17.96(a)[CH].
Arabis hoffmannii	Hoffmann's rock-cress	Wherever found	E	62 FR 40954; 7/31/1997.
Arabis mcdonaldiana	McDonald's rock-cress	Wherever found	E	43 FR 44810; 9/28/1978.
Arabis (=Boechera) perstellata	Braun's Rock-cress	Wherever found	E	60 FR 56; 1/3/1995, 50 CFR 17.96(a)[CH].
Arabis serotina	Shale barren rock-cress	Wherever found	E	54 FR 29655; 7/13/1989.
Arctomecon humilis	Dwarf bear-poppy	Wherever found	E	44 FR 64250; 11/6/1979.
Arctostaphylos confertiflora	Santa Rosa Island manzanita	Wherever found	E	62 FR 40954; 7/31/1997.
Arctostaphylos franciscana	Franciscan manzanita	Wherever found	E	77 FR 54434; 9/5/2012, 50 CFR 17.96(a)[CH].
Arctostaphylos glandulosa ssp. *crassifolia*.	Del Mar manzanita	Wherever found	E	61 FR 52370; 10/7/1996.
Arctostaphylos hookeri var. *ravenii*.	Presidio manzanita	Wherever found	E	44 FR 61910; 10/26/1979.
Arctostaphylos morroensis	Morro manzanita	Wherever found	T	59 FR 64613; 12/15/1994.
Arctostaphylos myrtifolia	Ione manzanita	Wherever found	T	64 FR 28403; 5/26/1999.
Arctostaphylos pallida	Pallid manzanita	Wherever found	T	63 FR 19842; 4/22/1998.

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
Arenaria cumberlandensis	Cumberland sandwort	Wherever found	E	53 FR 23745; 6/23/1988.
Arenaria paludicola	Marsh sandwort	Wherever found	E	58 FR 41378; 8/3/1993.
Arenaria ursina	Bear Valley sandwort	Wherever found	T	63 FR 49006; 9/14/1998, 50 CFR 17.96(a)[CH].
Argemone pleiacantha ssp. *pinnatisecta*.	Sacramento prickly-poppy	Wherever found	E	54 FR 35302; 8/24/1989.
Argyroxiphium kauense	Mauna Loa silversword	Wherever found	E	58 FR 18029; 4/7/1993, 50 CFR 17.99(k)[CH].
Argyroxiphium sandwicense ssp. *macrocephalum*.	ʻAhinahina	Wherever found	T	57 FR 20772; 5/15/1992, 50 CFR 17.99(e)(1)[CH].
Argyroxiphium sandwicense ssp. *sandwicense*.	ʻAhinahina	Wherever found	E	51 FR 9814; 3/1/1986.
Aristida chaseae	No common name	Wherever found	E	58 FR 25755; 4/27/1993.
Aristida portoricensis	Pelos del diablo	Wherever found	E	55 FR 32255; 8/8/1990.
Asclepias meadii	Mead's milkweed	Wherever found	T	53 FR 33992; 9/1/1988.
Asclepias welshii	Welsh's milkweed	Wherever found	T	52 FR 41435; 10/28/1987, 50 CFR 17.96(a)[CH].
Asimina tetramera	Four-petal pawpaw	Wherever found	E	51 FR 34415; 9/26/1986.
Astelia waialealae	Painiu	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Astragalus albens	Cushenbury milk-vetch	Wherever found	E	59 FR 43652; 8/24/1994, 50 CFR 17.96(a)[CH].
Astragalus ampullarioides	Shivwits milkvetch	Wherever found	E	66 FR 49560; 9/28/2001, 50 CFR 17.96(a)[CH].
Astragalus applegatei	Applegate's milk-vetch	Wherever found	E	58 FR 40547; 7/28/1993.
Astragalus bibullatus	Guthrie's (=Pyne's) ground-plum.	Wherever found	E	56 FR 48748; 9/26/1991.
Astragalus brauntonii	Braunton's milk-vetch	Wherever found	E	62 FR 4172; 1/29/1997, 50 CFR 17.96(a)[CH].
Astragalus clarianus	Clara Hunt's milk-vetch	Wherever found	E	62 FR 54791; 10/22/1997.
Astragalus cremnophylax var. *cremnophylax*.	Sentry milk-vetch	Wherever found	E	55 FR 50184; 12/5/1990.
Astragalus desereticus	Deseret milkvetch	Wherever found	T	64 FR 56590; 10/20/1999.
Astragalus holmgreniorum	Holmgren milkvetch	Wherever found	E	66 FR 49560; 9/28/2001, 50 CFR 17.96(a)[CH].
Astragalus humillimus	Mancos milk-vetch	Wherever found	E	50 FR 26568; 6/27/1985.
Astragalus jaegerianus	Lane Mountain milk-vetch	Wherever found	E	63 FR 53596; 10/6/1998, 50 CFR 17.96(a)[CH].
Astragalus lentiginosus var. *coachellae*.	Coachella Valley milk-vetch	Wherever found	E	63 FR 53596; 10/6/1998, 50 CFR 17.96(a)[CH].
Astragalus lentiginosus var. *piscinensis*.	Fish Slough milk-vetch	Wherever found	T	63 FR 53596; 10/6/1998, 50 CFR 17.96(a)[CH].
Astragalus magdalenae var. *peirsonii*.	Peirson's milk-vetch	Wherever found	T	63 FR 53596; 10/6/1998, 50 CFR 17.96(a)[CH].
Astragalus montii	Heliotrope milkvetch	Wherever found	T	52 FR 42652; 11/6/1987, 50 CFR 17.96(a)[CH].
Astragalus osterhoutii	Kremmling Osterhout milkvetch	Wherever found	E	54 FR 29658; 7/13/1989.
Astragalus phoenix	Ash Meadows milk-vetch	Wherever found	T	50 FR 20777; 5/20/1985, 50 CFR 17.96(a)[CH].
Astragalus pycnostachyus var. *lanosissimus*.	Ventura Marsh milk-vetch	Wherever found	E	66 FR 27901; 5/21/2001, 50 CFR 17.96(a)[CH].
Astragalus robbinsii var. *jesupi*	Jesup's milk-vetch	Wherever found	E	52 FR 21481; 6/5/1987.
Astragalus tener var. *titi*	Coastal dunes milk-vetch	Wherever found	E	63 FR 43100; 8/12/1998.
Astragalus tricarinatus	Triple-ribbed milk-vetch	Wherever found	E	63 FR 53596; 10/6/1998.
Astrophytum asterias	Star cactus	Wherever found	E	58 FR 53804; 10/18/1993.
Atriplex coronata var. *notatior*	San Jacinto Valley crownscale	Wherever found	E	63 FR 54975; 10/13/1998, 50 CFR 17.96(a)[CH].
Auerodendron pauciflorum	No common name	Wherever found	E	59 FR 9935; 3/2/1994.
Ayenia limitaris	Tamaulipan Kidneypetal	Wherever found	E	59 FR 43648; 8/24/1994.
Baccharis vanessae	Encinitas baccharis	Wherever found	T	61 FR 52370; 10/7/1996.
Banara vanderbiltii	Palo de Ramón	Wherever found	E	52 FR 1459; 1/14/1987.
Baptisia arachnifera	Hairy rattleweed	Wherever found	E	43 FR 17910; 4/26/1978.
Berberis nevinii	Nevin's barberry	Wherever found	E	63 FR 54956; 10/13/1998, 50 CFR 17.96(a)[CH].
Berberis pinnata ssp. *insularis*	Island barberry	Wherever found	E	62 FR 40954; 7/31/1997.
Betula uber	Virginia round-leaf birch	Wherever found	T	43 FR 17910; 4/26/1978, 59 FR 59173; 11/16/1994.
Bidens amplectens	Kookoolau	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Bidens campylotheca ssp. *pentamera*.	Kookoolau	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Bidens campylotheca ssp. *waihoiensis*.	Kookoolau	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
Bidens conjuncta	Kookoolau	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Bidens hillebrandiana ssp. *hillebrandiana.*	Kookoolau	Wherever found	E	78 FR 32013; 5/28/2013.
Bidens micrantha ssp. *ctenophylla.*	Kookoolau	Wherever found	E	78 FR 64637; 10/29/2013.
Bidens micrantha ssp. *kalealaha.*	Kookoolau	Wherever found	E	57 FR 20772; 5/15/1992, 50 CFR 17.99(e)(1)[CH].
Bidens wiebkei	Kookoolau	Wherever found	E	57 FR 46325; 10/8/1992, 50 CFR 17.99(c)[CH].
Blennosperma bakeri	Sonoma sunshine	Wherever found	E	56 FR 61173; 12/2/1991.
Boltonia decurrens	Decurrent false aster	Wherever found	T	53 FR 45858; 11/14/1988.
Bonamia grandiflora	Florida bonamia	Wherever found	T	52 FR 42068; 11/2/1987.
Bonamia menziesii	No common name	Wherever found	E	59 FR 56333; 11/10/1994, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(k)[CH], 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(i)[CH], 50 CFR 17.99(c)[CH].
Brickellia mosieri	Florida Brickell-bush	Wherever found		79 FR 52567; 9/4/2014, 50 CFR 17.96(a)[CH].
Brighamia insignis	Olulu	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(a)(2)[CH].
Brighamia rockii	Pua ala	Wherever found	E	57 FR 46325; 10/8/1992, 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH].
Brodiaea filifolia	Thread-leaved brodiaea	Wherever found	T	63 FR 54975; 10/13/1998, 50 CFR 17.96(a)[CH].
Brodiaea pallida	Chinese Camp brodiaea	Wherever found	T	63 FR 49022; 9/14/1998.
Bulbophyllum guamense	Siboyas halumtanu, Siboyan halom tano.	Wherever found	T	80 FR 59423; 10/1/2015.
Buxus vahlii	Vahl's boxwood	Wherever found	E	50 FR 32572; 8/13/1985.
Calamagrostis hillebrandii	No common name	Wherever found	E	78 FR 32013; 05/28/2013, 50 CFR 17.99(e)(1)[CH].
Callicarpa ampla	Capá rosa	Wherever found	E	57 FR 14782; 4/22/1992.
Callirhoe scabriuscula	Texas poppy-mallow	Wherever found	E	46 FR 3184; 1/13/1981, 46 FR 40025; 8/6/1981.
Calochortus tiburonensis	Tiburon mariposa lily	Wherever found	T	60 FR 6671; 2/3/1995.
Calyptranthes thomasiana	No common name	Wherever found	E	59 FR 8138; 2/18/1994.
Calyptridium pulchellum	Mariposa pussypaws	Wherever found	T	63 FR 49022; 9/14/1998.
Calyptronoma rivalis	Palma de manaca	Wherever found	T	55 FR 4157; 2/6/1990.
Calystegia stebbinsii	Stebbins' morning-glory	Wherever found	E	61 FR 54346; 10/18/1996.
Camissonia benitensis	San Benito evening-primrose	Wherever found	T	50 FR 5755; 2/12/1985.
Campanula robinsiae	Brooksville bellflower	Wherever found	E	54 FR 31190; 7/27/1989.
Canavalia molokaiensis	Awikiwiki	Wherever found	E	57 FR 46325; 10/8/1992, 50 CFR 17.99(c)[CH].
Canavalia napaliensis	Awikiwiki	Wherever found	E	76 FR 15609; 5/5/2011, 50 CFR 17.99(a)[CH].
Canavalia pubescens	Awikiwiki	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Cardamine micranthera	Small-anthered bittercress	Wherever found	E	54 FR 38947; 9/21/1989.
Carex albida	White sedge	Wherever found	E	62 FR 54791; 10/22/1997.
Carex lutea	Golden sedge	Wherever found	E	67 FR 3120; 1/23/2002, 50 CFR 17.96(a)[CH].
Carex specuicola	Navajo sedge	Wherever found	T	50 FR 19370; 5/8/1985, 50 CFR 17.96(a)[CH].
Castilleja affinis ssp. *neglecta*	Tiburon paintbrush	Wherever found	E	60 FR 6671; 2/3/1995.
Castilleja campestris ssp. *succulenta.*	Fleshy owl's-clover	Wherever found	T	62 FR 14338; 3/26/1997, 50 CFR 17.96(a)[CH].
Castilleja cinerea	Ash-gray Indian paintbrush	Wherever found	T	63 FR 49006; 9/14/1998, 50 CFR 17.96(a)[CH].
Castilleja grisea	San Clemente Island paintbrush.	Wherever found	E	42 FR 40682; 8/11/1977.
Castilleja levisecta	Golden paintbrush	Wherever found	T	62 FR 31740; 6/11/1997.
Castilleja mollis	Soft-leaved paintbrush	Wherever found	E	62 FR 40954; 7/31/1997.
Catesbaea melanocarpa	No common name	Wherever found	E	64 FR 13116; 3/17/1999, 50 CFR 17.96(a)[CH].
Caulanthus californicus	California jewelflower	Wherever found	E	55 FR 29361; 7/19/1990.
Ceanothus ferrisae	Coyote ceanothus	Wherever found	E	60 FR 6671; 2/3/1995.
Ceanothus ophiochilus	Vail Lake ceanothus	Wherever found	T	63 FR 54956; 10/13/1998, 50 CFR 17.96(a)[CH].
Ceanothus roderickii	Pine Hill ceanothus	Wherever found	E	61 FR 54346; 10/18/1996.

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Cenchrus agrimonioides	Kamanomano	Wherever found	E	61 FR 53108; 10/10/1996, 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(i)[CH].
Centaurium namophilum	Spring-loving centaury	Wherever found	T	50 FR 20777; 5/20/1985, 50 CFR 17.96(a)[CH].
Cercocarpus traskiae	Catalina Island mountain-mahogany.	Wherever found	E	62 FR 42692; 8/8/1997.
Cereus eriophorus var. *fragrans*	Fragrant prickly-apple	Wherever found	E	50 FR 45618; 11/1/1985.
Chamaecrista glandulosa var. *mirabilis*.	No common name	Wherever found	E	55 FR 12788; 4/5/1990.
Chamaesyce deltoidea ssp. *deltoidea*.	Deltoid spurge	Wherever found	E	50 FR 29345; 7/18/1985.
Chamaesyce garberi	Garber's spurge	Wherever found	T	50 FR 29345; 7/18/1985.
Chamaesyce hooveri	Hoover's spurge	Wherever found	T	62 FR 14338; 3/26/1997, 50 CFR 17.96(a)[CH].
Chamaesyce skottsbergii var. *skottsbergii*.	Akoko (Ewa Plains akoko)	Wherever found	E	47 FR 36846; 8/24/1982, 77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Charpentiera densiflora	Papala	Wherever found	E	76 FR 15609; 5/5/2011, 50 CFR 17.99(a)[CH].
Chionanthus pygmaeus	Pygmy fringe-tree	Wherever found	E	52 FR 2227; 1/21/1987.
Chlorogalum purpureum	Purple amole (Camatta Canyon amole).	Wherever found	T	65 FR 14878; 3/20/2000, 50 CFR 17.96(a)[CH].
Chorizanthe howellii	Howell's spineflower	Wherever found	E	57 FR 27848; 6/22/1992.
Chorizanthe orcuttiana	Orcutt's spineflower	Wherever found	E	61 FR 52370; 10/7/1996.
Chorizanthe pungens var. *hartwegiana*.	Ben Lomond spineflower	Wherever found	E	59 FR 5499; 2/4/1994.
Chorizanthe pungens var. *pungens*.	Monterey spineflower	Wherever found	T	59 FR 5499; 2/4/1994, 50 CFR 17.96(a)[CH].
Chorizanthe robusta var. *hartwegii*.	Scotts Valley spineflower	Wherever found	E	59 FR 5499; 2/4/1994, 50 CFR 17.96(a)[CH].
Chorizanthe robusta var. *robusta*.	Robust spineflower	Wherever found	E	59 FR 5499; 2/4/1994, 50 CFR 17.96(b)[CH].
Chorizanthe valida	Sonoma spineflower	Wherever found	E	57 FR 27848; 6/22/1992.
Chromolaena frustrata	Cape Sable thoroughwort	Wherever found	E	78 FR 63795; 10/24/2013, 50 CFR 17.96(a)[CH], 50 CFR 17.96(h)[CH].
Chrysopsis floridana	Florida golden aster	Wherever found	E	51 FR 17974; 5/16/1986.
Cirsium fontinale var. *fontinale*	Fountain thistle	Wherever found	E	60 FR 6671; 2/3/1995.
Cirsium fontinale var. *obispoense*.	Chorro Creek bog thistle	Wherever found	E	59 FR 64613; 12/15/1994.
Cirsium hydrophilum var. *hydrophilum*.	Suisun thistle	Wherever found	E	62 FR 61916; 11/20/1997, 50 CFR 17.96(a)[CH].
Cirsium loncholepis	La Graciosa thistle	Wherever found	E	65 FR 14888; 3/20/2000, 50 CFR 17.96(a)[CH].
Cirsium pitcheri	Pitcher's thistle	Wherever found	T	53 FR 27137; 7/18/1988.
Cirsium vinaceum	Sacramento Mountains thistle	Wherever found	T	52 FR 22933; 6/16/1987.
Clarkia franciscana	Presidio clarkia	Wherever found	E	60 FR 6671; 2/3/1995.
Clarkia imbricata	Vine Hill clarkia	Wherever found	E	62 FR 54791; 10/22/1997.
Clarkia speciosa ssp. *immaculata*.	Pismo clarkia	Wherever found	E	59 FR 64613; 12/15/1994.
Clarkia springvillensis	Springville clarkia	Wherever found	T	63 FR 49022; 9/14/1998.
Clematis morefieldii	Morefield's leather-flower	Wherever found	E	57 FR 21562; 5/20/1992.
Clematis socialis	Alabama leather-flower	Wherever found	E	51 FR 34420; 9/26/1986.
Clermontia drepanomorpha	Oha wai	Wherever found	E	61 FR 53137; 10/10/1996, 50 CFR 17.99(k)[CH].
Clermontia lindseyana	Oha wai	Wherever found	E	59 FR 10305; 3/4/1994, 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(k)[CH].
Clermontia oblongifolia ssp. *brevipes*.	Oha wai	Wherever found	E	57 FR 46325; 10/8/1992, 50 CFR 17.99(c)[CH].
Clermontia oblongifolia ssp. *mauiensis*.	Oha wai	Wherever found	E	57 FR 20772; 5/15/1992, 50 CFR 17.99(e)(1)[CH].
Clermontia peleana	Oha wai	Wherever found	E	59 FR 10305; 3/4/1994, 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(k)[CH].
Clermontia pyrularia	Oha wai	Wherever found	E	59 FR 10305; 3/4/1994, 50 CFR 17.99(k)[CH].
Clermontia samuelii	Oha wai	Wherever found	E	64 FR 48307; 9/3/1999, 50 CFR 17.99(e)(1)[CH].
Clitoria fragrans	Pigeon wings	Wherever found	T	58 FR 25746; 4/27/1993.

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Colubrina oppositifolia	Kauila	Wherever found	E	59 FR 10305; 3/4/1994, 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(i)[CH], 50 CFR 17.99(k)[CH].
Conradina brevifolia	Short-leaved rosemary	Wherever found	E	58 FR 37432; 7/12/1993.
Conradina etonia	Etonia rosemary	Wherever found	E	58 FR 37432; 7/12/1993.
Conradina glabra	Apalachicola rosemary	Wherever found	E	58 FR 37432; 7/12/1993.
Conradina verticillata	Cumberland rosemary	Wherever found	T	56 FR 60937; 11/29/1991.
Consolea corallicola	Cactus, Florida semaphore	Wherever found	E	78 FR 63795; 10/24/2013, 50 CFR 17.96(a)[CH].
Cordia bellonis	No common name	Wherever found	E	62 FR 1645; 1/10/1997.
Cordylanthus maritimus ssp. *maritimus*.	Salt marsh bird's-beak	Wherever found	E	43 FR 44810; 9/28/1978.
Cordylanthus mollis ssp. *mollis*	Soft bird's-beak	Wherever found	E	62 FR 61916; 11/20/1997, 50 CFR 17.96(a)[CH].
Cordylanthus palmatus	Palmate-bracted bird's-beak	Wherever found	E	51 FR 23765; 7/1/1986.
Cordylanthus tenuis ssp. *capillaris*.	Pennell's bird's-beak	Wherever found	E	60 FR 6671; 2/3/1995.
Cornutia obovata	Palo de nigua	Wherever found	E	53 FR 11610; 4/7/1988.
Coryphantha minima	Nellie's cory cactus	Wherever found	E	44 FR 64738; 11/7/1979.
Coryphantha ramillosa	Bunched cory cactus	Wherever found	T	44 FR 64247; 11/6/1979.
Coryphantha robbinsorum	Cochise pincushion cactus	Wherever found	T	51 FR 952; 1/9/1986.
Coryphantha scheeri var. *robustispina*.	Pima pineapple cactus	Wherever found	E	58 FR 49875; 9/23/1993.
Coryphantha sneedii var. *leei*	Lee pincushion cactus	Wherever found	T	44 FR 61554 ; 10/25/1979.
Coryphantha sneedii var. *sneedii*.	Sneed pincushion cactus	Wherever found	E	44 FR 64741; 11/7/1979.
Cranichis ricartii	None	Wherever found	E	56 FR 60933; 11/29/1991.
Crescentia portoricensis	Higuero de Sierra	Wherever found	E	52 FR 46085; 12/4/1987.
Crotalaria avonensis	Avon Park harebells	Wherever found	E	58 FR 25746; 4/27/1993.
Cryptantha crassipes	Terlingua Creek cats-eye	Wherever found	E	56 FR 49634; 9/30/1991.
Cucurbita okeechobeensis ssp. *okeechobeensis*.	Okeechobee gourd	Wherever found	E	58 FR 37432; 7/12/1993.
Cyanea acuminata	Haha	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].
Cyanea asarifolia	Haha	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH].
Cyanea asplenifolia	Haha	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Cyanea calycina	Haha	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Cyanea copelandii ssp. *copelandii*.	Haha	Wherever found	E	59 FR 10305; 3/4/1994.
Cyanea copelandii ssp. *haleakalaensis*.	Haha	Wherever found	E	64 FR 48307; 9/3/1999, 50 CFR 17.99(e)(1)[CH].
Cyanea crispa	Haha	Wherever found	E	59 FR 14482; 3/28/1994, 50 CFR 17.99(i)[CH].
Cyanea dolichopoda	Haha	Wherever found	E	76 FR 15609; 5/5/2011, 50 CFR 17.99(a)[CH].
Cyanea dunbariae	Haha	Wherever found	E	61 FR 53130; 10/10/1996, 50 CFR 17.99(c)[CH].
Cyanea duvalliorum	Haha	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Cyanea eleeleensis	Haha	Wherever found	E	76 FR 15609; 5/5/2011, 50 CFR 17.99(a)[CH].
Cyanea gibsonii	No common name	Wherever found	E	56 FR 47686; 9/20/1991.
Cyanea glabra	Haha	Wherever found	E	64 FR 48307; 9/3/1999, 50 CFR 17.99(e)(1)[CH].
Cyanea grimesiana ssp. *grimesiana*.	Haha	Wherever found	E	61 FR 53108; 10/10/1996, 50 CFR 17.99(c)[CH], 50 CFR 17.99(i)[CH].
Cyanea grimesiana ssp. *obatae*	Haha	Wherever found	E	59 FR 32932; 6/27/1994, 78 FR 32013; 5/28/2013, 50 CFR 17.99(i)[CH].
Cyanea hamatiflora ssp. *carlsonii*.	Haha	Wherever found	E	59 FR 10305; 3/4/1994, 50 CFR 17.99(k)[CH].
Cyanea hamatiflora ssp. *hamatiflora*.	Haha	Wherever found	E	64 FR 48307; 9/3/1999, 50 CFR 17.99(e)(1)[CH].
Cyanea horrida	Haha nui	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Cyanea humboltiana	Haha	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].

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Cyanea kolekoleensis	Haha	Wherever found	E	76 FR 15609; 5/5/2011, 50 CFR 17.99(a)[CH].
Cyanea koolauensis	Haha	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].
Cyanea kuhihewa	Haha	Wherever found	E	76 FR 15609; 5/5/2011, 50 CFR 17.99(a)[CH].
Cyanea kunthiana	Haha	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Cyanea lanceolata	Haha	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Cyanea lobata	Haha	Wherever found	E	57 FR 20772; 5/15/1992, 50 CFR 17.99(e)(1)[CH].
Cyanea longiflora	Haha	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].
Cyanea magnicalyx	Haha	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Cyanea mannii	Haha	Wherever found	E	57 FR 46325; 10/8/1992, 50 CFR 17.99(c)[CH].
Cyanea maritae	Haha	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Cyanea marksii	Haha	Wherever found	E	78 FR 64637; 10/29/2013.
Cyanea mauiensis	Haha	Wherever found	E	78 FR 32013; 5/28/2013.
Cyanea mceldowneyi	Haha	Wherever found	E	57 FR 20772; 5/15/1992, 50 CFR 17.99(e)(1)[CH].
Cyanea munroi	Haha	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(c)[CH].
Cyanea obtusa	Haha	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Cyanea pinnatifida	Haha	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(i)[CH].
Cyanea platyphylla	Haha	Wherever found	E	61 FR 53137; 10/10/1996, 50 CFR 17.99(k)[CH].
Cyanea procera	Haha	Wherever found	E	57 FR 46325; 10/8/1992, 50 CFR 17.99(c)[CH].
Cyanea profuga	Haha	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(c)[CH].
Cyanea purpurellifolia	Haha	Wherever found	E	77 FR 57647; 9/18/2012.
Cyanea recta	Haha	Wherever found	T	61 FR 53070; 10/10/1996, 50 CFR 17.99(a)(1)[CH].
Cyanea remyi	Haha	Wherever found	E	61 FR 53070; 10/10/1996, 50 CFR 17.99(a)(1)[CH].
Cyanea shipmanii	Haha	Wherever found	E	59 FR 10305; 3/4/1994, 50 CFR 17.99(k)[CH].
Cyanea solanacea	Popolo	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(c)[CH].
Cyanea st.-johnii	Haha	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].
Cyanea stictophylla	Haha	Wherever found	E	59 FR 10305; 3/4/1994, 50 CFR 17.99(k)[CH].
Cyanea superba	No common name	Wherever found	E	56 FR 46235; 9/11/1991, 50 CFR 17.99(i)[CH].
Cyanea tritomantha	Aku	Wherever found	E	78 FR 64637; 10/29/2013.
Cyanea truncata	Haha	Wherever found	E	59 FR 14482; 3/28/1994, 50 CFR 17.99(i)[CH].
Cyanea undulata	No common name	Wherever found	E	56 FR 47695; 9/20/1991, 50 CFR 17.99(a)(1)[CH].
Cycladenia humilis var. *jonesii*	Jones cycladenia	Wherever found	T	51 FR 16526; 5/5/1986.
Cycas micronesica	Fadang, Faadang	Wherever found	T	80 FR 59423; 10/1/2015.
Cyperus fauriei	No common name	Wherever found	E	59 FR 10305; 3/4/1994, 50 CFR 17.99(c)[CH], 50 CFR 17.99(k)[CH].
Cyperus pennatiformis	No common name	Wherever found	E	59 FR 56333; 11/10/1994, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(g)[CH], 50 CFR 17.99(i)[CH].
Cyperus trachysanthos	Puukaa	Wherever found	E	61 FR 53108; 10/10/1996, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(i)[CH], 50 CFR 17.99(c)[CH].
Cyrtandra crenata	Ha'iwale	Wherever found	E	59 FR 14482; 3/28/1994.
Cyrtandra cyaneoides	Mapele	Wherever found	E	61 FR 53070; 10/10/1996, 50 CFR 17.99(a)(1)[CH].

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Cyrtandra dentata	Haiwale	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].
Cyrtandra ferripilosa	Haiwale	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Cyrtandra filipes	Haiwale	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH].
Cyrtandra giffardii	Haiwale	Wherever found	E	59 FR 10305; 3/4/1994, 50 CFR 17.99(k)[CH].
Cyrtandra gracilis	Haiwale	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Cyrtandra kaulantha	Haiwale	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Cyrtandra limahuliensis	Haiwale	Wherever found	T	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH].
Cyrtandra munroi	Haiwale	Wherever found	E	57 FR 20772; 5/15/1992, 50 CFR 17.99(e)(1)[CH].
Cyrtandra nanawaleensis	Haiwale	Wherever found	E	78 FR 64637; 10/29/2013.
Cyrtandra oenobarba	Haiwale	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Cyrtandra oxybapha	Haiwale	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Cyrtandra paliku	Haiwale	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Cyrtandra polyantha	Haiwale	Wherever found	E	59 FR 14482; 3/28/1994, 50 CFR 17.99(i)[CH].
Cyrtandra sessilis	Haiwale	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Cyrtandra subumbellata	Haiwale	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].
Cyrtandra tintinnabula	Haiwale	Wherever found	E	59 FR 10305; 3/4/1994, 50 CFR 17.99(k)[CH].
Cyrtandra viridiflora	Haiwale	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].
Cyrtandra wagneri	Haiwale	Wherever found	E	78 FR 64637; 10/29/2013.
Cyrtandra waiolani	Haiwale	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Dalea foliosa	Leafy prairie-clover	Wherever found	E	56 FR 19953; 5/1/1991.
Daphnopsis hellerana	No common name	Wherever found	E	53 FR 23740; 6/23/1988.
Deeringothamnus pulchellus	Beautiful pawpaw	Wherever found	E	51 FR 34415; 9/26/1986.
Deeringothamnus rugelii	Rugel's pawpaw	Wherever found	E	51 FR 34415; 9/26/1986.
Deinandra (= *Hemizonia*) *conjugens*.	Otay tarplant	Wherever found	T	63 FR 54938; 10/13/1998, 50 CFR 17.96(a)[CH].
Deinandra increscens ssp. villosa.	Gaviota tarplant	Wherever found	E	65 FR 14888; 3/20/2000, 50 CFR 17.96(a)[CH].
Delissea rhytidosperma	No common name	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH].
Delissea rivularis	Haha	Wherever found	E	61 FR 53070; 10/10/1996, 68 FR 9115; 2/27/2003, 50 CFR 17.99(a)(1)[CH].
Delissea subcordata	Oha	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].
Delissea undulata	No common name	Wherever found	E	61 FR 53124; 10/10/1996, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(k)[CH].
Delphinium bakeri	Baker's larkspur	Wherever found	E	65 FR 4156; 1/26/2000, 50 CFR 17.96(a)[CH].
Delphinium luteum	Yellow larkspur	Wherever found	E	65 FR 4156; 1/26/2000, 50 CFR 17.96(a)[CH].
Delphinium variegatum ssp. *kinkiense*.	San Clemente Island larkspur	Wherever found	E	42 FR 40682; 8/11/1977.
Dendrobium guamense	No common name	Wherever found	T	80 FR 59423; 10/1/2015.
Dicerandra christmanii	Garrett's mint	Wherever found	E	50 FR 45621; 11/1/1985, 54 FR 38946; 9/21/1989.
Dicerandra cornutissima	Longspurred mint	Wherever found	E	50 FR 45621; 11/1/1985.
Dicerandra frutescens	Scrub mint	Wherever found	E	50 FR 45621;11/1/1985, 54 FR 38946; 9/21/1989.
Dicerandra immaculata	Lakela's mint	Wherever found	E	50 FR 20212; 5/15/1985.
Diplacus vandenbergensis	Vandenberg monkeyflower	Wherever found	E	79 FR 50844; 8/26/2014, 50 CFR 17.96(a)[CH].
Dodecahema leptoceras	Slender-horned spineflower	Wherever found	E	52 FR 36265; 9/28/1987.
Dubautia herbstobatae	Naenae	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(i)[CH].

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Dubautia imbricata ssp. *imbricata*.	Naenae	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Dubautia kalalauensis	Naenae	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Dubautia kenwoodii	Naenae	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Dubautia latifolia	Koholapehu	Wherever found	E	57 FR 20580; 5/13/1992, 50 CFR 17.99(a)(1)[CH].
Dubautia pauciflorula	Naenae	Wherever found	E	56 FR 47695; 9/20/1991, 50 CFR 17.99(a)(1)[CH].
Dubautia plantaginea ssp. *humilis*.	Naenae	Wherever found	E	64 FR 48307; 9/3/1999, 50 CFR 17.99(e)(1)[CH].
Dubautia plantaginea ssp. *magnifolia*.	Naenae	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Dubautia waialealae	Naenae	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Dudleya abramsii ssp. *parva*	Conejo dudleya	Wherever found	T	62 FR 4172; 1/29/1997.
Dudleya cymosa ssp. *marcescens*.	Marcescent dudleya	Wherever found	T	62 FR 4172; 1/29/1997.
Dudleya cymosa ssp. *ovatifolia*	Santa Monica Mountains dudleya.	Wherever found	T	62 FR 4172; 1/29/1997.
Dudleya nesiotica	Santa Cruz Island dudleya	Wherever found	T	62 FR 40954; 7/31/1997.
Dudleya setchellii	Santa Clara Valley dudleya	Wherever found	E	60 FR 6671; 2/3/1995.
Dudleya stolonifera	Laguna Beach liveforever	Wherever found	T	63 FR 54938; 10/13/1998.
Dudleya traskiae	Santa Barbara Island liveforever.	Wherever found	E	43 FR 17910; 4/26/1978.
Dudleya verityi	Verity's dudleya	Wherever found	T	62 FR 4172; 1/29/1997.
Echinacea laevigata	Smooth coneflower	Wherever found	E	57 FR 46340; 10/8/1992.
Echinocactus horizonthalonius var. *nicholii*.	Nichol's Turk's head cactus	Wherever found	E	44 FR 61927; 10/26/1979.
Echinocereus chisoensis var. *chisoensis*.	Chisos hedgehog cactus	Wherever found	T	53 FR 38453; 9/30/1988.
Echinocereus fendleri var. *kuenzleri*.	Kuenzler hedgehog cactus	Wherever found	E	44 FR 61924; 10/26/1979.
Echinocereus reichenbachii var. *albertii*.	Black lace cactus	Wherever found	E	44 FR 61918; 10/26/1979.
Echinocereus triglochidiatus var. *arizonicus*.	Arizona hedgehog cactus	Wherever found	E	44 FR 61556; 10/25/1979.
Echinocereus viridiflorus var. *davisii*.	Davis's green pitaya	Wherever found	E	44 FR 64738; 11/7/1979.
Echinomastus erectocentrus var.*acunensis*.	acuña cactus	Wherever found	E	78 FR 60607; 10/1/2013.
Echinomastus mariposensis	Lloyd's Mariposa cactus	Wherever found	T	44 FR 64247; 11/6/1979.
Enceliopsis nudicaulis var. *corrugata*.	Ash Meadows sunray	Wherever found	T	50 FR 20777; 5/20/1985, 50 CFR 17.96(a)[CH].
Eragrostis fosbergii	Fosberg's love grass	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].
Eremalche kernensis	Kern mallow	Wherever found	E	55 FR 29361; 7/19/1990.
Eriastrum densifolium ssp. *sanctorum*.	Santa Ana River woolly-star	Wherever found	E	52 FR 36265; 9/28/1987.
Erigeron decumbens	Willamette daisy	Wherever found	E	65 FR 3875; 1/25/2000, 50 CFR 17.96[CH].
Erigeron parishii	Parish's daisy	Wherever found	T	59 FR 43652; 8/24/1994, 50 CFR 17.96(a)[CH].
Erigeron rhizomatus	Zuni fleabane	Wherever found	T	50 FR 16680; 4/26/1985.
Eriodictyon altissimum	Indian Knob mountain balm	Wherever found	E	59 FR 64613; 12/15/1994.
Eriodictyon capitatum	Lompoc yerba santa	Wherever found	E	65 FR 14888; 3/20/2000, 50 CFR 17.96(a)[CH].
Eriogonum apricum (incl. var. *prostratum)*.	Ione (incl. Irish Hill) buckwheat	Wherever found	E	64 FR 28403; 5/26/1999.
Eriogonum codium	Umtanum desert buckwheat	Wherever found	T	78 FR 23983; 4/23/2013, 50 CFR 17.96(a)[CH].
Eriogonum gypsophilum	Gypsum wild-buckwheat	Wherever found	T	46 FR 5730; 1/19/1981, 46 FR 40025; 8/6/1981, 50 CFR 17.96(a)[CH].
Eriogonum kennedyi var. *austromontanum*.	Southern mountain wild-buckwheat.	Wherever found	T	63 FR 49006; 9/14/1998 50 CFR 17.96(a)[CH].
Eriogonum longifolium var. *gnaphalifolium*.	Scrub buckwheat	Wherever found	T	58 FR 25746; 4/27/1993.
Eriogonum ovalifolium var. *vineum*.	Cushenbury buckwheat	Wherever found	E	59 FR 43652; 8/24/1994, 50 CFR 17.96(a)[CH].
Eriogonum ovalifolium var. *williamsiae*.	Steamboat buckwheat	Wherever found	E	51 FR 24669; 7/8/1986.

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Eriogonum pelinophilum	Clay-loving wild buckwheat	Wherever found	E	49 FR 28562; 7/13/1984, 50 CFR 17.96(a)[CH].
Eriophyllum latilobum	San Mateo woolly sunflower	Wherever found	E	60 FR 6671; 2/3/1995.
Eryngium aristulatum var. *parishii*.	San Diego button-celery	Wherever found	E	58 FR 41384; 8/3/1993.
Eryngium constancei	Loch Lomond coyote-thistle	Wherever found	E	50 FR 31187; 8/1/1985, 51 FR 45904; 12/23/1986.
Eryngium cuneifolium	Snakeroot	Wherever found	E	52 FR 2227; 1/21/1987.
Erysimum capitatum var. *angustatum*.	Contra Costa wallflower	Wherever found	E	43 FR 17910; 4/26/1978, 50 CFR 17.96(a)[CH].
Erysimum menziesii	Menzies' wallflower	Wherever found	E	57 FR 27848; 6/22/1992.
Erysimum teretifolium	Ben Lomond wallflower	Wherever found	E	59 FR 5499; 2/4/1994.
Erythronium propullans	Minnesota dwarf trout lily	Wherever found	E	51 FR 10521; 3/26/1986.
Eugenia bryanii	No common name	Wherever found	E	80 FR 59423; 10/1/2015.
Eugenia haematocarpa	Uvillo	Wherever found	E	59 FR 60565; 11/25/1994.
Eugenia koolauensis	Nioi	Wherever found	E	59 FR 14482; 3/28/1994, 50 CFR 17.99(c)[CH], 50 CFR 17.99(i)[CH].
Eugenia woodburyana	No common name	Wherever found	E	59 FR 46715; 9/9/1994.
Euphorbia (=Chamaesyce) celastroides var. *kaenana*.	Akoko	Wherever found	E	56 FR 55770; 10/29/1991, 77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Euphorbia (=Chamaesyce) deppeana.	Akoko	Wherever found	E	59 FR 14482; 3/28/1994, 77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Euphorbia (=Chamaesyce) eleanoriae.	Akoko	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Euphorbia haeleeleana	Akoko	Wherever found	E	61 FR 53108; 10/10/1996, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(i)[CH].
Euphorbia (=Chamaesyce) halemanui.	Akoko	Wherever found	E	57 FR 20580; 5/13/1992, 50 CFR 17.99(a)(1)[CH].
Euphorbia (=Chamaesyce) herbstii.	Akoko	Wherever found	E	61 FR 53089; 10/10/1996, 77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Euphorbia (=Chamaesyce) kuwaleana.	Akoko	Wherever found	E	56 FR 55770; 10/29/1991, 77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Euphorbia (=Chamaesyce) remyi var . *kauaiensis*.	Akoko	Wherever found	E	76 FR 15609; 5/5/2011, 50 CFR 17.99(a)[CH].
Euphorbia (=Chamaesyce) remyi var . *remyi*.	Akoko	Wherever found	E	76 FR 15609; 5/5/2011, 50 CFR 17.99(a)[CH].
Euphorbia (=Chamaesyce) rockii.	Akoko	Wherever found	E	61 FR 53089; 10/10/1996, 77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Euphorbia telephioides	Telephus spurge	Wherever found	T	57 FR 19813; 5/8/1992.
Eutrema penlandii	Mosquito Range mustard	Wherever found	T	58 FR 40539; 7/28/1993.
Exocarpos luteolus	Heau	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH].
Festuca molokaiensis	No common name	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(c)[CH].
Flueggea neowawraea	Mehamehame	Wherever found	E	59 FR 56333; 11/10/1994, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(i)[CH], 50 CFR 17.99(k)[CH].
Fremontodendron californicum ssp. *decumbens*.	Pine Hill flannelbush	Wherever found	E	61 FR 54346; 10/18/1996.
Fremontodendron mexicanum	Mexican flannelbush	Wherever found	E	63 FR 54956; 10/13/1998, 50 CFR 17.96(a)[CH].
Fritillaria gentneri	Gentner's fritillary	Wherever found	E	64 FR 69195; 12/10/1999.
Galactia smallii	Small's milkpea	Wherever found	E	50 FR 29345; 7/18/1985.
Galium buxifolium	Island bedstraw	Wherever found	E	62 FR 40954; 7/31/1997.
Galium californicum ssp. *sierrae*.	El Dorado bedstraw	Wherever found	E	61 FR 54346; 10/18/1996.
Gardenia brighamii	Hawaiian gardenia (Na'u)	Wherever found	E	50 FR 33728; 8/21/1985.
Gardenia mannii	Nanu	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].
Gaura neomexicana ssp. *coloradensis*.	Colorado butterfly plant	Wherever found	T	65 FR 62302; 10/18/2000, 50 CFR 17.96(a)[CH].
Geocarpon minimum	No common name	Wherever found	T	52 FR 22930; 6/16/1987.

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Geranium arboreum	Nohoanu	Wherever found	E	57 FR 20589; 5/13/1992, 50 CFR 17.99(e)(1)[CH].
Geranium hanaense	Nohoanu	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Geranium hillebrandii	Nohoanu	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Geranium kauaiense	Nohoanu	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Geranium multiflorum	Nohoanu	Wherever found	E	57 FR 20772; 5/15/1992, 50 CFR 17.99(e)(1)[CH].
Gesneria pauciflora	No common name	Wherever found	T	60 FR 12483; 3/7/1995.
Geum radiatum	Spreading avens	Wherever found	E	55 FR 12793; 4/5/1990.
Gilia tenuiflora ssp. *arenaria*	Monterey gilia	Wherever found	E	57 FR 27848; 6/22/1992.
Gilia tenuiflora ssp. *hoffmannii*	Hoffmann's slender-flowered gilia.	Wherever found	E	62 FR 40954; 7/31/1997.
Goetzea elegans	Beautiful goetzea or matabuey	Wherever found	E	50 FR 15564; 4/19/1985.
Gonocalyx concolor	No common name	Wherever found	E	79 FR 53303; 9/9/2014, 50 CFR 17.96(a)[CH].
Gouania hillebrandii	No common name	Wherever found	E	49 FR 44753; 11/19/1984, 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(e)(2)[CH], 50 CFR 17.96(a)[CH].
Gouania meyenii	No common name	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(i)[CH].
Gouania vitifolia	No common name	Wherever found	E	59 FR 32932; 6/27/1994, 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(k)[CH].
Grindelia fraxino-pratensis	Ash Meadows gumplant	Wherever found	T	50 FR 20777; 5/20/1985, 50 CFR 17.96(a)[CH].
Hackelia venusta	Showy stickseed	Wherever found	E	67 FR 5515; 2/6/2002.
Halophila johnsonii	Johnson's seagrass	Wherever found	T	63 FR 49035 9/14/1998[N], 64 FR 28392; 5/26/1999, 50 CFR 226.213[CH].
Haplostachys haplostachya	No common name	Wherever found	E	44 FR 62468; 10/30/1979.
Harperocallis flava	Harper's beauty	Wherever found	E	44 FR 56862; 10/2/1979.
Harrisia aboriginum	Prickly-apple, aboriginal	Wherever found	E	78 FR 63795; 10/24/2013, 50 CFR 17.96(a)[CH].
Harrisia portoricensis	Higo chumbo	Wherever found	T	55 FR 32252; 8/8/1990.
Hedeoma todsenii	Todsen's pennyroyal	Wherever found	E	46 FR 5730; 1/19/1981, 46 FR 40025; 8/6/1981, 50 CFR 17.96(a)[CH].
Hedyotis cookiana	Awiwi	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH].
Hedyotis megalantha	Pau dedu, Pao doodu	Wherever found	E	80 FR 59423; 10/1/2015.
Hedyotis purpurea var. *montana*.	Roan Mountain bluet	Wherever found	E	55 FR 12793; 4/5/1990.
Helenium virginicum	Virginia sneezeweed	Wherever found	T	63 FR 59239; 11/3/1998.
Helianthemum greenei	Island rush-rose	Wherever found	T	62 FR 40954; 7/31/1997.
Helianthus paradoxus	Pecos (=puzzle, =paradox) sunflower.	Wherever found	T	64 FR 56583; 10/20/1999, 50 CFR 17.96(a)[CH].
Helianthus schweinitzii	Schweinitz's sunflower	Wherever found	E	56 FR 21087; 5/7/1991.
Helianthus verticillatus	Whorled sunflower	Wherever found	E	79 FR 44712; 8/1/2014.
Helonias bullata	Swamp pink	Wherever found	T	53 FR 35076; 9/9/1988.
Heritiera longipetiolata	Ufa halumtanu, Ufa halom tano	Wherever found	E	80 FR 59423; 10/1/2015.
Hesperolinon congestum	Marin dwarf-flax	Wherever found	T	60 FR 6671; 2/3/1995.
Hesperomannia arborescens	No common name	Wherever found	E	59 FR 14482; 3/28/1994, 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(c)[CH], 50 CFR 17.99(i)[CH].
Hesperomannia arbuscula	No common name	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(i)[CH].
Hesperomannia lydgatei	No common name	Wherever found	E	56 FR 47695; 9/20/1991, 50 CFR 17.99(a)(1)[CH].
Hexastylis naniflora	Dwarf-flowered heartleaf	Wherever found	T	54 FR 14964; 4/14/1989.
Hibiscadelphus distans	Kauai hau kuahiwi	Wherever found	E	51 FR 15903; 4/29/1986.
Hibiscadelphus giffardianus	Hau kuahiwi	Wherever found	E	61 FR 53137; 10/10/1996, 50 CFR 17.99(k)[CH].
Hibiscadelphus hualalaiensis	Hau kuahiwi	Wherever found	E	61 FR 53137; 10/10/1996, 50 CFR 17.99(k)[CH].
Hibiscadelphus woodii	Hau kuahiwi	Wherever found	E	61 FR 53070; 10/10/1996, 50 CFR 17.99(a)(1)[CH].

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Hibiscus arnottianus ssp. *immaculatus.*	Kokio keokeo	Wherever found	E	57 FR 46325; 10/8/1992, 50 CFR 17.99(c)[CH].
Hibiscus brackenridgei	Mao hau hele	Wherever found	E	59 FR 5633; 11/11/1994, 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(e)(2)[CH], 50 CFR 17.99(i)[CH], 50 CFR 17.99(k)[CH].
Hibiscus clayi	Clay's hibiscus	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH].
Hibiscus dasycalyx	Neches River rose-mallow	Wherever found	T	78 FR 56025; 9/11/2013, 50 CFR 17.96(a)[CH].
Hibiscus waimeae ssp. *hannerae.*	Kokio keokeo	Wherever found	E	61 FR 53070; 10/10/1996, 50 CFR 17.99(a)(1)[CH].
Hoffmannseggia tenella	Slender rush-pea	Wherever found	E	50 FR 45621; 11/1/1985.
Holocarpha macradenia	Santa Cruz tarplant	Wherever found	T	65 FR 14898; 3/20/2000, 50 CFR 17.96(a)[CH].
Howellia aquatilis	Water howellia	Wherever found	T	59 FR 35860; 7/14/1994.
Hudsonia montana	Mountain golden heather	Wherever found	T	45 FR 69360; 10/20/1980, 50 CFR 17.96(a)[CH].
Hymenoxys herbacea	Lakeside daisy	Wherever found	T	53 FR 23742; 6/23/1988.
Hymenoxys texana	Texas prairie dawn-flower	Wherever found	E	51 FR 8681; 3/13/1986.
Hypericum cumulicola	Highlands scrub hypericum	Wherever found	E	52 FR 2227; 1/21/1987.
Ilex cookii	Cook's holly	Wherever found	E	52 FR 22936; 6/16/1986.
Ilex sintenisii	None	Wherever found	E	57 FR 14782; 4/22/1992.
Iliamna corei	Peter's Mountain mallow	Wherever found	E	51 FR 17343; 5/12/1986.
Ipomopsis polyantha	Pagosa skyrocket	Wherever found	E	76 FR 45053; 7/27/2011, 50 CFR 17.96(a)[CH].
Ipomopsis sancti-spiritus	Holy Ghost ipomopsis	Wherever found	E	59 FR 13836; 3/23/1994.
Iris lacustris	Dwarf lake iris	Wherever found	T	53 FR 37972; 9/28/1988.
Ischaemum byrone	Hilo ischaemum	Wherever found	E	59 FR 10305; 3/4/1994, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(k)[CH].
Isodendrion hosakae	Aupaka	Wherever found	T	56 FR 1454; 1/14/1991, 50 CFR 17.99(k)[CH].
Isodendrion laurifolium	Aupaka	Wherever found	E	61 FR 53108; 10/10/1996, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(i)[CH].
Isodendrion longifolium	Aupaka	Wherever found	T	61 FR 53108; 10/10/1996, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(i)[CH].
Isodendrion pyrifolium	Wahine noho kula	Wherever found	E	59 FR 10305; 3/4/1994, 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(i)[CH].
Isotria medeoloides	Small whorled pogonia	Wherever found	T	47 FR 39827; 9/9/1982, 59 FR 50852; 10/6/1994.
Ivesia kingii var. *eremica*	Ash Meadows ivesia	Wherever found	T	50 FR 20777; 5/20/1985, 50 CFR 17.96(a)[CH].
Ivesia webberi	Webber's ivesia	Wherever found	T	79 FR 31878; 6/3/2014, 50 CFR 17.96(a)[CH].
Jacquemontia reclinata	Beach jacquemontia	Wherever found	E	58 FR 62046; 11/24/1993.
Jatropha costaricensis	Costa Rican jatropha	Wherever found	E	49 FR 30199; 7/27/1984.
Juglans jamaicensis	Nogal or West Indian walnut	Wherever found	E	62 FR 1691; 1/13/1997.
Justicia cooleyi	Cooley's water-willow	Wherever found	E	54 FR 31190; 7/27/1989.
Kadua cordata ssp. remyi	Kopa	Wherever found	E	64 FR 48307; 9/3/1999.
Kadua coriacea	Kioele	Wherever found	E	57 FR 20772; 5/15/1992, 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(i)[CH].
Kadua degeneri	No common name	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(i)[CH].
Kadua laxiflora	Pilo	Wherever found	E	57 FR 46325; 10/8/1992, 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH].
Kadua parvula	No common name	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(i)[CH].
Kadua (=Hedyotis) st.-johnii	No common name	Wherever found	E	56 FR 49639; 9/30/1991, 50 CFR 17.99(a)(1)[CH].
Kanaloa kahoolawensis	Kohe malama malama o kanaloa.	Wherever found	E	64 FR 48307; 9/3/1999, 50 CFR 17.99(e)(2)[CH].

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Keysseria erici	No common name	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Keysseria helenae	No common name	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Kokia cookei	Cooke's koki'o	Wherever found	E	44 FR 62470; 10/30/1979, 50 CFR 17.99(c)[CH].
Kokia drynarioides	Koki'o	Wherever found	E	49 FR 47397; 12/4/1984, 50 CFR 17.96(a)[CH].
Kokia kauaiensis	Koki'o	Wherever found	E	61 FR 53070; 10/10/1996, 50 CFR 17.99(a)(1)[CH].
Korthalsella degeneri	Hulumoa	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Labordia cyrtandrae	Kamakahala	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].
Labordia helleri	Kamakahala	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Labordia lydgatei	Kamakahala	Wherever found	E	56 FR 47695; 9/20/1991, 50 CFR 17.99(a)(1)[CH].
Labordia pumila	Kamakahala	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Labordia tinifolia var. *lanaiensis*	Kamakahala	Wherever found	E	64 FR 48307; 9/3/1999.
Labordia tinifolia var. *wahiawaensis*.	Kamakahala	Wherever found	E	61 FR 53070; 10/10/1996, 50 CFR 17.99(a)(1)[CH].
Labordia triflora	Kamakahala	Wherever found	E	64 FR 48307; 9/3/1999, 50 CFR 17.99(c)[CH].
Lasthenia burkei	Burke's goldfields	Wherever found	E	56 FR 61173; 12/2/1991.
Lasthenia conjugens	Contra Costa goldfields	Wherever found	E	62 FR 33029; 6/18/1997, 50 CFR 17.96(a)[CH].
Layia carnosa	Beach layia	Wherever found	E	57 FR 27848; 6/22/1992.
Leavenworthia crassa	fleshy-fruit gladecress	Wherever found	E	79 FR 44712; 8/1/2014.
Leavenworthia exigua var.*laciniata*.	Kentucky glade cress	Wherever found	T	79 FR 25683; 5/6/2014, 50 CFR 17.96(a)[CH].
Leavenworthia texana	Texas golden gladecress	Wherever found	E	78 FR 56025; 9/11/2013, 50 CFR 17.96(a)[CH].
Lembertia congdonii	San Joaquin wooly-threads	Wherever found	E	55 FR 29361; 7/19/1990.
Lepanthes eltoroensis	No common name	Wherever found	E	56 FR 60933; 11/29/1991.
Lepidium arbuscula	Anaunau	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].
Lepidium barnebyanum	Barneby ridge-cress	Wherever found	E	55 FR 39860; 9/28/1990.
Leptocereus grantianus	No common name	Wherever found	E	58 FR 11550; 2/26/1993.
Lespedeza leptostachya	Prairie bush-clover	Wherever found	T	52 FR 781; 1/9/1987.
Lesquerella congesta	Dudley Bluffs bladderpod	Wherever found	T	55 FR 4152; 2/6/1990.
Lesquerella kingii ssp. *bernardina*.	San Bernardino Mountains bladderpod.	Wherever found	E	59 FR 43652; 8/24/1994, 50 CFR 17.96(a)[CH].
Lesquerella lyrata	Lyrate bladderpod	Wherever found	T	55 FR 39864; 9/28/1990.
Lesquerella pallida	White bladderpod	Wherever found	E	52 FR 7424; 3/11/1987.
Lesquerella perforata	Spring Creek bladderpod	Wherever found	E	61 FR 67493; 12/23/1996.
Lesquerella thamnophila	Zapata bladderpod	Wherever found	E	64 FR 63745; 11/22/1999, 50 CFR 17.96(a)[CH].
Lesquerella tumulosa	Kodachrome bladderpod	Wherever found	E	58 FR 52027; 10/6/1993.
Lessingia germanorum (=L. g. var. *germanorum)*.	San Francisco lessingia	Wherever found	E	62 FR 33368; 6/19/1997.
Liatris helleri	Heller's blazingstar	Wherever found	T	52 FR 44397; 11/19/1987.
Liatris ohlingerae	Scrub blazingstar	Wherever found	E	54 FR 31190; 7/27/1989.
Lilaeopsis schaffneriana var. *recurva*.	Huachuca water-umbel	Wherever found	E	62 FR 665; 1/6/1997, 50 CFR 17.96(a)[CH].
Lilium occidentale	Western lily	Wherever found	E	59 FR 42171; 8/17/1994.
Lilium pardalinum ssp. *pitkinense*.	Pitkin Marsh lily	Wherever found	E	62 FR 54791; 10/22/1997.
Limnanthes floccosa ssp. *californica*.	Butte County meadowfoam	Wherever found	E	57 FR 24192; 6/8/1992, 50 CFR 17.96(a)[CH].
Limnanthes floccosa ssp. *grandiflora*.	large-flowered woolly meadowfoam.	Wherever found	E	67 FR 68004; 11/7/2002, 50 CFR 17.96(a)[CH].
Limnanthes vinculans	Sebastopol meadowfoam	Wherever found	E	56 FR 61173; 12/2/1991.
Lindera melissifolia	Pondberry	Wherever found	E	51 FR 27495; 7/31/1986.
Linum carteri var. *carteri*	Carter's small-flowered flax	Wherever found	E	79 FR 52567; 9/4/2014, 50 CFR 17.96(a)[CH].
Lipochaeta fauriei	Nehe	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH].
Lipochaeta lobata var. *leptophylla*.	Nehe	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(i)[CH].
Lipochaeta micrantha	Nehe	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH].

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Lipochaeta venosa	No common name	Wherever found	E	44 FR 62468; 10/30/1979.
Lipochaeta waimeaensis	Nehe	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH].
Lithophragma maximum	San Clemente Island woodland-star.	Wherever found	E	62 FR 42692; 8/8/1997.
Lobelia (gaudichaudii ssp.) *koolauensis*.	No common name	Wherever found	E	61 FR 53089; 10/10/1996, 77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Lobelia monostachya	No common name	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].
Lobelia niihauensis	No common name	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(i)[CH].
Lobelia oahuensis	No common name	Wherever found	E	59 FR 14482; 3/28/1994, 50 CFR 17.99(i)[CH].
Lomatium bradshawii	Bradshaw's desert-parsley	Wherever found	E	53 FR 38448; 9/30/1988.
Lomatium cookii	Cook's lomatium (Cook's desert parsley).	Wherever found	E	67 FR 68004; 11/7/2002 50 CFR 17.96(a)[CH].
Lupinus aridorum	Scrub lupine	Wherever found	E	52 FR 11172; 4/7/1987.
Lupinus nipomensis	Nipomo Mesa lupine	Wherever found	E	65 FR 14888; 3/20/2000.
Lupinus sulphureus ssp. *kincaidii*.	Kincaid's lupine	Wherever found	T	65 FR 3875; 3/25/2000, 50 CFR 17.96[CH].
Lupinus tidestromii	Clover lupine	Wherever found	E	57 FR 27848; 6/22/1992.
Lyonia truncata var. *proctorii*	No common name	Wherever found	E	58 FR 25755; 4/27/1993.
Lysimachia asperulaefolia	Rough-leaved loosestrife	Wherever found	E	52 FR 22585; 6/12/1987.
Lysimachia daphnoides	Lehua makanoe	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Lysimachia filifolia	No common name	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(i)[CH].
Lysimachia iniki	No common name	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Lysimachia lydgatei	No common name	Wherever found	E	57 FR 20772; 5/15/1992, 50 CFR 17.99(e)(1)[CH].
Lysimachia maxima	No common name	Wherever found	E	61 FR 53130; 10/10/1996, 50 CFR 17.99(c)[CH].
Lysimachia pendens	No common name	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Lysimachia scopulensis	No common name	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Lysimachia venosa	No common name	Wherever found	E	75 FR 18960; 4/13/2010 50 CFR 17.99(a)[CH].
Macbridea alba	White birds-in-a-nest	Wherever found	T	57 FR 19813; 5/8/1992.
Maesa walkeri	No common name	Wherever found	T	80 FR 59423; 10/1/2015.
Malacothamnus clementinus	San Clemente Island bush-mallow.	Wherever found	E	42 FR 40682; 8/11/1977.
Malacothamnus fasciculatus var. *nesioticus*.	Santa Cruz Island bushmallow	Wherever found	E	62 FR 40954; 7/31/1997.
Malacothrix indecora	Santa Cruz Island malacothrix	Wherever found	E	62 FR 40954; 7/31/1997.
Malacothrix squalida	Island malacothrix	Wherever found	E	62 FR 40954; 7/31/1997.
Manihot walkerae	Walker's manioc	Wherever found	E	56 FR 49850; 10/2/1991.
Marshallia mohrii	Mohr's Barbara's buttons	Wherever found	T	53 FR 34698; 9/7/1988.
Melanthera kamolensis	Nehe	Wherever found	E	57 FR 20772; 5/15/1992, 50 CFR 17.99(e)(1)[CH].
Melanthera tenuifolia	Nehe	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(i)[CH].
Melicope adscendens	Alani	Wherever found	E	59 FR 62346; 12/5/1994, 50 CFR 17.99(e)(1)[CH].
Melicope balloui	Alani	Wherever found	E	59 FR 62346; 12/5/1994, 50 CFR 17.99(e)(1)[CH].
Melicope christophersenii	Alani	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Melicope degeneri	Alani	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Melicope haupuensis	Alani	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH].
Melicope hiiakae	Alani	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Melicope knudsenii	Alani	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(e)(1)[CH].
Melicope lydgatei	Alani	Wherever found	E	59 FR 14482; 3/28/1994, 50 CFR 17.99(i)[CH].

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Melicope makahae	Alani	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Melicope mucronulata	Alani	Wherever found	E	57 FR 20772; 5/15/1992, 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH].
Melicope munroi	Alani	Wherever found	E	64 FR 48307; 9/3/1999, 50 CFR 17.99(c)[CH].
Melicope ovalis	Alani	Wherever found	E	59 FR 62346; 12/5/1994, 50 CFR 17.99(e)(1)[CH].
Melicope pallida	Alani	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(i)[CH].
Melicope paniculata	Alani	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Melicope puberula	Alani	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Melicope quadrangularis	Alani	Wherever found	E	59 FR 9304; 2/25/1994.
Melicope reflexa	Alani	Wherever found	E	57 FR 46325; 10/8/1992, 50 CFR 17.99(c)[CH].
Melicope saint-johnii	Alani	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].
Melicope zahlbruckneri	Alani	Wherever found	E	61 FR 53137; 10/10/1996, 50 CFR 17.99(k)[CH].
Mentzelia leucophylla	Ash Meadows blazing-star	Wherever found	T	50 FR 20777; 5/20/1985, 50 CFR 17.96(a)[CH].
Mezoneuron kavaiense	Uhi uhi	Wherever found	E	51 FR 24672; 7/8/1986.
Mimulus michiganensis (=*Mimulus glabratus* var. *michiganensis*).	Michigan monkey-flower	Wherever found	E	55 FR 25596; 6/21/1990, 75 FR 55686; 9/14/2010.
Mirabilis macfarlanei	MacFarlane's four-o'clock	Wherever found	T	44 FR 61912; 10/26/1979, 61 FR 10693; 3/15/1996.
Mitracarpus maxwelliae	No common name	Wherever found	E	59 FR 46715; 9/9/1994.
Mitracarpus polycladus	No common name	Wherever found	E	59 FR 46715; 9/9/1994.
Monardella viminea	Willowy monardella	Wherever found	E	63 FR 54938; 10/13/1998, 50 CFR 17.96(a)[CH].
Mucuna sloanei var.*persericea*	Sea bean	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Myrcia paganii	No common name	Wherever found	E	59 FR 8138; 2/18/1994.
Myrsine juddii	Kolea	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].
Myrsine knudsenii	Kolea	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Myrsine linearifolia	Kolea	Wherever found	T	61 FR 53070; 10/10/1996, 50 CFR 17.99(a)(1)[CH].
Myrsine mezii	Kolea	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Myrsine vaccinioides	Kolea	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Navarretia fossalis	Spreading navarretia	Wherever found	T	63 FR 54975; 10/13/1998, 50 CFR 17.96(a)[CH].
Navarretia leucocephala ssp. *pauciflora (=N. pauciflora).*	Few-flowered navarretia	Wherever found	E	62 FR 33029; 6/18/1997.
Navarretia leucocephala ssp. *plieantha.*	Many-flowered navarretia	Wherever found	E	62 FR 33029; 6/18/1997.
Neostapfia colusana	Colusa grass	Wherever found	T	62 FR 14338; 3/26/1997, 50 CFR 17.96(a)[CH].
Neraudia angulata	No common name	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(i)[CH].
Neraudia ovata	No common name	Wherever found	E	61 FR 53137; 10/10/1996, 50 CFR 17.99(k)[CH].
Neraudia sericea	No common name	Wherever found	E	59 FR 56333; 11/10/1994, 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(e)(2)[CH].
Nervilia jacksoniae	No common name	Wherever found	T	80 FR 59423; 10/1/2015.
Nesogenes rotensis	No common name	Wherever found	E	69 FR 10335; 3/5/2004.
Nitrophila mohavensis	Amargosa niterwort	Wherever found	E	50 FR 20777; 5/20/1985, 50 CFR 17.96(a)[CH].
Nolina brittoniana	Britton's beargrass	Wherever found	E	58 FR 25746; 4/27/1993.
Nothocestrum breviflorum	Aiea	Wherever found	E	59 FR 10305; 3/4/1994, 50 CFR 17.99(k)[CH].
Nothocestrum peltatum	Aiea	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH].

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Nototrichium humile	Kului	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(i)[CH].
Ochrosia kilaueaensis	Holei	Wherever found	E	59 FR 10305; 3/4/1994.
Oenothera avita ssp. *eurekensis*.	Eureka Valley evening-primrose	Wherever found	E	43 FR 17910; 4/26/1978.
Oenothera deltoides ssp. *howellii*.	Antioch Dunes evening-primrose.	Wherever found	E	43 FR 17910; 4/26/1978, 50 CFR 17.96(a)[CH].
Opuntia treleasei	Bakersfield cactus	Wherever found	E	55 FR 29361; 7/19/1990.
Orcuttia californica	California Orcutt grass	Wherever found	E	58 FR 41384; 8/3/1993.
Orcuttia inaequalis	San Joaquin Valley Orcutt grass.	Wherever found	T	62 FR 14338; 3/26/1997, 50 CFR 17.96(a)[CH].
Orcuttia pilosa	Hairy Orcutt grass	Wherever found	T	62 FR 14338; 3/26/1997, 50 CFR 17.96(a)[CH].
Orcuttia tenuis	Slender Orcutt grass	Wherever found	T	62 FR 14338; 3/26/1997, 50 CFR 17.96(a)[CH].
Orcuttia viscida	Sacramento Orcutt grass	Wherever found	T	62 FR 14338; 3/26/1997, 50 CFR 17.96(a)[CH].
Osmoxylon mariannense	No common name	Wherever found	E	69 FR 10335; 3/5/2004.
Ottoschulzia rhodoxylon	Palo de rosa	Wherever found	E	55 FR 13488; 4/10/1990.
Oxypolis canbyi	Canby's dropwort	Wherever found	E	51 FR 6690; 2/25/1986.
Oxytheca parishii var. *goodmaniana*.	Cushenbury oxytheca	Wherever found	E	59 FR 43652; 8/24/1994, 50 CFR 17.96(a)[CH].
Oxytropis campestris var. *chartacea*.	Fassett's locoweed	Wherever found	T	53 FR 37970; 9/28/1988.
Panicum fauriei var. *carteri*	Carter's panicgrass	Wherever found	E	48 FR 46328; 10/12/1983, 50 CFR 17.96(a)[CH].
Panicum niihauense	Lau ehu	Wherever found	E	61 FR 53108; 10/10/1996, 50 CFR 17.99(a)(1)[CH].
Paronychia chartacea	Papery whitlow-wort	Wherever found	T	52 FR 2227; 1/21/1987.
Parvisedum leiocarpum	Lake County stonecrop	Wherever found	E	62 FR 33029; 6/18/1997.
Pedicularis furbishiae	Furbish lousewort	Wherever found	E	43 FR 17910; 4/26/1978.
Pediocactus bradyi	Brady pincushion cactus	Wherever found	E	44 FR 61784; 10/26/1979.
Pediocactus despainii	San Rafael cactus	Wherever found	E	52 FR 34914; 9/16/1987.
Pediocactus knowltonii	Knowlton cactus	Wherever found	E	44 FR 62244; 10/29/1979.
Pediocactus peeblesianus var. *fickeiseniae*.	Fickeisen plains cactus	Wherever found	E	78 FR 60607; 10/1/2013.
Pediocactus peeblesianus var. *peeblesianus*.	Peebles Navajo cactus	Wherever found	E	44 FR 61922; 10/26/1979.
Pediocactus sileri	Siler pincushion cactus	Wherever found	T	44 FR 61786; 10/26/1979, 58 FR 68476; 12/27/1993.
Pediocactus winkleri	Winkler cactus	Wherever found	T	63 FR 44587; 8/20/1998.
Penstemon debilis	Parachute beardtongue	Wherever found	T	76 FR 45053; 7/27/2011, 50 CFR 17.96(a)[CH].
Penstemon haydenii	Blowout penstemon	Wherever found	E	52 FR 32926; 9/1/1987.
Penstemon penlandii	Kremmling beardtongue	Wherever found	E	54 FR 29658; 7/13/1989.
Pentachaeta bellidiflora	White-rayed pentachaeta	Wherever found	E	60 FR 6671; 2/3/1995.
Pentachaeta lyonii	Lyon's pentachaeta	Wherever found	E	62 FR 4172; 1/29/1997, 50 CFR 17.96(a)[CH].
Peperomia subpetiolata	Alaala wai nui	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Peperomia wheeleri	Wheeler's peperomia	Wherever found	E	52 FR 1459; 1/14/1987.
Peucedanum sandwicense	Makou	Wherever found	T	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(i)[CH].
Phacelia argillacea	Clay phacelia	Wherever found	E	43 FR 44810; 9/28/1978.
Phacelia formosula	North Park phacelia	Wherever found	E	47 FR 38540; 9/1/1982.
Phacelia insularis ssp. *insularis*	Island phacelia	Wherever found	E	62 FR 40954; 7/31/1997.
Phacelia submutica	DeBeque phacelia	Wherever found	T	76 FR 45053; 7/27/2011, 50 CFR 17.96(a)[CH].
Phlox hirsuta	Yreka phlox	Wherever found	E	65 FR 5268; 2/3/2000.
Phlox nivalis ssp. *texensis*	Texas trailing phlox	Wherever found	E	56 FR 49636; 9/30/1991.
Phyllanthus saffordii	No common name	Wherever found	E	80 FR 59423; 10/1/2015.
Phyllostegia bracteata	No common name	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Phyllostegia floribunda	No common name	Wherever found	E	78 FR 64637; 10/29/2013.
Phyllostegia glabra var. *lanaiensis*.	No common name	Wherever found	E	56 FR 47686; 9/20/1991.
Phyllostegia haliakalae	No common name	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH].

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Phyllostegia hirsuta	No common name	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].
Phyllostegia hispida	No common name	Wherever found	E	74 FR 11319; 3/17/2009, 50 CFR 17.99(c)[CH].
Phyllostegia kaalaensis	No common name	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].
Phyllostegia knudsenii	No common name	Wherever found	E	61 FR 53070; 10/10/1996, 50 CFR 17.99(a)(1)[CH].
Phyllostegia mannii	No common name	Wherever found	E	57 FR 46325; 10/8/1992, 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH].
Phyllostegia mollis	No common name	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(i)[CH].
Phyllostegia parviflora	No common name	Wherever found	E	61 FR 53108; 10/10/1996, 50 CFR 17.99(i)[CH].
Phyllostegia pilosa	No common name	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH].
Phyllostegia racemosa	Kiponapona	Wherever found	E	61 FR 53137; 10/10/1996, 50 CFR 17.99(k)[CH].
Phyllostegia renovans	No common name	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Phyllostegia velutina	No common name	Wherever found	E	61 FR 53137; 10/10/1996, 50 CFR 17.99(k)[CH].
Phyllostegia waimeae	No common name	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH].
Phyllostegia warshaueri	No common name	Wherever found	E	61 FR 53137; 10/10/1996, 50 CFR 17.99(k)[CH].
Phyllostegia wawrana	No common name	Wherever found	E	61 FR 53070; 10/10/1996, 50 CFR 17.99(a)(1)[CH].
Physaria douglasii subsp. *tuplashensis*.	White Bluffs bladderpod	Wherever found	T	78 FR 23983; 4/23/2013, 50 CFR 17.96(a)[CH].
Physaria filiformis (= *Lesquerella f.)*.	Missouri bladderpod	Wherever found	T	52 FR 679; 1/8/1987, 68 FR 59337; 10/15/2003, 75 FR 55686; 9/14/2010.
Physaria globosa	Short's bladderpod	Wherever found	E	79 FR 44712; 8/1/2014.
Physaria obcordata	Dudley Bluffs twinpod	Wherever found	T	55 FR 4152; 2/6/1990.
Pilosocereus robinii	Key tree-cactus	Wherever found	E	49 FR 29234; 7/19/1984.
Pinguicula ionantha	Godfrey's butterwort	Wherever found	T	58 FR 37432; 7/12/1993.
Piperia yadonii	Yadon's piperia	Wherever found	E	63 FR 43100; 8/12/1998, 50 CFR 17.96(a)[CH].
Pittosporum halophilum	Hoawa	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(c)[CH].
Pittosporum hawaiiense	Hoawa, haawa	Wherever found	E	78 FR 64637; 10/29/2013.
Pittosporum napaliense	Hoawa	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Pityopsis ruthii	Ruth's golden aster	Wherever found	E	50 FR 29341; 7/18/1985.
Plagiobothrys hirtus	Rough popcornflower	Wherever found	E	65 FR 3866; 1/25/2000.
Plagiobothrys strictus	Calistoga allocarya	Wherever found	E	62 FR 54791; 10/22/1997.
Plantago hawaienis	Laukahi kuahiwi	Wherever found	E	59 FR 10305; 3/4/1994, 50 CFR 17.99(k)[CH].
Plantago princeps	Laukahi kuahiwi	Wherever found	E	59 FR 56333; 11/10/1994, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(i)[CH].
Platanthera holochila	No common name	Wherever found	E	61 FR 53108; 10/10/1996, 50 CFR 17.99(c)[CH], 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(i)[CH].
Platanthera leucophaea	Eastern prairie fringed orchid	Wherever found	T	54 FR 39857; 9/28/1989.
Platanthera praeclara	Western prairie fringed orchid	Wherever found	T	54 FR 39857; 9/28/1989.
Platydesma cornuta var. *cornuta*.	No common name	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Platydesma cornuta var. *decurrens*.	No common name	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Platydesma remyi	No common name	Wherever found	E	78 FR 64637; 10/29/2013.
Platydesma rostrata	Pilo kea lau lii	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Pleodendron macranthum	Chupacallos	Wherever found	E	59 FR 60565; 11/25/1994.
Pleomele fernaldii	Hala pepe	Wherever found	E	78 FR 32013; 5/28/2013.

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Pleomele forbesii	Hala pepe	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Pleomele hawaiiensis	Hala pepe	Wherever found	E	61 FR 53137; 10/10/1996, 50 CFR 17.99(k)[CH].
Poa atropurpurea	San Bernardino bluegrass	Wherever found	E	63 FR 49006; 9/14/1998, 50 CFR 17.96(a)[CH].
Poa mannii	Mann's bluegrass	Wherever found	E	59 FR 56330; 11/10/1994, 50 CFR 17.99(a)(1)[CH].
Poa napensis	Napa bluegrass	Wherever found	E	62 FR 54791; 10/22/1997.
Poa sandvicensis	Hawaiian bluegrass	Wherever found	E	57 FR 20580; 5/13/1992, 50 CFR 17.99(a)(1)[CH].
Poa siphonoglossa	No common name	Wherever found	E	57 FR 20580; 5/13/1992, 50 CFR 17.99(a)(1)[CH].
Pogogyne abramsii	San Diego mesa mint	Wherever found	E	43 FR 44810; 9/28/1978.
Pogogyne nudiuscula	Otay mesa mint	Wherever found	E	58 FR 41384; 8/3/1993.
Polygala lewtonii	Lewton's polygala	Wherever found	E	58 FR 25746; 4/27/1993.
Polygala smallii	Tiny polygala	Wherever found	E	50 FR 29345; 7/18/1985.
Polygonella basiramia	Wireweed	Wherever found	E	52 FR 2227; 1/21/1987.
Polygonella myriophylla	Sandlace	Wherever found	E	58 FR 25746; 4/27/1993.
Polygonum hickmanii	Scotts Valley polygonum	Wherever found	E	68 FR 16979; 4/8/2003, 50 CFR 17.96(a)[CH].
Polyscias (=Tetraplasandra) bisattenuata.	No common name	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Polyscias (=Tetraplasandra) flynnii.	No common name	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Polyscias (=Tetraplasandra) gymnocarpa.	Oheohe	Wherever found	E	59 FR 14482; 3/28/1994, 50 CFR 17.99(i)[CH].
Polyscias (=Tetraplasandra) lydgatei.	No common name	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Polyscias (=Munroidendron) racemosa (=racemosum).	No common name	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH].
Portulaca sclerocarpa	Poe	Wherever found	E	59 FR 10305; 3/4/1994, 50 CFR 17.99(k)[CH].
Potamogeton clystocarpus	Little Aguja pondweed	Wherever found	E	56 FR 57844; 11/14/1991.
Potentilla hickmanii	Hickman's potentilla	Wherever found	E	63 FR 43100; 8/12/1998.
Primula maguirei	Maguire primrose	Wherever found	T	50 FR 33731; 8/21/1985.
Pritchardia affinis	Loulu	Wherever found	E	59 FR 10305; 3/4/1994.
Pritchardia aylmer-robinsonii	Wahane	Wherever found	E	61 FR 41020; 8/7/1996.
Pritchardia hardyi	Loulu	Wherever found	E	75 FR 18960; 4/13/2010.
Pritchardia kaalae	Loulu	Wherever found	E	61 FR 53089; 10/10/1996.
Pritchardia lanigera	Loulu	Wherever found	E	78 FR 64637; 10/29/2013.
Pritchardia maideniana	Loulu	Wherever found	E	59 FR 10305; 3/4/1994.
Pritchardia munroi	Loulu	Wherever found	E	57 FR 46325; 10/8/1992.
Pritchardia napaliensis	Loulu	Wherever found	E	61 FR 53070; 10/10/1996.
Pritchardia remota	Loulu	Wherever found	E	61 FR 43178; 8/21/1996, 50 CFR 17.99(g)[CH].
Pritchardia schattaueri	Loulu	Wherever found	E	61 FR 53137; 10/10/1996.
Pritchardia viscosa	Loulu	Wherever found	E	61 FR 53070; 10/10/1996.
Prunus geniculata	Scrub plum	Wherever found	E	52 FR 2227; 1/21/1987.
Pseudobahia bahiifolia	Hartweg's golden sunburst	Wherever found	E	62 FR 5542; 2/6/1997.
Pseudobahia	San Joaquin adobe sunburst	Wherever found	T	62 FR 5542; 2/6/1997.
Psychotria grandiflora	Kopiko	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Psychotria hexandra ssp. *oahuensis.*	Kopiko	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Psychotria hobdyi	Kopiko	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Psychotria malaspinae	Aplokating palaoan	Wherever found	E	80 FR 59423; 10/1/2015.
Pteralyxia kauaiensis	Kaulu	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH].
Pteralyxia macrocarpa	Kaulu	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Ptilimnium nodosum	Harperella	Wherever found	E	53 FR 37978; 9/28/1988.
Purshia subintegra	Arizona cliffrose	Wherever found	E	49 FR 22326; 5/29/1984.
Quercus hinckleyi	Hinckley's oak	Wherever found	T	53 FR 32824; 8/26/1988.
Ranunculus acriformis var. *aestivalis.*	Autumn buttercup	Wherever found	E	54 FR 30550; 7/21/1989.
Remya kauaiensis	No common name	Wherever found	E	56 FR 1450; 1/14/1991, 50 CFR 17.99(a)(1)[CH].
Remya mauiensis	Maui remya	Wherever found	E	56 FR 1450; 1/14/1991, 50 CFR 17.99(e)(1)[CH].
Remya montgomeryi	No common name	Wherever found	E	56 FR 1450; 1/14/1991, 50 CFR 17.99(a)(1)[CH].

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Rhodiola integrifolia ssp. *leedyi (= Sedum integrifolium* ssp. *l.*).	Leedy's roseroot	Wherever found	T	57 FR 14649; 4/22/1992, 75 FR 55686; 9/14/2010.
Rhododendron chapmanii	Chapman rhododendron	Wherever found	E	44 FR 24248; 4/24/1979.
Rhus michauxii	Michaux's sumac	Wherever found	E	54 FR 39850; 9/28/1989.
Rhynchospora knieskernii	Knieskern's beaked-rush	Wherever found	T	56 FR 32978; 7/18/1991.
Ribes echinellum	Miccosukee gooseberry	Wherever found	T	50 FR 29338; 7/18/1985.
Rorippa gambellii	Gambel's watercress	Wherever found	E	58 FR 41378; 8/3/1993.
Sagittaria fasciculata	Bunched arrowhead	Wherever found	E	44 FR 43700; 7/25/1979.
Sagittaria secundifolia	Kral's water-plantain	Wherever found	T	55 FR 13907; 4/13/1990.
Sanicula mariversa	No common name	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(i)^{CH}.
Sanicula purpurea	No common name	Wherever found	E	61 FR 53108; 10/10/1996, 50 CFR 17.99(e)(1)^{CH}, 50 CFR 17.99(i)^{CH}.
Santalum haleakalae var.*lanaiense*.	Lanai sandalwood or iliahi	Wherever found	E	51 FR 3182; 1/24/1986, 78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)^{CH}, 50 CFR 17.99(c)^{CH}.
Sarracenia oreophila	Green pitcher-plant	Wherever found	E	44 FR 54922; 9/21/1979, 45 FR 18929; 3/24/1980.
Sarracenia rubra ssp. *alabamensis*.	Alabama canebrake pitcher-plant.	Wherever found	E	54 FR 10150; 3/10/1989.
Sarracenia rubra ssp. *jonesii*	Mountain sweet pitcher-plant	Wherever found	E	53 FR 38470; 9/30/1988.
Scaevola coriacea	Dwarf naupaka	Wherever found	E	51 FR 17971; 5/16/1986.
Schenkia sebaeoides	Awiwi	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(a)(1)^{CH}, 50 CFR 17.99(c)^{CH}, 50 CFR 17.99(e)(1)^{CH}, 50 CFR 17.99(i)^{CH}.
Schiedea adamantis	Diamond Head schiedea	Wherever found	E	49 FR 6099; 2/17/1984.
Schiedea apokremnos	Maolioli	Wherever found	E	56 FR 49639; 9/30/1991, 50 CFR 17.99(a)(1)^{CH}.
Schiedea attenuata	No common name	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)^{CH}.
Schiedea diffusa ssp.*macraei*	No common name	Wherever found	E	78 FR 64637; 10/29/2013.
Schiedea haleakalensis	No common name	Wherever found	E	57 FR 20772; 5/15/1992, 50 CFR 17.99(e)(1)^{CH}.
Schiedea hawaiiensis	No common name	Wherever found	E	78 FR 64637; 10/29/2013.
Schiedea helleri	No common name	Wherever found	E	61 FR 53070; 10/10/1996, 50 CFR 17.99(a)(1)^{CH}.
Schiedea hookeri	No common name	Wherever found	E	61 FR 53108; 10/10/1996, 50 CFR 17.99(i)^{CH}.
Schiedea jacobii	No common name	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)^{CH}.
Schiedea kaalae	No common name	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(i)^{CH}.
Schiedea kauaiensis	No common name	Wherever found	E	61 FR 53108; 10/10/1996, 50 CFR 17.99(a)(1)^{CH}.
Schiedea kealiae	Maolioli	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)^{CH}.
Schiedea laui	No common name	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(c)^{CH}.
Schiedea (=Alsinidendron) lychnoides.	Kuawawaenohu	Wherever found	E	61 FR 53070; 10/10/1996, 50 CFR 17.99(a)(1)^{CH}.
Schiedea lydgatei	No common name	Wherever found	E	57 FR 46325; 10/8/1992, 50 CFR 17.99(c)^{CH}.
Schiedea membranacea	No common name	Wherever found	E	61 FR 53070; 10/10/1996, 50 CFR 17.99(a)(1)^{CH}.
Schiedea nuttallii	No common name	Wherever found	E	61 FR 53108; 10/10/1996, 50 CFR 17.99(a)(1)^{CH}, 50 CFR 17.99(c)^{CH}, 50 CFR 17.99(i)^{CH}.
Schiedea obovata	No common name	Wherever found	E	56 FR 55770; 10/29/1991, 77 FR 57647; 9/18/2012, 50 CFR 17.99(i)^{CH}.
Schiedea salicaria	No common name	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)^{CH}.
Schiedea sarmentosa	No common name	Wherever found	E	61 FR 53130; 10/10/1996, 50 CFR 17.99(c)^{CH}.
Schiedea spergulina var. *leiopoda*.	No common name	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)^{CH}.

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Schiedea spergulina var. *spergulina*.	No common name	Wherever found	T	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH].
Schiedea stellarioides	Laulihilihi (=Maolioli)	Wherever found	E	61 FR 53070; 10/10/1996, 50 CFR 17.99(a)(1)[CH].
Schiedea trinervis	No common name	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(i)[CH].
Schiedea verticillata	No common name	Wherever found	E	61 FR 43178; 8/21/1996, 50 CFR 17.99(g)[CH].
Schiedea (=Alsinidendron) viscosa (=viscosum).	No common name	Wherever found	E	61 FR 53070; 10/10/1996, 50 CFR 17.99(a)(1)[CH].
Schoenocrambe argillacea	Clay reed-mustard	Wherever found	T	57 FR 1398; 1/14/1992.
Schoenocrambe barnebyi	Barneby reed-mustard	Wherever found	E	57 FR 1398; 1/14/1992.
Schoenocrambe suffrutescens	Shrubby reed-mustard	Wherever found	E	52 FR 37416; 10/6/1987.
Schoepfia arenaria	None	Wherever found	T	56 FR 16021; 4/19/1991.
Schwalbea americana	American chaffseed	Wherever found	E	57 FR 44703; 9/29/1992.
Scirpus ancistrochaetus	Northeastern bulrush	Wherever found	E	56 FR 21091; 5/7/1991.
Sclerocactus brevispinus	Pariette cactus	Wherever found	T	44 FR 58868; 10/11/1979, 74 FR 47112; 9/15/2009.
Sclerocactus glaucus	Colorado hookless cactus	Wherever found	T	44 FR 58868; 10/11/1979, 74 FR 47112; 9/15/2009.
Sclerocactus mesae-verdae	Mesa Verde cactus	Wherever found	T	44 FR 62471; 10/30/1979.
Sclerocactus wetlandicus	Uinta Basin hookless cactus	Wherever found	T	44 FR 58868; 10/11/1979, 74 FR 47112; 9/15/2009.
Sclerocactus wrightiae	Wright fishhook cactus	Wherever found	E	44 FR 58866; 10/11/1979.
Scutellaria floridana	Florida skullcap	Wherever found	T	57 FR 19813; 5/8/1992.
Scutellaria montana	Large-flowered skullcap	Wherever found	T	51 FR 22521; 6/20/1986, 67 FR 1662; 1/14/2002.
Senecio franciscanus	San Francisco Peaks ragwort	Wherever found	T	48 FR 52743; 11/22/1983, 50 CFR 17.96(a)[CH].
Senecio layneae	Layne's butterweed	Wherever found	T	61 FR 54346; 10/18/1996.
Serianthes nelsonii	Hayun lagu (Guam), Tronkon guafi (Rota).	Wherever found	E	52 FR 4907; 2/18/1987, 52 FR 6651; 5/4/1987.
Sesbania tomentosa	Ohai	Wherever found	E	59 FR 56333; 11/10/1994, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(g)[CH], 50 CFR 17.99(i)[CH], 50 CFR 17.99(k)[CH].
Sibara filifolia	Santa Cruz Island rock-cress	Wherever found	E	62 FR 42692; 8/8/1997.
Sicyos albus (=alba)	Anunu	Wherever found	E	61 FR 53137; 10/10/1996, 50 CFR 17.99(k)[CH].
Sidalcea keckii	Keck's checkermallow	Wherever found	E	65 FR 7757; 2/16/2000, 50 CFR 17.96(a)[CH].
Sidalcea nelsoniana	Nelson's checker-mallow	Wherever found	T	58 FR 8235; 2/12/1993.
Sidalcea oregana var. *calva*	Wenatchee Mountains checker-mallow.	Wherever found	E	64 FR 71680; 12/22/1999, 50 CFR 17.96(a)[CH].
Sidalcea oregana ssp. *valida*	Kenwood Marsh checker-mallow.	Wherever found	E	62 FR 54791; 10/22/1997.
Sidalcea pedata	Pedate checker-mallow	Wherever found	E	49 FR 34497; 8/31/1984.
Silene alexandri	No common name	Wherever found	E	57 FR 46325; 10/8/1992, 50 CFR 17.99(c)[CH].
Silene hawaiiensis	No common name	Wherever found	T	59 FR 10305; 3/4/1994, 50 CFR 17.99(k)[CH].
Silene lanceolata	No common name	Wherever found	E	57 FR 46325; 10/8/1992, 50 CFR 17.99(c)[CH], 50 CFR 17.99(i)[CH].
Silene perlmanii	No common name	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(i)[CH].
Silene polypetala	Fringed campion	Wherever found	E	56 FR 1932; 1/18/1991.
Silene spaldingii	Spalding's catchfly	Wherever found	T	66 FR 51597; 10/10/2001.
Sisyrinchium dichotomum	White irisette	Wherever found	E	56 FR 48752; 9/26/1991.
Solanum drymophilum	Erubia	Wherever found	E	53 FR 32827; 8/26/1988.
Solanum guamense	Biringenas halumtanu, Birengenas halom tano.	Wherever found	E	80 FR 59423; 10/1/2015.
Solanum incompletum	Popolo ku mai	Wherever found	E	59 FR 56333; 10/10/1994, 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(k)[CH].
Solanum sandwicense	Aiakeakua, popolo	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(i)[CH].
Solidago albopilosa	White-haired goldenrod	Wherever found	T	53 FR 11612; 4/7/1988.
Solidago houghtonii	Houghton's goldenrod	Wherever found	T	53 FR 27134; 7/18/1988.

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Solidago shortii	Short's goldenrod	Wherever found	E	50 FR 36085; 9/5/1985.
Solidago spithamaea	Blue Ridge goldenrod	Wherever found	T	50 FR 12306; 3/28/1985.
Spermolepis hawaiiensis	No common name	Wherever found	E	59 FR 56333; 11/10/1994, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(i)[CH].
Sphaeralcea gierischii	Gierisch mallow	Wherever found	E	78 FR 49149; 8/13/2013.
Spigelia gentianoides	Gentian pinkroot	Wherever found	E	55 FR 49046; 11/26/1990.
Spiraea virginiana	Virginia spiraea	Wherever found	T	55 FR 24241; 6/15/1990.
Spiranthes delitescens	Canelo Hills ladies'-tresses	Wherever found	E	62 FR 665; 1/6/1997.
Spiranthes diluvialis	Ute ladies'-tresses	Wherever found	T	57 FR 2048; 1/17/1992.
Spiranthes parksii	Navasota ladies'-tresses	Wherever found	E	47 FR 19539; 5/6/1982.
Stahlia monosperma	Cóbana negra	Wherever found	T	55 FR 12790; 4/5/1990.
Stenogyne angustifolia var. *angustifolia*.	No common name	Wherever found	E	44 FR 62468; 10/30/1979.
Stenogyne bifida	No common name	Wherever found	E	57 FR 46325; 10/8/1992, 50 CFR 17.99(c)[CH].
Stenogyne campanulata	No common name	Wherever found	E	57 FR 20580; 5/13/1992, 50 CFR 17.99(a)(1)[CH].
Stenogyne cranwelliae	No common name	Wherever found	E	78 FR 64637; 10/29/2013.
Stenogyne kanehoana	No common name	Wherever found	E	57 FR 20592; 5/13/1992, 50 CFR 17.99(i)[CH].
Stenogyne kauaulaensis	No common name	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Stenogyne kealiae	No common name	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Stephanomeria malheurensis	Malheur wire-lettuce	Wherever found	E	47 FR 50881; 11/10/1982, 50 CFR 17.96(a)[CH].
Streptanthus albidus ssp. *albidus*.	Metcalf Canyon jewelflower	Wherever found	E	60 FR 6671; 2/3/1995.
Streptanthus niger	Tiburon jewelflower	Wherever found	E	60 FR 6671; 2/3/1995.
Styrax portoricensis	Palo de jazmfn	Wherever found	E	57 FR 14782; 4/22/1992.
Styrax texanus	Texas snowbells	Wherever found	E	49 FR 40035; 10/12/1984.
Suaeda californica	Sea-blite, California	Wherever found	E	59 FR 64613; 12/15/1994.
Swallenia alexandrae	Eureka Dune grass	Wherever found	E	43 FR 17910; 4/26/1978.
Tabernaemontana rotensis	No common name	Wherever found	T	80 FR 59423; 10/1/2015.
Taraxacum californicum	California taraxacum	Wherever found	E	63 FR 49006; 9/14/1988, 50 CFR 17.96(a)[CH].
Ternstroemia luquillensis	Palo colorado	Wherever found	E	57 FR 14782; 4/22/1992.
Ternstroemia subsessilis	No common name	Wherever found	E	57 FR 14782; 4/22/1992.
Tetramolopium arenarium	No common name	Wherever found	E	59 FR 10305; 3/4/1994.
Tetramolopium capillare	Pamakani	Wherever found	E	59 FR 49860; 9/30/1994, 50 CFR 17.99(e)(1)[CH].
Tetramolopium filiforme	No common name	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(i)[CH].
Tetramolopium lepidotum ssp. *lepidotum*.	No common name	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(i)[CH].
Tetramolopium remyi	No common name	Wherever found	E	56 FR 47686; 9/20/1991, 50 CFR 17.99(e)(1)[CH].
Tetramolopium rockii	No common name	Wherever found	T	57 FR 46325; 10/8/1992, 50 CFR 17.99(c)[CH].
Thalictrum cooleyi	Cooley's meadowrue	Wherever found	E	54 FR 5935; 2/7/1989.
Thelypodium howellii ssp. *spectabilis*.	Howell's spectacular thelypody	Wherever found	T	64 FR 28393; 5/26/1999.
Thelypodium stenopetalum	Slender-petaled mustard	Wherever found	E	49 FR 34497; 8/31/1984.
Thlaspi californicum	Kneeland Prairie penny-cress	Wherever found	E	65 FR 6332; 2/9/2000, 50 CFR 17.96(a)[CH].
Thymophylla tephroleuca	Ashy dogweed	Wherever found	E	49 FR 29232; 7/19/1984.
Thysanocarpus conchuliferus	Santa Cruz Island fringepod	Wherever found	E	62 FR 40954; 7/31/1997.
Tinospora homosepala	No common name	Wherever found	E	80 FR 59423; 10/1/2015.
Townsendia aprica	Last Chance townsendia	Wherever found	T	50 FR 33734; 8/21/1985.
Trematolobelia singularis	No common name	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].
Trichilia triacantha	Bariaco	Wherever found	E	53 FR 3565; 2/5/1988.
Trichostema austromontanum ssp. *compactum*.	Hidden Lake bluecurls	Wherever found	T	63 FR 49006; 9/14/1998.
Trifolium amoenum	Showy Indian clover	Wherever found	E	62 FR 54791; 10/22/1997.
Trifolium stoloniferum	Running buffalo clover	Wherever found	E	52 FR 21478; 6/5/1987.
Trifolium trichocalyx	Monterey clover	Wherever found	E	63 FR 43100; 8/12/1998.
Trillium persistens	Persistent trillium	Wherever found	E	43 FR 17910; 4/26/1978.
Trillium reliquum	Relict trillium	Wherever found	E	53 FR 10879; 4/4/1988.
Tuberolabium guamense	No common name	Wherever found	T	80 FR 59423; 10/1/2015.

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Tuctoria greenei	Greene's tuctoria	Wherever found	T	62 FR 14338; 3/26/1997, 50 CFR 17.96(a)[CH].
Tuctoria mucronata	Solano grass	Wherever found	T	43 FR 44810; 9/28/1978, 50 CFR 17.96(a)[CH].
Urera kaalae	Opuhe	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(i)[CH].
Varronia rupicola	No common name	Wherever found	T	79 FR 53303; 9/9/2014, 50 CFR 17.96(a)[CH].
Verbena californica	Red Hills vervain	Wherever found	T	63 FR 49006; 9/14/1998.
Verbesina dissita	Big-leaved crownbeard	Wherever found	T	61 FR 52370; 10/7/1996.
Vernonia proctorii	No common name	Wherever found	E	58 FR 25755; 4/27/1993.
Vicia menziesii	Hawaiian vetch	Wherever found	E	43 FR 17910; 4/26/1978.
Vigna o-wahuensis	No common name	Wherever found	E	59 FR 56333; 11/10/1994, 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(e)(2)[CH], 50 CFR 17.99(i)[CH], 50 CFR 17.99(c)[CH], 50 CFR 17.99(k)[CH].
Viola chamissoniana ssp. *chamissoniana*.	Pamakani	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(i)[CH].
Viola helenae	No common name	Wherever found	E	56 FR 47695; 9/20/1991, 50 CFR 17.99(a)(1)[CH].
Viola kauaiensis var. *wahiawaensis*.	Nani waialeale	Wherever found	E	61 FR 53070; 10/10/1996, 50 CFR 17.99(a)(1)[CH].
Viola lanaiensis	No common name	Wherever found	E	56 FR 47686; 9/20/1991.
Viola oahuensis	No common name	Wherever found	E	61 FR 53089; 10/10/1996, 50 CFR 17.99(i)[CH].
Warea amplexifolia	Wide-leaf warea	Wherever found	E	52 FR 15501; 4/29/1987.
Warea carteri	Carter's mustard	Wherever found	E	52 FR 2227; 1/21/1987.
Wikstroemia villosa	Akia	Wherever found	E	78 FR 32013; 5/28/2013, 50 CFR 17.99(e)(1)[CH].
Wilkesia hobdyi	Dwarfiliau	Wherever found	E	57 FR 27859; 6/22/1992, 50 CFR 17.99(a)(1)[CH].
Xylosma crenatum	No common name	Wherever found	E	57 FR 20580; 5/13/1992, 50 CFR 17.99(a)(1)[CH].
Xyris tennesseensis	Tennessee yellow-eyed grass	Wherever found	E	56 FR 34151; 7/26/1991.
Yermo xanthocephalus	Desert yellowhead	Wherever found	T	67 FR 11442; 3/14/2002, 50 CFR 17.96(a)[CH].
Zanthoxylum dipetalum var. tomentosum.	Ae	Wherever found	E	61 FR 53137; 10/10/1996, 50 CFR 17.99(k)[CH].
Zanthoxylum hawaiiense	Ae	Wherever found	E	59 FR 10305; 3/4/1994, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH].
Zanthoxylum oahuense	Ae	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Zanthoxylum thomasianum	St. Thomas prickly-ash	Wherever found	E	50 FR 51867; 12/20/1985.
Zizania texana	Texas wild-rice	Wherever found	E	43 FR 17910; 4/26/1978, 50 CFR 17.96(a)[CH].
Ziziphus celata	Florida ziziphus	Wherever found	E	54 FR 31190; 7/27/1989.
CONIFERS				
Abies guatemalensis	Guatemalan fir (=pinabete)	Wherever found	T	44 FR 65002; 11/8/1979.
Cupressus goveniana ssp. *goveniana*.	Gowen cypress	Wherever found	T	63 FR 43100; 8/12/1998.
Fitzroya cupressoides	Alerce or Chilean false larch	Wherever found	T	44 FR 64730; 11/7/1979.
Hesperocyparis abramsiana	Santa Cruz cypress	Wherever found	T	52 FR 675; 1/8/1987, 81 FR 8408; 2/19/2016.
Torreya taxifolia	Florida torreya	Wherever found	E	49 FR 2783; 1/23/1984.
FERNS AND ALLIES				
Adenophorus periens	Pendent kihi fern	Wherever found	E	59 FR 56333; 11/10/1994, 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(i)[CH], 50 CFR 17.99(k)[CH].
Adiantum vivesii	No common name	Wherever found	E	58 FR 32308; 6/9/1993.
Asplenium dielerectum	Asplenium-leaved diellia	Wherever found	E	59 FR 56333; 11/10/1994, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(i)[CH], 50 CFR 17.99(k)[CH].
Asplenium (=Diellia) dielfalcatum (=falcate).	No common name	Wherever found	E	56 FR 55770; 10/29/1991, 50 CFR 17.99(i)[CH].

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
Asplenium (=Diellia) dielmannii (=mannii).	No common name	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Asplenium (=Diellia) dielpallicum (=pallida).	No common name	Wherever found	E	59 FR 9304; 2/25/1994, 50 CFR 17.99(a)(1)[CH].
Asplenium peruvianum var. *insulare.*	No common name	Wherever found	E	59 FR 49025; 9/26/1994, 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(k)[CH].
Asplenium scolopendrium var. *americanum.*	American hart's-tongue fern	Wherever found	T	54 FR 29726; 7/14/1989.
Asplenium (=Diellia) unisorum (=unisora).	No common name	Wherever found	E	59 FR 32932; 6/27/1994, 50 CFR 17.99(i)[CH].
Ctenitis squamigera	Pauoa	Wherever found	E	59 FR 49025; 9/26/1994, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(i)[CH].
Cyathea dryopteroides	Elfin tree fern	Wherever found	E	52 FR 22936; 6/16/1987.
Diplazium molokaiense	No common name	Wherever found	E	59 FR 49025; 9/26/1994, 50 CFR 17.99(a)(1)[CH], 50 CFR 17.99(c)[CH], 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(i)[CH].
Doryopteris angelica	No common name	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Doryopteris takeuchii	No common name	Wherever found	E	77 FR 57647; 9/18/2012, 50 CFR 17.99(i)[CH].
Dryopteris crinalis var. *podosorus.*	Palapalai aumakua	Wherever found	E	75 FR 18960; 4/13/2010, 50 CFR 17.99(a)[CH].
Elaphoglossum serpens	None	Wherever found	E	58 FR 32308; 6/9/1993.
Huperzia mannii	Wawae'iole	Wherever found	E	57 FR 20772; 5/15/1992, 50 CFR 17.99(e)(1)[CH].
Huperzia nutans	Wawaeiole	Wherever found	E	57 FR 20772; 5/15/1992, 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(i)[CH].
Isoetes louisianensis	Louisiana quillwort	Wherever found	E	57 FR 48741; 10/28/1992.
Isoetes melanospora	Black-spored quillwort	Wherever found	E	53 FR 3560; 2/5/1988.
Isoetes tegetiformans	Mat-forming quillwort	Wherever found	E	53 FR 3560; 2/5/1988.
Marsilea villosa	Ihiihi	Wherever found	E	57 FR 27863; 6/22/1992, 50 CFR 17.99(c)[CH], 50 CFR 17.99(i)[CH].
Polystichum aleuticum	Aleutian shield-fern	Wherever found	E	53 FR 4626; 2/17/1988.
Polystichum calderonense	No common name	Wherever found	E	58 FR 32308; 6/9/1993.
Pteris lidgatei	No common name	Wherever found	E	59 FR 49025; 9/26/1994, 50 CFR 17.99(e)(1)[CH], 50 CFR 17.99(i)[CH], 50 CFR 17.99(c)[CH].
Tectaria estremerana	No common name	Wherever found	E	58 FR 32308; 6/9/1993.
Thelypteris inabonensis	No common name	Wherever found	E	58 FR 35887; 7/2/1993.
Thelypteris pilosa var. *alabamensis.*	Alabama streak-sorus fern	Wherever found	T	57 FR 30164; 7/8/1992.
Thelypteris verecunda	No common name	Wherever found	E	58 FR 35887; 7/2/1993.
Thelypteris yaucoensis	No common name	Wherever found	E	58 FR 35887; 7/2/1993.
*Trichomanes punctatum*ssp. *floridanum.*	Florida bristle fern	Wherever found	E	80 FR 60439; 10/6/2015.
LICHENS				
Cladonia perforata	Florida perforate cladonia	Wherever found	E	58 FR 25746; 4/27/1993.
Gymnoderma lineare	Rock gnome lichen	Wherever found	E	60 FR 3557; 1/18/1995.

§ 17.50 [Amended]

■ 4. Revise § 17.50 by removing the three examples at the end of the section.

■ 5. In § 17.52, revise the introductory text to read as follows:

§ 17.52 Permits—similarity of appearance.

Upon receipt of a complete application and unless otherwise indicated in a rule found at §§ 17.40 through 17.48, §§ 17.73 through 17.78, or §§ 17.84 through 17.86, the Director may issue permits for any activity otherwise prohibited with a species designated as endangered or threatened due to its similarity of appearance. Such a permit may authorize a single transaction, a series of transactions, or a number of activities over a specified period of time.

* * * * *

Dated: June 28, 2016.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–17322 Filed 8–3–16; 8:45 am]

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Part III

Securities and Exchange Commission

17 CFR Parts 210, 229, 230, 240, *et al.*
Disclosure Update and Simplification; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 230, 239, 240, 249, and 274

[Release No. 33–10110; 34–78310; IC–32175; File No. S7–15–16]

RIN 3235–AL82

Disclosure Update and Simplification

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to certain of our disclosure requirements that may have become redundant, duplicative, overlapping, outdated, or superseded, in light of other Commission disclosure requirements, U.S. Generally Accepted Accounting Principles (''U.S. GAAP''), International Financial Reporting Standards (''IFRS''), or changes in the information environment. We are also soliciting comment on certain Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP to determine whether to retain, modify, eliminate, or refer them to the Financial Accounting Standards Board (''FASB'') for potential incorporation into U.S. GAAP. The proposed amendments are intended to facilitate the disclosure of information to investors, while simplifying compliance efforts, without significantly altering the total mix of information provided to investors. These proposals are part of an initiative by the Division of Corporation Finance to review disclosure requirements applicable to issuers to consider ways to improve the requirements for the benefit of investors and issuers. We are also issuing these proposals as part of our efforts to implement title LXXII, section 72002(2) of the Fixing America's Surface Transportation Act.

DATES: Comments should be received on or before October 3, 2016.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–15–16 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–15–16. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the SEC's Web site. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Nili Shah, Deputy Chief Accountant, at (202) 551–3255, Division of Corporation Finance; Duc Dang, Senior Special Counsel, at (202) 551–3386, Office of the Chief Accountant; Matt Giordano, Chief Accountant, at (202) 551–6918, Division of Investment Management; Valentina Minak Deng, Special Counsel, at (202) 551–5778 and Tim White, Special Counsel, at (202) 551–5777, Division of Trading and Markets; Harriet Orol, Branch Chief, at (212) 336–0554, Office of Credit Ratings; Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to, or soliciting comment on potential FASB referrals of, Rules 1–02, 2–01, 2–02, 3–01, 3–02, 3–03, 3–04, 3–05, 3–12, 3–14, 3–15, 3–17, 3–20, 3A–01, 3A–02, 3A–03, 3A–04, 4–01, 4–07, 4–08, 4–10, 5–02, 5–03, 5–04, 6–03, 6–04, 6–07, 6–09, 6A–04, 6A–05, 7–02, 7–03, 7–04, 7–05, 8–01, 8–02, 8–03, 8–04, 8–05, 8–06, 9–03, 9–04, 9–05, 9–06, 10–01, 11–02, 11–03, 12–16, 12–17, 12–18, 12–28, and 12–29 of Regulation S–X under the Securities Act of 1933 (the ''Securities Act'') and the Securities Exchange Act of 1934 (the ''Exchange Act''), Items 10, 101, 103, 201, 302, 303, 503, 512, and 601 of Regulation S–K under the Securities Act and the Exchange Act, Item 1010 of Regulation M–A under the Securities Act and the Exchange Act, and Item 1118 of Regulation AB under the Securities Act and the Exchange Act, Rule 158 of the Securities Act, Rules 405 and 436 of Regulation C under the Securities Act, Forms S–1, S–3, S–11, S–4, F–1, F–3, F–4, F–6, F–7, F–8, F–10, F–80, SF–1, SF–3, 1–A, 1–K, and 1–SA under the Securities Act, Rules 3a51–1, 10A–1, 12b–2, 13a–10, 13b2–2, 14a–101, 15c3–1g, 15d–2, 15d–10, 17a–5, 17a–12, 17g–3, and 17h–1T of the Exchange Act, Forms 20–F, 40–F, 10–K, 11–K, 10–D, and X–17A–5 under the Exchange Act, Forms N–5, N–1A, N–2, N–3, N–4, and N–6 under the Securities Act and the Investment Company Act of 1940 (the ''Investment Company Act''), and Form N–8B–2 under the Investment Company Act.

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I. Introduction

A. Objective

We are proposing amendments to certain of our disclosure requirements that may have become redundant, duplicative, overlapping, outdated, or superseded, in light of other Commission disclosure requirements, U.S. GAAP, IFRS, or changes in the information environment. As discussed further below, the proposed amendments are a result of the Division of Corporation Finance's Disclosure Effectiveness Initiative and part of our efforts to implement title LXXII, section 72002(2) of the Fixing America's Surface Transportation Act [1] (the ''FAST Act''). We are also soliciting comment on certain Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP [2] to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP.[3] The proposals are intended to facilitate the disclosure of information to investors, while simplifying compliance efforts, without significantly altering the total mix of information provided to investors.[4]

This release is part of a comprehensive evaluation of the Commission's disclosure requirements recommended in the staff's *Report on Review of Disclosure Requirements in Regulation S–K* (''S–K Study''),[5] which was mandated by section 108 of the Jumpstart Our Business Startups Act.[6] Based on the S–K Study's recommendation and at the request of the Commission Chair, the Commission staff initiated a comprehensive evaluation of the type of information our rules require issuers to disclose, how this information is presented, where and how this information is disclosed, and how we can better leverage technology as part of these efforts (''Disclosure Effectiveness Initiative''). The overall objective of the Disclosure Effectiveness Initiative is to improve our disclosure regime for both investors and issuers. This initiative

[1] Public Law 114–94.

[2] In this release, we refer to such requirements as ''incremental'' Commission disclosure requirements.

[3] We refer to the proposed amendments and this additional comment solicitation collectively as ''proposals.''

[4] The Supreme Court in *TSC* v. *Northway* held that a fact is material if there is ''a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.'' *See* TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976).

[5] *Report on Review of Disclosure Requirements in Regulation S–K* (Dec. 2013), available at *http://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf*. Comment letters are available at *http://www.sec.gov/comments/jobs-title-i/reviewreg-sk/reviewreg-sk.shtml*.

[6] Jumpstart Our Business Startups Act, Public Law 112–106, 126 Stat. 306 (2012).

may result in the addition,[7] revision,[8] or elimination [9] of certain disclosure requirements and seeks input on how potential changes might affect investors, issuers, efficiency, competition, and capital formation.

In connection with the Disclosure Effectiveness Initiative, the Commission staff requested public input.[10] In a separate concept release,[11] we are seeking public comment on modernizing certain business and financial disclosure requirements in Regulation S–K. We have also separately requested comment [12] on the financial disclosure requirements in Regulation S–X for certain entities other than the issuer. In addition, we have requested comment on the proposed rules to modernize the disclosure requirements for mining properties.[13]

We are also issuing this release as part of our effort to implement title LXXII, section 72002(2) of the FAST Act, which, among other things, requires the Commission to eliminate provisions of Regulation S–K that are duplicative, overlapping, outdated, or unnecessary.

B. Scope of Proposals

The proposals, if adopted, would affect a variety of entities we regulate in different ways, as discussed below. For ease of discussion, throughout this release, we refer to the affected entities as issuers. The requirements under discussion may apply to entities other than issuers or to subsets of issuers and, thus, should be referenced for their specific scope. Entities other than issuers include significant acquirees for which financial statements are required under Rule 3–05 of Regulation S–X,[14] significant equity method investments for which financial statements are required under Rule 3–09 of Regulation S–X,[15] broker-dealers, and nationally recognized statistical rating organizations (''NRSROs'').

1. Issuers With Offerings Registered Under the Securities Act and Securities Registered Under the Exchange Act

Because the proposals affect issuers filing forms prescribed under the Securities Act and the Exchange Act differently, our discussion is tailored accordingly. Our references to domestic issuers encompass large accelerated filers,[16] accelerated filers,[17] and non-accelerated filers,[18] as well as emerging growth companies [19] (''EGCs'') and smaller reporting companies [20] (''SRCs''). In this release, we have highlighted the Commission disclosure requirements that affect SRCs differently from non-SRCs. Our references to foreign private issuers [21] encompass large accelerated filers, accelerated filers, and non-accelerated filers, as well as EGCs.[22] More specifically:

- Proposals involving Regulation S–K relate only to domestic issuers [23] and foreign private issuers that elect to file on forms used by domestic issuers.
- Proposals involving Regulation S–X generally relate only to domestic issuers and foreign private issuers that report under U.S. GAAP or a comprehensive body of accounting principles other than U.S. GAAP or IFRS as issued by the International Accounting Standards Board (''IASB'') [24] with a reconciliation to U.S. GAAP.[25]
- Proposals involving Commission forms relate to either domestic issuers or

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[7] For example, in this release, we propose to require disclosure of changes in stockholders' equity and dividends per share for each class of shares, rather than only for common stock in interim periods (please refer to sections III.C.16 and V.B.5), an issuer's Web site address (please refer to section IV.B.3), and the ticker symbol of their common equity that is publicly traded (please refer to section IV.B.4). We also propose to change the threshold at which disclosures on dividend restrictions are provided in the audited financial statements, which may result in additional disclosures subject to audit, internal control over financial reporting, and XBRL tagging (please refer to section III.D.2).

[8] For example, in this release, please refer to our proposals in section III.D. on overlapping requirements proposed for integration, section IV on outdated requirements, and section V on superseded requirements.

[9] For example, in this release, please refer to our proposals in section II on redundant or duplicative requirements, section III.C on overlapping requirements proposed for deletion, section IV on outdated requirements, and section V on superseded requirements.

[10] *See* Request for Public Comment at *http://www.sec.gov/spotlight/disclosure-effectiveness.shtml* and comment letters at *http://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness.shtml.*

[11] *Business and Financial Disclosure Required by Regulation S–K,* Release No. 33–10064 (Apr. 13, 2016) [81 FR 23915] (''S–K Concept Release''). *See* comment letters at *http://www.sec.gov/comments/s7-06-16/s70616.htm.*

[12] *Request for Comment on the Effectiveness of Financial Disclosures About Entities Other than the Registrant,* Release No. 33–9929 (Sept. 25, 2015) [80 FR 59083] (''Regulation S–X Request for Comment''). *See* comment letters at *http://www.sec.gov/comments/s7-20-15/s72015.shtml.*

[13] *Modernization of Property Disclosures for Mining Registrants,* Release No. 33–10098 (June 16, 2016) [81 FR 41651].

[14] 17 CFR 210.3–05.

[15] 17 CFR 210.3–09.

[16] Under Exchange Act Rule 12b–2 [17 CFR 240.12b–2], a large accelerated filer is an issuer with an aggregate worldwide market value of voting and non-voting common equity held by its non-affiliates of $700 million or more, as of the last business day of its most recently completed second fiscal quarter. In addition, the issuer needs to have been subject to reporting requirements for at least twelve calendar months, have filed at least one annual report, and not be eligible to use the requirements for smaller reporting companies for its annual and quarterly reports.

[17] Under Exchange Act Rule 12b–2, an accelerated filer is an issuer with an aggregate worldwide market value of voting and non-voting common equity held by its non-affiliates of $75 million or more, but less than $700 million, as of the last business day of its most recently completed second fiscal quarter. In addition, the issuer needs to have been subject to reporting requirements for at least twelve calendar months, have filed at least one annual report, and not be eligible to use the requirements for smaller reporting companies for its annual and quarterly reports.

[18] Although the term ''non-accelerated filer'' is not defined in Commission rules, we use it throughout this release to refer to a reporting company that does not meet the definition of either an ''accelerated filer'' or a ''large accelerated filer'' under Exchange Act Rule 12b–2.

[19] An EGC is defined in section 2(a)(19) of the Securities Act [15 U.S.C. 77b(a)(19)] and section 3(a)(80) of the Exchange Act [15 U.S.C. 78c(a)(80)] to mean an issuer with less than $1 billion in total annual gross revenues during its most recently completed fiscal year. If an issuer qualifies as an EGC on the first day of its fiscal year, it maintains that status until the earliest of (1) the last day of the fiscal year of the issuer during which it has total annual gross revenues of $1 billion or more; (2) the last day of its fiscal year following the fifth anniversary of the first sale of its common equity securities pursuant to an effective registration statement; (3) the date on which the issuer has, during the previous 3-year period, issued more than $1 billion in non-convertible debt; or (4) the date on which the issuer is deemed to be a ''large accelerated filer'' (as defined in Exchange Act Rule 12b–2).

[20] SRC is defined to mean an issuer that had a public float of less than $75 million as of the last business day of its most recently completed second fiscal quarter or had annual revenues of less than $50 million during the most recently completed fiscal year for which audited financial statements are available. *See* Rule 405 of Regulation C [17 CFR 230.405], Rule 12b–2 of the Exchange Act, and Item 10(f) of Regulation S–K [17 CFR 229.10(f)].

The Commission has proposed to amend this definition. Under the proposed amendments, the $75 million public float threshold would be increased to $250 million and the $50 million revenue threshold would be increased to $100 million. *See Amendments to Smaller Reporting Company Definition,* Release No. 33–10107 (Jun. 27, 2016) [81 FR 43130].

[21] *See* Rule 405 of Regulation C and Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)]. A foreign private issuer is any foreign issuer other than a foreign government, except for an issuer that has more than 50 percent of its outstanding voting securities held of record by U.S. residents and any of the following: A majority of its officers or directors are citizens or residents of the United States; more than 50 percent of its assets are located in the United States; or its business is principally administered in the United States.

[22] Foreign private issuers may only use the scaled rules available to SRCs if they file on domestic forms under U.S. GAAP. *See* Rule 8–01 of Regulation S–X [17 CFR 210.8–01]. The proposals affect these SRCs in the same ways as domestic SRC issuers.

[23] Domestic issuers include foreign issuers that do not meet the definition of foreign private issuer.

[24] Throughout this release, we refer to a comprehensive body of accounting principles other than U.S. GAAP or IFRS as ''Another Comprehensive Body of Accounting Principles.''

[25] Foreign private issuers that report under IFRS must comply with the IFRS requirements for the form and content of financial statements, rather than with the specific presentation and disclosure provisions in Articles 3A, 4, 5, 6, 6A, 7, 8, 9, 10, and certain parts of Article 3 of Regulation S–X. Where a proposal on Regulation S–X also affects foreign private issuers that report under IFRS, we discuss both U.S. GAAP and IFRS.

foreign private issuers, depending on the form under discussion. For example, proposed amendments to the ''F'' series of forms [26] only affect foreign private issuers. Because foreign private issuers may report under U.S. GAAP, Another Comprehensive Body of Accounting Principles with a reconciliation to U.S. GAAP, or IFRS, discussion of proposals involving F-forms includes consideration of both U.S. GAAP and IFRS, where applicable.

Some of the proposals also affect asset-backed issuers.[27]

2. Issuers Offering Securities Under Regulation A

Some of our proposals affect Regulation A issuers, as follows: [28]

- Proposals involving Regulation S–K would affect Regulation A issuers that provide narrative disclosure that follows Part I of Form S–1 [29] or Part I of Form S–11 [30] in Part II of Form 1–A.[31]
- Proposals involving Rule 4–10,[32] Rule 8–04,[33] Rule 8–05,[34] and Rule 8–06 [35] of Regulation S–X would affect all Regulation A issuers. Proposals involving Rule 8–03(a) [36] of Regulation S–X would affect all Regulation A issuers that report under U.S. GAAP. Proposals involving the remaining rules in Article 8 of Regulation S–X would affect only Regulation A issuers in a Tier 2 offering that report under U.S. GAAP. No other proposals involving Regulation S–X would affect Regulation A issuers.
- Proposals involving Regulation A forms may affect issuers that report under U.S. GAAP or Canadian issuers that report under IFRS.[37] For this reason, discussion of proposals affecting these forms includes consideration of both U.S. GAAP and IFRS, where applicable.

In this release, we have highlighted the Commission disclosure requirements that affect Regulation A issuers.[38]

We are also soliciting comment on certain Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP. As discussed in section III.E, we are not proposing amendments to this category of disclosure requirements in this release. Rather, the comments received in response to this release may inform both potential future Commission rulemaking and FASB standard-setting activities. One potential outcome of this feedback is a referral of these incremental requirements to the FASB for potential incorporation into U.S. GAAP.[39] A referral alone would have no effect on issuers. Any changes to U.S. GAAP that may result from such a referral would be subject to FASB's standard-setting process, as discussed below, and would potentially affect all entities that report under U.S. GAAP, including crowdfunding issuers and those outside the scope of our regulatory authority.

3. Issuers Regulated Under the Investment Company Act

Certain proposals affect requirements applicable to issuers regulated under the Investment Company Act, as follows:

- Proposals involving Regulation S–K would affect business development companies to which the regulation applies.
- Proposals involving Regulation S–X would affect investment companies to which the regulation applies.
- Proposals involving Investment Company Act forms may affect investment companies, depending on the form in question.

4. Other Entities

Certain proposals also affect requirements applicable to registered broker-dealers, investment advisors, and NRSROs.

C. FASB-Related Considerations

1. Role of the FASB

The federal securities laws set forth the Commission's broad authority and responsibility to prescribe the methods to be followed in the preparation of accounts and the form and content of financial statements to be filed under those laws,[40] as well as its responsibility to ensure that investors are furnished with other information necessary for investment decisions.[41] To assist it in meeting this responsibility, the Commission historically has looked to private-sector standard-setting bodies designated by the accounting profession to develop accounting principles and standards.[42] At the time of the FASB's formation in 1973, the Commission reexamined its policy and formally recognized pronouncements of the FASB that establish and amend accounting principles and standards as ''authoritative'' in the absence of any contrary determination by the Commission.[43] The Commission concluded at that time that the expertise and resources that the private sector could offer to the process of setting accounting standards would be beneficial to investors.

The Sarbanes-Oxley Act of 2002 [44] (''Sarbanes-Oxley Act'') established criteria that must be met in order for the work product of an accounting standard-setting body to be recognized as ''generally accepted.'' [45] In accordance with these criteria, the Commission has designated the FASB as the private-sector accounting standard setter for U.S. financial reporting

[26] For example, these forms include Forms F–1 [17 CFR 239.31], F–3 [17 CFR 239.33], F–4 [17 CFR 239.34], and 20–F [17 CFR 249.220f].

[27] ''Asset-backed issuer'' is defined in Item 1101(b) of Regulation AB [17 CFR 229.1101(b)]. *See* the proposals regarding: (1) Invitations for competitive bids discussed in section III.C.19, (2) available information discussed in section IV.B.3, (3) matters submitted to a vote of security holders discussed in section V.B.15, and (4) incorrect references in General Instruction J(1)(e) to Form 10–K discussed in section V.B.18.

[28] *See* Rules 251–263 of Regulation A [17 CFR 230.251–230.263]. A Tier 1 offering under Regulation A limits the sum of the aggregate offering price and the aggregate sales within 12 months before the start of the offering to $20 million. Rule 251(a)(1) of Regulation A. A Tier 1 offering also limits sales by affiliated selling security holders to $6 million. A Tier 2 offering under Regulation A limits the sum of the aggregate offering price and the aggregate sales to $50 million and limits the amount offered by affiliated selling security holders to $15 million. Rule 251(a)(2) of Regulation A.

[29] 17 CFR 239.11.

[30] 17 CFR 239.18.

[31] 17 CFR 239.90.

[32] 17 CFR 210.4–10.

[33] 17 CFR 210.8–04.

[34] 17 CFR 210.8–05.

[35] 17 CFR 210.8–06.

[36] 17 CFR 210.8–03(a).

[37] Only U.S. and Canadian issuers may rely on Regulation A and use Form 1–A. *See* Rule 251(b)(1) of Regulation A [17 CFR 230.251(b)(1)]. U.S. issuers must report under U.S. GAAP. Canadian issuers may report under U.S. GAAP or IFRS. *See* paragraph (a)(2) of Part F/S of Form 1–A [17 CFR 239.90], Item 7(b) of Form 1–K [17 CFR 239.91], and Item 3 of Form 1–SA [17 CFR 239.92].

[38] Statements about the effect of a proposal on Regulation A issuers throughout this release reflect that the form and content requirements in Regulation S–X do not apply to Canadian Regulation A issuers that report under IFRS. Please refer to section V.B.17.

[39] The IASB, which is subject to oversight by the IFRS Foundation, is responsible for IFRS and establishes its own standard-setting agenda. For further information, see *http://www.ifrs.org/About-us/Pages/IFRS-Foundation-and-IASB.aspx.*

[40] *See, e.g.,* sections 7 [15 U.S.C. 77g], 19(a) [15 U.S.C. 77s(a)] and Schedule A, Items (25) and (26) of the Securities Act [15 U.S.C. 77aa(25) and (26)]; sections 3(b) [15 U.S.C. 78c(b)], 12(b) [17 CFR 78l(b)] and 13(b) [17 CFR 78m(b)] of the Exchange Act; and sections 8 [15 U.S.C. 80a–8], 30(e) [15 U.S.C. 80a–29(e)], 31 [15 U.S.C. 80a–30], and 38(a) [15 U.S.C. 80a–37(a)] of the Investment Company Act.

[41] *See Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter,* Release No. 33–8221 (Apr. 25, 2003) [68 FR 23333], available at *http://www.sec.gov/rules/policy/33-8221.htm* (''2003 FASB Policy Statement'').

[42] *Id.*

[43] *See* Accounting Series Release No. 150 (Dec. 20, 1973).

[44] Pub. L. 107–204, 116 Stat. 745 (2002)

[45] *See* section 19 of the Securities Act [15 U.S.C. 77s].

purposes.[46] As required under the securities laws, including the Sarbanes-Oxley Act, the Commission monitors the FASB's ongoing compliance with the expectations and views expressed in the 2003 FASB Policy Statement.

As the designated private-sector accounting standard setter in the United States, the FASB seeks to undertake a transparent, public standard-setting process.[47]

2. Interaction of Commission Disclosure Requirements and U.S. GAAP

Although the FASB functions as the designated private-sector accounting standard setter in the United States, some Commission rules contain accounting and disclosure requirements. In some cases, these Commission requirements mandate disclosures which the FASB later added to U.S. GAAP.[48] Other Commission disclosure requirements include concepts that have been superseded by U.S. GAAP.[49] From time to time, the Commission has reviewed and amended its disclosure requirements to eliminate rules that became redundant, duplicative, or overlapping as the FASB updated U.S. GAAP.[50] In keeping with this historical practice, many of the proposed amendments revise or eliminate Commission disclosure requirements related to information that is addressed by more recently updated U.S. GAAP requirements.

In addition, a number of Commission disclosure requirements are related, but require information that is incremental, to U.S. GAAP. In this release, we solicit comment on certain of those incremental Commission disclosure requirements to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP.[51] The comments received in response to this release may inform both potential future Commission rulemaking and FASB standard-setting activities. Future amendments to these Commission disclosure requirements may depend on the outcome of any FASB's standard-setting activities to address the disclosure requirements. Our staff has discussed these requirements with the FASB staff.

3. Current FASB Projects Concerning the Application of U.S. GAAP

The FASB maintains U.S. GAAP by updating it from time to time through its standard-setting projects. Among a number of projects on the FASB's agenda, there are two current standard-setting projects that we invite commenters to consider when evaluating the proposals and providing feedback.[52] In one project,[53] the FASB has proposed amendments, which, among other things,[54] would clarify that with respect to disclosures in the notes to the financial statements an omission of immaterial information is not an accounting error.[55]

In the other project, the FASB is addressing disclosures in interim reports. The FASB has reached a tentative decision that disclosures about matters required to be provided in annual financial statements should be updated in the interim report if there is a substantial likelihood that the updated information would be viewed by a reasonable investor as significantly altering the total mix of information available to the investor.[56]

Both projects are subject to further stakeholder comment and FASB deliberation. If we ultimately decide to eliminate or revise certain of our disclosure requirements on the basis that U.S. GAAP requires the same or similar disclosure, these projects, if finalized, may impact certain disclosures currently provided under Commission disclosure requirements that we propose to eliminate or amend. In particular, for information currently provided under Commission rules that do not contain a specified disclosure threshold, investors may receive less information if such information is only required by U.S. GAAP and the issuer determines that the information is not material. Throughout this release, we identify those Commission disclosure requirements that contemplate a disclosure threshold in some manner, for example, through the use of terms such as ''material'' or ''significant'' or through the use of bright line disclosure thresholds.

Request for Comment

1. Would the FASB's projects discussed above affect our: (1) Proposed amendments to eliminate certain Commission disclosure requirements due to a U.S. GAAP requirement or (2) potential referrals to the FASB of certain Commission disclosure requirements? If so, how?

2. Would the information provided to investors in the notes to the financial statements change if the source of the disclosure requirement (*i.e.,* Commission rule or U.S. GAAP) changed? If so, how and why?

3. Do the other proposed amendments within the FASB Exposure Draft related to notes to the financial statements [57] impact the proposals made in this release? If so, how?

II. Redundant or Duplicative Requirements

A. Background

In reviewing our disclosure requirements, we have preliminarily identified a number of requirements that require substantially the same disclosures as U.S. GAAP, IFRS, or other Commission disclosure requirements. We propose to eliminate these redundant or duplicative Commission disclosure requirements to

[46] Section 108 of the Sarbanes-Oxley Act amended section 19 of the Securities Act to provide that the Commission ''may recognize, as 'generally accepted' for purposes of the securities laws, any accounting principles established by a standard setting body that met certain criteria.'' The Commission has determined that the FASB satisfies the criteria in section 19 and, accordingly, the FASB's financial accounting and reporting standards are recognized as ''generally accepted'' for purposes of the federal securities laws. *See* 2003 FASB Policy Statement.

[47] *See http://www.fasb.org/jsp/FASB/Page/SectionPage&cid=1351027215692. See* also pages 2 and 5 of the FASB Rules of Procedures, available at *http://www.fasb.org/cs/ContentServer?c=Document_C&pagename=FASB%2FDocument_C%2FDocumentPage&cid=1176162391050.*

[48] *See, e.g.,* Rule 4–08(h) of Regulation S–X [17 CFR 210.4–08(h)], parts of which were subsequently incorporated into U.S. GAAP.

[49] *See, e.g.,* Rule 10–01(a)(7) of Regulation S–X [17 CFR 210.10–01(a)(7)], which refers to the disclosures required by ASC 915 on development stage entities, which the FASB has since eliminated.

[50] *See, e.g., General Revision of Regulation S–X,* Release No. 33–6233 (Sept. 2, 1980) [45 FR 63660], *Phase One Recommendations of Task Force on Disclosure Simplification* Release No. 33–7300 (May 31, 1996) [61 FR 30397], and *Technical Amendments to Rules, Forms, Schedules, and Codification of Financial Reporting Policies,* Release No. 33–9026, (Apr. 15, 2009) [74 FR 18612].

[51] The incorporation of incremental Commission disclosure requirements into U.S. GAAP may streamline disclosures for investors and simplify requirements for issuers.

[52] The FASB also has other standard-setting projects underway that may affect specific topics within this release. Those projects are identified in the discussion of the specific topics they affect.

[53] FASB Exposure Draft, *Notes to Financial Statements (Topic 235): Assessing Whether Disclosures Are Material* (Sept. 24, 2015), available at: *http://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176166402325&acceptedDisclaimer=true.*

[54] Among the other proposed amendments is an amendment related to the legal concept of materiality. Commenters have expressed a range of views on the proposed amendments and their potential impact on the volume of financial disclosures. The comment letters are available at: *http://www.fasb.org/jsp/FASB/CommentLetter_C/CommentLetterPage&cid=1218220137090&project_id=2015-310.*

[55] In 2014, the IASB amended IFRS to clarify that an entity does not have to disclose information required by IFRS if that information would not be material. *See Disclosure Initiative (Amendments to IAS 1).*

[56] *See* Minutes from FASB Board Meeting (May 29, 2014), available at: *http://www.fasb.org/jsp/FASB/FASBContent_C/ProjectUpdatePage&cid=1176164227056.*

[57] *See supra* note 53 and 54.

simplify issuer compliance efforts while providing substantially the same information to investors.[58]

The table in section II.B below describes each redundant or duplicative requirement that we propose to eliminate and identifies the corresponding U.S. GAAP, IFRS, or Commission disclosure requirement that requires substantially the same information.

B. Proposed Amendments

Commission disclosure requirement proposed for elimination	Description of Commission disclosure requirement proposed for elimination	Corresponding U.S. GAAP, IFRS,[59] or Commission disclosure requirement
1. Foreign Currency		
Third sentence of Rule 3–20(d) of Regulation S–X.[60]	Defines: (1) The currency of an operation's primary economic environment and (2) a hyperinflationary environment.	Accounting Standards Codification (''ASC'') 830–10–45–2, ASC 830–10–45–12, and ASC 830–10–55–10.
Last sentence of Rule 3–20(d) of Regulation S–X.	States that foreign private issuers must comply with Item 17(c)(2) of Form 20–F,[61] which requires disclosure and quantification of departures from the methodology of this rule if their financial statements are prepared on a basis other than U.S. GAAP or IFRS.	Item 17(c)(2) of Form 20–F. Also Item 4 of Form F–1, General Instructions I.B of Form F–3, and Items 11, 12, and 13 of Form F–4, which indirectly refer to Item 17 of Form 20–F.
2. Consolidation[62]		
Rule 4–08(a) of Regulation S–X[63]	Requires compliance with Article 3A	Article 3A[64] itself requires compliance. The requirement is repeated in Rule 4–08(a).
Rule 3A–01 of Regulation S–X[65]	States subject matter of Article 3A	The same information is set forth in the title of Article 3A.
All except fourth sentence of Rule 3A–02(b)(1) of Regulation S–X.[66]	Permits consolidation of an entity's financial statements for its fiscal period if the period does not differ from that of the issuer by more than 93 days[67] and requires recognition by disclosure or otherwise of material intervening events.	ASC 810–10–45–12.
First sentence of Rule 3A–02(d) of Regulation S–X.[68]	Requires consideration of the propriety of consolidation under certain restrictions.[69]	ASC 810–10–15–10.
Last two sentences of first paragraph of Rule 3A–02 of Regulation S–X[70] and 3A–03(a) of Regulation S–X[71].	Requires disclosure of the accounting policies followed in consolidation or combination[72].	ASC 235–10–50–1 and ASC 810–10–50–1.
First sentence of Rule 3A–04 of Regulation S–X.[73]	Requires elimination of intercompany transactions.	ASC 323–10–35–5a and ASC 810–10–45.
3. Obligations[74]		
Reference to issuances in Rule 4–08(f) of Regulation S–X.[75]	Requires disclosure of significant changes[76] in issued amounts of debt subsequent to the latest balance sheet date.	ASC 855–10–50–2 and 855–10–55–2a.
4. Income Tax Disclosures[77]		
First sentence of Rule 4–08(h)(2) of Regulation S–X.[78]	Requires an income tax rate reconciliation	ASC 740–10–50–12.
Fourth sentence of Rule 4–08(h)(2) of Regulation S–X.	Permits the income tax rate reconciliation to be presented in either percentages or dollars.	ASC 740–10–50–12.

[58] Some proposed amendments, however, may be affected by certain FASB projects, as discussed in section I.C.3.

[59] Where a Commission disclosure requirement proposed for elimination does not apply to foreign private issuers that report under IFRS, the proposed change would not result in a change to the requirements for foreign private issuers and we do not identify a corresponding IFRS requirement. *See supra* note 25.

[60] 17 CFR 210.3–20(d).

[61] 17 CFR 249.220f.

[62] Please refer to the related discussions in sections III.C.2, III.E.2, and V.B.4.

[63] 17 CFR 210.4.08(a).

[64] 17 CFR 210.3A–01 through 210.3A–04.

[65] 17 CFR 210.3A–01.

[66] 17 CFR 210.3A–02(b)(1).

[67] ASC 810–10–45–12 uses the phrase ''about three months.''

[68] 17 CFR 210.3A–02(d).

[69] Rule 3A–02(d) requires due consideration of the propriety of consolidation in the presence of political, economic, or currency restrictions. ASC 810–10–15–10 states that subsidiaries shall not be consolidated in the presence of foreign exchange restrictions, controls, or other governmentally imposed uncertainties so severe that they cast significant doubt on the parent's ability to control the subsidiary.

[70] 17 CFR 210.3A–02.

[71] 17 CFR 210.3A–03(a).

[72] Rule 3A–02 states that the accounting policy disclosure should also include the circumstances associated with any departure from the normal practice of consolidating majority owned subsidiaries and not consolidating entities that are not majority owned. ASC 235–10–50–1 states that the accounting disclosure shall encompass important judgments about the appropriateness of accounting principles and unusual or innovative applications of U.S. GAAP.

[73] 17 CFR 210.3A–04.

[74] Please refer to the related discussion in section III.E.5.

[75] 17 CFR 210.4–08(f).

[76] ASC 855–10–50–2 requires disclosure of events subsequent to the balance sheet date that are of such a nature that non-disclosure would render the financial statements misleading. ASC 855–10–55–2a provides that the sale of a bond subsequent to the balance sheet date is an example of such a subsequent event.

[77] Please refer to the related discussions in sections III.E.7 and IV.B.2.

[78] 17 CFR 210.4–08(h)(2).

Commission disclosure requirement proposed for elimination	Description of Commission disclosure requirement proposed for elimination	Corresponding U.S. GAAP, IFRS,[59] or Commission disclosure requirement
5. Warrants, Rights, and Convertible Instruments[79]		
Rule 4–08(i) of Regulation S–X[80]	Requires disclosure of the title and amount of securities subject to warrants or rights, the exercise price, and the exercise period.[81]	Non-compensatory warrants or rights: ASC 505–10–50–3 and ASC 815–40–50–5. Compensatory warrants or rights: ASC 505–10–50–3, ASC 718–10–50–1, and ASC 718–10–50–2.
6. Related Parties[82]		
Reference to identification of related party transactions in Rule 4–08(k)(1) of Regulation S–X[83].	Requires identification of related party transactions.	ASC 850–10–50–1.
7. Contingencies		
References to ''material contingencies'' in Rule 8–03(b)(2)[84] and the second sentence of Rule 10–01(a)(5) of Regulation S–X and the entire last sentence of Rule 10–01(a)(5) of Regulation S–X[85].	Require disclosure of material contingencies in interim financial statements, notwithstanding disclosure in the annual financial statements.	ASC 270–10–50–6.
8. Earnings per Share[86]		
Reference to ''earnings per share'' in first sentence of Rule 10–01(b)(2) of Regulation S–X[87].	Requires presentation of earnings per share on interim income statement.	ASC 270–10–50–1b.
Item 601(b)(11) of Regulation S–K[88] and Instruction 6 to ''Instructions as to Exhibits'' of Form 20–F.	Require disclosure of the computation of earnings per share in annual filings.	ASC 260–10–50–1a, Rule 10–01(b)(2) of Regulation S–X, and IAS 33, paragraph 70.
9. Insurance Companies[89]		
Last sentence of Rule 7–03(a)(11) of Regulation S–X[90].	Requires a description of the activities being reported in the separate accounts[91].	ASC 944–80–50–1a.
Rule 7–04.3(c) of Regulation S–X[92]	Requires disclosure of the method followed in determining the cost of investments sold[93].	ASC 235–10–50–1 and ASC 320–10–50–9b.
10. Bank Holding Companies[94]		
Rule 9–03.6(a) of Regulation S–X[95]	Requires disclosure of the carrying and market values of (1) securities of the U.S. Treasury and other U.S. Government agencies and corporations, (2) securities of states of the U.S. and political subdivisions, and (3) other securities.	ASC 320–10–50–1B, ASC 320–10–50–2, ASC 320–10–50–5, and ASC 942–320–50–2.
Rule 9–03.7(d) of Regulation S–X[96]	Requires disclosure of changes in the allowance for loan losses.	ASC 310–10–50–11B(c).
First part of Rule 9–04.13(h) of Regulation S–X[97].	Requires disclosure of the method followed in determining the cost of investment securities sold.	ASC 235–10–50–1 and ASC 320–10–50–9b.
11. Changes in Accounting Principles[98]		
Requirement to disclose reason for change in accounting principle in Rule 8–03(b)(5)[99] and Rule 10–01(b)(6) of Regulation S–X[100].	Requires disclosure of the reasons for making material accounting changes in an interim period.	ASC 250–10–45–12 to 16, ASC 250–10–50–1a, and ASC 270–10–50–1g.
12. Interim Adjustments		
Third sentence of Rule 3–03(d)[101] and third sentence of Rule 10–01(b)(8)[102] of Regulation S–X.	Provide examples of adjustments in order for interim financial statements to be fairly stated.	ASC 270–10–45–10.
13. Interim Financial Statements—Common Control Transactions[103]		
Part of first sentence of Rule 10–01(b)(3) of Regulation S–X[104].	Requires that common control transactions be reflected in current and prior comparative period's interim financial statements.	ASC 805–50–45–1 to 5.

Commission disclosure requirement proposed for elimination	Description of Commission disclosure requirement proposed for elimination	Corresponding U.S. GAAP, IFRS,[59] or Commission disclosure requirement
14. Interim Financial Statements—Dispositions [105]		
Rule 10–01(b)(5) of Regulation S–X [106]	Requires disclosure of the effect of discontinued operations on interim revenues, net income, and earnings per share for all periods presented.	ASC 205–20–50–5B, ASC 205–20–50–5C, ASC 260–10–45–3, and ASC 270–10–50–7.
15. Report Furnished to Security Holders		
Item 601(b)(19) of Regulation S–K [107]	Provides specific instructions to address the incorporation by reference into Form 10–Q [108] of information that is separately made available to security holders.	General Instruction D(3) to Form 10–Q, which refers to Item 601(b)(13) of Regulation S–K.[109]

C. Request for Comment

4. We solicit comment on the foregoing proposed amendments to eliminate redundant or duplicative requirements.

a. Do the requirements proposed for elimination require substantially the same disclosures as U.S. GAAP, IFRS, or other Commission disclosure requirements? If eliminated, would investors continue to receive substantially the same information? If not, which redundant or duplicative requirements preliminarily identified above do not require substantially the same disclosures and why?

b. Should any proposed amendments not be made? Should any proposed amendments be modified? If so, which ones and why? Please be as specific as possible for each of the proposals on which you provide comments.

5. Are there other Commission disclosure requirements that are redundant or duplicative with U.S. GAAP, IFRS, or other Commission disclosure requirements that we should consider eliminating? If so, which requirements should be eliminated and how are they redundant or duplicative?

III. Overlapping Requirements

A. Background

We also have preliminarily identified Commission disclosure requirements that are related to, but not the same as, U.S. GAAP, IFRS, or other Commission disclosure requirements, which we refer to in this release as overlapping requirements. In this section, we:

- Propose to delete Commission disclosure requirements that, as discussed further in section III.C below, we believe: (1) Require disclosures that convey reasonably similar information to or are encompassed by the disclosures that result from compliance with the overlapping U.S. GAAP, IFRS, or Commission disclosure requirements or (2) require disclosures incremental to the overlapping U.S. GAAP, IFRS, or Commission disclosure requirements and may no longer be useful to investors.
- Propose to integrate Commission disclosure requirements that overlap with, but require information incremental to, other Commission disclosure requirements, as discussed further in section III.D below, or
- Solicit comment on certain Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP, as discussed further in section III.E below.[110]

B. Broad Considerations

Our objective with these proposals is to streamline disclosures for investors and simplify requirements for issuers. In some cases, the proposed streamlining of overlapping disclosure requirements would give rise to the considerations discussed below.[111]

1. Disclosure Location Considerations

In some cases, the streamlining of disclosure requirements would result in the relocation of disclosures within a filing,[112] with the following consequences:

[79] Please refer to the related discussion in section III.C.15.

[80] 17 CFR 210.4–08(i).

[81] For compensatory warrants or rights, U.S. GAAP requires disclosure of the nature and terms of such arrangements, the number and weighted-average exercise price, and the weighted-average contractual term.

[82] Please refer to the related discussion in section III.E.8.

[83] 17 CFR 4–08(k)(1).

[84] 17 CFR 210.8–03(b)(2). This rule specifically applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP.

[85] 17 CFR 210.10–01(a)(5). This rule specifically applies to companies other than SRCs (''non-SRCs'').

[86] Please refer to the related discussion in section III.E.10.

[87] 17 CFR 210.10–01(b)(2).

[88] 17 CFR 229.601(b)(11). We also propose conforming revisions to delete references to Item 601(b)(11) of Regulation S–K in the Exhibit Table and in Rule 10–01(b)(2) of Regulation S–X.

[89] Please refer to the related discussions in sections III.C.6 and V.B.8.

[90] 17 CFR 210.7–03(a)(11).

[91] ASC 944–80–50–1a requires disclosure of the nature of the contracts reported in separate accounts.

[92] 17 CFR 210.7–04.3(c).

[93] ASC 320–10–50–9b refers to the ''cost of a security sold.''

[94] Please refer to the related discussion in section V.B.9.

[95] 17 CFR 210.9–03.6(a).

[96] 17 CFR 210.9–03.7(d).

[97] 17 CFR 210.9–04.13(h).

[98] Please refer to the related discussions in section III.C.8 and V.B.14.

[99] 17 CFR 210.8–03(b)(5). This rule specifically applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP.

[100] 17 CFR 210.10–01(b)(6). This rule specifically applies to non-SRCs.

[101] 17 CFR 210.3–03(d).

[102] 17 CFR 210.10–01(b)(8).

[103] Please refer to the related discussion in section III.E.12.

[104] 17 CFR 210.10–01(b)(3).

[105] Please refer to the related discussion in section III.C.10.

[106] 17 CFR 210.10–01(b)(5).

[107] 17 CFR 229.601(b)(19). We also propose conforming revisions to delete the reference to Item 601(b)(19) of Regulation S–K in the Exhibit Table.

[108] 17 CFR 249.308a.

[109] 17 CFR 229.601(b)(13). We also propose to amend the Exhibit Table within Item 601 of Regulation S–K to clarify that Item 601(b)(13) applies to Form 10–Q.

[110] One commenter to the Regulation S–X Request for Comment recommended that we ''[c]oordinate with and encourage the FASB to complete a disclosure project that would eliminate the need for SEC-specific footnote disclosure requirements (*e.g.,* S–X 4–08 and 5–02) and financial statement schedules and incorporate them within the US GAAP required disclosures if necessary. This commenter also noted that ''US GAAP and SEC disclosure requirements often overlap. Slight differences in requirements cause confusion about whether there are different disclosure objectives and often result in redundancies.'' *See* letter from Ernst & Young LLP (Nov. 20, 2015).

[111] Some proposals may also be affected by certain FASB projects, as discussed in section I.C.3.

[112] For example, as discussed in section III.C.1, our proposed amendments would result in the

Continued

• Prominence Considerations—the current location of some disclosures may provide a certain level of prominence and/or context to other disclosures located with them. The relocation of these disclosures may affect investors by changing the prominence and/or context of both the relocated disclosures and the remaining disclosures. Throughout this release, we collectively refer to these consequences as ''Disclosure Location—Prominence Considerations.''

• Financial Statement Considerations—the proposals related to some topics would result in the relocation of disclosures from outside to inside the financial statements, subjecting this information to annual audit and/or interim review, internal control over financial reporting, and XBRL tagging requirements, as applicable. The safe harbor under the Private Securities Litigation Reform Act of 1995 (''PSLRA'') would not be available for such disclosures.[113] Conversely, relocation of disclosures from inside to outside the financial statements would have the opposite effect—namely, this information would not be subject to annual audit and/or interim review, internal control over financial reporting, and XBRL tagging requirements, as applicable, while the safe harbor under the PSLRA would be available. These topics would also be subject to Disclosure Location—Prominence Considerations. Throughout this release, we collectively refer to these consequences as ''Disclosure Location—Financial Statement Considerations.''

We refer to the foregoing considerations collectively as ''Disclosure Location Considerations.''

Request for Comment

6. For each of the disclosures subject to Disclosure Location—Prominence Considerations discussed below:

a. Do investors benefit from the prominence of this information in its current location or from the context these disclosures provide to other disclosures located with them?

b. Would the proposed changes to the disclosure location either benefit or adversely affect investors or issuers? If so, how? Please be specific.

c. Should we mandate a cross-reference in the prior location of the disclosures to assist investors in navigating the issuer's disclosures and help maintain the prominence and/or context of the disclosures?

d. Do electronic data analysis tools affect the importance of the disclosure location?

7. For disclosures subject to Disclosure Location—Financial Statement Considerations, in addition to the above questions about prominence, what are the benefits and costs of the inclusion/exclusion of these disclosures in the financial statements for investors and issuers? How important are these benefits and costs to investors and issuers? Please quantify the benefits and costs, to the extent practicable.

2. Bright Line Disclosure Threshold Considerations

Some overlapping requirements, while similar, are not redundant or duplicative because one set of requirements includes a bright line disclosure threshold, while the other set of requirements does not.[114] Where a requirement contains a bright line disclosure threshold, matters involving amounts below that threshold are not required to be disclosed. With the exception of disclosure requirements about major customers, as discussed in section III.E.14, the Commission disclosure requirements we discuss contain bright line disclosure thresholds, while the corresponding requirement does not. For these topics, the elimination of the bright line threshold would potentially change the disclosure provided to investors. Throughout this release, we refer to these considerations as ''Bright Line Disclosure Threshold Considerations.''

Request for Comment

8. For each of the disclosures subject to Bright Line Disclosure Threshold Considerations discussed below, should there continue to be a bright line below which the disclosures would not be required? Should the Commission modify the threshold? Why or why not?

a. Are there any aspects to these disclosures that warrant bright line disclosure thresholds, as compared to other disclosures?

b. Does the bright line disclosure threshold help to ensure disclosure at an appropriate level of detail for investors? Alternatively, does the bright line disclosure threshold result in too much or too little detail for investors? Why or why not?

c. Are there alternative disclosure thresholds, in lieu of bright lines, that we should consider? Would the alternative disclosure threshold change the level of information provided to investors and the burdens and costs associated with the preparation of these disclosures for issuers?

C. Overlapping Requirements—Proposed Deletions

This section discusses Commission disclosure requirements that we believe: (1) Require disclosures that convey reasonably similar information to or are encompassed by the disclosures that result from compliance with the overlapping U.S. GAAP, IFRS, or Commission disclosure requirements or (2) require disclosures incremental to the overlapping U.S. GAAP, IFRS, or Commission disclosure requirements and may no longer be useful to investors. In these cases, we propose to delete the specified Commission disclosure requirement.

1. REIT Disclosures [115]

a. Undistributed Gains or Losses on the Sale of Properties

Regulation S–X [116] and U.S. GAAP [117] both set forth requirements for the presentation of components of stockholders' equity on the face of the financial statements. Regulation S–X incrementally requires REITs to present undistributed gains or losses on the sale of properties separately from other distributable earnings on their balance sheet.[118] This amount is presented on a book basis,[119] which we do not believe is useful to investors because of the unique tax status of REITs, as discussed below.

Specifically, REITs are not subject to entity-level taxation on the amounts

elimination of disclosures about an issuer's status as a real estate investment trust (''REIT'') in the audited notes to the financial statements, in reliance on disclosures within the same filing, but outside the audited financial statements. As another example, as discussed in section III.D.2, our proposed amendments would result in the relocation of disclosures about material restrictions on the payment of dividends in a filing from outside to within the audited notes to the financial statements. For equity compensation plans, the proposed amendments would result in the need to reference a different filing, as discussed in section III.C.17.

[113] Pub. L. 104–67, 109 Stat. 737 (1995).

[114] For example, Regulation S–K requires, as discussed in section III.E.13, disclosure of the amount of revenue from products and services which account for 10 percent or more of consolidated revenue and, as discussed in section III.E.15, disclosure of legal proceedings involving environmental matters that exceed 10 percent of the issuer's consolidated current assets. The corresponding U.S. GAAP requirements do not contain such bright line thresholds above which disclosures would be required.

[115] Please refer to the related discussions in sections III.E.1 and V.B.3.

[116] *See, e.g.,* Rule 3–15(a)(2) [17 CFR 210.3–15(a)(2)] and Rule 5–02.30 [17 CFR 210.5–02.30] of Regulation S–X.

[117] *See, e.g.,* ASC 505–10–45.

[118] *See* Rule 3–15(a)(2) of Regulation S–X.

[119] Amounts presented on a ''book'' basis refer to amounts determined in accordance with accounting for financial reporting purposes (*e.g.,* U.S. GAAP or IFRS), rather than amounts determined in accordance with federal statutory tax law.

distributed to their investors. Rather, their investors are liable for taxes on these distributions, depending on the character of the dividends (*i.e.,* ordinary income, capital gains, or return of capital) the REIT distributes to them. Because the amount of undistributed gains or losses required by Rule 3–15(a)(2) of Regulation S–X is not presented on a tax basis, this disclosure does not provide investors with insight into the tax implications of the REIT's distributions. Instead, the disclosures required by Rule 3–15(c) of Regulation S–X of the tax status of distributions provide this insight.[120]

In addition, the Commission staff has observed that, in practice, because REITs are required to distribute 90 percent of their taxable income in order to maintain their REIT status and often distribute more, REITs generally do not have undistributed amounts to disclose under this requirement.

Based on the foregoing, we propose to delete Rule 3–15(a)(2).

Request for Comment

9. Has the requirement to provide incremental disclosure about undistributed gains or losses on the sale of properties on a book basis resulted in the disclosure of useful information?

What would the impact to investors and issuers be of a deletion of this requirement?

b. Status as a REIT

Regulation S–K and Regulation S–X both require certain disclosures about an issuer's status as a REIT. Regulation S–K requires disclosure of the issuer's form of organization,[121] significant risk factors [122] and a description of known uncertainties that are reasonably expected to have a material effect on income.[123] Regulation S–X similarly requires disclosure in the notes to the financial statements of the issuer's status as a REIT.[124]

Regulation S–X also requires REITs to disclose in the notes to the financial statements their assumptions in making or not making federal income tax provisions.[125] As stated above, REITs are not subject to entity-level taxation on the amounts distributed to their investors, so long as they maintain their REIT status. As such, for REITs, the primary assumption in making or not making federal income tax provisions is the issuer's continued REIT status and its consideration of the risks affecting its continued REIT status. We believe that the disclosure provided in response to the requirement in Regulation S–X to disclose assumptions in making or not making federal income tax provisions is encompassed by the disclosures provided to comply with Regulation S–K's requirement to disclose significant risk factors and a description of known uncertainties that are reasonably expected to have a material effect on income. In fact, because of the overlap, issuers often repeat or expand on the note disclosures in their risk factor disclosures, by discussing matters such as the applicable tax regulations and the consequence of a loss in REIT status.

Based on the foregoing, we propose to delete Rule 3–15(b) of Regulation S–X. We note that because disclosures under Regulation S–K, unlike those required by Regulation S–X, may be provided outside of the audited financial statements, the proposed amendments give rise to Disclosure Location—Financial Statement Considerations.

Request for Comment

10. Does Rule 3–15(b) require disclosures that are encompassed by disclosures that result from compliance with the overlapping provisions, as discussed above? Why or why not?

11. Would deletion of Rule 3–15(b) as described above affect, in any material respect, the usefulness of information that investors receive? If so, how?

2. Consolidation [126]

a. Difference in Fiscal Periods

Regulation S–X [127] and U.S. GAAP [128] both set forth requirements about the presentation of consolidated financial statements when the issuer and its subsidiaries have different fiscal periods. Regulation S–X incrementally requires disclosure of the subsidiary's fiscal year closing date and an explanation of the necessity for using different closing dates. However, when there is a difference in the fiscal periods of the issuer and its subsidiaries, U.S. GAAP also requires, as stated in section II.B.2, recognition by disclosure or otherwise of the effect of intervening events that materially affect the financial position or results of operations.[129] Because this U.S. GAAP requirement effectively eliminates the effect of differences in the fiscal periods of the issuer and its subsidiaries, we believe that disclosure of the subsidiary's fiscal year closing date and an explanation of the necessity for using different closing dates is no longer useful for investors. We, therefore, propose to delete Rule 3A–02(b)(1) of Regulation S–X.

Request for Comment

12. Do disclosures of the subsidiary's fiscal year closing date and the explanation of the necessity for using different closing dates provide useful information to investors? What would the impact to investors and issuers be of a deletion of this requirement?

b. Changes in Fiscal Periods

Regulation S–X requires disclosure in the notes to the financial statements of: (1) Material changes in the fiscal periods of an issuer's subsidiaries and (2) the manner in which the material changes are reflected in the financial statements.[130] The corresponding requirements in U.S. GAAP are narrower than Regulation S–X in three respects.

First, U.S. GAAP limits changes in the difference between an issuer and its subsidiary's fiscal periods to situations where the change is preferable.[131] Second, U.S. GAAP only sets forth requirements related to a change or elimination of a previously existing difference in fiscal periods, for example, when an issuer is able to obtain financial information of a subsidiary with fiscal periods that are more consistent with, or the same as, that of the issuer.[132] Regulation S–X is broader than U.S. GAAP in that it refers to all changes in fiscal periods, rather than only changes to pre-existing differences in fiscal periods. Third, U.S. GAAP, unlike Regulation S–X, specifies the manner of treatment of a change in fiscal period by requiring that the change be reflected in the financial statements on a retrospective basis, if practicable.[133] We believe that U.S. GAAP, in limiting potential changes, provides for more consistency in issuer financial statements and results in better

[120] 17 CFR 210.3–15(c).

[121] Item 101(a)(1) of Regulation S–K [17 CFR 229.101(a)(1)].

[122] Item 503(c) of Regulation S–K [17 CFR 229.503(c)].

[123] Item 303(a)(3)(ii) of Regulation S–K [17 CFR 229.303(a)(3)(ii)].

[124] Rule 3–15(b) of Regulation S–X [17 CFR 210.3–15(b)].

[125] Rule 3–15(b) of Regulation S–X.

[126] Please refer to the related discussions in sections II.B.2, III.E.2, and V.B.4.

[127] *See* Rule 3A–02(b)(1) of Regulation S–X.

[128] *See* ASC 810–10–45–12.

[129] *See* ASC 810–10–45–12.

[130] *See* Rule 3A–03(b) of Regulation S–X [17 CFR 210.3A–03(b)].

[131] ASC 810–10–45–13 states that a change in a difference in fiscal periods is a change in accounting policy, which requires that the issuer and its auditor assert that the new accounting policy is preferable to the old one. See ASC 250–10–45–12, Rule 8–03(b)(5) of Regulation S–X for SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP, Rule 10–01(b)(6) of Regulation S–X for non-SRCs, and Item 601(b)(16) of Regulation S–K.

[132] *See* ASC 810–10–45–13.

[133] *See* ASC 810–10–45–13.

financial reporting. Thus, we propose to delete the last sentence of Rule 3A–03(b) of Regulation S–X.

Request for Comment

13. Do issuers rely on the broader language in Rule 3A–03(b) as a basis to change their subsidiaries' fiscal periods where differences did not previously exist? Are issuers and their auditors able to assert preferability of these changes?

14. Does the broader language in Rule 3A–03(b) affect, in any material respect, the usefulness of information that investors receive? If so, how?

3. Repurchase and Reverse Repurchase Agreements [134]

The requirements in Regulation S–X governing repurchase and reverse repurchase agreements were adopted in 1986, following developments at that time in the government securities market.[135] Their primary objective was to require disclosure about the nature and extent of registrants' repurchase and reverse repurchase agreements and the degree of risk involved in these transactions.[136] The FASB has more recently considered requirements in this area in response to constituent concerns in the wake of the global financial crisis. Most recently, in 2014, the FASB issued amendments to the accounting and disclosures for repurchase agreements and similar transactions.[137] These revisions to U.S. GAAP have resulted in overlapping disclosure requirements, as discussed further below.

a. Balance Sheet Presentation

Regulation S–X [138] and U.S. GAAP [139] both require separate presentation of repurchase liabilities associated with repurchase agreements on the face of the balance sheet.[140] However, because Regulation S–X, unlike U.S. GAAP, sets forth a 10 percent threshold for separate presentation,[141] the proposed amendments give rise to Bright Line Disclosure Threshold Considerations. We propose to delete the requirement for separate presentation in Rule 4–08(m)(1)(i) and the related 10 percent threshold. We would retain the requirement to include accrued interest payables in the separately presented liability amounts.[142]

b. Disaggregated Disclosures

While Regulation S–X [143] and U.S. GAAP [144] both require disaggregated disclosures about repurchase agreements, they differ in the form and content of the disaggregated disclosures. First, Regulation S–X and U.S. GAAP both require disaggregated disclosures of repurchase liabilities by class of collateral and maturity interval. Regulation S–X provides a few illustrative examples of classes, where U.S. GAAP requires an entity to determine the appropriate level of disaggregation and classes to be presented on the basis of the nature, characteristics, and risks of the collateral pledged. Regulation S–X also specifies maturity intervals (*e.g.,* overnight, up to 30 days), whereas U.S. GAAP permits judgment to determine an appropriate range of maturity intervals. Further, Regulation S–X requires the disaggregated disclosure by class of collateral and maturity interval to be combined in the form of a single table. Although U.S. GAAP is silent about the form of disclosure, the sole example it includes of an approach to comply with its requirements is in the form of a table that includes both classes of collateral as well as maturity intervals similar to those required by Regulation S–X.[145]

Second, Regulation S–X specifies tabular disclosure of the carrying amount of associated assets sold under repurchase agreements disaggregated by class of asset sold and maturity interval (*e.g.,* overnight, up to 30 days) of the repurchase agreement.[146] Instead of a tabular format, U.S. GAAP requires separate presentation on the transferor's balance sheet of the carrying amount of assets that the transferee has the right to sell or repledge.[147] U.S. GAAP also requires disclosure in the notes to the financial statements of the carrying amount and balance sheet classification of both assets pledged as collateral that the transferee does not have the right to sell or repledge and the associated liabilities along with quantitative information about the relationship(s) between them.[148]

Despite some differences in form and content, we believe that disclosures required by Regulation S–X convey reasonably similar information as the disclosures that result from compliance with the U.S. GAAP provisions discussed above, along with their accompanying disclosure objectives and aggregation principles.[149]

Third, Regulation S–X requires disaggregated disclosures of the market value of assets sold under repurchase agreements for which unrealized changes in market value are reported in income.[150] Although the FASB deliberated adding a requirement to disclose the market value of these assets to U.S. GAAP, it ultimately decided against doing so due to operability concerns.[151]

Based on the foregoing, we propose to delete Rule 4–08(m)(1)(ii), with the exception of the requirement in Rule 4–08(m)(1)(ii)(A)(ii) to disclose the interest rate on repurchase liabilities, which we would retain. We note that, because Regulation S–X, unlike U.S. GAAP, sets forth a 10 percent threshold for the

[134] Please refer to the related discussion in section III.E.9.

[135] *See Disclosure Amendments to Regulation S–X Regarding Repurchase and Reverse Repurchase Agreements,* Release No. 33–6621 (Jan. 30, 1986) [51 FR 3765].

[136] Id.

[137] *See also* Accounting Standards Update (''ASU'') No. 2014–11, *Transfers and Servicing (Topic 860): Repurchase-to-Maturity Transactions, Repurchase Financings, and Disclosures.*

[138] *See* Rule 4–08(m)(1)(i) of Regulation S–X [17 CFR 210.4–08(m)(1)(i)].

[139] *See* ASC 860–30–45–2.

[140] Regulation S–X requires separate presentation of repurchase liabilities incurred pursuant to repurchase agreements. U.S. GAAP is broader in that it includes other transactions with similar characteristics—specifically, ''transactions in which cash is obtained in exchange for financial assets with an obligation for an opposite exchange later,'' such as dollar rolls and securities lending transactions. *See* ASC 860–30–15–3.

[141] Specifically, Regulation S–X requires separate presentation if the carrying amount (or market value, if higher than the carrying amount or if there is no carrying amount) of the securities or other assets sold under repurchase agreements, in the aggregate, exceeds 10 percent of total assets.

[142] Please refer to the additional discussion of this requirement to include accrued interest payables in the separately presented liability in section III.E.9 below.

[143] *See* Rule 4–08(m)(1)(ii) of Regulation S–X [17 CFR 210.4–08(m)(1)(ii)].

[144] *See* ASC 860–30–50–7.

[145] *See* ASC 860–30–55–4.

[146] *See* Rules 4–08(m)(1)(ii)(A)(i) [17 CFR 210.4–08(m)(1)(ii)(A)(i)] and 4–08(m)(1)(ii)(B) [17 CFR 210.4–08(m)(1)(ii)(B)] of Regulation S–X.

[147] *See* ASC 860–30–25–5a.

[148] *See* ASC 860–30–50–1A.b.1 and 2.

[149] U.S. GAAP requires that its minimum disclosure requirements about transactions such as repurchase agreements be supplemented as necessary to meet certain disclosures objectives (*e.g.,* providing investors with an understanding of how transfers of financial assets affect an issuer's financial statements) and aggregation principles (*e.g.,* presentation in a manner that clearly and fully explains the transferor's risk exposure related to the transferred financial assets and any restrictions on the assets of the entity). *See* ASC 860–10–50.

[150] *See* Rules 4–08(m)(1)(ii)(A)(i) and 4–08(m)(1)(ii)(B) of Regulation S–X. These rules, however, do not require disclosure of the carrying amount and market value of securities and other assets for which unrealized changes in market value are reported in current income or which have been obtained under reverse repurchase agreements. This scope is narrower than that for the U.S. GAAP requirement to separately present carrying amounts, which applies to all assets sold under repurchase agreements.

[151] *See* Minutes from FASB Board Meeting (Mar. 12, 2014), available at: *http://www.fasb.org/jsp/FASB/Document_C/DocumentPage&cid=1176163899372. See also* Accounting Standards Update (''ASU'') No. 2014–11, *Transfers and Servicing (Topic 860): Repurchase-to-Maturity Transactions, Repurchase Financings, and Disclosures.*

disaggregated disclosures,[152] the proposed amendments give rise to Bright Line Disclosure Threshold Considerations.

Request for Comment

15. Do disclosures required by Rule 4–08(m) convey reasonably similar information as the disclosures that result from compliance with the overlapping provisions discussed above? Why or why not?

16. As described above, the form and content of the disclosures required under U.S. GAAP differ in certain respects from Rule 4–08(m). Should we refer any of the disclosure requirements in Rule 4–08(m) to the FASB for potential incorporation into U.S. GAAP? If so, which ones and why?

17. Would revision of Rule 4–08(m) as described above affect, in any material respect, the usefulness of information that investors receive? If so, how?

c. Collateral Policy

Regulation S–X[153] requires disclosure of the issuer's policy with regard to taking possession of assets purchased under reverse repurchase agreements. U.S. GAAP requires disclosure of the issuer's policy for requiring collateral or other security.[154] Although U.S. GAAP is not as specific as Regulation S–X about taking possession of collateral, we believe Regulation S–X requires disclosures that are encompassed by the disclosures that result from compliance with U.S. GAAP. Accordingly, we propose to delete this requirement in Rule 4–08(m)(2)(i)(B)(1).

Regulation S–X, unlike U.S. GAAP, requires these disclosures when the aggregate carrying amount of reverse repurchase agreements exceeds 10 percent of total assets. As such, these differences also give rise to Bright Line Disclosure Threshold Considerations.

Request for Comment

18. Does Rule 4–08(m)(2)(i)(B)(1) require disclosures that are encompassed by disclosures that result from compliance with the overlapping provisions discussed above? Why or why not?

19. As described above, U.S. GAAP is not as specific as Regulation S–X about taking possession of collateral. Would elimination of Rule 4–08(m)(2)(i)(B)(1) affect, in any material respect, the usefulness of information that investors receive? If so, how?

4. Derivative Accounting Policies

Regulation S–X[155] and U.S. GAAP[156] both require disclosure in the notes to the financial statements of accounting policies for certain derivative instruments. Regulation S–X applies to: (1) Derivative financial instruments, as defined under U.S. GAAP, and (2) derivative commodity instruments such as commodity futures, swaps, and options that are permitted to be settled in cash or with another financial instrument, to the extent such instruments are not within the definition of derivative financial instruments. For both types of instruments, Regulation S–X requires, where material, disclosure of the accounting policies; the criteria required to be met for each accounting method used; the accounting method used if those criteria are not met; the method used to account for terminations of derivatives designated as hedges or derivatives used to affect the terms, fair values, or cash flows of a designated item; the method used to account for derivatives when the designated item matures, is sold, is extinguished, or is terminated; and how the derivative instruments are reported in the financial statements.

U.S. GAAP requires disclosure of accounting principles and methods that materially affect the financial statements, including those involving a selection from existing acceptable alternatives, and important judgments about the appropriateness of the principles.[157] We believe that these U.S. GAAP principles call for reasonably similar information as the corresponding requirements in Regulation S–X, as they require disclosure of the accounting method applied to each aspect of a material derivative transaction from inception to termination.

In addition, for derivative financial instruments, as defined under U.S. GAAP, U.S. GAAP requires disclosure of how and why the issuer uses derivative instruments, how the derivative instruments and related hedged items are accounted for, and how they affect the financial statements.[158] Although Regulation S–X is more detailed than U.S. GAAP, the specificity in Regulation S–X stemmed, in part, from the absence of a comprehensive accounting model for derivatives when the Commission adopted these disclosure requirements.[159] Since that time, the FASB has adopted an accounting model for derivative financial instruments, as defined under U.S. GAAP.[160] Because U.S. GAAP limits the options for accounting for derivatives, we believe that the additional specific disclosure requirements in Rule 4–08(n) are no longer applicable.

Based on the foregoing, we propose to delete Rule 4–08(n) and Note 2(b) to Rule 8–01.

Request for Comment

20. Is the U.S. GAAP requirement to disclose accounting principles and methods that materially affect the financial statements reasonably similar to the corresponding requirements in Regulation S–X?

21. Are the specific disclosure requirements in Rule 4–08(n) applicable or necessary in light of the U.S. GAAP requirement? If so, which ones and why?

22. Would deletion of Rule 4–08(n) affect, in any material respect, the usefulness of information that investors receive about derivative financial instruments, as defined under U.S. GAAP? If so, how?

23. Would deletion of Rule 4–08(n) affect, in any material respect, the usefulness of information that investors receive about derivative commodity instruments that are not within the

[152] Specifically, Regulation S–X requires the tabular disclosures if the carrying amount (or market value, if higher than the carrying amount) of the securities or other assets sold under repurchase agreements, other than securities or other assets for which for which unrealized changes in market value are reported in current income or have been obtained under reverse repurchase agreements, in the aggregate, exceeds 10 percent of total assets.

[153] *See* Rule 4–08(m)(2)(i)(B)(1) of Regulation S–X [17 CFR 210.4–08(m)(2)(i)(B)(1)].

[154] *See* ASC 860–30–50–1Aa.

[155] *See* Rule 4–08(n) of Regulation S–X [17 CFR 210.4–08(n)] and Note 2(b) to Rule 8–01 of Regulation S–X [17 CFR 210.8–01]. Rule 4–08(n) applies to non-SRCs and Note 2(b) to Rule 8–01 applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP.

[156] *See* ASC 815–10–50.

[157] *See* ASC 235–10–50–1 and ASC 235–10–50–3.

[158] *See* ASC 815–10–50.

[159] *See Disclosure of Accounting Policies for Derivative Financial Instruments and Derivative Commodity Instruments, and Disclosure of Quantitative and Qualitative Information about Market Risk Inherent in Derivative Financial Instruments, Other Financial Instruments and Derivative Commodity* Instruments, Release No. 33–7386, Financial Reporting Release No. 48, (Jan. 31, 1997).

In this adopting release, the Commission stated that in the absence of comprehensive accounting literature, registrants have developed accounting practices for options and complex derivatives by analogy to the limited amount of literature that does exist. The Commission also noted that those analogies are complicated because under existing accounting literature, there are at least three distinctively different methods of accounting for derivatives (*e.g.* fair value accounting, deferral accounting and accrual accounting). The Commission further observed that the underlying concepts and criteria used in determining the applicability of those accounting methods is not consistent.

[160] *See* SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities,* codified in ASC 815.

definition of derivative financial instruments? If so, how?

24. Are the requirements in Rule 4–08(n) used by analogy for contracts that derive their value from an underlying price, index, rate, condition, or event, but do not meet the FASB ASC Master Glossary definition of ''derivative financial instrument?'' Would deletion of Rule 4–08(n) affect, in any material respect, the usefulness of information that investors receive about accounting policy disclosures for these instruments? If so, how?

5. Distributable Earnings for Registered Investment Companies

Regulation S–X [161] and U.S. GAAP [162] both require registered investment companies to present certain components of capital on their balance sheet. Regulation S–X incrementally specifies that, as part of this presentation, three components of distributable earnings must be separately presented on the balance sheet: (1) Net investment income, (2) net realized gains (losses) on investment transactions, and (3) net unrealized appreciation (depreciation) in value of investments.[163] Regulation S–X requires these amounts to be presented on a book basis, which we do not believe is useful to investors of registered investment companies. Similar to REITs, as discussed in section III.C.1, registered investment companies are generally structured such that they are not subject to entity-level taxation on the amounts distributed to their investors. As such, the book basis amounts required to be presented under Regulation S–X do not provide investors with insight into the tax implications of registered investment company distributions. Rather, the requirement in U.S. GAAP to disclose the components of distributable earnings on a tax basis in the notes to the financial statements [164] provides this insight.

Based on the foregoing, we propose to amend Rule 6–04.17 to require presentation of the total, rather than the components, of distributable earnings on the balance sheet. We also propose to delete the requirement in Rule 6–09.7 for parenthetical disclosure of undistributed net investment income, one of the components of distributable earnings, on a book basis, on the statement of changes in net assets.[165]

Request for Comment

25. Do investors use the information about the three components (net investment income, net realized gains (losses) on investment transactions, and net unrealized appreciation (depreciation) in value of investments) of distributable earnings separately presented on registered investment company balance sheets? If so, how?

26. Would amendment of Rule 6–04.17 to require presentation of the total, rather than the components, of distributable earnings on the balance sheet affect, in any material respect, the usefulness of information that investors receive? If so, how?

27. Would deletion of the requirement in Rule 6–09.7 for parenthetical disclosure of undistributed net investment income on the statement of changes in net assets affect, in any material respect, the usefulness of information that investors receive? If so, how?

6. Insurance Companies [166]

a. Liability Assumptions

Regulation S–X [167] and U.S. GAAP [168] both require disclosure in the notes to the financial statements of assumptions for insurance liabilities stated at present value. Regulation S–X, unlike U.S. GAAP, specifically identifies three assumptions (interest rates, mortality, and withdrawals) for disclosure about the liability for future policy benefits. U.S. GAAP, however, does not limit its disclosures to these three assumptions but, rather, provides additional examples of assumptions.[169] Accordingly, we propose to delete Rule 7–03(a)(13)(b).

Request for Comment

28. Would deletion of the requirement in Rule 7–03(a)(13)(b) for disclosures of the above three assumptions affect, in any material respect, the usefulness of information that investors receive? If so, how?

b. Reinsurance Transactions

Regulation S–X [170] and U.S. GAAP [171] both require disclosures in the notes to the financial statements about the nature of reinsurance contracts. Regulation S–X specifically requires disclosure of the nature and effect of material nonrecurring reinsurance transactions.[172] We believe this provision requires disclosures that are encompassed by the disclosures that result from compliance U.S. GAAP and Regulation S–K. Specifically, although U.S. GAAP does not explicitly refer to nonrecurring reinsurance transactions, it requires disclosure of all reinsurance transactions, meaning that nonrecurring and recurring transactions would be included in the disclosures. In addition, Item 303(a)(3)(i) of Regulation S–K requires disclosure of any unusual or infrequent events or changes, which may include the nature and effect of material nonrecurring reinsurance transactions.

Based on the foregoing, we propose to delete Rule 7–03(a)(13)(c). We note that because disclosures required by Item 303(a)(3)(i), unlike those required by Regulation S–X, may be provided outside of the audited financial statements, the proposed amendments give rise to Disclosure Location—Financial Statement Considerations.

Request for Comment

29. Does Rule 7–03(a)(13)(c) require disclosures that are encompassed by disclosures that result from compliance with the overlapping provisions discussed above? Why or why not?

30. Would deletion of the requirement in Rule 7–03(a)(13)(c) affect, in any material respect, the usefulness of information that investors receive? If so, how?

31. As stated above, U.S. GAAP does not require separate disclosure of nonrecurring transactions. Should we refer disclosure requirements specifically about the nature and effect of material nonrecurring reinsurance to the FASB for potential incorporation into U.S. GAAP?

7. Interim Financial Statements—Material Events Subsequent to the End of the Most Recent Fiscal Year

Regulation S–X requires disclosure, in interim financial statements, of material events subsequent to the end of the most recent fiscal year.[173] As discussed below, we believe that these provisions require disclosures that are encompassed by the disclosures that result from compliance with U.S. GAAP and Item 303(b) of Regulation S–K (or

[161] *See* Rule 6–04.17 of Regulation S–X [17 CFR 210.6–04.17].

[162] *See* ASC 946–20–50–11.

[163] *See* Rule 6–04.17 of Regulation S–X.

[164] *See* ASC 946–20–50–11.

[165] *See* Rule 6–09.7 of Regulation S–X [17 CFR 210.6–09.7].

[166] Please refer to the related discussions in sections II.B.9 and V.B.8.

[167] *See* Rule 7–03(a)(13)(b) of Regulation S–X [17 CFR 210.7–03(a)(13)(b)].

[168] *See* ASC 944–40–50.

[169] *See* ASC 944–40–30–7 for examples of assumptions made in estimating the liability.

[170] *See* Rule 7–03(a)(13)(c) of Regulation S–X [17 CFR 210.7–03(a)(13)(c)].

[171] *See* ASC 944–20–50–3 and ASC 944–20–50–4.

[172] *See* Rule 7–03(a)(13)(c)(2) [17 CFR 210.7–03(a)(13)(c)(2)].

[173] *See* Rule 8–03(b)(2) [17 CFR 210.8–03(b)(2)] and Rule 10–01(a)(5) [17 CFR 210.10–01(a)(5)] of Regulation S–X. Rule 8–03(b)(2) applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP and Rule 10–01(a)(5) applies to non-SRCs.

Item 9 of Form 1–A and Item 1 of Form 1–SA for Regulation A issuers), in combination.

Specifically, U.S. GAAP requires disclosure of a number of items occurring in the interim periods after the end of the most recent fiscal periods, including changes in accounting principles, changes in estimates, disposals, business combinations, and disclosures about segments, fair value, and pensions.[174] Item 303(b) of Regulation S–K (or Item 9 of Form 1–A and Item 1 of Form 1–SA for Regulation A issuers) require disclosure of: (1) Material changes in the issuer's financial condition and results of operations, (2) unusual or infrequent events that materially affect income and any other significant components of revenues or expenses that, in the issuer's judgment, should be described in order to understand its interim results of operations, and (3) known trends that are reasonably expected to have a material effect on the financial statements.[175]

Rule 10–01(a)(5) incrementally requires disclosure of the status of long-term contracts and changes in capitalization, including significant new borrowings or modification of existing financing arrangements. Although Regulation S–K does not specify these two items, they would be required under Item 303(b) of Regulation S–K (or Item 9 of Form 1–A and Item 1 of Form 1–SA for Regulation A issuers), if material, as discussed above.

Based on the foregoing, we propose to delete the requirements to disclose material events subsequent to the end of the most recent fiscal year in Rule 8–03(b)(2) and Rule 10–01(a)(5). We note that because disclosures required by Item 303(b) (or Item 9 of Form 1–A and Item 1 of Form 1–SA for Regulation A issuers), unlike those required by Regulation S–X, may be provided outside of the interim financial statements, the proposed amendments give rise to Disclosure Location—Financial Statement Considerations.

Request for Comment

32. Do the provisions in Rule 8–03(b)(2) and Rule 10–01(a)(5) to disclose material events subsequent to the end of the most recent fiscal year require disclosures that are encompassed by disclosures that result from compliance with the overlapping provisions discussed above? Why or why not?

33. Rule 10–01(a)(5) specifies disclosure of the status of long-term contracts and changes in capitalization subsequent to the most recent fiscal year. Would deletion of this requirement affect, in any material respect, the usefulness of information that investors receive? If so, how?

8. Interim Financial Statements—Changes in Accounting Principles [176]

Regulation S–X requires disclosure in the notes to the interim financial statements of the date of any material accounting change.[177] We believe this information is unnecessary because U.S. GAAP requires disclosure of the accounting change in the period of the change.[178] We, therefore, propose to delete these requirements in Rule 8–03(b)(5) and Rule 10–01(b)(6).

Request for Comment

34. Is disclosure of the date of any material accounting change unnecessary in light of the U.S. GAAP requirements discussed above? Why or why not?

9. Interim Financial Statements—Pro Forma Business Combination Information [179]

Regulation S–X [180] and U.S. GAAP [181] both require supplemental pro forma information about business combinations in the notes to interim financial statements. These disclosure requirements differ in two ways: (1) Scope and (2) the line items required to be disclosed. Notwithstanding these differences, we believe that U.S. GAAP and Item 9.01 of Form 8–K result in reasonably similar disclosures as the corresponding requirements in Regulation S–X.

First, with respect to scope, Regulation S–X requires disclosure of pro forma information for significant business combinations for SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP and material business combinations for non-SRCs. U.S. GAAP, on the other hand, does not qualify the size of the business combinations to which pro forma information requirements apply. Accordingly, the requirements in U.S. GAAP would apply to the same or a greater number of business combinations and, thus, subsume the scope of the corresponding requirements in Regulation S–X.

Second, with respect to the line items required to be disclosed, Regulation S–X requires disclosure of pro forma revenue, net income, net income attributable to the issuer, and net income per share. Regulation S–X also requires SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP to disclose pro forma income from continuing operations. U.S. GAAP only requires disclosure of pro forma revenue and earnings. This difference resulted from changes to U.S. GAAP for which Regulation S–X was not conformed, as discussed below.

The Commission originally adopted Rule 8–03(b)(4) and Rule 10–01(b)(4) to require in interim financial statements the same pro forma business combination disclosures provided in annual financial statements under Accounting Principles Board (''APB'') Opinion No. 16, *Business Combinations*.[182] In 2001, the FASB issued Statement of Financial Accounting Standards (''SFAS'') No. 141, *Business Combinations* (''SFAS No. 141''), which required these pro forma disclosures in interim financial statements and superseded APB Opinion No. 16; however, Regulation S–X was not updated at that time to eliminate the duplication with U.S. GAAP. In 2007, the FASB issued SFAS No. 141R (revised 2007), *Business Combinations* (''SFAS No. 141R''), which required fewer pro forma line items—namely, only revenue and earnings—than previously required under SFAS No. 141, in part to converge with IFRS.[183]

As a result of these changes, issuers are required to disclose more pro forma information about business combinations in interim periods than in annual periods,[184] even though Regulation S–X generally imposes fewer obligations with regard to interim

[174] *See* ASC 270–10–50–1 and 7.

[175] Item 303(b) of Regulation S–K explicitly requires interim disclosure of changes in financial condition and results of operations and, through its reference to Item 303(a), requires disclosure of unusual and infrequent events and trends.

[176] Please refer to the related discussions in section II.B.11 and V.B.14.

[177] *See* Rule 8–03(b)(5) and Rule 10–01(b)(6) [17 CFR 210.10–01(b)(6)] of Regulation S–X. Rule 8–03(b)(5) specifically applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP, while 10–01(b)(6) applies to non-SRCs.

[178] *See* ASC 250–10–50–1 and ASC 270–10–50–1g.

[179] Please refer to the related discussion in section V.B.6.

[180] *See* Rule 8–03(b)(4) [17 CFR 210.8–03(b)(4)] and Rule 10–01(b)(4) [17 CFR 210.10–01(b)(4)] of Regulation S–X. Rule 8–03(b)(4) specifically applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP, while 10–01(b)(4) applies to non-SRCs.

[181] *See* ASC 270–10–50–7, which refers to ASC 805–10–50–2h.3 for purposes of interim disclosures.

[182] In the proposing release, the Commission noted that the proposed rule would require disclosure of pro forma data in connection with business combinations accounted for on a purchase basis similar to that required in annual statements by APB No. 16. *See Interim Financial Data Proposals to Increase Disclosure,* Release No. 33–5549 (Dec. 19, 1974) [40 FR 1079].

[183] SFAS No. 141R, paragraph B426.

[184] *See* ASC 805–10–50–2h.3.

financial statements.[185] Moreover, Rule 8–03(b)(4) requires SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP to present more line items than the corresponding requirement in Rule 10–01(b)(4) for non-SRCs, even though Commission disclosure requirements, as a general matter, provide certain accommodations for SRCs [186] and Regulation A issuers.

In addition, we believe Item 9.01 of Form 8–K mitigates at least in part the absence of a U.S. GAAP requirement to present pro forma earnings per share, as it requires SRCs and non-SRCs to file, within approximately 75 days after the transaction, pro forma financial information for significant acquisitions, including earnings per share, through the issuer's most recently filed balance sheet. We note, however, this pro forma financial information would not cover the same periods as the pro forma information required under Rule 8–03(b)(4) and Rule 10–01(b)(4).[187]

Based on the foregoing, we propose to delete the requirements for pro forma financial information in interim filings for business combinations in Rule 8–03(b)(4) and Rule 10–01(b)(4).

Request for Comment

35. Would elimination of the specific requirements discussed above to disclose the line items pro forma income from continuing operations, net income attributable to the issuer, and net income per share affect, in any material respect, the usefulness of information that investors receive? If so, how? Do the pro forma disclosures in Form 8–K sufficiently substitute for the loss of these specific line items, despite the differences in timing discussed above?

10. Interim Financial Statements—Dispositions [188]

For significant dispositions, Regulation S–X requires SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP to disclose in the notes to the financial statements pro forma revenue, income from continuing operations, net income, net income attributable to the issuer, and net income per share for all interim periods presented, as though the disposition occurred at the beginning of the periods.[189] There are two types of dispositions: (1) those that meet the definition of discontinued operations and (2) all others (hereafter referred to as ''other dispositions'').

U.S. GAAP requires that the effects of discontinued operations be isolated and separately presented on the income statement on a retrospective basis,[190] thereby obviating the need for pro forma information for discontinued operations in the notes to the financial statements.

For other dispositions, we believe that the disclosures required by U.S. GAAP and Item 9.01 of Form 8–K results in reasonably similar disclosures as the pro forma disclosures mandated by Rule 8–03(b)(4). Specifically, U.S. GAAP requires disclosure of pre-tax profit and pre-tax profit attributable to the parent for individually significant dispositions for all interim periods presented.[191] However, U.S. GAAP does not contain an equivalent to the requirement in Rule 8–03(b)(4) to disclose pro forma revenues as if the other disposal occurred at the beginning of the periods presented.

We believe Item 9.01 of Form 8–K provides some mitigation, as it requires SRCs to file within four business days after a significant disposition, pro forma financial information, including revenue, income from continuing operations, and income per share, through the most recently filed balance sheet date. We note, however, this pro forma financial information would not cover the same periods as the separate results required under Rule 8–03(b)(4).[192]

In addition, Rule 8–03(b)(4) requires SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP to disclose more information about dispositions in interim periods than in annual periods,[193] even though Regulation S–X, as noted above, generally imposes fewer obligations with regard to interim financial statements. Moreover, Rule 8–03(b)(4) requires SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP to disclose more extensive information about other dispositions than is required of non-SRCs,[194] even though Commission disclosure requirements, as a general matter, provide certain scaled disclosure accommodations for SRCs.[195]

Based on the foregoing, we propose to delete these requirements in Rule 8–03(b)(4).

Request for Comment

36. Would elimination of the specific requirement discussed above to disclose pro forma revenue affect, in any material respect, the usefulness of information that investors receive? If so, how? Do the pro forma disclosures in Form 8–K sufficiently substitute for this specific line item, despite the differences in timing discussed above?

11. Segments

Item 101(b) of Regulation S–K [196] requires disclosure of segment financial information, restatement of prior periods when reportable segments change, and discussion of interim segment performance that may not be indicative of current or future operations. U.S. GAAP [197] and Item 303(b) of Regulation S–K [198] require

[185] For example, Article 8 and Article 10 of Regulation S–X permit the presentation of condensed financial statements, do not require audits of interim financial statements, allow issuers to assume that a user has read the preceding year's audited financial statements, permit omission of details of accounts that have not changed significantly since the audited balance sheet date, and permit omission of the disclosures required by Rule 4–08 of Regulation S–X.

[186] For example, SRCs are required to present only two, rather than three, years of financial statements and are not required to present selected financial data in accordance with Item 301 of Regulation S–K [17 CFR 229.301].

[187] For example, for a significant acquisition that occurs on September 1, 2015, the Form 8–K would contain pro forma financial information for the year ended December 31, 2014 and the six months ended June 30, 2015 and 2014. Under Rule 8–03(b)(4) and Rule 10–01(b)(4), however, the Form 10–Q for the nine months ended September 30, 2015 would be required to include pro forma disclosures for the nine months ended September 30, 2015 and 2014.

[188] Please refer to the related discussion in section II.B.14.

[189] *See* Rule 8–03(b)(4) of Regulation S–X.

[190] *See* ASC 205–20–45.

[191] *See* ASC 270–10–50–7, which refers to ASC 360–10–50–3A for purposes of interim disclosures. ASC 360–10–50–3A is effective for public business entities on a prospective basis to: (1) All disposals (or classifications as held for sale) of components of an entity that occur within annual periods beginning on or after December 15, 2014, and interim periods within those years and (2) all businesses that, on acquisition, are classified as held for sale that occur within annual periods beginning on or after December 15, 2014, and interim periods within those years. Early adoption is permitted, but only for disposals (or classifications as held for sale) that have not been reported in financial statements previously issued or available for issuance.

[192] For example, for a significant disposal that occurs on August 3, 2015, the Form 8–K filed by August 7, 2015, would contain pro forma financial information for the year ended December 31, 2014 and the three months ended March 31, 2015 and 2014, as if the disposal had occurred on January 1, 2014. In contrast, Rule 8–03(b)(4) would require pro forma disclosures in the September 30, 2015 interim financial statements, filed on Form 10–Q by November 16, 2015, for the nine months ended September 30, 2015 and 2014, as if the disposal had occurred at the beginning of each period presented.

[193] *See* ASC 360–10–50–3A.

[194] *See* Rule 10–01(b)(5) of Regulation S–X [17 CFR 210.10–01(b)(5)].

[195] *See supra* note 186.

[196] 17 CFR 229.101(b).

[197] *See* ASC 280–10–50–22, ASC 280–10–50–34, and ASC 280–10–50–35.

[198] 17 CFR 229.303(b). Specifically, Instruction 4 of Item 303(b) of Regulation S–K, which addresses interim periods, requires that the registrant's discussion of material changes in results of operations shall identify any significant elements of the registrant's income or loss from continuing

similar disclosures. In fact, Item 101(b) explicitly permits issuers to cross-reference between the notes to the financial statements and the description of business to avoid duplicative disclosures about segments. We, therefore, propose to delete Item 101(b). We note that because these disclosures (or the cross-reference to the notes to the financial statements) are located in the business section of the filing, while the corresponding disclosures are in the notes to the financial statements, their elimination gives rise to Disclosure Location—Prominence Considerations.

Regulation A issuers are similarly required to cross-reference to their segment disclosures under U.S. GAAP or IFRS.[199] We also propose to delete Item 7(b) of Form 1–A. We note that because the cross-reference to the notes to the financial statements is located in the business section of the filing, while the corresponding disclosures are in the notes to the financial statements, its elimination also gives rise to Disclosure Location—Prominence Considerations.

12. Geographic Areas [200]

a. Financial Information

Regulation S–K [201] requires disclosure of financial information by geographic area. U.S. GAAP requires similar disclosures.[202] In fact, Item 101(d)(2) explicitly permits issuers to cross-reference between the notes to the financial statements and the description of business to avoid duplicative disclosures about geographic areas. We, therefore, propose to delete Item 101(d)(1) and Item 101(d)(2).[203] We note that because these disclosures (or the cross-reference to the notes to the financial statements) are located in the business section of the filing, while the corresponding disclosures are in the notes to the financial statements, their elimination gives rise to Disclosure Location—Prominence Considerations.

b. Risks and Dependence

Item 101(d)(3) of Regulation S–K requires disclosures of any risks associated with an issuer's foreign operations and any segment's dependence on foreign operations. We believe that Item 101(d)(3) requires disclosures that are largely encompassed by the disclosures that result from compliance with other parts of Regulation S–K. Specifically, Item 503(c) of Regulation S–K requires disclosure of significant risk factors. Although Item 101(d)(3) is more expansive than Item 503(c) in its requirement to disclose ''any'' risk, rather than ''significant'' risk factors, we believe that disclosure of ''significant'' risk factors provides appropriate disclosure to investors and disclosure of ''any'' risk is not necessary.

In addition, Item 303(a) of Regulation S–K requires disclosure of trends and uncertainties by segment, if appropriate to an understanding of the issuer as a whole, which would include disclosure of a segment's dependence on foreign operations.[204] We, therefore, propose to delete Item 101(d)(3).[205] We note that because these disclosures are located in the business section of the filing, while the corresponding disclosures are in the risk factors and management's discussion and analysis (''MD&A'') sections, their elimination gives rise to Disclosure Location—Prominence Considerations.

Request for Comment

37. Would deletion of the requirements in Item 101(d)(3) affect, in any material respect, the usefulness of information that investors receive? If so, how?

13. Seasonality

Regulation S–K [206] and U.S. GAAP [207] both require disclosures about seasonality. As discussed below, we believe that these provisions in Instruction 5 to Item 303(b) (''Instruction 5'') and Item 101(c)(1)(v) require disclosures that convey reasonably similar information as the disclosures that result from compliance with U.S. GAAP and other parts of Regulation S–K, in combination.

a. Interim Disclosures

Instruction 5 and U.S. GAAP both require disclosures about seasonality in interim periods. Accordingly, we propose to delete Instruction 5. We note that because U.S. GAAP requires seasonality disclosures in the financial statements, whereas Instruction 5 requires disclosure in MD&A, its elimination gives rise to Disclosure Location—Prominence Considerations. With the proposed amendments, issuers may also be less willing to voluntarily supplement the required disclosures in the notes to the financial statements with forward-looking information because note disclosures are not subject to safe harbor protections under the PSLRA.

Request for Comment

38. Would the unavailability of the PSLRA safe harbor in this instance affect issuers or investors? If so, how? What disclosures, if any, are currently provided to voluntarily supplement the required disclosures above? Would issuers cease to provide these voluntary disclosures if we delete Instruction 5? If so, would such a change affect the information available to investors?

b. Annual Disclosures

Item 101(c)(1)(v) requires annual seasonality disclosure. Seasonality, by definition, relates to variations within annual periods, so the effects of seasonality are not evident in annual financial statements. We, therefore, believe that interim seasonality disclosures required under U.S. GAAP, as discussed above, are more useful to investors than annual seasonality disclosures.

Item 101(c)(1)(v), unlike U.S. GAAP, incrementally requires seasonality disclosure at the segment level, to the extent material to an understanding of the business as a whole. However, Item 303(b) of Regulation S–K requires disclosure of results of operations, liquidity, and capital resources in interim periods at the segment level, when appropriate to an understanding of the business.[208] Accordingly, we

operations which do not arise from or are not necessarily representative of the registrant's ongoing business. The introduction paragraph to Item 303(b) also states that the interim discussion and analysis shall include a discussion of material changes in those items specifically listed in paragraph (a) of the Item. Since paragraph (a) indicates that where in a registrant's judgment a discussion of segment information or of other subdivisions of the registrant's business would be appropriate to an understanding of such business, the discussion shall focus on each relevant, reportable segment or other subdivision of the business and on the registrant as a whole, the requirement in Item 101(b)(2) of Regulation S–K is duplicative of Item 303 requirements.

[199] *See* Item 7(b) of Form 1–A.

[200] Please refer to the related discussion in section III.D.3.

[201] 17 CFR 229.101(d)(1) and 17 CFR 229.101(d)(2).

[202] *See* ASC 280–10–50–41.

[203] Two commenters on the Disclosure Effectiveness Initiative recommended that Item 101(d)(1) and Item 101(d)(2) be deleted given the overlap with ASC 280. *See* letters from the Disclosure Effectiveness Working Group of the Federal Regulation of Securities Committee and the Law & Accounting Committee of the American Bar Association (''ABA'') (Mar. 6, 2015) *and* Center for Capital Markets Competitiveness, U.S. Chamber of Commerce (''CCMC'') (July 29, 2014).

[204] The proposed amendment to add a reference to ''geographic areas'' to Item 303(a), as discussed in section III.D.3, would also help ensure disclosure of a segment's dependence on foreign operations.

[205] One commenter on the Disclosure Effectiveness Initiative observed that material disclosures about geographic areas would already be provided under Item 303 of Regulation S–K. *See* letter from CCMC (July 29, 2014).

[206] *See* Instruction 5 to Item 303(b) of Regulation S–K. This disclosure is required where the effect is material. *See* also Item 101(c)(1)(v) [17 CFR 229.101(c)(1)(v)] of Regulation S–K.

[207] *See* ASC 270–10–45–11.

[208] Specifically, Item 303(b) requires discussion of material changes in the items listed in Item 303(a).

Continued

believe Item 303(b), in conjunction with U.S. GAAP, would result in reasonably similar disclosures as Item 101(c)(1)(v) about the effects of seasonality on an issuer's financial statements at the segment level, if material and appropriate to an understanding of the business.

Based on the foregoing, we propose to delete Item 101(c)(1)(v). We note that because these disclosures are located in the business section and MD&A, while the corresponding disclosures are in MD&A and the notes to the financial statements, their elimination gives rise to Disclosure Location—Prominence Considerations. With the proposed amendments, issuers may also be less willing to voluntarily supplement the required disclosures in the notes to the financial statements with forward-looking information because note disclosures are not subject to safe harbor protections under the PSLRA.

Request for Comment

39. Would deletion of the requirements in Item 101(c)(1)(v) affect, in any material respect, the usefulness of information that investors receive? If so, how?

40. Would the unavailability of the PSLRA safe harbor in this instance affect issuers or investors? If so, how? What disclosures, if any, are currently provided to voluntarily supplement the required disclosures above? Would issuers cease to provide these voluntary disclosures if we delete Item 101(c)(1)(v)? If so, would such a change affect the information available to investors?

14. Research and Development Activities

a. Domestic Issuers

Regulation S–K requires disclosures, if material, of the amount spent on research and development activities for all years presented.[209] Although Regulation S–K uses terms that differ from U.S. GAAP,[210] we believe U.S. GAAP results in reasonably similar disclosures as this requirement.

First, Regulation S–K refers to the ''amount spent,'' while U.S. GAAP refers to ''costs charged to expense'' or ''costs incurred.'' We note, however, that the Regulation S–K adopting release used the term ''expense'' when discussing this requirement.[211]

Regulation S–K also uses the term ''company-sponsored,'' but U.S. GAAP does not. However, the Regulation S–K adopting release specified that the amount of company-sponsored research and development expenses to be disclosed should be determined in accordance with U.S. GAAP, suggesting no difference in scope was intended.[212]

In addition, Regulation S–K refers to ''customer-sponsored'' research and development activities, while U.S. GAAP refers to ''research and development performed on behalf of others.'' Because U.S. GAAP is broader in its reference to all other parties, rather than only customers, the disclosures required by U.S. GAAP would encompass those required by Regulation S–K.

Further, Item 101(c)(1)(xi) only refers to customer-sponsored ''research activities'' rather than research *and* development activities. However, we do not believe this difference is substantive because Item 101(h)(4)(x) refers to ''research and development activities'' and it was intended to ''parallel'' Item 101(c)(1)(xi).[213]

Based on the foregoing, we propose to delete Item 101(c)(1)(xi) of Regulation S–K and Item 101(h)(4)(x) of Regulation S–K. We note that because the Item 101(c)(1)(xi) disclosures are located in the business section of the filing, while the corresponding disclosures are in the notes to the financial statements, their elimination gives rise to Disclosure Location—Prominence Considerations. With the proposed amendments, issuers may also be less willing to voluntarily supplement the required disclosures in the notes to the financial statements with forward-looking information because note disclosures are not subject to safe harbor protections under the PSLRA.

Request for Comment

41. Would deletion of the requirements in Item 101(c)(1)(xi) and Item 101(h)(4)(x) affect, in any material respect, the usefulness of information that investors receive? If so, how?

42. Would the unavailability of the PSLRA safe harbor in this instance affect issuers or investors? If so, how? What disclosures, if any, are currently provided to voluntarily supplement the required disclosures above? Would issuers cease to provide these voluntary disclosures if we delete Item 101(c)(1)(xi) and Item 101(h)(4)(x)? If so, would such a change affect the information available to investors?

b. Foreign Private Issuers

Item 5.C of Form 20–F requires foreign private issuers to describe their research and development policies, where significant, and disclose the amount spent on company-sponsored research and development activities. We propose to delete the requirement to disclose the amount spent, as foreign private issuers are already required to disclose the amount of research and development expenses in the notes to the financial statements.[214] We note that, in certain circumstances, IFRS requires amounts spent on development be capitalized as an intangible asset, instead of expensed.[215] However, although Commission disclosure requirements use terms different from IFRS, for the same reasons discussed above about differences between Commission disclosure requirements and U.S. GAAP terminology, we believe IFRS results in reasonably similar disclosures as this requirement. We also note that because the Item 5.C disclosures are located in the operating and financial review and prospects section of Form 20–F, while the corresponding disclosures are in the notes to the financial statements, their elimination gives rise to Disclosure Location—Prominence Considerations. With the proposed amendments, issuers may also be less willing to voluntarily supplement the required disclosures in the notes to the financial statements with forward-looking information because note disclosures are not subject to safe harbor protections under the PSLRA.

Request for Comment

43. Does the requirement in Item 5.C of Form 20–F to disclose the amount spent on company-sponsored research and development activities result in reasonably similar disclosure as IFRS, which requires disclosure of research and development expense?

44. Would deletion of the above requirements in Item 5.C of Form 20–F affect, in any material respect, the

Item 303(a) requires discussion at the reportable segment level where appropriate to an understanding of the business.

[209] *See* Item 101(c)(1)(xi) of Regulation S–K for non-SRCs and Item 101(h)(4)(x) of Regulation S–K for SRCs. Item 101(c)(1)(xi) only requires this disclosure by non-SRCs if material.

[210] *See* ASC 730–10–50–1 and ASC 730–20–50–1.

[211] *See Adoption of Disclosure Regulation and Amendments of Disclosure Forms and Rules,* Release No. 33–5893 (Dec. 23, 1977) [42 FR 65554].

[212] *Id.*

[213] *See Small Business Initiatives,* Release No. 33–6949, (Jul. 30, 1992) [57 FR 36442].

[214] Paragraph 126 of IAS 38, *Intangible Assets,* requires foreign private issuers that report under IFRS to disclose the aggregate amount of research and development expenses in the notes to their financial statements. Foreign private issuers that report under U.S. GAAP or Another Comprehensive Body of Accounting Principles with a reconciliation to U.S. GAAP are also required to disclose the amount of research and development expenses in the notes to their financial statements, as discussed above.

[215] See paragraph 57 of IAS 38, *Intangible Assets.*

usefulness of information that investors receive? If so, how?

45. Would the unavailability of the PSLRA safe harbor in this instance affect issuers or investors? If so, how? What disclosures, if any, are currently provided to voluntarily supplement the required disclosures above? Would issuers cease to provide these voluntary disclosures if we delete the above requirement in Item 5.C of Form 20–F? If so, would such a change affect, in any material respect, the usefulness of the information that investors receive?

c. Regulation A Issuers

Form 1–A requires Regulation A issuers to disclose, if material, the amount spent on research and development activities for all years presented.[216] This requirement is based on the requirement in Regulation S–K. Accordingly, Regulation A issuers that report under either U.S. GAAP or IFRS will provide substantially the same information in the notes to their financial statements, as described above. We, therefore, propose to delete Item 7(a)(1)(iii) of Form 1–A. We note that because the Item 7(a)(1)(iii) disclosures are located in the business section of Form 1–A, while the corresponding disclosures are in the notes to the financial statements, their elimination gives rise to Disclosure Location—Prominence Considerations. With the proposed amendments, issuers may also be less willing to voluntarily supplement the required disclosures in the notes to the financial statements with forward-looking information because note disclosures are not subject to safe harbor protections under the PSLRA.

Request for Comment

46. Would deletion of Item 7(a)(1)(iii) of Form 1–A affect, in any material respect, the usefulness of information that investors receive? If so, how?

47. Would the unavailability of the PSLRA safe harbor in this instance affect issuers or investors? If so, how? What disclosures, if any, are currently provided to voluntarily supplement the required disclosures above? Would issuers cease to provide these voluntary disclosures if we delete Item 7(a)(1)(iii) of Form 1–A? If so, would such a change affect, in any material respect, the usefulness of the information that investors receive?

15. Warrants, Rights, and Convertible Instruments [217]

Regulation S–K requires disclosure on Form S–1 or Form 10 of the amount of common equity subject to outstanding options, warrants, or convertible securities, when the class of common equity has no established United States public trading market.[218] U.S. GAAP more broadly requires disclosure of the terms of significant contracts to issue additional shares, the number of shares authorized for certain equity awards,[219] and, in the calculation of diluted earnings per share, the weighted-average incremental shares that would be issued from the assumed exercise or conversion of options, warrants, and convertible securities.[220] As such, we propose to delete Item 201(a)(2)(i) of Regulation S–K. We note that because Item 201(a)(2)(i) disclosures are located with related information about the potential dilution of equity for which there is no established United States public trading market, such as the amount of common equity that is being publicly offered which could have a material effect on the market price of the issuer's common equity, while the corresponding disclosures are in the notes to the financial statements, the proposed amendments give rise to Disclosure Location—Prominence Considerations.

Request for Comment

48. Would deletion of Item 201(a)(2)(i) affect, in any material respect, the usefulness of information that investors receive? If so, how?

16. Dividends

Item 201(c)(1) of Regulation S–K [221] requires disclosure of the frequency and amount of cash dividends declared for the two most recent fiscal years and any subsequent interim period. Rule 3–04 of Regulation S–X requires annual disclosure of the amount of dividends per share and in the aggregate for each class of shares and changes in stockholders' equity for each period for which an income statement is required to be filed, but does not apply to interim periods. We propose to add requirements to Rule 8–03 and Rule 10–01 to mandate that Rule 3–04 be applied to interim periods. These proposed amendments would provide disclosure of the amount of dividends in interim periods, similar to Item 201(c)(1). In addition, the frequency of dividends would be evident from this disclosure.[222]

Based on the foregoing, we propose to delete the requirement in Item 201(c)(1) to disclose the frequency and amount of cash dividends declared. We also propose to delete the reference to dividends in Instruction 2 to Item 201 to conform to the deletion of Item 201(c)(1).[223]

Extending Rule 3–04 disclosures to interim periods may create some additional burden for issuers. However, we expect this burden would be minimal, as the required information is already available from the preparation of the interim financial statements.[224] In addition, we note that because disclosures required by Regulation S–K are located with related information about dividends and other stockholder matters, while the corresponding disclosures are in the notes to the financial statements, the proposed amendments give rise to Disclosure Location—Prominence Considerations. With the proposed amendments, issuers may also be less willing to voluntarily supplement the required disclosures in the notes to the financial statements with forward-looking information because note disclosures are not subject to safe harbor protections under the PSLRA.

Request for Comment

49. Would deletion of Item 201(c)(1) affect, in any material respect, the

[216] Item 7(a)(1)(iii) of Form 1–A.

[217] Please refer to the related discussion in section II.B.5.

[218] 17 CFR 229.201(a)(2)(i).

[219] ASC 470–20–50, ASC 505–10–50–3, ASC 505–50–50–1, ASC 718–10–50–1, ASC 718–10–50–2, and ASC 815–40–50–5.

[220] ASC 260–10–50. U.S. GAAP also requires disclosure of amounts not included in the calculation of diluted earnings per share because exercise or conversion of the securities would have had an antidilutive effect in the period. In aggregate, these amounts may be similar to, but not the same as, those required by Item 201(a)(2)(i) of Regulation S–K, as U.S. GAAP determines the incremental shares as a weighted average based on the period outstanding during the year and assumes that cash received from the assumed exercise or conversion is used to repurchase outstanding shares.

[221] 17 CFR 229.201(c)(1).

[222] These proposed amendments also address certain inconsistencies between Rule 3–04 of Regulation S–X [17 CFR 210.3–04] and U.S. GAAP and may create some additional burdens for issuers, as discussed in section V.B.5.

[223] Three commenters on the Disclosure Effectiveness Initiative stated that the requirement to disclose the frequency and amount of dividends pursuant to Item 201(c)(1) are unnecessary and proposed its elimination. *See* letters from ABA (Mar. 6, 2015), CCMC (July 29, 2014), and Standards & Financial Market Integrity Division, CFA Institute (''CFA Institute'') (Nov. 12, 2014). One commenter on the Disclosure Effectiveness Initiative recommended more transparency in the disclosure of dividends, observing ''[t]oo often these amounts are deliberately buried in financial statements that many small investors cannot read.'' *See* letter from Rosann Balfour (Sept. 27, 2015).

[224] Please refer to further discussion of the potential additional burden and request for comment in section V.B.5.

usefulness of information that investors receive? If so, how?

50. Would the unavailability of the PSLRA safe harbor in this instance affect issuers or investors? If so, how? What disclosures, if any, are currently provided to voluntarily supplement the required disclosures above? Would issuers cease to provide these voluntary disclosures if we delete Item 201(c)(1)? If so, would such a change affect the information available to investors?

17. Equity Compensation Plans

Regulation S–K prescribes the form and content for the disclosure of existing equity compensation plans with equity securities authorized for issuance.[225] This information is currently required in Part III of Form 10–K,[226] Item 11 of Form S–1, Item 9 of Form 10, and Item 10 of Schedule 14A.[227] In 2004, the FASB issued SFAS No. 123 (revised 2004), *Share-Based Payment* (''SFAS No. 123R''), which resulted in disclosures that overlap with Item 201(d).[228]

Regulation S–K incrementally requires: (1) For options, warrants, or rights assumed in a business combination, disclosure of the number of securities to be issued upon exercise and the weighted-average exercise price [229] and (2) disclosure of any formula for calculating the number of securities available for issuance under the plan.[230] Item 201(d) further provides instructions about the aggregation of equity compensation plan disclosures. Although these requirements and instruments are not explicitly contained in U.S. GAAP, we believe that the U.S. GAAP requirement to provide disclosures to enable investors to understand the nature and terms of equity compensation arrangements and the potential effects of those arrangements on shareholders [231] would results in reasonably similar disclosures.

Regulation S–K also incrementally requires disaggregation of information between equity compensation plans approved by security holders and those not approved by security holders. The Commission adopted these requirements in 2001 [232] before the major national securities exchanges required listed issuers to have, with limited exceptions, shareholder approved plans.[233] Because the major exchanges [234] now have such requirements, we believe disaggregation of the disclosures about the plans in this manner is no longer useful to investors.[235]

Based on the foregoing, we propose to delete Item 201(d) and the references to it in Part III of Form 10–K and Item 10(c) of Schedule 14A.[236] These proposed amendments would not affect the disclosures related to new plans or modifications of existing plans subject to shareholder action.[237] We note that because disclosures required by Item 201(d) are located with related information about the issuer's common equity and related stockholder matters, while the corresponding disclosures are in the notes to the financial statements, the proposed amendments give rise to Disclosure Location—Prominence Considerations. In particular, as a result of the proposed amendments, Item 201(d) disclosures would no longer be provided in Schedule 14A [238] alongside information on equity compensation plans subject to security holder action; rather, investors would obtain that information from the notes to the financial statements in the separate Form 10–K filing. With the proposed amendments, issuers may also be less willing to voluntarily supplement the required disclosures in the notes to the financial statements with forward-looking information because note disclosures are not subject to safe harbor protections under the PSLRA.

Request for Comment

51. Would deletion of Item 201(d) affect, in any material respect, the usefulness of information that investors receive? If so, how?

52. Would the unavailability of the PSLRA safe harbor in this instance affect issuers or investors? If so, how? What disclosures, if any, are currently provided to voluntarily supplement the required disclosures above? Would issuers cease to provide these voluntary disclosures if we delete Item 201(d)? If so, would such a change affect the information available to investors?

53. Non-listed issuers and, in limited circumstances, listed issuers,[239] are not required to have shareholder approved plans. Should we retain the requirements in Item 201(d) for these situations? Why or why not?

18. Ratio of Earnings to Fixed Charges

Regulation S–K requires issuers that register debt securities to disclose the historical and pro forma ratios of earnings to fixed charges.[240] Regulation S–K also requires issuers that register preference equity securities to disclose the historical and pro forma ratio of combined fixed charges and preference dividends to earnings (collectively, ''ratio of earnings to fixed charges'').[241] Regulation S–K further requires the

[225] *See* Item 201(d) of Regulation S–K [17 CFR 229.201(d)].

[226] There was previously uncertainty regarding whether this disclosure should appear both in Part II, Item 5 and Part III, Item 12 of Form 10–K. The staff of the Division Corporation Finance has provided guidance to clarify that the general reference to Item 201 of Regulation S–K in Part II, Item 5 does not include Item 201(d). Issuers therefore provide the Item 201(d) disclosure in response to Part III, Item 12, which specifically references Item 201(d). *See* Division of Corporation Finance CD&I 106.01 available at *http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm.* As with any staff guidance referenced in this release, the views of the staff are not rules or interpretations of the Commission. The Commission has neither approved nor disapproved the views of the staff.

[227] 17 CFR 240.14a–101. Item 1 of Schedule 14C [17 CFR 240.14c–101] also requires inclusion of the information that would have been provided in a Schedule 14A if proxies were being solicited even though consents are not being solicited by the information statement.

[228] *See* ASC 718–10–50–1 to 4. Additionally, ASC 505–50–50–1 requires similar disclosure when share based payments are made to non-employees.

[229] *See* Instruction 5 to Item 201(d).

[230] *See* Instruction 8 to Item 201(d).

[231] ASC 718–10–50–1a.

[232] *See Disclosure of Equity Compensation Plan Information,* Release No. 33–8048 (Dec. 21, 2001) [67 FR 232], available at *https://www.sec.gov/rules/final/33-8048.htm.*

[233] For example, the New York Stock Exchange (''NYSE'') listing standard does not require shareholder approval of employment inducement awards, certain grants, plans and amendments in the context of mergers and acquisitions, and certain other specific types of plans. *See Self-Regulatory Organizations; New York Stock Exchange, Inc. and National Association of Securities Dealers, Inc.; Order Approving NYSE and Nasdaq Proposed Rule Changes and Nasdaq Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3 Thereto Relating to Equity Compensation Plans,* Release No. 34–48108 (June 30, 2003). *See also* New York Stock Exchange, Listed Company Manual § 303A.08; Nasdaq Listing Rule 5635(c) and IM–5635–1; *American Stock Exchange Rulemaking Re: Shareholder Approval of Stock Option Plans and Other Equity Compensation Arrangements,* Release No. 34–48610 (Oct. 9, 2003); and NYSE MKT Company Guide § 711.

[234] We refer to the NYSE, NYSE MKT, and Nasdaq as the major exchanges. The majority of domestic issuers, representing substantially all domestic issuer market capitalization, is listed on one of the major exchanges.

[235] One commenter on the Disclosure Effectiveness Initiative recommended that Item 201(d)(3), which requires the material features of non-shareholder approved equity compensation plans, be deleted, noting that such plans are either not material or covered by other disclosure requirements. *See* letter from ABA (Mar. 6, 2015).

[236] Because Form S–1 and Form 10 contain a general reference to Item 201, rather than a specific reference to Item 201(d), no amendment to these forms is necessary.

[237] *See* Items 10(a), 10(b), and the Instructions to 10(c) of Schedule 14A.

[238] The proposal to delete the Item 201(d) requirements from Schedule 14A would also result in such information being omitted from information statements filed on Schedule 14C disclosing adoption of an equity compensation plan when shareholder consents are not being solicited.

[239] *See, e.g., supra* note 233.

[240] *See* Item 503(d) [17 CFR 229.503(d)] and Item 1010(a)(3) [17 CFR 229.1010(a)(3)] of Regulation M–A.

[241] *See id.*

filing of an exhibit setting forth the computation of any ratio of earnings to fixed charges.[242] These requirements only apply to non-SRCs.[243] In addition, Instruction 7 to ''Instructions as to Exhibits'' of Form 20–F requires foreign private issuers to disclose how any ratio of earnings to fixed charges presented in the filing was calculated. As discussed further below, U.S. GAAP and IFRS require disclosure of many of the components of this ratio, as well as information from which other ratios that convey reasonably similar information about an issuer's ability to meet its financial obligations may be computed.

The Commission first adopted the requirement to present a ratio of earnings to fixed charges in 1954 in connection with the adoption of Form S–9, a short-form registration statement for registration of non-convertible, fixed-interest debt.[244] An issuer was required to have a minimum coverage ratio before it was permitted to use Form S–9. To demonstrate eligibility, the issuer was required to disclose the ratio in its filing. The Commission rescinded Form S–9 in 1976. However, the Commission added a requirement to disclose the ratio in certain other forms, although use of those forms was not contingent upon a minimum coverage ratio.[245]

In 1980, the Commission issued a concept release that requested comment on whether the requirements for the presentation of historical and pro forma ratios should be retained or deleted.[246] Responses from commenters were mixed with a substantial number of commenters supporting retention of the requirement. Although they did not discuss specific reasons for their support, commenters ''pointed out the disclosure as an analytical tool and a method for showing trends.'' [247]

However, today, there are a variety of analytical tools available to investors that may accomplish a similar objective as the ratio of earnings to fixed charges.[248] This ratio measures the issuer's ability to service fixed financing expenses—specifically, interest expense, including management's approximation of the portion of rent expense that represents interest expense, and preference dividend requirements—from earnings. Other ratios that accomplish similar objectives include other variations of the ratio of earnings to fixed charges,[249] the interest coverage ratio,[250] and the debt-service coverage ratio,[251] which can be calculated based on information readily available in the financial statements.

Further, the requirement to disclose the ratio of earnings to fixed charges, as opposed to the various components (*e.g.,* income, interest expense, lease expense) of this ratio that investors may use as desired, may place undue emphasis on this particular measure. Commenters to the 1980 concept release observed shortcomings in the measure, such as the lack of uniformity of computation and the failure of the ratio to give effect to principal payments on debt and lease obligations.[252] Unlike other ratios, however, certain components of the ratio of earnings to fixed charges, such as the portion of rent expense that represents interest [253] and the amortization of capitalized interest, are not readily available elsewhere.

Moreover, while debt agreements may contain fixed charge coverage covenants,[254] debt investors often negotiate contractual agreements with issuers to obtain financial information to meet their needs,[255] which may be more relevant and useful than a prescribed disclosure of a ratio of earnings to fixed charges. Companies are also required to discuss the material impacts of these covenants to the extent that they are reasonably likely to limit the company's ability to undertake additional financing or are reasonably likely to be breached.[256]

Based on the foregoing, we propose to delete Item 503(d) and Item 601(b)(12), with conforming revisions to Item 503(e), Item 601(c), the Exhibit Table in Item 601, Item 1010(a)(3), Item 1010(b)(2), Item 1010(c)(4), Item 3 of Form S–1, Item 3 of Form S–3, Item 3 of Form S–4, Item 3 of Form S–11, Item 3 of Form F–1, Item 3 of Form F–3, and Item 3 of Form F–4. We also propose to delete Instruction 7 to ''Instructions as to Exhibits'' of Form 20–F.

Request for Comment

54. As stated above, certain components of the ratio of earnings to fixed charges, such as the portion of rent expense that represents interest and the amortization of capitalized interest, are not readily available elsewhere.

a. Are there any other components to the ratio of earnings to fixed charges that are not readily available in the notes to the financial statements?

b. For the components of the ratio that are not readily available in the notes to

[242] 17 CFR 229.601(b)(12).

[243] *See* Item 503(e) [17 CFR 229.503(e)] and Item 601(c) [17 CFR 229.601(c)] of Regulation S–K.

[244] *See Registration Statement,* Release No. 33–3509, (Jul. 21, 1954) [19 FR 4630].

[245] *See, e.g.,* Forms S–1, S–3, S–4, F–1, F–3 and F–4.

[246] *See Ratio of Earnings to Fixed Charges,* Release No. 33–6196 (Mar. 7, 1980) [45 FR 16498].

[247] *See Ratio of Earnings to Fixed Charges,* Release No. 33–6285 (Feb. 18, 1981) [46 FR 12757].

[248] *See* letter from Ernst & Young (Sept. 11, 2012) on the S–K Study, which states that the ratio of earnings to fixed charges ''appears an anachronism in the age of sophisticated financial modeling and analysis, facilitated by the wealth of data available from issuer financial statements.'' See also letter from CCMC (July 29, 2014).

[249] Other variations of the ratio of earnings to fixed charges include alternative earnings measures such as earnings before interest and taxes and alternative fixed charges measures such as total lease payments and one-third of lease payments (to approximate the interest component in lease payments).

[250] The interest coverage ratio is often calculated as earnings before interest and taxes divided by interest payments.

[251] The debt-service coverage ratio is often calculated as operating income divided by total debt service.

[252] *See Ratio of Earnings to Fixed Charges, supra* note 247.

[253] In January 2016, the IASB issued IFRS 16, *Leases,* which is effective on January 1, 2019, with early application permitted in certain circumstances. Under IFRS 16, interest expense will be recognized for all leases with a term of more than 12 months, unless the underlying asset is of low value. In February 2016, the FASB issued ASU No. 2016–02, *Leases (Topic 842)* (''ASU No. 2016–02''), which is effective for fiscal years beginning after December 15, 2018, with early application permitted. Under ASU No. 2016–02, leases with a term of more than 12 months will be classified into one of two types, with one type requiring recognition of an interest expense component (a finance lease) and the other type requiring recognition of lease expense without separate recognition of interest expense (an operating lease). Like IFRS 16, interest expense will not be recognized on leases with a term less than 12 months. Interested parties may still need to estimate the portion of lease expense that is viewed to represent interest for operating leases in order to determine the components of the ratio of earnings to fixed charges, which will be facilitated by disclosure of the weighted-average discount rate for operating leases required by ASU No. 2016–02.

[254] *See* Gerald T. Nowak P.C., *Negotiating the High-Yield Indenture,* (Feb. 17, 2009), *available at http://www.pli.edu/emktg/toolbox/HighYield_Indenture13.pdf* (noting that a typical high-yield credit agreement might require the debtor to maintain a certain level of revenue or a certain ratio of earnings to fixed charges). *See* also Li, Ningzhoung, *Performance Measures in Earnings-Based Financial Covenants in Debt Contracts,* LONDON BUS. SCH. (2011) *available at http://www.olin.wustl.edu/docs/Faculty/Performance_measures_in_earnings_based_financial_covenants.pdf*(noting that fixed charge coverage covenants are common in loan documents).

[255] *See* letter from ABA (Mar. 6, 2015), which states: Many of [the financial metrics debt investors use to evaluate an issuer's financial position and liquidity] are reflected in the measures of performance or liquidity that are defined in the issuers' debt instruments. For investors in such instruments, a metric that is tied to a contractually defined covenant test is more useful than the SEC-mandated disclosure. Importantly, our experience is that market participants in unregistered debt offerings—initial purchasers as well as institutional investors—do not generally request or require that the SEC-prescribed ratio of earnings to fixed charges be included in the offering document; instead, issuers disclose one or more interest coverage ratios or similar financial metrics that are calculated with reference to the instruments governing the securities being offered.

[256] *See Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations,* Release No. 33–8350 (Dec. 19, 2003) [68 FR 75056].

the financial statements, could they be estimated using information in the notes to the financial statements? If so, would estimation be burdensome for investors? How consistent would these methods and estimates be compared to the methods used and amounts estimated by issuers?

19. Invitations for Competitive Bids

Item 601(b)(26) [257] and Item 512(d) [258] of Regulation S–K both set forth disclosure requirements for competitive bids. However, Item 601(b)(26) differs from Item 512(d) in that it requires disclosure about the invitation of the competitive bid, whereas Item 512(d) requires issuers to undertake to distribute prior to opening bids a reasonable number of prospectuses and to amend the registration statement to reflect the results of the competitive bidding and the terms of the reoffering. We do not believe that the Item 601(b)(26) disclosure provides additional value to investors because those participating in the competitive bid would directly receive the invitation and all other investors would have access to the registration statement covering the securities offered at competitive bidding, as well as the results of the competitive bidding and the terms of reoffering. Based on the foregoing, we propose to delete Item 601(b)(26) and its accompanying reference in the Exhibit Table within Item 601.

20. Request for Comment

55. We solicit comment on the foregoing proposed amendments to eliminate overlapping requirements. Should any proposed amendments not be adopted? Should any proposed amendments be modified? If so, which ones and why? Please be as specific as possible for each of the proposals on which you provide comments.

56. Are there other overlapping Commission disclosure requirements that: (1) Require disclosures that convey reasonably similar information to or are encompassed by the disclosures that result from compliance with the overlapping, U.S. GAAP, IFRS, or Commission disclosure requirements or (2) require disclosures incremental to other U.S. GAAP or Commission disclosure requirements and may no longer be useful to investors? If so, what requirements do they overlap with and what action, if any, should we take to address the overlap?

D. Overlapping Requirements—Proposed Integrations

This section discusses Commission disclosure requirements that overlap with, but require information incremental to, other Commission disclosure requirements. In these cases, we propose to integrate the overlapping Commission disclosure requirements.

1. Foreign Currency Restrictions

If consolidation of foreign subsidiaries is deemed appropriate in the presence of foreign currency exchange restrictions, Rule 3A–02(d) of Regulation S–X requires disclosure of the effect of foreign subsidiaries' currency exchange restrictions upon the consolidated financial position and operating results of the issuer and its subsidiaries. To streamline Commission disclosure requirements, we propose to relocate this requirement to Rule 3–20(b) of Regulation S–X,[259] which addresses other currency considerations.

Rule 3–20(b), however, applies only to foreign private issuers, whereas Rule 3A–02(d) applies to all issuers. To prevent any loss of disclosure from the relocation of Rule 3A–02(d) to Rule 3–20(b), we propose to delete the reference to foreign private issuers in the title of Rule 3–20, which would broaden the scope of Rule 3–20(b) and Rule 3–20(e) to all issuers.[260] We do not believe that this expansion of the scope would create additional burdens for domestic issuers. Rule 3–20(b) requires disclosure of easily-accessible information, such as the issuer's reporting currency and the currency in which the issuer declares dividends. Rule 3–20(e) requires use of the same reporting currency for all periods presented. Even though Rule 3–20(e) currently applies only to foreign private issuers, Commission staff has historically requested issuers to use the same reporting currency for all periods presented.[261]

Rule 3–20(b) also sets forth requirements for foreign private issuers if their reporting currency is not the U.S. dollar. Despite the proposed expansion of the scope of Rule 3–20(b) discussed above, we do not intend to expand the instances in which a reporting currency other than the U.S. dollar would be permitted. We are therefore proposing amendments to Rule 3–20(a) to require that a non-foreign private issuer present its financial statements in U.S. dollars.

Request for Comment

57. Would disclosure of the reporting currency and the currency in which the issuer declares dividends result in significant burdens or costs for issuers? How would the requirement to use the same reporting currency for all periods presented affect the burdens and costs for issuers?

58. Foreign issuers that do not meet the definition of ''foreign private issuer'' would be required to report in U.S. dollars. Should such foreign issuers be permitted to report in a foreign currency?

2. Restrictions on Dividends and Related Items

a. Domestic Issuers

Commission requirements mandate disclosure about restrictions on the payment of dividends and related items in a number of locations:

- Item 201(c)(1) of Regulation S–K requires disclosure of restrictions (including restrictions on the ability of issuer's subsidiaries to transfer funds to it in the form of cash dividends, loans or advances) that currently or are likely to materially limit the issuer's ability to pay dividends on its common equity.[262]
- Rule 4–08(d)(2) of Regulation S–X requires disclosure of any restriction upon retained earnings that arises from the fact that upon involuntary liquidation the aggregate preferences of the preferred shares exceed the par or stated value of such shares.[263]
- Rule 4–08(e) of Regulation S–X requires disclosure related to the most significant restrictions of the issuer's payment of dividends.[264] Rule 4–08(e)(3) also requires, where restricted net assets, as defined by the rule, exceed 25 percent of consolidated net assets, a description of: (1) The restrictions on the ability of subsidiaries to transfer funds to the issuer, and (2) the amount of restricted net assets.[265]

We propose to streamline these disclosure requirements into a single requirement for the disclosure of material restrictions on dividends and

[257] 17 CFR 229.601(b)(26). Item 601(b)(26) requires that where a registration statement covers securities to be offered at competitive bidding, any communication that is an invitation for competitive bid shall be filed as an exhibit.

[258] 17 CFR 229.512(d). Item 512(d) requires an undertaking by issuers to provide disclosure not later than the first use of a prospectus relating to the securities offered at competitive bidding, unless no further public offering and no reoffering of such securities is proposed to be made.

[259] 17 CFR 210.3–20(b).

[260] The remaining paragraphs in Rule 3–20 specify the rule's scope, so broadening the title to Rule 3–20 would have no effect on the application of these paragraphs.

[261] *See* section 6630.1 of the Division of Corporation Finance's Financial Reporting Manual.

[262] In lieu of disclosures, Item 201(c)(1) permits a cross-reference to this information in the disclosures required by Item 303 of Regulation S–K and Regulation S–X.

[263] 17 CFR 210.4–08(d).

[264] 17 CFR 210.4–08(e).

[265] 17 CFR 210.4–08(e)(3).

related items to which an issuer and its subsidiaries are subject. To that end, we propose to: (1) Delete the requirements in Item 201(c)(1) and Rule 4–08(d)(2) to disclose restrictions, and (2) revise Rule 4–08(e)(3) to require the dividend restrictions and related disclosures in subparagraphs (i) and (ii) when material, rather than when restricted net assets exceed the 25 percent threshold. Doing so would give rise to Bright Line Disclosure Threshold Considerations. In addition, we note that because disclosures required by Regulation S–K, unlike those required by Regulation S–X, may be provided outside of the audited financial statements, the proposed amendments give rise to Disclosure Location—Financial Statement Considerations.

Rule 5–04,[266] Rule 7–05,[267] and Rule 9–06 [268] of Regulation S–X also refer to the definition of restricted net assets in Rule 4–08(e)(3) in determining when condensed financial information of the issuer (''parent only financial information'') is required to be disclosed. We are not changing the requirements in Rules 5–04, 7–05, and 9–06 of Regulation S–X for parent only financial information at this time. As such, we propose to move the definition of restricted net assets in Rule 4–08(e)(3) to a new Rule 1–02(dd) of Regulation S–X and make corresponding changes to the cross references in Rules 5–04, 7–05, and 9–06.

b. Foreign Private Issuers

Form 20–F requires disclosure of dividend restrictions, as follows:

- Item 10.F requires disclosure of any dividend restrictions.
- Instruction to Item 14.B requires disclosure of any limitations on the payment of dividends.

Foreign private issuers are already required to disclose dividend restrictions in the notes to the financial statements. Specifically, foreign private issuers that report under U.S. GAAP or Another Comprehensive Body of Accounting Principles with a reconciliation to U.S. GAAP must comply with Rule 4–08(e), as discussed above. Foreign private issuers that report under IFRS must comply with paragraph 79(a)(v) of IAS 1, *Presentation of Financial Statements,* which requires disclosure of restrictions on the distribution of dividends and the repayment of capital for each class of share capital. Item 5.B.1.(b) of Form 20–F also requires disclosure of an evaluation of the sources and amounts of cash flows, including the nature and extent of any restrictions on the ability of subsidiaries to transfer funds to the parent and the impact of such restrictions.

Based on the foregoing, we propose to delete the dividend restriction disclosure requirements in Item 10.F and the Instruction to Item 14.B of Form 20–F.[269] We note that because these disclosures, unlike those required by IFRS, may be provided outside the audited financial statements with related information such as the rights of security holders, the proposed amendments give rise to Disclosure Location—Prominence Considerations.

3. Geographic Areas [270]

Item 101(d)(4) of Regulation S–K requires, when interim financial statements are presented, a discussion of the facts that indicate the three-year financial data for geographic performance may not be indicative of current or future operations. This requirement is similar to requirements in Instruction 3 to Item 303(a) and Instruction 4 to Item 303(b) to identify elements of income which are not necessarily indicative of the issuer's ongoing business, except that there is no explicit reference to ''geographic areas'' in either item requirement. To streamline the requirements in Regulation S–K, we propose to revise Item 303 to add an explicit reference to ''geographic areas'' and delete Item 101(d)(4).[271] We note that because these disclosures are located in the business section of the filing, while the corresponding disclosures are in MD&A, their proposed elimination gives rise to Disclosure Location—Prominence Considerations.

4. Request for Comment

59. We solicit comment on the foregoing proposed amendments to integrate overlapping Commission disclosure requirements. For each topic in this section:

a. Do investors use the disclosures required by the Commission disclosure requirement? If so, in what way?

b. Should any proposed amendments not be made? Should any proposed amendments be modified? If so, which ones and why? Please be as specific as possible for each of the proposed amendments on which you provide comments.

60. Are there additional Commission disclosure requirements that overlap with, but require information incremental to, other Commission disclosure requirements? If so, what requirements do they overlap with and what action, if any, should we take to address the overlap?

E. Overlapping Requirements—Potential Modifications, Eliminations, or FASB Referrals

This section discusses Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP for which we solicit comment to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP. The comments received in response to this release may inform both potential future Commission rulemaking and FASB standard-setting activities. Future amendments to these Commission disclosure requirements may depend on the outcome of any FASB standard-setting activities to address the Commission disclosure requirements. Our staff has discussed these overlapping requirements with the FASB staff.

Incorporating these overlapping Commission disclosure requirements into U.S. GAAP could alleviate any inconsistencies that currently arise when the corresponding Commission disclosure requirements are not simultaneously amended to conform to U.S. GAAP updates, as discussed in section V.A.

Because U.S. GAAP does not scale disclosure requirements by issuer status, incorporation into U.S. GAAP would result in the application of some of these requirements to SRCs, as identified below. Incorporation into U.S. GAAP would also potentially result in the application of all such requirements to Regulation A issuers

[266] 17 CFR 210.5–04.

[267] 17 CFR 210.7–05.

[268] 17 CFR 210.9–06

[269] Item 5.B.1(b) of Form 20–F requires disclosure of restrictions on a subsidiary's ability to transfer funds to the parent in the form of dividends, loans, or advances. Although this requirement is similar to Rule 4–08(e), which creates duplication for foreign private issuers that report under U.S. GAAP or Another Comprehensive Body of Accounting Principles with a reconciliation to U.S. GAAP, we do not propose its deletion because IFRS does not contain an equivalent requirement for foreign private issuers that report under IFRS.

Item 10.D.2 of Form 20–F requires disclosure of governmental laws, decrees, regulations, or other legislation which may affect the remittance of dividends, interest, or other payments to nonresident securityholders. Although this requirement covers dividend restrictions, we also do not propose amendments to it because, through its reference to interest and other payments to nonresident securityholders, its scope is broader than the requirements for the notes to the financial statements.

[270] Please refer to the related discussion in section III.C.12.

[271] One commenter on the Disclosure Effectiveness Initiative observed that material disclosures about geographic areas would already be provided under Item 303 of Regulation S–K. *See* letter from CCMC (July 29, 2014).

and crowdfunding issuers that report under U.S. GAAP. We solicit comment on the costs and benefits of this expanded scope below.

1. REIT Disclosures [272]—Tax Status of Distributions

U.S. GAAP requires disclosure of a public entity's tax status.[273] For REITs, in addition to its tax status, Regulation S–X requires disclosure in the notes to the financial statements of the tax status of distributions per unit, for example as ordinary income, capital gain, or return of capital.[274]

2. Consolidation [275]

Although Regulation S–X [276] and U.S. GAAP [277] both set forth disclosure requirements about consolidation matters, Regulation S–X incrementally requires disclosure of material changes in the entities included in or excluded from the consolidated financial statements.

3. Discount on Shares

Regulation S–X [278] and U.S. GAAP [279] both set forth requirements about the presentation of items in the equity section of the financial statements. However, Regulation S–X incrementally requires discounts on shares to be presented separately as a deduction from the applicable accounts. Discounts on shares may arise, for example, from stock issuance costs, which are recognized as a reduction in equity.[280]

4. Assets Subject to Lien

Regulation S–X [281] and U.S. GAAP [282] both require disclosure in the notes to the financial statements of assets subject to lien and the obligation collateralized for the most recent audited balance sheet being filed. However, these U.S. GAAP disclosure requirements only apply to certain financial assets (*e.g.,* repurchase agreements or securities lending transactions), whereas Rule 4–08(b) applies to all assets.

5. Obligations [283]

a. Defaults Not Cured

Regulation S–X requires disclosure in the notes to the financial statements of the facts and amounts related to defaults of obligations or breaches of covenants that existed at the most recent balance sheet date and have not been subsequently cured.[284] This disclosure requirement is incremental to U.S. GAAP, which sets forth classification requirements for obligations for which there has been a covenant violation [285] and more limited disclosure requirements.[286]

Request for Comment

61. Item 2.04 of Form 8–K requires disclosure of a triggering event that causes the increase or acceleration of a direct financial obligation, among other disclosures, if material. In addition, Part II, Item 3 of Form 10–Q and Part II, Item 13 of Form 20–F both require disclosure of material defaults and the amount of default for debt that exceeds 5 percent of total assets. Moreover, Item 303(a)(1) of Regulation S–K requires liquidity-related disclosures.[287] These disclosures, unlike those required by Rule 4–08(c), may be provided outside the audited financial statements, giving rise to Disclosure Location—Financial Statement Considerations. In addition, the disclosures under Form 8–K and Form 10–Q are required at different times than the annual disclosures required by Rule 4–08(c). In light of these requirements in Form 8–K, Form 10–Q, Form 20–F, and Item 303(a)(1), should the disclosure requirement in Rule 4–08(c) be eliminated, rather than retained, modified, or referred to the FASB for potential incorporation into U.S. GAAP?

b. Waived Defaults

If a default of an obligation exists, but acceleration of the obligation has been waived for a period of time, Rule 4–08(c) requires disclosure of the amount of the obligation and the period of the waiver. This disclosure requirement is incremental to U.S. GAAP, which sets forth requirements for when to present debt subject to a covenant violation as a current liability on the balance sheet,[288] but does not require disclosure of the amount of the obligation or the period of the waiver for all waived defaults.

c. Changes in Obligations

Regulation S–X [289] and U.S. GAAP [290] both require disclosure of issuances of debt subsequent to the balance sheet date. However, Rule 4–08(f) of Regulation S–X incrementally requires disclosure of significant changes in the authorized amounts of debt subsequent to the latest balance sheet date.

d. Amounts and Terms of Financing Arrangements

Regulation S–X [291] and U.S. GAAP [292] both require certain disclosures of an issuer's financing arrangements. However, Regulation S–X incrementally requires disclosure, if significant, of the amount and terms (including commitment fees and the conditions under which lines may be withdrawn) of unused lines of credit for short-term financing, the weighted average interest rate on short-term borrowings outstanding as of each balance sheet date, and the amount of any lines of credit which support a commercial paper borrowing or similar arrangement. It also requires similar disclosure of the amount and terms (including commitment fees and the conditions under which commitments may be withdrawn) of unused commitments for long-term financial arrangements.

6. Preferred Shares

Regulation S–X [293] and U.S. GAAP [294] both require disclosure about preferred share preferences in involuntary liquidation. However, Regulation S–X

[272] Please refer to the related discussions in sections III.C.1 and V.B.3.

[273] *See* ASC 740–10–50–16.

[274] *See* Rule 3–15(c) of Regulation S–X.

[275] Please refer to the related discussion in sections II.B.2, III.C.2, and V.B.4.

[276] *See* Rule 3A–03(b) of Regulation S–X.

[277] *See* ASC 810–10–50.

[278] *See* Rule 4–07 of Regulation S–X [17 CFR 210.4–07]. Pursuant to Rule 4–02 of Regulation S–X, this separate presentation is only required if material.

[279] *See* ASC 505–10–45.

[280] *See* SAB Topic 5:A, *Expenses of Offering.*

[281] *See* Rule 4–08(b) of Regulation S–X [17 CFR 210.4–08(b)].

[282] *See* ASC 860–30–50–1A and ASC 860–30–50–7.

[283] Please refer to the related discussion in section II.B.3. We note that the FASB has a project underway on simplifying the balance sheet classification of debt that may address these disclosures. *See http://www.fasb.org/jsp/FASB/FASBContent_C/ProjectUpdatePage&cid=1176164405275.*

[284] *See* Rule 4–08(c) of Regulation S–X [17 CFR 210.4–08(c)].

[285] *See* ASC 470–10–45–1 and ASC 470–10–45–11.

[286] *See* ASC 470–10–50–2, which requires disclosure of the circumstances surrounding a covenant violation in certain situations, but not the amount of the obligation.

[287] Item 303(a)(1) requires disclosure of any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the issuer's liquidity materially increasing or decreasing. In addition, if a material deficiency is identified, Item 303(a)(1) requires disclosure of the course of action that the issuer has taken or proposes to take to remedy the deficiency.

[288] *See* ASC 470–10–45–1 and ASC 470–10–45–11.

[289] *See* Rule 4–08(f) of Regulation S–X.

[290] *See* ASC 855–10–50–2 and ASC 855–10–55–2a.

[291] *See* Rule 5–02.19(b) [17 CFR 210.5–02.19(b)], Rule 5–02.22(b) [17 CFR 210.5–02.22(b)], Rule 6–04.13(b) [17 CFR 210. 6–04.13(b)], Rule 7–03.16(b) [17 CFR 210.9–03.16(b)], Rule 7–03.16(c) [17 CFR 210.7–03.16(c)], Rule 9–03.13(a) [17 CFR 210.9–03.13(a)], and Rule 9–03.16 [17 CFR 210.9–03.16] of Regulation S–X.

[292] *See* ASC 470–10–50.

[293] 17 CFR 210.4–08(d)(1).

[294] ASC 505–10–50–4.

requires disclosure in more circumstances than U.S. GAAP. Specifically, Regulation S–X requires disclosure when preferences are other than par or stated value, whereas U.S. GAAP requires disclosure when preferences are considerably in excess of par or stated value.

7. Income Tax Disclosures [295]

Regulation S–X [296] and U.S. GAAP [297] both require disclosures about income taxes in the notes to the financial statements.[298] However, Rule 4–08(h) includes certain incremental requirements, some of which gives rise to Bright Line Disclosure Threshold Considerations.

Specifically, although U.S. GAAP and Regulation S–X both require disclosure of the components of income tax expense, Rule 4–08(h) incrementally: (1) Requires disclosure of the amount of domestic and foreign pre-tax income and income tax expense, (2) requires disaggregation of the foreign component of pre-tax income and income tax expense with the domestic component if it exceeds five percent of the respective total, and (3) defines ''foreign'' for purposes of this disclosure.

In addition, although U.S. GAAP and Regulation S–X both require a reconciliation of the domestic federal statutory tax rate to the effective tax rate, Rule 4–08(h) incrementally: (1) Requires disaggregation of reconciling items if they individually exceed five percent of the amount computed by multiplying pre-tax income by the applicable statutory income tax rate, (2) clarifies the statutory tax rate to use in the income tax rate reconciliation for foreign issuers, and (3) requires, when the statutory tax rate used differs from the U.S. federal corporate income tax rate, disclosure of the basis for using that rate.

Request for Comment [299]

62. Are there additional income tax disclosures that would be useful to investors? Please explain. As discussed above, Rule 4–08(h) requires disclosure of the amount of domestic and foreign pre-tax income and income tax expense. Would further disaggregation of foreign amounts be useful to investors? What, if any, burdens would such additional disclosure create for issuers? Issuers are currently required to provide foreign amounts. Would there be impediments to disaggregating these amounts by material jurisdiction? If so, what are the impediments?

8. Related Parties [300]

Regulation S–X [301] and U.S. GAAP [302] both require the amount of related party transactions to be disclosed in the financial statements. We note that Rule 4–08(k)(1) incrementally requires that these amounts be presented on the face of the financial statements, if material,[303] giving rise to Disclosure Location—Prominence Considerations. In addition, in separate financial statements, Rule 4–08(k)(2) incrementally requires disclosure of the intercompany profits or losses on transactions with related parties that are not eliminated.

9. Repurchase and Reverse Repurchase Agreements [304]

Regulation S–X [305] and U.S. GAAP [306] both set forth presentation and disclosure requirements for repurchase and reverse repurchase agreements in the financial statements. However, Regulation S–X incrementally requires: (1) The liabilities associated with repurchase agreements that are separately presented on the balance sheet to include accrued interest payable,[307] (2) disclosure of the interest rates associated with certain repurchase liabilities,[308] (3) information about counterparties and agreements with them, where there is a concentration of counterparties,[309] (4) separate presentation on the balance sheet of the carrying amount of reverse repurchase agreements,[310] and (5) disclosure of the nature of any provisions to ensure that the market value of the underlying assets remains sufficient to protect the issuer in the event of counterparty default.[311] Regulation S–X requires these incremental disclosures when a specified bright line threshold is met, giving rise to Bright Line Disclosure Threshold Considerations.

10. Interim Financial Statements—Computation of Earnings Per Share [312]

Although Commission disclosure requirements [313] and U.S. GAAP [314] both require disclosure in the notes to the financial statements of the computation of earnings per share, U.S. GAAP does not specifically require disclosure of the computation in interim financial statements.

11. Interim Financial Statements—Retroactive Prior Period Adjustments

Regulation S–X requires disclosure, in interim period financial statements, of material retroactive changes to prior period financial statements.[315] Retroactive prior period adjustments arise due to:

- Changes in accounting principle, as discussed in sections II.B.11 and III.C.8.
- Corrections of errors. Regulation S–X [316] and U.S. GAAP [317] both require disclosure, in interim financial statements, of the effect of a correction of an error on income, income per share, and retained earnings.
- Changes in reporting entities.[318] Regulation S–X and U.S. GAAP [319] both require disclosure of the effect of changes in reporting entities on net income and per share amounts. However, Regulation S–X, unlike U.S. GAAP, explicitly requires such disclosures in the interim period of change and, for non-SRCs,

[295] Please refer to the related discussion in sections II.B.4 and IV.B.2.

[296] *See* Rule 4–08(h) of Regulation S–X [17 CFR 210.4–08(h)].

[297] *See* ASC 740–10–50.

[298] We note that the FASB has an income tax disclosure project underway regarding income tax disclosures. *See http://www.fasb.org/jsp/FASB/FASBContent_C/ProjectUpdatePage&cid=1176164227426.*

[299] The S–K Concept Release also seeks input on updating and modernizing our business and financial disclosure requirements, including income tax disclosures. *See* sections IV.A.4 and IV.G.7 of the S–K Concept Release.

[300] Please refer to the related discussion in section II.B.6.

[301] *See* Rule 4–08(k) of Regulation S–X [17 CFR 210.4–08(k)].

[302] *See* ASC 850–10–50–1.

[303] Pursuant to Rule 4–02 of Regulation S–X, this separate presentation is only required if material.

[304] Please refer to the related discussion in section III.C.3.

[305] *See* Rule 4–08(m) of Regulation S–X [17 CFR 210.4–08(m)].

[306] *See* ASC 860–30–45–2 and ASC 860–30–50.

[307] *See* Rule 4–08(m)(1)(i) of Regulation S–X.

[308] *See* Rule 4–08(m)(1)(ii)(A)(ii) of Regulation S–X.

[309] *See* Rule 4–08(m)(1)(iii) and Rule 4–08(m)(2)(ii) of Regulation S–X.

[310] *See* Rule 4–08(m)(2)(i)(A) of Regulation S–X.

[311] *See* Rule 4–08(m)(2)(i)(B)(2) of Regulation S–X.

[312] Please refer to the related discussion in section II.B.8.

[313] *See* Rule 10–01(b)(2) of Regulation S–X and Item 601(b)(11) of Regulation S–K.

[314] *See* ASC 260–10–50–1.

[315] *See* Rule 8–03(b)(5) and Rule 10–01(b)(7) [17 CFR 210.10–01(b)(7)] of Regulation S–X. Rule 8–03(b)(5) applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP, while Rule 10–01(b)(7) applies to non-SRCs.

[316] Regulation S–X only requires disclosure of the effect of a correction of an error on retained earnings for non-SRCs. U.S. GAAP requires disclosure of the effect on all financial statement lines items, not only income, income per share, and retained earnings.

[317] *See* ASC 250–10–50–7 and ASC 250–10–50–8.

[318] Examples of changes in reporting entity include: (1) Changes in the specific subsidiaries that comprise the group of entities for which consolidated financial statements are presented, or (2) changes in the entities included in combined financial statements. *See* FASB ASC Master Glossary.

[319] *See* ASC 250–10–50–6.

incrementally requires disclosure of the effect on retained earnings.

Because U.S. GAAP does not scale disclosure requirements by SRC status, any incorporation of these requirements into U.S. GAAP would result in the application of these requirements to SRCs.

Request for Comment

63. Would the application of the requirement to disclose the effect of retroactive prior period adjustments on retained earnings to SRCs result in additional costs? Please discuss any such costs. Would investors benefit from such disclosure? Does that affect your view as to whether we should refer this requirement to the FASB? If so, how?

12. Interim Financial Statements—Common Control Transactions [320]

Regulation S–X [321] and U.S. GAAP [322] both set forth accounting and disclosure requirements for combinations of entities under common control. However, Rule 10–01(b)(3) incrementally requires non-SRCs to disclose the separate results of the combined entities for periods prior to the combination.[323] Because U.S. GAAP does not scale disclosure requirements by SRC status, any incorporation of these requirements into U.S. GAAP would result in the application of these requirements to SRCs.

Request for Comment

64. Would the application of this disclosure requirement to SRCs result in additional costs? Please discuss any such costs. Would investors benefit from such disclosure? Does that affect your view as to whether we should refer this requirement to the FASB? If so, how?

13. Products and Services

Regulation S–K [324] and U.S. GAAP [325] both require disclosure of the amount of revenue from products and services. Regulation S–K, however, only requires this disclosure for products and services which account for 10 percent or more of consolidated revenue in each of the last three fiscal years.[326] U.S. GAAP, on the other hand, requires this disclosure for each product or service, or group of similar products and services, unless impracticable. We note that because disclosures required by Regulation S–K, unlike those required by U.S. GAAP, may be provided outside of the audited financial statements, these differences give rise to Disclosure Location—Financial Disclosure Considerations. These differences also give rise to Bright Line Disclosure Threshold Considerations.

Request for Comment

65. Do issuers encounter challenges in disclosing revenue by products and services? If so, how significant are these challenges and how do issuers overcome these challenges, given that Regulation S–K does not provide an impracticability exception?

14. Major Customers

Regulation S–K [327] and U.S. GAAP [328] both require disclosures about major customers. However, Regulation S–K is more expansive in its requirements and differs from U.S. GAAP in two ways: (1) The threshold for disclosure and (2) the requirement to disclose a customer's name in certain instances. We note that because disclosures required by Regulation S–K, unlike those required by U.S. GAAP, may be provided outside of the audited financial statements, these differences give rise to Disclosure Location—Financial Disclosure Considerations. These differences also give rise to Bright Line Disclosure Threshold Considerations.

First, Item 101(c)(1)(vii) of Regulation S–K requires disclosure if loss of a customer, or a few customers, would have a material adverse effect on a segment. This threshold differs from U.S. GAAP in that it is qualitative and focuses on the impact on a segment. In contrast, U.S. GAAP requires disclosure, for each customer that comprises 10 percent or more of total revenue, of that fact. Although the requirements for SRCs in Item 101(h)(4)(vi) are more similar to U.S. GAAP in that they do not prescribe a segment focus, they also differ from U.S. GAAP in that they do not set forth a 10 percent bright line test for disclosure.

Second, Item 101(c)(1)(vii) requires disclosure of the name of any customer that represents 10 percent or more of the issuer's revenues and whose loss would have a material adverse effect on the issuer.[329] In 1999, the Commission considered deleting this requirement to conform to U.S. GAAP. However, the Commission determined to retain this requirement, as it continued to believe that the identity of major customers is material information to investors and that the disclosure allows a reader to better assess risks associated with a particular customer, as well as material concentrations of revenues related to that customer.[330]

Because U.S. GAAP does not scale disclosure requirements by SRC status, any incorporation of these requirements into U.S. GAAP would result in the application to SRCs of the disclosure threshold and the requirement to name a customer in certain instances.

Request for Comment

66. U.S. GAAP does not require identification of major customers by name because many constituents argued in the standard-setting process that it could be competitively harmful to either the enterprise or the customer.[331] In what way would such disclosures be competitively harmful? Does the fact that the Regulation S–K requirement to identify the customer is triggered where the loss would be material, whereas the U.S. GAAP disclosure is based on a bright line percentage of revenues, affect the determination of whether disclosure would be competitively harmful?

67. What would be the impact on SRCs if the disclosure threshold discussed above and requirement to disclose a customer's name in certain circumstances were to apply to SRCs? Would investors benefit from such disclosure? Does any potential impact affect your view as to whether we should refer this requirement to the FASB? If so, how?

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[320] Please refer to the related discussion in section II.B.13.

[321] *See* Rule 10–01(b)(3) of Regulation S–X.

[322] *See* ASC 805–50–45–1 to 5.

[323] Should the FASB revise ASC 250–10–50–6 to address the incremental Commission disclosure requirements discussed in section III.E.11, such revisions would also address the incremental Commission disclosure requirements discussed in this section. Specifically, ASC 250–10–50–6 requires disclosure of the effect of a change in a reporting entity, of which a combination of entities under common control is an example. From this information, an investor can determine the separate results of the combined entities for periods prior to the combination, as required by Rule 10–01(b)(3).

However, as discussed in section III.E.11, ASC 250–10–50–6 does not explicitly apply to interim periods, while Rule 10–01(b)(3) does. Thus, any revision to U.S. GAAP to apply the provisions of ASC 250–10–50–6 to interim periods, to address the points raised in section E.E.11, would also address the points raised in this section.

[324] *See* Item 101(c)(1)(i) of Regulation S–K [17 CFR 229.101(c)(1)(i)].

[325] *See* ASC 280–10–50–40.

[326] If an issuer's revenue does not exceed $50 million, Regulation S–K only requires disclosure for products and services which accounted for 15 percent or more of consolidated revenue.

[327] *See* Item101(c)(1)(vii) [17 CFR 229.101(c)(1)(vii)] and Item 101(h)(4)(vi) [17 CFR 229.101(h)(4)(vi)] of Regulation S–K. Item 101(c)(1)(vii) applies to non-SRCs and Item 101(h)(4)(vi) applies to SRCs.

[328] *See* ASC 280–10–50–42.

[329] Item 101(h)(4)(vi) of Regulation S–K does not require disclosure of the name of major customers.

[330] *See Segment Reporting,* Release No. 33–7620, (Jan. 5, 1999) [64 FR 1728].

[331] Basis for Conclusions to SFAS No. 14, *Financial Reporting for Segments of a Business Enterprise,* paragraph 89.

15. Legal Proceedings

U.S. GAAP requires disclosure of loss contingencies.[332] Regulation S–K requires disclosure of certain legal proceedings,[333] which are one type of loss contingency. In practice, to comply with Regulation S–K, issuers commonly repeat some or all of the disclosures provided in the notes to the financial statements under U.S. GAAP or include a cross-reference thereto.

Three commenters to the Disclosure Effectiveness Initiative generally noted similarities between the disclosures required by Item 103 of Regulation S–K and U.S. GAAP.[334] One commenter suggested removing any overlap between Item 103 and relevant accounting standards and financial reporting requirements.[335] Another commenter encouraged the Commission to coordinate with the FASB to determine, generally, whether differences between U.S. GAAP and the disclosures required by Regulation S–K continue to serve a purpose.[336]

As further described below, although Item 103 and U.S. GAAP have overlapping requirements, they differ in certain respects. Incorporation of Item 103 requirements into U.S. GAAP would have implications for investors, issuers, and other stakeholders.

The discussion below is organized as follows:

- Section III.E.15.a identifies differences between Item 103 and U.S. GAAP.
- Section III.E.15.b discusses the potential consequences of incorporating the Item 103 requirements into U.S. GAAP.
- Section III.E.15.c discusses other considerations related to Item 103.

a. Differences

The table below presents differences in: (1) The types of matters covered by Item 103 and U.S. GAAP and (2) other criteria. Each type of matter in part (1) of the table is subject to each of the other criteria discussed in part (2) of the table. These differences give rise to Disclosure Location—Financial Disclosure Considerations and Bright Line Disclosure Threshold Considerations.

Scope	Item 103	U.S. GAAP	Difference
1. Types of Matters			
Ordinary routine litigation	Requires disclosure of material legal proceedings other than ordinary routine litigation incidental to the business.	Encompasses all legal proceedings, including ordinary routine litigation.	U.S. GAAP is more expansive than Item 103. See consequence 3 in section III.E.15.b.
Proceedings known to be contemplated by governmental authorities.	Requires disclosure of proceedings that are not only pending, but known to be contemplated.	Encompasses all legal proceedings, as well as unasserted claims probable of being asserted.	U.S. GAAP is more expansive than Item 103, except for proceedings known to be contemplated which are not probable of being asserted. See consequence 3 in section III.E.15.b. For proceedings known to be contemplated which are not probable of being asserted, Item 103 is more expansive than U.S. GAAP. See consequences 1 and 2 in section III.E.15.b.
Proceedings with any director, officer, affiliate, or shareholder.	Requires disclosure of material proceedings when a director, officer, affiliate, shareholder with more than five percent ownership, or associate thereof is a party adverse to the issuer, or has a material interest adverse to the issuer.	Encompasses all legal proceedings, including matters with directors, officers, affiliates, shareholders with more than five percent ownership, or associates thereof.	U.S. GAAP is more expansive than Item 103. See consequence 3 in section III.E.15.b.
Bankruptcy, receivership, or similar proceeding.	Requires a description of any material bankruptcy, receivership, or similar proceeding.	Disclosure not required	Item 103 is more expansive than U.S. GAAP. See consequence 2 in section III.E.15.b.
Environmental matters	Notwithstanding the ordinary routine litigation exception above, requires disclosure of all proceedings, under federal, state, or local provisions related to environmental regulation.	Encompasses all legal proceedings that affect the income statement, including environmental matters.	For legal proceedings that affect the income statement, U.S. GAAP is more expansive than Item 103. See consequence 3 in section III.E.15.b.
	Includes proceedings involving capital expenditures or deferred charges that may be recognized on the balance sheet (rather than losses recognized on the income statement).	Does not address legal proceedings involving capital expenditures or deferred charges.	For legal proceedings involving capital expenditures or deferred charges, Item 103 is more expansive than U.S. GAAP. See consequence 2 in section III.E.15.b.

[332] *See* ASC 450.

[333] *See* Item 103 of Regulation S–K [17 CFR 229.103].

[334] *See* letters from CCMC (July 29, 2014); Society of Corporate Secretaries and Governance Professionals (''SCSGP'') (Sept. 10, 2014); and Shearman & Sterling LLP (''Shearman'') (Nov. 26, 2014).

[335] *See* letter from CCMC (July 29, 2014).

[336] *See* letter from SCSGP (Sept. 10, 2014).

Scope	Item 103	U.S. GAAP	Difference
2. Other Criteria			
Damages	Applies to proceedings that involve both monetary and non-monetary (e.g., injunctions) damages.	Covers matters that give rise to a liability—that is, monetary damages.	Item 103 is more expansive than U.S. GAAP. See consequence 2 in section III.E.15.b.
Quantitative Thresholds	For all matters other than (1) bankruptcies, receiverships, or similar proceedings and (2) environmental matters, does not require disclosure of material proceedings, where the amounts involved do not exceed 10 percent of the issuer's consolidated current assets. For environmental matters involving a claim for damages, potential monetary sanctions, capital expenditures, or other charges, requires disclosure of proceedings that exceed 10 percent of the issuer's consolidated current assets. For environmental matters involving a governmental authority and potential monetary sanctions, requires disclosure if potential monetary sanctions exceed $100,000.	Does not provide quantitative thresholds.	U.S. GAAP is more expansive than Item 103 where material proceedings fall below the 10 percent or the $100,000 threshold. See consequence 3 in section III.E.15.b. Item 103 could be more expansive than U.S. GAAP where environmental proceedings exceed the 10 percent or $100,000 thresholds but otherwise may not be material to the registrant. See consequences 1 and 2 in section III.E.15.b.
Likelihood	For all matters other than environmental matters, requires disclosure if material. Materiality depends on likelihood and magnitude.[337]	Requires disclosure when the likelihood of loss is at least reasonably possible..	Item 103 is more expansive than U.S. GAAP, in low probability-high magnitude situations. See consequences 1 and 2 in section III.E.15.b.

b. Consequences

In light of the differences between Item 103 and U.S. GAAP, as discussed above, incorporation of Item 103's requirements into U.S. GAAP would result in the following consequences. These consequences assume that the most expansive requirements from either Item 103 or U.S. GAAP are retained. Refer to the table above to identify the specific consequences associated with each difference between Item 103 and U.S. GAAP.

1. Disclosure of the Possible Range of Loss in More Circumstances

U.S. GAAP requires disclosure of the possible loss or range of loss in excess of amounts accrued [338] or a statement that such an estimate cannot be made.[339] Where the scope of proceedings or matters covered by Item 103 is more expansive than that of U.S. GAAP, incorporation of these incremental disclosure requirements into U.S. GAAP may benefit investors, as they would receive range of loss disclosures for matters previously outside the scope of U.S. GAAP. Provision of this disclosure, however, may create additional burdens for issuers and auditors to develop and audit additional estimates and disclosures.

2. Disclosure Subject to Audit/Review, Internal Control Over Financial Reporting, and XBRL Tagging Requirements in More Circumstances

Certain disclosures made outside the audited financial statements would be included within the notes to the financial statements, giving rise to Disclosure Location—Financial Statement Considerations. Some issuers already include this information in their audited financial statements, and, thus, the additional burdens should not be significant for these issuers.

3. Disclosure of Factual Information in More Circumstances

Item 103 requires disclosure of the court or agency in which the proceedings are pending, the date instituted, the principal parties involved, the alleged factual basis to the proceeding, and the relief sought. Where the scope of U.S. GAAP is more expansive than that of Item 103, incorporation of these factual disclosure requirements into U.S. GAAP may benefit investors, as they would newly receive these factual disclosures for incremental matters previously outside the scope of Item 103. Provision of this disclosure, however, may create additional burdens for issuers and auditors to develop and audit additional disclosures.

c. Other Considerations

Under the National Environmental Policy Act of 1970 (''NEPA''),[340] Congress required all federal agencies to include consideration of the environment in regulatory action. In response to this mandate, the Commission adopted environmental

[337] *See Basic, Inc.* v. *Levinson,* 485 U.S. 224 (1988) (stating that, in the case of speculative or contingent events, materiality will depend at any given time upon a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity).

[338] *See* ASC 450–20–25–2, which requires accrual of an estimated loss from a loss contingency if: (a) It is probable that a liability has been incurred at the date of the financial statements and (b) the amount of loss can be reasonably estimated.

[339] *See* ASC 450–20–50–3.

[340] 42 U.S.C. 4321 *et seq.*

compliance and litigation disclosure requirements.[341] The incorporation of Item 103's requirements into U.S. GAAP could result in changes to required disclosures about environmental legal proceedings, such as replacement of the 10 percent and $100,000 thresholds [342] related to environmental matters with a more general materiality threshold. We solicit comment about alternative thresholds in section III.B.2 in our discussion of Bright Line Disclosure Threshold Considerations.

Request for Comment

68. For the following disclosures, would inclusion of these disclosures in the audited financial statements create significant burdens for issuers and auditors? Would it require revision to standards of the Public Company Accounting Oversight Board (United States) (''PCAOB'') or the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information? [343] If so, how do auditors of issuers that currently include the above disclosures in the audited financial statements audit them?

a. Proceedings known to be contemplated but which are not probable of being asserted.

b. Material bankruptcy, receivership, or similar proceeding.

c. Non-monetary damages.

d. Proceedings involving capital expenditures or deferred charges.

e. Environment proceedings in excess of the 10 percent or $100,000 thresholds that may not be otherwise material to the registrant.

f. Low probability-high magnitude proceedings.

g. The court or agency in which the proceedings are pending, the date instituted, the principal parties involved, the alleged factual basis to the proceeding, and the relief sought.

16. Oil and Gas Producing Activities

Regulation S–K [344] and U.S. GAAP [345] both require issuers engaged in oil and gas producing activities to disclose information about those activities in the notes to the financial statements. However, Item 302(b) of Regulation S–K incrementally requires that the U.S. GAAP disclosures must be provided for each period presented. This requirement is only applicable to non-SRCs.[346] Because U.S. GAAP does not scale disclosure requirements by SRC status, any incorporation of these requirements into U.S. GAAP would result in the application of this requirement to SRCs.

Request for Comment

69. Would the application of this disclosure requirement to SRCs impose additional costs? Please describe any such costs. Would investors benefit from such disclosure? Does that affect your view as to whether we should refer this requirement to the FASB? If so, how?

17. Request for Comment

70. Do investors use the incremental disclosures required by the overlapping Commission disclosure requirements? If so, in what way?

71. Should we retain, modify, eliminate, or refer the foregoing incremental Commission disclosure requirements to the FASB for potential incorporation into U.S. GAAP? If so, which ones and why? If not, please discuss why not. Please be as specific as possible for each of the proposed referrals on which you provide comments.

72. For each topic in this section:

a. What would be the potential costs and benefits of incorporating the incremental disclosure requirements into U.S. GAAP? Do these potential costs and benefits affect your views as to whether we should refer any or all of the foregoing disclosure requirements to the FASB for potential incorporation into U.S. GAAP? If so, which requirements and how?

b. Would the expansion of the disclosure requirements to Regulation A and crowdfunding issuers that report under U.S. GAAP result in additional costs and benefits? Please describe any such costs and benefits. Do any of these potential costs and benefits affect your views as to whether the disclosure requirements should be referred to the FASB? If so, how?

73. Are there other Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP? If so, what requirements do they overlap with and what action, if any, should we take to address the overlap?

IV. Outdated Requirements

A. Background

We have also preliminarily identified Commission disclosure requirements that have become obsolete as a result of the passage of time or changes in the regulatory, business, or technological environment. We propose to amend these outdated requirements. The proposed amendments are intended to simplify issuer compliance efforts. To reduce any loss of information or increased burdens for investors, we also propose to require additional disclosure of information which is expected to be readily available to issuers at minimal to no cost.

Section IV.B below discusses each outdated Commission disclosure requirement and the proposed amendment.

B. Proposed Amendments

1. Stale Transition Dates

In certain circumstances, when the Commission revised its disclosure requirements, it specified the date beyond which issuers are required to comply with the new requirements.[347] Given the passage of these transition dates, we propose to delete references to them in our disclosure requirements.

2. Income Tax Disclosures [348]

In February 1992, the FASB revised its income tax disclosure requirements, as part of a broader project on the accounting for income taxes,[349] effective for fiscal years beginning after December 15, 1992. In October 1992, the Commission amended Regulation S–

[341] As a result of NEPA, the Commission issued an interpretive release in 1971 alerting companies to potential disclosure obligations that could arise from material environmental litigation and the material effects of compliance with environmental laws. The Commission later adopted more specific disclosure requirements relating to these matters and, in 1976, the Commission amended its forms to require disclosure of any material estimated capital expenditures for environmental control facilities.

See *Disclosures Pertaining to Matters Involving the Environment and Civil Rights,* Release No. 33–5170 (July 19, 1971) [36 FR 13989 (July 29, 1971)], *Disclosure with Respect to Compliance with Environmental Requirements and Other Matters,* Release No. 33–5386 (April 20, 1973) [38 FR 12100 (May 9, 1973)], *Disclosure of Environmental and Other Socially Significant Matters,* Release No. 33–5569 (Feb. 11, 1975) [40 FR 7013 (Feb. 18, 1975)], *Conclusions and Final Action on Rulemaking Proposals Relating to Environmental Disclosure,* Release No. 33–5704 (May 6, 1976) [41 FR 21632 (May 27, 1976)], *Natural Resources Defense Council et al.,* v. *SEC,* 389 F. Supp. 689 (D.D.C. 1974).

[342] The Commission adopted the $100,000 threshold in 1982. *See* Adoption of Integrated Disclosure System.

[343] *See* AU sec. 337C: Exhibit II—*American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Request for Information.*

[344] *See* Item 302(b) of Regulation S–K [17 CFR 229.302(b)].

[345] *See* ASC 932–235–50.

[346] *See* Item 302(c) of Regulation S–K [17 CFR 229.302(c)].

[347] *See* Rule 4–01(a)(3) of Regulation S–X [17 CFR 210.4–01(a)(3)] for non-SRCs and Note 6 to Rule 8–01 of Regulation S–X [17 CFR 210.8–01] for SRCs. *See* Forms S–3, F–1, F–3, F–4, and 20–F. *See* Exchange Act Rule 13a–10(g)(3) [17 CFR 240.13a–10(g)(3)], Exchange Act Rule 15d–2 [17 CFR 240.15d–2], and Exchange Act Rule 15d–10(g)(3) [17 CFR 240.15d–10(g)(3)].

[348] Please refer to the related discussions in sections II.B.4 and III.E.7.

[349] SFAS No. 109, *Accounting for Income Taxes.*

X [350] to clarify that parts of certain rules [351] do not apply to issuers that have adopted the new FASB standard.[352] Because all issuers are now required to apply the FASB's revised standard, we propose to eliminate the parts of Rule 4–08(h) that no longer apply: Rule 4–08(h)(1)(ii), the parenthetical at the end of Rule 4–08(h)(1), part of the introductory sentence of Rule 4–08(h)(2), and all of Rule 4–08(h)(3) of Regulation S–X.

3. Available Information

a. Public Reference Room

Various Commission disclosure requirements and forms require issuers to disclose the availability of their filings for reading or copying at the Commission's Public Reference Room and the Public Reference Room's physical address and phone number.[353] However, the Commission staff has observed that the Commission's Public Reference Room is rarely used by the public to obtain or review issuer filings,[354] as paper filings are now only permitted (and sometimes required) in very limited circumstances.[355] Generally, issuers are required to file most filings electronically and, with the widespread availability of the Internet, investors can access for free substantially all issuers' Commission filings on EDGAR. As a result, we propose to delete the requirements to identify the Public Reference Room and disclose its physical address and phone number.[356]

Additionally, electronic filers are required to disclose the Commission's Internet address and that electronic SEC filings are available there. We intend to retain this requirement but propose to delete the qualifier ''if you are an electronic filer'' as all but a limited number of issuers are now required to file electronically.[357] We also propose to expand this requirement to Forms 20–F and F–1, which do not currently call for such disclosure, to align the requirements for foreign private issuers with domestic issuers. While these proposed amendments would impose additional disclosure burdens on certain classes of issuers (*i.e.,* paper filers and foreign private issuers), we believe the cost of providing this information would be minimal.

Request for Comment

74. Are the disclosures to identify the Public Reference Room and disclose its physical address and phone number useful to investors?

75. Are there significant burdens and costs associated with disclosing the Commission's Internet address and a statement that electronic SEC filings are available there?

b. Issuer Internet Address

In 2002, the Commission recognized that ''[a]n efficient and economical method for companies to make information available about themselves to many investors is through their Internet Web sites.'' [358] The Commission believed that it was important for issuers to make investors aware of the different sources, including corporate Web sites, that provide access to information about the issuer.[359] Consequently, the Commission revised Regulation S–K to require accelerated and large accelerated filers [360] to disclose their Internet address, if they have one, in their annual reports filed on Form 10–K,[361] and to encourage other filers to do so.[362] Various forms also encourage filers to disclose their Internet address, if available.[363]

In the 2002 adopting release, the Commission noted that commenters supported extending this disclosure requirement to all issuers, including smaller issuers and foreign private issuers.[364] The Commission indicated it would ''continue to study this issue and consider extending the requirement to all reporting companies after evaluating [its] initial experience with the requirement by accelerated filers.'' [365]

The Commission staff has observed that many non-accelerated filers already disclose their Internet addresses annually in their Form 10-Ks. This current practice, combined with the minimal costs of disclosing an Internet address, suggest that such a requirement would impose limited burden on issuers. In addition, the Commission has provided guidance about the liability framework for certain types of disclosures on company Web sites, including hyperlinked and archived data, so that investors could gain the benefits of Internet disclosure.[366] We also believe that such a requirement would help ensure that investors are aware of an additional resource for information about issuers.

Based on the foregoing, we propose to amend Items 101(e) and 101(h)(5) of Regulation S–K and Forms S–3, S–4, F–1, F–3, F–4, 20–F, SF–1, and SF–3 to require all issuers to disclose their Internet addresses (or, in the case of asset-backed issuers, the address of the specified transaction party), if they have one.

Request for Comment

76. Are there significant burdens and costs associated with disclosing the issuer's Internet address? Are the burdens or costs that may be imposed on non-accelerated filers, including

[350] *See Amendments to Rules and Forms,* Release No. 33–6958A, (Oct. 1, 1992) [57 FR 45287].

[351] *See* Rule 4–08(h)(1) [17 CFR 210.4–08(h)(1)] and 4–08(h)(2) of Regulation S–X [17 CFR 210.4–08(h)(2)].

[352] Rule 4–08(h)(3) of Regulation S–X [17 CFR 210.4–08(h)(3)].

[353] *See* Item 101(e)(2) of Regulation S–K [17 CFR 229.101(e)(2)] for non-SRCs and Item 101(h)(5)(iii) of Regulation S–K [17 CFR 229.101(h)(5)(iii)] for SRCs. The Commission's Securities Act registration statements filed on Forms S–1, S–3, S–11, S–4, F–1, F–3, and F–4 require similar disclosures. Regulation AB also has similar disclosure requirements for asset-backed issuers. See Item 1118(b) of Regulation AB [17 CFR 229.1118(b)] and Forms SF–1 [17 CFR 239.44] and SF–3 [17 CFR 239.45]. In addition, Forms N–1A [17 CFR 239.15A and 274.11A], N–2 [17 CFR 239.14 and 274.11a–1], N–3 [17 CFR 239.17a and 274.11b], N–5 [17 CFR 239.24 and 274.5], N–6 [17 CFR 239.17c and 274.11d], and N–8B–2 [17 CFR 274.12] have similar disclosure requirements.

[354] Commission staff who currently operate the Public Reference Room indicate that it is now primarily used by legal publishers who wish to review paper Forms 144 [17 CFR 239.144] (filings made by an affiliate of an issuer as notice of the proposed sale of securities in reliance on Rule 144), which are still permitted to be filed in paper form. See *http://www.sec.gov/answers/form144.htm.*

[355] *See* Rules 14 [17 CFR 232.14], 101[17 CFR 232.101], and 102 [17 CFR 232.102] of Regulation S–T.

[356] We also propose to delete the requirement to disclose how to send a written request by mail to the SEC's Public Reference Room to obtain certain hard copy information. Disclosure of how to obtain this information electronically would still be required.

Three commenters on the Disclosure Effectiveness Initiative recommended deleting the requirements to identify the Public Reference Room and disclose its location and phone number. *See* letters from ABA (Mar. 6, 2015); CCMC (July 29, 2014); and SCSGP (Sept. 10, 2014).

Although we are proposing to delete the requirements to identify the Public Reference Room, its physical address, and its phone number, the Public Reference Room will remain open and available for interested persons to access Commission filings.

[357] *See* Rules 100 [17 CFR 232.100] and 101 [17 CFR 232.101] of Regulation S–T.

[358] *See Acceleration of Periodic Report Filing Dates and Disclosure Concerning Web sites Access to Reports,* Release No. 33–8128 (Sept. 5, 2002) [67 FR 58480].

[359] *Id.*

[360] Rule 12b–2 of the Exchange Act defines the terms accelerated filer and large accelerated filer.

[361] *See* Item 101(e)(3) of Regulation S–K [17 CFR 229.101(e)(3)].

[362] *See id. See also* Item 101(h)(5)(iii) of Regulation S–K [17 CFR 229.101(h)(5)], which encourages SRCs to disclose their internet addresses, if available.

[363] *See* Forms S–3, S–4, F–3, F–4. *See also* Forms SF–1 and SF–3 for asset-backed issuers.

[364] *See* Release No. 33–8128, *supra* note 358, at n.138.

[365] *Id.*

[366] *See, e.g., Commission Guidance on the Use of Company Web sites,* Release No. 34–58288 (Aug. 1, 2008) [73 FR 45862].

SRCs, different from those that may be borne by accelerated and large accelerated filers?

4. Market Price Disclosure

a. Item 201(a)(1) of Regulation S–K

Item 201(a)(1) of Regulation S–K [367] requires issuers to disclose the following:

- The principal U.S. market(s) where its common equity is traded. Foreign issuers must also disclose the principal established foreign public trading market, if applicable. Where applicable, issuers must disclose that there is no established public trading market for their common equity.[368]
- If the principal U.S. market is an exchange, issuers must disclose the high and low sale prices for their common equity for each quarter within the two most recent fiscal years and subsequent interim period.[369]
- If the principal U.S. market is not an exchange, issuers must disclose the high and low bid quotations for the same periods as above. Where applicable, issuers must identify the source of the quotations and include appropriate qualifying language.[370]
- Foreign issuers that identify a principal established foreign trading market for common equity are also required to provide market price disclosure comparable to that of a domestic issuer. If the primary U.S. market for the foreign issuer trades using American Depositary Receipts (''ADRs''), then foreign issuers must disclose prices based on the ADRs.[371]
- When Item 201(a)(1) disclosure is included in a Securities Act registration statement or an Exchange Act proxy or information statement, issuers must also disclose the price for their common equity as of the latest practicable date.[372]

Today, the daily market prices of most publicly traded common equity securities, including those quoted on an automated quotation system, are readily available for free on numerous Web sites, including the exchanges' or quotation systems' Web sites.[373] On these Web sites, investors can view daily closing prices, up to the previous day, and intra-day quotes, which would be more up-to-date than the prices required by Item 201(a)(1)(v) of Regulation S–K. Additionally, many of these Web sites allow users to download the daily historical data over customized time horizons for their own consumption. These features result in more robust information than the disclosure required by Item 201(a)(1) of Regulation S–K.[374]

Based on the foregoing, we propose the following amendments to Item 201(a)(1) of Regulation S–K:

- Issuers with one or more classes of common equity would be required to disclose the principal U.S. market(s) where each class is traded and the trading symbol(s) used by the market(s) for each class of common equity. Foreign issuers also would be required to identify the principal established foreign public trading market, if any, and the trading symbol(s), for each class of their common equity.
- Issuers with common equity that is not traded on an exchange must indicate, as applicable, that any over-the-counter quotations in such trading systems reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not necessarily represent actual transactions.
- Issuers with no class of common equity traded in an established public trading market would be required to state such fact and disclose the range of high and low bid information, if applicable, for each quarter over the last two fiscal years and any subsequent interim period.[375] Also, such issuers would be required to disclose the source and explain the nature of such quotations.

As proposed to be amended, Item 201(a)(1) would eliminate the detailed disclosure requirement of sale or bid prices for most issuers whose common equity is traded in an established public trading market and replace it with disclosure of the trading symbol.[376] The proposed amendments would also align Item 201(a)(1) with Item 501(b)(4) of Regulation S–K.[377]

b. Item 9.A.4 of Form 20–F

Foreign private issuers that file Form 20–F are subject to disclosure requirements similar to those included in Item 201(a)(1) of Regulation S–K. Item 9.A.4 of Form 20–F requires the following price history of the stock to be offered or listed for both the U.S. market and the principal trading market outside the United States, as applicable:

- The annual high and low market prices for the last five full financial years;
- Quarterly high and low market prices for the last two full financial years and any subsequent period; and
- Monthly high and low market prices for the last six months;

For preemptive share issuances, the issuer must disclose the market prices for the first trading day in the most recent six months, the last trading day before the announcement of the offering, and for the latest practicable date. If an issuer's securities are ''not regularly traded in an organized market,'' the issuer must discuss any lack of liquidity.

We propose to amend Item 9.A.4 to be consistent with the proposals related to Item 201(a)(1) of Regulation S–K. Specifically, we propose to amend Item 9.A.4 to require disclosure of the U.S. and principal market(s) where the issuer's common equity trades and the trading symbol(s) assigned to the issuer's common equity that is traded in the U.S. market and principal market. For those issuers whose common equity

[367] 17 CFR 229.201(a)(1).

[368] Item 201(a)(1)(i) of Regulation S–K [17 CFR 229.201(a)(1)(i)].

[369] Item 201(a)(1)(ii) of Regulation S–K [17 CFR 229.201(a)(1)(ii)].

[370] Item 201(a)(1)(iii) of Regulation S–K [17 CFR 229.201(a)(1)(iii)]. This paragraph requires qualification where the over-the-counter quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not necessarily represent actual transactions. Reference to quotations must be qualified by appropriate explanation where there is an absence of an established public trading market.

[371] Item 201(a)(1)(iv) of Regulation S–K [17 CFR 229.201(a)(1)(iv)].

[372] Item 201(a)(1)(v) of Regulation S–K [17 CFR 229.201(a)(1)(v)]. The Commission has required this or similar pricing disclosure since the 1960s. *See Guides for Preparation and Filing of Registration Statements,* Release No. 33–4936 (Dec. 9, 1968) [33 FR 18617].

[373] *See, e.g., www.finance.yahoo.com; www.google.com/finance; www.bloomberg.com; www.nyse.com; www.nasdaq.com; www.londonstockexchange.com; deutsche-boerse.com; www.otcbb.com;* and *www.otcmarkets.com.*

[374] Some commenters on the Disclosure Effectiveness Initiative have also suggested that the stock price disclosures are obsolete and should be eliminated. *See, e.g.,* letters from ABA (Mar. 6, 2015); Corporate Governance Committee Business Roundtable (Apr. 15, 2015); CCMC (July 29, 2014); CFA Institute (Nov. 12, 2014); IBM Corporation (Aug. 7, 2014); SCSGP (Sept. 10, 2014); and Shearman (Nov. 26, 2014).

[375] Item 201(a)(1)(i) currently notes that the existence of limited or sporadic quotations should not, by itself, be deemed to constitute an established public trading market.

[376] Form N–2, which is used for registration of closed-end management investment companies, includes disclosure requirements relating to sales prices and bid information that are similar to those in Item 201(a)(1) of Regulation S–K. Item 1, Instruction 1 and Item 8.5(b) of Form N–2. In addition to these requirements, Form N–2 requires disclosure of information relating to net asset value and discount or premium to net asset value. Item 8.5(b), Instructions 4 and 5 and Item 8.5(c) through (e) of Form N–2. Disclosure of sales prices and bid information is needed in registration statements on Form N–2 so that the required premium/discount disclosure can be fully understood. Accordingly, we are not proposing to change the requirements in Form N–2 relating to sales prices and bid information.

[377] 17 CFR 229.501(b)(4). Item 501(b)(4) of Regulation S–K requires prospectus cover page disclosure of the trading symbol(s) and market(s) for securities being offered and registered on a Securities Act registration statement.

is not traded in any established public trading market, disclosure of that fact would still be required.

Request for Comment

77. Is disclosure of trading symbols an adequate substitute for the current required disclosures in Item 201(a)(1) of Regulation S–K and Item 9.A.4 of Form 20–F? Why or why not?

78. Would elimination of the detailed disclosure of sale or bid prices place a burden on retail investors? Would the proposed disclosures help retail investors by facilitating their research?

79. Where a class of common equity is traded in multiple markets, should issuers have to provide disclosure only for the principal established public trading market or every established public trading market? Why?

80. Should foreign issuers be required to disclose the trading symbol(s) for both the principal U.S. market and the principal established foreign public trading market(s), as applicable? Why or why not?

81. How do investors and issuers currently understand the term ''established public trading market?'' Is further guidance needed to determine what constitutes ''limited or sporadic quotations'' and whether a quotation or trading medium is an established public trading market?

82. Is there uncertainty in the current marketplace regarding the determination of the principal established public trading market?

5. Exchange Rate Data

Item 3.A.3 of Form 20–F requires foreign private issuers to provide exchange rate data where the financial statements required to be provided in the Form 20–F are prepared in a currency other than the U.S. dollar. In these situations, the exchange rate between the financial reporting currency and the U.S. dollar must be provided:

- At the latest practicable date;
- The high and low exchange rates for each month during the previous six months; and
- For the five most recent financial years and any subsequent interim period for which financial statements are presented, the average rates for each period, calculated by using the average of the exchange rates on the last day of each month during the period.

Exchange rate information is readily available for free on a number of Web sites.[378] These Web sites allow investors to obtain exchange rate data for the relevant periods, and investors may obtain information that is more current than the information provided in the Form 20–F. In addition, although certain exchange rate information, such as the average exchange rates for each of the five most recent financial years and any subsequent interim period, may be more difficult to obtain and necessitate investors to calculate the averages themselves, we do not expect that investors would face significant challenges in deriving this information.

Based on the foregoing, we proposed to delete Item 3.A.3 of Form 20–F.

Request for Comment

83. Is the exchange rate information that is available on Web sites an adequate substitute for the current required disclosures? Why or why not?

84. Would the proposed amendments place a burden on retail investors?

85. What are the burdens and costs on registrants associated with disclosing this information?

6. Foreign Private Issuer Initial Public Offering—Age of Financial Statements

Form F–1, through its reference to Item 8.A.4 of Form 20–F, requires that audited financial statements for an initial public offering by a foreign private issuer must not be older than 12 months as of the date of the filing.[379] Audited financial statements for all other foreign private issuer offerings or listings must not be older than 15 months at the time of the offering or listing.[380]

Instruction 2 to Item 8.A.4 states that we will waive the 12-month requirement if the foreign private issuer adequately represents that it is not required to comply with the 12-month requirement in any jurisdiction outside the United States and that complying with the requirement is impracticable or involves undue hardship. However, the issuer must still comply with the 15-month requirement in these circumstances.

In light of this instruction, the Commission staff has almost always granted these waiver requests. Based on the foregoing, we propose to amend Instruction 2 to Item 8.A.4 to remove the requirement that foreign private issuers in these situations seek a waiver. This amendment would enable foreign private issuers that file the above representations as an exhibit to the registration statement, as currently required, to forgo the 12-month requirement and instead comply with the 15-month requirement without incurring the time and expense associated with the waiver process.

C. Request for Comment

86. We solicit comment on the foregoing proposed amendments to address outdated requirements. Is our approach to these outdated requirements appropriate? Please be as specific as possible for each of the proposed amendments on which you provide comments.

87. Are there other Commission disclosure requirements that are outdated? If so, why is the requirement outdated and how should it be amended?

V. Superseded Requirements

A. Background

As accounting, auditing, and disclosure requirements change over time, inconsistencies may arise between the newer requirements and existing Commission disclosure requirements. We propose amendments to update Commission disclosure requirements to reflect, as applicable, recent legislation, more recently updated Commission disclosure requirements, or more recently updated U.S. GAAP requirements, as discussed in section I.C.2.[381]

The Commission staff has observed in its filing reviews that, in practice, issuers typically navigate these inconsistencies by complying with the requirement that was updated more recently. This is particularly the case with respect to changes in U.S. GAAP requirements, as the Commission has designated the FASB as the private-sector accounting standard setter for U.S. financial reporting purposes, as discussed in section I.C.1. As such, we anticipate that these proposed amendments generally will not affect current disclosure practices. Periodically, however, issuers and their advisers express confusion about how the more recently updated requirements

[378] *See, e.g., www.finance.yahoo.com; www.google.com/finance; www.bloomberg.com*; and *www.reuters.com/finance.*

[379] This age of financial statements requirement is more stringent than the requirements for domestic issuers, which permit the age of financial statements to exceed 12 months for a period of between 45 days and 90 days after the fiscal year end, depending on the issuer's filer status and other conditions if the issuer is a smaller reporting company. *See* Rule 8–08 of Regulation S–X [17 CFR 210.8–08](applicable to SRCs) and Rule 3–12 of Regulation S–X [17 CFR 210.3–12] (applicable to non-SRCs)].

[380] Item 8.A.4 of Form 20–F.

[381] Some of the proposed amendments to eliminate superseded Commission disclosure requirements apply to both issuers that report under U.S. GAAP and IFRS. We do not expect our proposed amendments to conform these requirements to U.S. GAAP to cause confusion for issuers that report under IFRS because U.S. GAAP and IFRS are substantially converged for these topics.

affect existing Commission disclosure requirements and seek guidance from the Commission staff. In these situations, the proposed amendments should help simplify compliance by updating superseded Commission disclosure requirements and addressing any potential confusion by codifying Commission staff guidance. In turn, investors and other users should benefit from greater consistency across issuers.

Section V.B below discusses each Commission disclosure requirement that we believe is superseded and the proposed amendment.[382]

B. Proposed Amendments

1. Auditing Standards

Section 103(a) of the Sarbanes-Oxley Act authorized the PCAOB to establish auditing and related professional practice standards used by registered public accountants when conducting audits of issuers.[383] Prior to the creation of the PCAOB, public accounting firms conducted audits of issuers pursuant to Generally Accepted Auditing Standards (''GAAS'') [384] and many Commission rules continue to refer to those standards. In addition, section 10A of the Exchange Act also refers to GAAS in its requirements for audits. The standards of the PCAOB are different from GAAS.

In 2004, the Commission published interpretive guidance explaining that references to GAAS in Commission rules and staff guidance, as they relate to issuers, should be understood to mean the standards of the PCAOB plus any applicable rules of the Commission.[385] The Commission also stated its intent to codify this interpretation in the future.[386]

We propose to codify the 2004 interpretation by amending Rule 1–02(d) of Regulation S–X to refer to ''the standards of the Public Company Accounting Oversight Board (United States) (''PCAOB'')'' as it relates to the audit of issuers and to note that, for different types of non-issuers, the Commission requires PCAOB auditing standards or GAAS or permits the use of either.[387] We are also proposing amendments to Rule 436(d)(4) of Regulation C and General Instructions E(c)(3) and G(f)(1) and Instruction 2 to Item 8.A.2 of Form 20–F to replace the references to GAAS with ''the standards of the Public Company Accounting Oversight Board (United States) (''PCAOB'')'' and to state that financial statements of entities other than the issuer must be audited in accordance with applicable professional standards. Additionally, we propose amending Rule 2–01(f)(7)(ii)(B) of Regulation S–X to update its language to make it consistent with current auditing standards, Rules 2–02(b)(1), 8–03, and 10–01 of Regulation S–X to refer to ''applicable professional standards'' instead of GAAS, and Rules 10A–1(b)(3) [388] and 13b2–2(b)(2) [389] of the Exchange Act to replace the references to GAAS with ''the standards of the Public Company Accounting Oversight Board.'' Related to auditing, we are also proposing an amendment to Instruction E(c)(3) of Form 20–F to clarify the auditor independence requirement by replacing the reference to U.S. standards for auditor independence with ''qualified and independent in accordance with Article 2 of Regulation S–X.''

2. Statement of Cash Flows

In October 1992, to conform to changes in U.S. GAAP,[390] the Commission amended various rules and forms to replace references to ''changes in financial position'' and ''funds flows'' with ''cash flows.'' [391] The 1992 amendments inadvertently failed to amend the title of Rule 3–02 of Regulation S–X, which continues to refer to changes in financial position. We propose to replace that reference in the title of Rule 3–02.

3. Gain or Loss on Sale of Properties by REITs [392]

Regulation S–X requires REITs to present separately all gains and losses on the sale of properties outside of continuing operations in the income statement.[393] U.S. GAAP, however, restricts that presentation to gains and losses on disposals that meet the definition of discontinued operations.[394]

Prior to 2014, application of Regulation S–X often resulted in the same presentation as U.S. GAAP because most REIT dispositions met the definition of discontinued operations, such that any gains or losses were presented outside of continuing operations in compliance with both requirements. In 2014, the FASB narrowed the definition of discontinued operations in U.S. GAAP,[395] such that it now more frequently results in a presentation that differs from that under Regulation S–X. We propose to update Regulation S–X by eliminating Rule 3–15(a)(1).

4. Consolidation [396]

The Commission provided guidance on the presentation of consolidated and combined financial statements when it first issued Regulation S–X in 1940.[397] Since that time, certain U.S. GAAP consolidation requirements have changed significantly, creating inconsistencies between Regulation S–X and U.S. GAAP.[398] To address these

[382] This section also includes proposed technical corrections of non-existent or incorrect references.

[383] Public Law 107–204, 116 Stat. 745 (2002). Pursuant to section 2(a)(7) of the Sarbanes-Oxley Act, an issuer is defined as an issuer with securities registered under section 12 of the Exchange Act or required to file reports under section 15(d) of the Exchange Act. 15 U.S.C. 7201(a)(7).

[384] These standards are currently promulgated by the American Institute of Certified Public Accountants.

[385] *See Commission Guidance Regarding the Public Company Accounting Oversight Board's Auditing and Related Professional Practice Standard No. 1,* Release No. 34–49708 (May 14, 2004) [69 FR 29064]. Subsequently, section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') amended the Sarbanes-Oxley Act to establish the PCAOB's authority to oversee the independent public accountants that audit registered brokers and dealers. *See* Pub. L. 111–203, 124 Stat. 1376 (2010).

[386] *Id.*

[387] The auditing standards of the PCAOB apply to all issuers and only some entities that are not issuers as defined by the Sarbanes-Oxley Act (*e.g.,* broker-dealers). For other non-issuers, GAAS is permitted.

[388] 17 CFR 240.10A–1(b)(3).

[389] 17 CFR 240.13b2–2(b)(2).

[390] In November 1987, the FASB superseded APB Opinion No. 19, *Reporting Changes in Financial Position,* with its issuance of SFAS No. 95, *Statement of Cash Flows.*

[391] *See Amendments to Rules and Forms,* Release No. 33–6958A, (Oct. 1, 1992) [57 FR 45287].

[392] Please refer to the related discussions in sections III.C.1 and III.E.1.

[393] *See* Rule 3–15(a)(1) of Regulation S–X [17 CFR 210.3–15(a)(1)].

[394] ASC 205–20–45–1B.

[395] *See* Accounting Standards Update (''ASU'') No. 2014–08, *Presentation of Financial Statements (Topic 205) and Property, Plant, and Equipment (Topic 360): Reporting Discontinued Operations and Disclosures of Disposals of Components of an Entity.* ASU No. 2014–08 is effective for public business entities on a prospective basis to: (1) All disposals (or classifications as held for sale) of components of an entity that occur within annual periods beginning on or after December 15, 2014, and interim periods within those years and (2) all businesses that, on acquisition, are classified as held for sale that occur within annual periods beginning on or after December 15, 2014, and interim periods within those years. Early adoption is permitted, but only for disposals (or classifications as held for sale) that have not been reported in financial statements previously issued or available for issuance.

[396] Please refer to the related discussions in sections II.B.2, III.C.2, and III.E.2.

[397] *See Adoption of Regulation S–X,* 5 FR 954 (March 6, 1940) [5 FR 954].

[398] For example, Accounting Research Bulletin (''ARB'') No. 51, *Consolidated Financial Statements* (''ARB No. 51''), was issued in 1959. More recently, the FASB has issued SFAS No. 94, *Consolidation of All Majority-Owned Subsidiaries—an amendment of ARB No. 51, with related amendments of APB Opinion No. 18 and ARB No.*

Continued

inconsistencies, we propose the amendments discussed below.

a. Difference in Fiscal Periods

Regulation S–X prohibits the consolidation of an entity if its fiscal period differs substantially, for example by more than 93 days, from that of the issuer.[399] U.S. GAAP, however, requires consolidation despite different fiscal periods.[400] Thus, we propose to update Regulation S–X by deleting the consolidation prohibition in Rule 3A–02(b).

Regulation S–X permits the combination of entities under common control even if their fiscal periods differ by more than 93 days, but requires the recasting of the latest fiscal year to within 93 days and disclosure of amounts excluded or included more than once as a result of the recasting.[401] Under U.S. GAAP, the fiscal periods of combined entities must differ by less than about three months.[402] Thus, we propose to update Regulation S–X by deleting Rule 3A–02(b)(2).

b. Bank Holding Company Act of 1956

The Bank Holding Company Act of 1956 (''BHC Act'') [403] prohibits a bank holding company from certain holdings and activities.[404] When a bank becomes involved in a prohibited activity, for example through a business combination or possession of collateral, the bank holding company may temporarily continue these activities, as long as the bank holding company disposes of the restricted activities within the grace period afforded by the BHC Act.[405]

Regulation S–X prohibits consolidation of subsidiaries of issuers subject to the BHC Act when a divestiture has been made or it is substantially likely that the divestiture will be necessary in order to comply with provisions of the BHC Act.[406] U.S. GAAP, however, does not provide such an exception to consolidation.[407] Instead, U.S. GAAP requires consolidation of such subsidiaries until their disposal, but provides for their separate presentation in the financial statements prior to disposal if they meet the criteria for ''held for sale'' classification.[408] Thus, we propose to delete Rule 3A–02(c).

c. Intercompany Transactions Generally

Regulation S–X provides disclosure requirements for intercompany transactions that are not eliminated.[409] U.S. GAAP, however, requires the elimination of intercompany transactions from consolidated financial statements.[410] Accordingly, we propose to update Regulation S–X by deleting this disclosure requirement in Rule 3A–04.

d. Intercompany Transactions in Separate Financial Statements

When separate financial statements of a subset of a consolidated group, such as a parent, subsidiaries, or investees, are presented, Regulation S–X contemplates the elimination of some transactions between the subset of the consolidated group presented in the separate financial statements and other entities in the consolidated group.[411] U.S. GAAP, however, does not permit elimination of these transactions in the separate financial statements.[412] Rather, U.S. GAAP treats these transactions as related party transactions for which disclosure is required.[413] Accordingly, we propose to delete this requirement in Rule 4–08(k)(2).

e. Dividends per Share in Interim Financial Statements

Regulation S–X requires, for interim periods, the presentation of dividends per share on the face of the income statement.[414] U.S. GAAP permits this disclosure in the notes to the financial statements, but prohibits it on the face of the financial statements.[415] Because of this prohibition under U.S. GAAP, the requirement under Regulation S–X results in a presentation that does not comply with U.S. GAAP.

To address this issue, we propose to eliminate the requirement to present dividends per share on the face of the income statement for interim periods in Rule 8–03(a)(2) and Rule 10–01(b)(2). Because we believe that the presentation of interim dividends per share is useful, however, we propose to require its presentation alongside disclosure of changes in stockholders' equity. To effect this relocation of the interim dividends per share disclosure, as discussed in section III.C.16, we propose to extend Rule 3–04 of Regulation S–X, which requires annual disclosure of changes in stockholders' equity and the amount of dividends per share for each class of shares, to interim periods.[416]

43, Chapter 12; FASB Interpretation No. 46, *Consolidation of Variable Interest Entities—an interpretation of ARB No. 51;* FASB Interpretation No. 46 (revised December 2003), *Consolidation of Variable Interest Entities—an interpretation of ARB No. 51;* SFAS No. 167, *Amendments to FASB Interpretation No. 46(R);* and ASU No. 2015–02, *Consolidation (Topic 810): Amendments to the Consolidation Analysis.*

[399] *See* Rule 3A–02(b) [17 CFR 210.3A–02(b)] and Rule 3A–02(b)(1) [17 CFR 210.3A–02(b)(1)] of Regulation S–X.

[400] ASC 810–10–15–11.

[401] 17 CFR 210.3A–02(b)(2).

[402] ASC 810–10–45–10 and ASC 810–10–45–12.

[403] 12 U.S.C. 1841, *et seq.*

[404] 12 U.S.C. 1843.

[405] *Id.*

[406] *See* Rule 3A–02(c) of Regulation S–X [17 CFR 210.3A–02(c)].

[407] ASC 810–10–15–10a. See also paragraph C2.a of SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets* (August 2001), which eliminated the pre-existing exception from consolidation for subsidiaries under temporary control under ARB No. 51.

[408] *See* ASC 360–10–45–9, ASC 360–10–45–14, and ASC 205–20–45.

[409] Specifically, if an issuer does not eliminate intercompany transactions from its financial statements, it must explain why and how the transactions are treated. *See* Rule 3A–04 of Regulation S–X [17 CFR 210.3A–04].

[410] *See* ASC 323–10–35–5a and ASC 810–10–45–1.

[411] This provision is implicit in the first sentence of Rule 4–08(k)(2) of Regulation S–X [17 CFR 210.4–08(k)(2)], which requires disclosure of which intercompany amounts are eliminated or not eliminated.

[412] U.S. GAAP requires elimination of intercompany transactions only in consolidated financial statements. *See* ASC 810–10–45–1.

[413] *See* ASC 850–10–50–1.

[414] *See* Rule 8–03(a)(2) [17 CFR 210.8–03(a)(2)] and Rule 10–01(b)(2) [17 CFR 210.10–01(b)(2)] of Regulation S–X . Rule 8–03(a)(2) specifically applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP, while Rule 10–01(b)(2) applies to non-SRCs.

[415] *See* ASC 260–10–45–5.

[416] Rule 3–04 of Regulation S–X [17 CFR 210.3–04] provides that annual disclosures of changes in stockholders' equity, including dividends per share amounts, may be provided in a note to the financial statements or in a separate financial statement. The option to present dividend per share disclosures in a separate financial statement does not comply with U.S. GAAP, which, as discussed above, prohibits this per share presentation on the face of financial statements. However, we see benefits in continuing to provide (and extending to interim periods) an option to present dividends per share on the face of the statement of stockholders' equity, if an issuer elects to present changes in stockholders' equity in a separate financial statement, irrespective of the prohibition under U.S. GAAP. We believe that the presentation of dividends per share alongside disclosure of changes in stockholders' equity facilitates investor understanding of stockholders' equity, as dividends are distributed from stockholders' equity. In addition, the proposed amendments would address the more significant issue in Regulation S–X associated with the requirement to present interim dividends per share on the income statement, which is unrelated to dividends, a component of stockholders' equity.

For Regulation A issuers, we propose amendments directly to Forms 1–A and 1–SA to require interim disclosures of changes in stockholders' equity and dividends per share amounts to address the inconsistency described above with U.S. GAAP, rather than to refer to Rule 3–04. The proposed amendments to Form 1–A would apply to all Regulation A issuers and the proposed amendments to Form 1–SA would apply to all Regulation A issuers in a Tier 2 offering, even though Rule 8–03(a)(2) only applies to Regulation A issuers in a Tier 2 offering that report under U.S. GAAP. However, we do not expect any increased burdens for Regulation A issuers in a Tier 2 offering that report under IFRS, as such issuers are already required to present a condensed statement of changes in equity and dividend amounts either in

This proposed amendment may create some additional burden for issuers, including Regulation A issuers, because it would require disclosure of dividends per share for each class of shares, rather than only for common stock. The proposed amendment, as discussed in section III.C.16, would also require disclosure of changes in stockholders' equity in interim periods.[417] However, we expect this burden would be minimal, as the required information is already available from the preparation of other aspects of the interim financial statements. The proposed amendments may also give rise to Disclosure Location Considerations in that issuers will now disclose dividends in a separate financial statement or in the notes, instead of the face of the income statement.

Request for Comment

88. Should we retain the option to present dividends per share on the face of the statement of stockholders' equity, despite the U.S. GAAP prohibition?

89. Should we extend requirements to disclose changes in stockholders' equity to interim periods, as proposed? Would doing so pose any significant burdens and costs on issuers? Would the proposed requirements benefit investors? If so, how?

f. Interim Financial Statements—Pro Forma Business Combination Information [418]

Regulation S–X [419] and U.S. GAAP [420] both require supplemental pro forma information about business combinations in the notes to interim financial statements. In 2010, the FASB clarified that the pro forma financial information should reflect the business combination as if it occurred at the beginning of the preceding fiscal year.[421] At the time, the Commission staff acknowledged that the U.S. GAAP clarification diverged from Regulation S–X, but stated that it did not object to application of Regulation S–X in a manner consistent with U.S. GAAP, while it considered ways to update Regulation S–X.[422] To update Regulation S–X, we propose to delete reference in Rule 8–03(b)(4) and Rule 10–01(b)(4) to when a business combination should be assumed to have occurred in pro forma financial information.

5. Development Stage Entities

Regulation S–X requires presentation in interim periods of cumulative financial information from inception for development stage companies.[423] In June 2014, the FASB eliminated the U.S. GAAP requirement for development stage companies to present cumulative financial information from inception.[424] To update Regulation S–X, we propose to eliminate this requirement in Rule 8–03(b)(6) and Rule 10–01(a)(7).

6. Insurance Companies [425]

a. Statutory Accounting Requirements

Regulation S–X permits mutual life insurance companies and their wholly-owned stock insurance company subsidiaries to prepare financial statements in accordance with statutory accounting requirements.[426] The Commission originally provided this alternative because, prior to 1995, U.S. GAAP did not address accounting by mutual life insurance companies.[427] In 1995, the FASB issued SFAS No. 120, *Accounting and Reporting by Mutual Life Insurance Enterprises and by Insurance Enterprises for Certain Long-Duration Participating Contracts* (''SFAS No. 120''), which sets forth the accounting requirements for mutual life insurance companies and does not permit use of statutory accounting in U.S. GAAP financial statements.[428] Currently, no issuers under the Securities Act or the Exchange Act rely on Rule 7–02(b) of Regulation S–X as a basis to report under statutory accounting requirements.[429] We, therefore, propose to eliminate Rule 7–02(b).

b. Reinsurance Recoverable

Regulation S–X requires insurance company balance sheets to separately present an asset called ''reinsurance recoverable on paid losses.'' [430] This requirement aligned with SFAS No. 60, *Accounting and Reporting by Insurance Enterprises,* which required that amounts recoverable from reinsurers on paid losses be classified as an asset, but that amounts recoverable from reinsurers on unpaid losses be classified as a reduction of liabilities.[431] In 1992, the FASB issued SFAS No. 113, which established that reinsurance receivables on unpaid losses are also assets.[432]

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the aggregate or per share, pursuant to paragraphs 8 and 16A(f), respectively, of IAS 34, *Interim Financial Reporting.* We expect the burdens for Regulation A issuers in a Tier 1 offering that report under U.S. GAAP on Form 1–A to be minimal, as the required information already would be available from the preparation of the interim financial statements.

[417] ASC 505–10–50–2 requires disclosure of changes in the separate accounts comprising stockholders' equity during at least the most recent annual fiscal period and any subsequent interim period presented. The proposed amendments would require disclosure of changes in stockholders' equity for each period presented, which would include comparative periods.

[418] Please refer to the related discussion in section III.C.9.

[419] *See* Rule 8–03(b)(4) [17 CFR 210.8–03(b)(4)] and Rule 10–01(b)(4) [17 CFR 210.10–01(b)(4)] of Regulation S–X. Rule 8–03(b)(4) specifically applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP, while Rule 10–01(b)(4) applies to non-SRCs.

[420] *See* ASC 270–10–50–7, which refers to ASC 805–10–50–2h.3 for purposes of interim disclosures.

[421] ASU No. 2010–29, *Business Combinations (Topic 805): Disclosure of Supplementary Pro Forma Information for Business Combinations (a consensus of the FASB Emerging Issues Task Force).*

[422] *See* SEC Observer comments at Emerging Issues Task Force Meeting, as cited in ASU No. 2010–29, paragraph BC7.

[423] *See* Rule 8–03(b)(6) [17 CFR 210.8–03(b)(6)] and Rule 10–01(a)(7) [17 CFR 210.10–01(a)(7)] of Regulations S–X. Rule 8–03(b)(6) specifically applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP, while Rule 10–01(a)(7) applies to non-SRCs.

[424] ASU No. 2014–10, *Development Stage Entities (Topic 915): Elimination of Certain Financial Reporting Requirements, Including an Amendment to Variable Interest Entities guidance in Topic 810, Consolidation.* The amendments related to the elimination of the concept of development stage entities and cumulative financial information from inception disclosures were effective for public business entities on a retrospective basis for annual reporting periods beginning after December 15, 2014, and interim periods therein.

[425] Please refer to the related discussions in sections II.B.9 and III.C.6.

[426] *See* Rule 7–02(b) of Regulation S–X [17 CFR 210.7–02(b)].

[427] *See Notice of Adoption of Revision of Regulation S–X and Amendment of Forms 10 and 10–K to Revise Requirements as to Form and Content and Certification of Financial Statements of Life Insurance Companies,* Release No. 33–5456 (Feb. 14, 1974) [39 FR 10118].

[428] SFAS No. 120 extended the requirements of SFAS No. 60, *Accounting and Reporting by Insurance Enterprises* (''SFAS No. 60''), SFAS No. 97, *Accounting and Reporting by Insurance Enterprises for Certain Long-Duration Contracts and for Realized Gains and Losses from the Sale of Investments,* and SFAS No. 113, *Accounting and Reporting for Reinsurance of Short-Duration and Long-Duration Contracts* (''SFAS No. 113'') to mutual life insurance companies.

[429] Some insurance companies sponsoring variable annuity contracts for registration on Forms N–3 and N–4 under the Investment Company Act and the Securities Act and some insurance companies offering variable life insurance contracts for registration on Form N–6 under the Investment Company Act and Securities Act prepare financial statements under statutory accounting requirements. These companies are permitted to do so in certain circumstances by the applicable form requirements. Specifically, each of these forms requires financial statements of the insurance company and states that if the insurance company would not have to prepare financial statements in accordance with U.S. GAAP except for use in the registration statement being filed or other specified registration statements used for variable insurance contracts, then its financial statements may be prepared in accordance with statutory accounting requirements. *See* Form N–3, Item 28(b), Instruction 1; Form N–4, Item 23(b), Instruction 1; Form N–6, Item 24(b), Instruction 1. The proposed elimination of Rule 7–02(b) would not change these forms.

[430] *See* Rule 7–03(a)(6) of Regulation S–X [17 CFR 210.7–03(a)(6)].

[431] *See* Paragraph 38 of SFAS No. 60.

[432] *See* Paragraphs 74 and 75 of SFAS No. 113.

SFAS No. 113 further provided that amounts recoverable from reinsurers on unpaid losses may be presented together with other reinsurance receivables or separately.[433] To conform to SFAS No. 113, we propose to delete the reference to paid losses in Rule 7–03(a)(6).

c. Separate Account Assets

Regulation S–X requires the amount of assets held in separate accounts—defined as assets used to fund liabilities related to variable annuities, pension funds, and similar activities—to be separately reported as a summary total, rather than included in other lines, on the balance sheet.[434] U.S. GAAP, however, defines differently separate account assets that are required to be reported as a summary total.[435] We propose to replace the reference to variable annuities, pension funds, and similar activities in Rule 7–03(a)(11) with a reference to U.S. GAAP for assets to be reported as a summary total.

7. Bank Holding Companies [436]

a. Net Presentation

Regulation S–X requires federal funds sold and securities purchased under resale agreements or similar arrangements to be presented on the balance sheet gross of federal funds purchased and securities sold under agreement to repurchase.[437] U.S. GAAP permits net presentation under certain conditions.[438] To conform with U.S. GAAP, we propose to delete this requirement in Rule 9–03.3 of Regulation S–X.

b. Goodwill

Regulation S–X requires that goodwill net of amortization be presented on the balance sheet or disclosed in a note to the financial statements,[439] with goodwill amortization presented on the income statement.[440] However, in June 2001, the FASB issued a standard that prohibits amortization of goodwill.[441] To update Regulation S–X, we propose to eliminate the parenthetical reference to net of amortization in Rule 9–03.10(1) of Regulation S–X.[442] We also propose to delete the reference to goodwill amortization in Rule 9–04.14(c).

8. Discontinued Operations

Regulation S–X and Regulation S–K contain specific requirements related to discontinued segments and disposed segments, respectively.[443] For purposes of these Commission disclosure requirements, the term ''segments'' refers to discontinued operations that are presented separately on the income statement, as prescribed by a now-superseded requirement in U.S. GAAP.[444] Since the adoption of these Commission disclosure requirements, the definition of ''discontinued operations'' under U.S. GAAP has changed multiple times and no longer incorporates the term ''segment.'' [445]

To update Commission disclosure requirements, we propose to replace the reference to ''segments'' in Instruction 1 to Rule 11–02(b) of Regulation S–X and Item 302(a)(3) of Regulation S–K with the more appropriate term, ''discontinued operations.''

9. Pooling-of-Interests

In April 2009, following the FASB's elimination of the pooling-of-interests method of accounting,[446] the Commission adopted technical amendments to certain rules and forms to, among other items, eliminate references to pooling-of-interests and replace them with references to combinations of entities under common control.[447] The 2009 amendments inadvertently omitted to replace such references in Rule 11–02(c)(2)(ii) of Regulation S–X,[448] Rule 405 of Regulation C, Item 4A(b)(1)(iii) of Form F–1, Instruction 1 to paragraphs (e) and (f) of Item 3 of Form F–4, Item 10(c)(3) of Form F–4, the introduction to Item 12 of Form F–4, and Item 12(b)(2)(iv) of Form F–4. We propose to update these references accordingly.[449]

10. Statement of Comprehensive Income

Various Commission disclosure requirements and forms refer to ''income statements'' and variations thereof. In June 2011, the FASB replaced the income statement with the statement of comprehensive income.[450] Comprehensive income is the change in equity of a business entity during the period from transactions and other events and circumstances from non-owner sources.[451] In light of the FASB's revision, various Commission disclosure requirements and forms that refer only to an income statement (or similar term) are no longer consistent with U.S. GAAP because they do not address the presentation of comprehensive income.

To update Commission disclosure requirements, we propose to replace (or, in some cases, supplement) the existing references to ''income statement'' and variations thereof with ''statement of comprehensive income'' in our rules and forms. We also propose to clarify the two presentation options for the statement by defining the term ''statement of comprehensive income'' in Regulation S–X.[452]

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[433] *See* Paragraph 76, which was codified in ASC 944–20–50–5.

[434] *See* Rule 7–03(a)(11) of Regulation S–X [17 CFR 210.7–03(a)(11)].

[435] *See* ASC 944–80–25–1 to 5.

[436] Please refer to the related discussion in section II.B.10.

[437] *See* Rule 9–03.3 of Regulation S–X [17 CFR 210.9–03.3].

[438] *See* ASC 210–20–45. Where amounts are presented net, ASC 210–20–50–3(a) requires disclosure in the notes to the financial statements of the gross amounts.

[439] *See* Rule 9–03.10(1) of Regulation S–X [17 CFR 210.9–03.10(1)]. In referring to goodwill, Rule 9–03.10(1) uses the phrase ''Excess of cost over tangible and identifiable intangible assets acquired.''

[440] *See* Rule 9–04.14(c) of Regulation S–X [17 CFR 210.9–04.14(c)].

[441] *See* SFAS No. 142, *Goodwill and Other Intangible Assets.*

[442] We also propose to clarify Rule 9–03.10(1) by replacing the phrase ''Excess of cost over tangible and identifiable intangible assets acquired'' with ''goodwill.''

[443] Specifically Instruction 1 to Rule 11–02(b) of Regulation S–X [17 CFR 210.11–02(b)] states that the historical income statement used in pro forma financial information shall not report operations of discontinued segments, among other items. Item 302(a)(3) of Regulation S–K [17 CFR 229.302(a)(3)] requires a description of the effect of any disposals of segments of a business, among other items.

[444] *See* APB Opinion No. 30, *Reporting the Results of Operations—Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions.*

[445] *See* ASC 205.

[446] *See* SFAS No. 141, *Business Combinations.*

[447] *See Technical Amendments to Rules, Forms, Schedules, and Codification of Financial Reporting Policies,* Release No. 33–9026, (Apr. 23, 2009) [74 FR 18612].

[448] 17 CFR 210.11–02(c)(2)(ii).

[449] We also propose to replace references to ''acquired businesses'' with ''transferred businesses'' in Item 4A(b)(1)(iii) of Form F–1, Item 10(c)(3) of Form F–4, the introduction to Item 12 of Form F–4, and Item 12(b)(2)(iv) of Form F–4, as combinations of entities under common control are not referred to as acquisitions. *See* ASC 805–50.

[450] *See* ASU No. 2011–05, *Comprehensive Income (Topic 220): Presentation of Comprehensive Income.* ASU No. 2011–05 was effective for public entities on a retrospective basis for fiscal years, and interim periods within those years, beginning after December 15, 2011.

The statement of comprehensive income may be presented as either: (1) A single statement of comprehensive income or (2) two separate but consecutive statements, comprised of the income statement and a separate statement, which begins with net income and separately presents the components of other comprehensive income, a total of other comprehensive income, and a total of comprehensive income.

[451] *See* ASC Glossary.

[452] The proposed amendments apply to the following rules: Rule 1–02 [17 CFR 210.1–02], Rule 3–02 [17 CFR 210.3–02], Rule 3–03 [17 CFR 210.3–03], Rule 3–04 [17 CFR 210.3–04], Rule 3–05, Rule 3–12 [17 CFR 210.3–12], Rule 3–14 [17 CFR 210.3–14], Rule 3–17 [17 CFR, 210–3.17], Rule 4–08 [17 CFR 210.4–08], Rule 4–10 [17 CFR 210.4–10], Rule 5–02 [17 CFR 210.5–02], Rule 5–03 [17 CFR 210.5–03], Rule 5–04 [17 CFR 210.5–04], Rule 6–07 [17 CFR 210.6–07], Rule 6A–04 [17 CFR 210.6A–04], Rule 6A–05 [17 CFR 210.6A–05], Rule 7–03 [17 CFR 210.7–03], Rule 7–04 [17 CFR 210.7–04], Rule 7–05 [17 CFR 210.7–05], Rule 8–02 [17 CFR 210.8–02], Rule 8–03 [17 CFR 210.8–03], Rule 8–05 [17 CFR 210.8–05], Rule 8–06 [17 CFR 210.8–06], Rule 9–03

We further propose to amend Rule 5–03, Rule 7–04, and Rule 9–04 of Regulation S–X to add line items to present comprehensive income and related items in the statement of comprehensive income.

In addition, U.S. GAAP requires accumulated other comprehensive income to be separately presented in the equity section of the balance sheet.[453] We propose to amend Rule 5–02.30(a)[454] and Rule 7–03(a)(23)(a)[455] of Regulation S–X to include accumulated other comprehensive income in its list of balance sheet line items.[456] We also propose to delete the reference in Rule 7–03(a)(23)(a) to unrealized appreciation or depreciation of equity securities, as it is a component of accumulated other comprehensive income and, under U.S. GAAP, is required to be presented separately either on the face of the financial statements or in the notes thereto.[457]

11. Extraordinary Items

Various Commission disclosure requirements and forms refer to extraordinary items. In January 2015, the FASB eliminated extraordinary items from U.S. GAAP.[458] To update Commission disclosure requirements, we propose to delete references to extraordinary items in our rules and forms.[459]

12. Cumulative Effect of Changes in Accounting Principles[460]

Various Commission disclosure requirements and forms refer to a line on the income statement for a cumulative effect of a change in accounting principle. A change in accounting principle is a change from one generally accepted accounting principle to another generally accepted accounting principle when there are two or more generally accepted accounting principles that may be used or when the accounting principle formerly used is no longer generally accepted.[461] Prior to 2005, U.S. GAAP ordinarily required that the cumulative effect, or total effect on prior periods, of a change in accounting principle be reported separately in a single line in the income statement in the period the change took effect.[462] In 2005, the FASB eliminated from U.S. GAAP the requirement to report cumulative effect of a change in accounting principle in the income statement.[463] U.S. GAAP now requires, unless impracticable or otherwise provided for in a newly issued accounting standards update, retrospective application of a change in accounting principle to all prior periods, with the cumulative effect reported in the opening balance of retained earnings for the earliest period presented.[464]

To update Commission disclosure requirements, we propose to eliminate references to cumulative effect of a change in accounting principle.[465]

13. Published Report Regarding Matters Submitted To Vote of Security Holders

Prior to 2009, Forms 10–K and 10–Q required disclosure of the voting results for matters that were submitted to

[17 CFR 210.9–03], Rule 9–04 [17 CFR 210.9–04], Rule 9–05 [17 CFR 210.9–05], Rule 9–06 [17 CFR 210.9–06], Rule 10–01 [17 CFR 210.10–01], Rule 11–02 [17 CFR 210.11–02], Rule 11–03 [17 CFR 210.11–03], Rule 12–16 [17 CFR 210.12–16], Rule 12–17 [17 CFR 210.12–17], Rule 12–18 [17 CFR 210.12–18], Rule 12–28 [17 CFR 210.12–28], and Rule 12–29 [17 CFR 210.12–29] of Regulation S–X, Item 10 [17 CFR 229.10], Item 302 [17 CFR 229.302], and Item 303 [17 CFR 229.303] of Regulation S–K, Item 1010 [17 CFR 229.1010] of Regulation M–A, Securities Act Rule 158 [17 CFR 230.158], Exchange Act Rule 15c3–1g [17 CFR 240.15c3–1g], Exchange Act Rule 17a–5 [17 CFR 240.17a–5], Exchange Act Rule 17a–12 [240.17a–12], Exchange Act rule 17g–3 [17 CFR 240.17g–3], and Exchange Act Rule 17h–1T [17 CFR 240.17h–1T]. The proposed amendments also apply to the following forms: Form 1–A [17 CFR 239.90], Form 1–K [17 CFR 239.91], Form 1–SA [17 CFR 239.92], Form 20–F [17 CFR 249.220f], Form 11–K [17 CFR 249.311], and Form X–17A–5 [17 CFR 249.617].

Investment companies generally do not have any other comprehensive income. ASC 220–10–15–3(a) states that entities that have no items of other comprehensive income are not required to report other comprehensive income or comprehensive income. Accordingly, we are not proposing to include references to ''statement of comprehensive income'' within the rules and forms applicable to investment companies, other than a reference within Rule 6–07 of Regulation S–X to allow for statements of operations to be replaced with statements of comprehensive income, where applicable.

[453] *See* ASC 220–10–45–14.

[454] 17 CFR 210.5–02.30(a).

[455] 17 CFR 210.7–03(a)(23)(a).

[456] We do not propose to amend Rule 9–03 of Regulation S–X. Through its reference to Rule 5–02.30, which we propose to amend, Rule 9–03 would be effectively updated if we adopt the proposed amendment to Rule 5–02.30.

[457] See ASC 220–10–45–14A.

[458] *See* ASU No. 2015–01, *Income Statement—Extraordinary and Unusual Items (Subtopic 225–20): Simplifying Income Statement Presentation by Eliminating the Concept of Extraordinary Items.* Previously, ASC 225–20–45–2 defined ''extraordinary items'' as an event or transaction that is unusual in nature and infrequent in occurrence, and ASC 225–20–45–3 required separate presentation of the effect of the extraordinary item on the income statement. ASU No. 2015–01 is effective for public business entities on a prospective or retrospective basis for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2015. Early adoption is permitted provided that the ASU is applied from the beginning of the fiscal year of adoption.

[459] The proposed amendments apply to the following rules: Rule 1–02(w)(3) [17 CFR 210.1–02(w)(3)], Rule 1–02(bb)(1)(ii) [17 CFR 210.1–02(bb)(1)(ii)], Rule 3–01(c)(2) [17 CFR 210.3–01(c)(2)], Rule 3–01(c)(3) [17 CFR 210.3–01(c)(3)], Rule 3–15(a)(1) [17 CFR 210.3–15(a)(1)], Rule 3A–02(b)(2) [17 CFR 210.3A–02(b)(2)], Rule 5–03(b) [17 CFR 210.5–03(b)], Rule 7–04 [17 CFR 210.7–04], Rule 8–03(a)(2) [17 CFR 210.8–03(a)(2)], Rule 8–04(b)(3) [17 CFR 210.8–04(b)(3)], Rule 9–04 [17 CFR 210.9–04], Rule 10–01(b)(4) [17 CFR 210.10–01(b)(4)], Rule 11–02(b)(7) [17 CFR 210.11–02(b)(7)], and Instruction 1 to Rule 11–02 [17 CFR 210.11–02] of Regulation S–X, Item 10(b)(2) [17 CFR 229.10(b)(2)], Item 302(a)(1) [17 CFR 229.302(a)(1)], and Item 302(a)(3) [17 CFR 229.302(a)(3)] of Regulation S–K, Securities Act Rule 405, Exchange Act Rule 3a51–1(a)(2)(i)(A)(3) [17 CFR 240.3a51–1(a)(2)(i)(A)(3)], Exchange Act Rule 12b–2 [17 CFR 240.12b–2], Exchange Act Rule 13a–10(b) [17 CFR 240.13a–10(b)], and Exchange Act 15d–10(b) [17 CFR 240.15d–10(b)]. The proposed amendments also apply to Form X–17A–5 [17 CFR 249.617].

Rule 3a51–1 of the Exchange Act contains a net income measure that is used in evaluating whether certain equity securities are penny stocks, which currently excludes ''extraordinary and non-recurring items'' from the net income calculation. As a result of the proposed amendment, the reference to ''extraordinary items'' will be deleted, but the exclusion of non-recurring items from net income will remain. The deletion of the ''extraordinary items'' reference from net income calculations under Rule 3a51–1 is not intended to affect the application of the rule, as the Commission believes that non-recurring items encompass items that would have been ''extraordinary items'' previously. Thus, the calculation of net income for purposes of Rule 3a51–1 should not change.

While the FASB has eliminated the concept of extraordinary items from U.S. GAAP for general purpose financial reporting, the concept of extraordinary expenses is still relevant for investment companies, particularly in disclosure of expense ratios in registration statements. Certain investment company registration forms eliminate extraordinary expenses from expense ratios in the fee table in order to disclose to investors the ongoing level of expense that can be expected. We believe it is appropriate to continue requiring that extraordinary expenses be excluded in the fee table and require footnote disclosure reflecting extraordinary expenses if they would have a material effect. Thus, the investment company registration forms (Form N–1A, Form N–3, Form N–4 [17 CFR 239.17b and 274.11c], and Form N–6) that reference extraordinary items in relation to expenses and the related historical U.S. GAAP definition are being amended to include a definition of extraordinary expenses, consistent with the historical U.S. GAAP definition. With these proposed amendments, we do not intend to change the content required to be presented in these forms.

[460] Please refer to the related discussions in sections II.B.11 and III.C.8.

[461] *See* ASC Glossary.

[462] *See* APB Opinion No. 20, *Accounting Changes.*

[463] *See* SFAS No. 154, *Accounting Changes and Error Corrections.* This is now reflected in ASC 250, *Accounting Changes and Error Corrections.*

[464] *See* ASC 250–10–45–5. Where impracticable or otherwise provided for in a newly issued accounting standards update, U.S. GAAP requires prospective application such that the existing line on the income statement for a cumulative effect of a change in accounting principle is unnecessary.

[465] The proposed amendments apply to the following rules: Rule 1–02, Rule 3–01, Rule 3–15, Rule 5–03, Rule 7–04, Rule 8–03, Rule 8–04, Rule 9–04, Rule 10–01, Rule 11–02, and Instruction 1 to Rule 11–02 of Regulation S–X, Item 302 of Regulation S–K, Securities Act Rule 405, Exchange Act Rule 12b–2, Exchange Act Rule 13a–10(b), and Exchange Act Rule 15d–10(b). The proposed amendments also apply to Form X–17A–5.

shareholders.[466] Issuers were able to satisfy this disclosure requirement by providing the disclosure within the forms or by referring to a report containing the voting results and filing such report as an exhibit to the applicable form pursuant to Regulation S–K.[467]

In 2009, the Commission eliminated the requirement to disclose shareholder voting results in Forms 10–K and 10–Q and added it to Item 5.07 of Form 8–K.[468] As such, we propose to eliminate Item 601(b)(22) of Regulation S–K and its accompanying inclusion in the Exhibit Table within Item 601, as these requirements are no longer applicable.

We also propose to eliminate Item 5 of Form 10–D [469] regarding disclosure of matters submitted to a vote of security holders. In 2009, when the Commission adopted Item 5.07 of Form 8–K, it did not exclude asset-backed issuers from the requirements; however, Item 5 of Form 10–D was not revised or eliminated following the adoption of Item 5.07 of Form 8–K.[470] Rather, current Item 5 of Form 10–D contains a reference to Item 4 of Part II to Form 10–Q, which, as stated above, was eliminated with the adoption of Item 5.07 to Form 8–K.[471] As such, we propose to eliminate Item 5 of Form 10–D.

14. Selected Financial Data for Foreign Private Issuers That Report Under IFRS

Prior to 2005, Form 20–F required all foreign private issuers, including those that reported under IFRS, to present five years of selected financial data under their primary basis of accounting and U.S. GAAP.[472] As a result of two amendments, foreign private issuers that report under IFRS are now only required to present selected financial data under IFRS for those periods for which the issuer has prepared financial statements in accordance with IFRS. Specifically:

- In April 2005, the Commission amended Form 20–F to allow foreign private issuers to present two years of financial statements, instead of three, in the year that they first adopt IFRS.[473] At the time, the Commission created a new General Instruction G(c), which states that, for first-time IFRS adopters, selected financial data prepared under IFRS is only required for the two most recent financial years.
- In December 2007, the Commission eliminated the reconciliation requirement for foreign private issuers that prepare financial statements in accordance with IFRS.[474] In adopting amendments to Form 20–F to reflect the elimination of the reconciliation requirement, the Commission also clarified that selected financial data based on the U.S. GAAP reconciliation is only required if the issuer prepares its financial statements using a basis of accounting other than IFRS.[475]

However, General Instruction G(c) of Form 20–F continues to require an issuer that reports under IFRS to present selected financial data in accordance with U.S. GAAP for the five most recent years. To update Form 20–F, we propose to amend: (1) General Instruction G(c) of Form 20–F to delete the requirement to present selected financial data in accordance with U.S. GAAP and (2) Instruction 2 to Item 3.A of Form 20–F to explicitly state that selected financial data is required only for the periods for which the issuer has prepared financial statements in accordance with IFRS.

15. Canadian Regulation A Issuers

Foreign private issuers that report under IFRS must comply with IFRS requirements for form and content within the financial statements rather than the specific presentation and disclosure provisions in Regulation S–X.[476] Regulation A permits Canadian issuers to report under IFRS.[477] However, in certain places, Forms 1–A and 1–SA inadvertently refer all Regulation A issuers, including Canadian issuers that report under IFRS, to rules in Regulation S–X, rather than IFRS, for the form and content within the financial statements.[478] As we did not intend for the form and content requirements in Regulation S–X to apply to Canadian Regulation A issuers reporting under IFRS, we propose to amend such references to Regulation S–X in Forms 1–A and 1–SA only to apply to Regulation A issuers that report under U.S. GAAP.

16. Non-Existent or Incorrect References

Various Commission disclosure requirements contain non-existent or incorrect references. We propose to update them as follows:

- Rule 5–02 of Regulation S–X refers in four places [479] to Rule 4–05 of Regulation S–X, which no longer exists. We propose to delete these references.
- Rule 5–02.22(a) of Regulation S–X refers to Rule 4–06 of Regulation S–X, which no longer exists. We propose to delete this reference.
- Rule 7–04.9 of Regulation S–X on income tax expense refers to Rule 4–08(g) of Regulation S–X, which addresses summarized financial information of investments accounted for under the equity method of accounting. This reference should be to Rule 4–08(h) of Regulation S–X, which addresses income tax expense. We propose to update this reference accordingly.
- Rule 9–03.7(e)(3) of Regulation S–X refers to Rule 4–08(L)(3), which no longer exists. We propose to delete this reference.
- Item 512(a)(4) of Regulation S–K provides that a post-effective amendment need not be filed to include on Form F–3 the financial statements and information required by Rule 3–19 of Regulation S–X, if such financial statements and information are filed or furnished on reports incorporated by reference in the Form F–3.[480] However, Rule 3–19 no longer exists. When the Commission revised Form 20–F in 1999, it replaced references to Rule 3–19 with references to Item 8.A of Form 20–F as the source for foreign private issuer financial statement requirements, but inadvertently omitted to replace the

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[466] These requirements were contained in Item 4, Part I of Form 10–K and Item 4, Part II of Form 10–Q prior to 2009.

[467] *See* Item 601(b)(22) of Regulation S–K [17 CFR 229.601(b)(22)].

[468] *See Proxy Disclosure Enhancements,* Release No. 33–9089, (Dec. 16, 2009) [74 FR 68334]. In addition, the Form 8–K containing the voting results must be filed within four business days after the meeting at which the votes took place.

[469] 17 CFR 249.312.

[470] A Form 10–D is a periodic distribution report for asset-backed issuers that is typically filed three weeks or more after the end of a reporting period. Reporting on Form 8–K provides users of the information with a date certain upon which disclosure of the results of a vote is required and reduces delay between the end of a meeting and when voting results are disclosed in periodic reports. *See* 17 FR 68334 at 68350. Investors in asset-backed securities may vote for a variety of reasons, such as to amend the terms of the securities (*e.g.,* maturity date), substitute transaction parties, or to trigger a review of the underlying assets.

[471] Current Item 4 of Part II to Form 10–Q refers to mine safety disclosure requirements.

[472] Item 3.A of Form 20–F provides an exception from presenting up to the earliest two of the five years of selected financial data under the primary basis of accounting and U.S. GAAP if the issuer represents that such information cannot be provided without unreasonable effort or expense.

[473] *See First-Time Application of International Financial Reporting Standards,* Release No. 33–8567 (Apr. 12, 2005) [70 FR 20674].

[474] *See Acceptance From Foreign Private Issuers of Financial Statements Prepared in Accordance With International Financial Reporting Standards Without Reconciliation to U.S. GAAP,* Release 33–8879, (Dec. 21, 2007) [73 FR 986] (''2007 Adopting Release'').

[475] *See* Instruction 2 to Item 3.A of Form 20–F.

[476] *See* 2007 Adopting Release.

[477] Paragraph (a)(2) of Part F/S of Form 1–A, Item 7(b) of Form 1–K, and Item 3 of Form 1–SA.

[478] Paragraphs (b)(5) and (c)(1)(i) of Part F/S of Form 1–A and Item 3 and Item 3(d) of Form 1–SA.

[479] See the header to current assets, Rule 5–02.6(a)(2), Rule 5–02.6(a)(3), and the header to current liabilities.

[480] *See* Item 512(a)(4) [17 CFR 229.512(a)(4)].

reference in Item 512(a)(4).[481] We propose to update Item 512(a)(4) accordingly.

• General Instruction J(1)(e) to Form 10–K is blank. Although the Commission deleted the instruction in 2011,[482] it did not reserve the instruction. We propose to clarify that General Instruction J(1)(e) is reserved.

• General Instruction J(1)(f) to Form 10–K permits asset-backed issuers to omit Item 5 of Form 10–K, but the Instruction incorrectly describes Item 5. We propose to conform the description in Instruction J(1)(f) to the title of Item 5 of Form 10–K: Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

• Paragraph (c)(1)(i) of Part F/S of Form 1–A refers to the age of interim financial statements discussed in paragraphs (b)(3)–(4) of Part F/S. However, paragraphs (b)(3)–(4) address the age of both interim and annual financial statements. To correct this reference, we propose to delete ''interim'' in paragraph (c)(1)(i).

• Forms F–1, F–3, F–4, F–6,[483] F–7,[484] F–8,[485] F–10,[486] F–80,[487] 20–F, and 40–F [488] include references to incorrect telephone numbers and offices at the Commission. We propose to update these references to the correct telephone numbers and offices.

C. Request for Comment

90. We solicit comment on the foregoing proposed amendments to address superseded requirements. Should any proposed amendments not be made? Should any proposed amendments be modified? If so, which ones and why? Please be as specific as possible for each of the proposed amendments on which you provide comments.

91. Are there other superseded Commission disclosure requirements? If so, which requirements have been superseded and how should they be addressed?

VI. General Request for Comment

We request and encourage any interested person to submit comments regarding the proposals, specific issues discussed in this release, and other matters that may have an effect on the proposals. With regard to any comments, we note that such comments are of particular assistance if accompanied by supporting data and analysis of the issues addressed in those comments.

VII. Economic Analysis

This section analyzes the expected economic effects of the proposals relative to the current baseline, which consists of both the regulatory framework of disclosure requirements in existence today and the current use of such disclosure by investors and other users. As discussed above, we are proposing amendments to certain of our disclosure requirements that may have become redundant, duplicative, overlapping, outdated, or superseded, in light of other Commission disclosure requirements, U.S. GAAP, IFRS, or changes in the information environment. We are also soliciting comment on certain Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP. These proposals are a result of the Division of Corporation Finance's Disclosure Effectiveness Initiative and part of our efforts to implement title LXXII, section 72002(2) of the Fixing America's Surface Transportation Act.

The discussion below addresses the potential economic effects of the proposals, including the likely benefits and costs, as well as the likely effects on efficiency, competition, and capital formation.[489]

A. Baseline and Affected Parties

Our baseline includes the current disclosure requirements in Regulation S–K, Regulation S–X, and other rules and Commission forms promulgated under the Securities Act, the Exchange Act, and the Investment Company Act. The parties that are likely to be affected by the proposals include investors and other users, auditors, and entities subject to Regulation S–K, Regulation S–X, and other rules and Commission forms promulgated under the Securities Act, the Exchange Act, and the Investment Company Act.

The proposals affect both domestic issuers and foreign private issuers. We estimate approximately 7,600 issuers that file on domestic forms [490] and 800 foreign private issuers that file on F-forms would be affected by the proposals. Among the issuers that file on domestic forms, 26% are large accelerated filers, 18% are accelerated filers, 18% are non-accelerated filers, and 38% are SRCs. About 12% of issuers that file on domestic forms are also EGCs. Among the foreign private issuers that file on F-forms, 38% are large accelerated filers, 22% are accelerated filers, and 40% are non-accelerated filers.[491] About 15% of foreign private issuers that file on Forms 20–F and 40–F are also EGCs. With respect to foreign private issuer accounting standards, 43% of foreign private issuers report under U.S. GAAP, 56% report under IFRS, and less than 1% report under Another Comprehensive Body of Accounting Principles with a reconciliation to U.S. GAAP.[492]

Certain proposals also affect requirements applicable to:

• Fewer than 100 asset-backed issuers.

• Issuers that rely on Regulation A exemptions.[493]

[481] *See International Disclosure Standards,* Release No. 33–7745 (Sept. 28, 1999) [64 FR 53900].

[482] *See Mine Safety Disclosure,* Release No. 33–9286 (Dec. 21, 2011) [76 FR 81762].

[483] 17 CFR 239.36.

[484] 17 CFR 239.37.

[485] 17 CFR 239.38.

[486] 17 CFR 239.40.

[487] 17 CFR 239.41.

[488] 17 CFR 249.240f.

[489] Section 2(b) of the Securities Act [15 U.S.C. 77b(b)] and section 3(f) of the Exchange Act [17 U.S.C. 78c(f)] require the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Further, section 23(a)(2) of the Exchange Act [17 U.S.C. 78w(a)(2)] requires the Commission, when making rules under the Exchange Act, to consider the impact that the rules would have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act.

[490] This number includes fewer than 50 foreign private issuers that file on domestic forms, approximately 100 business development companies, and a portion of the approximately 12,000 investment advisers, as discussed further below.

[491] Approximately 16% of foreign private issuers that file on F-forms are Canadian issuers that file on Form 40–F under the multijurisdictional disclosure system. Form 40–F does not require disclosure of large accelerated, accelerated, or non-accelerated filer status. Accordingly, these amounts exclude foreign private issuers that file on Form 40–F.

[492] The number of domestic and foreign private issuers affected by the proposals is estimated as the number of unique companies, identified by Central Index Key (CIK), that filed Forms 10–K, Form 20–F, and Form 40–F with the Commission during calendar year 2015. The estimates for the percentages of SRCs, accelerated filers, large accelerated filers, and non-accelerated filers are based on information from Form 10–K, Form 20–F, and Form 40–F. The number of EGCs is estimated by analyzing several types of filings filed with the Commission during calendar year 2015. The estimates for the percentages of foreign private issuers' basis of accounting used to prepare the financial statements are calculated from the information in Forms 20–F and 40–F. These estimates do not include issuers that filed initial registration statements during calendar year 2015, which would also be affected by the proposals.

[493] Between June 19, 2015 and July 5, 2016, approximately 48 Regulation A offerings have been qualified. Over the same time period, approximately 108 Regulation A offering statements

Continued

• Approximately 4,100 investment companies, including approximately 100 business development companies, and the portion of the approximately 12,000 investment advisers to which Regulation S–X and Regulation S–K apply.

• Up to approximately 4,200 registered broker-dealers.[494]

• 10 NRSROs.

This release also solicits comment on certain Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP.[495] One potential outcome of this feedback is a referral of these incremental requirements to the FASB for potential incorporation into U.S. GAAP. While a referral alone would have no effect on issuers, any changes to U.S. GAAP that may result from such a referral would potentially affect all entities that report under U.S. GAAP, including crowdfunding issuers and those outside the scope of our regulatory authority. Any potential changes to U.S. GAAP would be subject to the FASB's standard-setting process, as discussed in section I.C.

B. Potential Costs and Benefits

In this section, we discuss the anticipated economic benefits and costs of the proposals in each category of redundant, duplicative, overlapping, outdated, and superseded disclosure requirements.

1. Redundant or Duplicative Requirements

We have preliminarily identified redundant or duplicative Commission disclosure requirements that require substantially the same disclosures as U.S. GAAP, IFRS, or other Commission disclosure requirements. The proposed amendments would eliminate certain redundant or duplicative Commission disclosure requirements.

Elimination of Commission disclosure requirements that are considered redundant or duplicative with U.S. GAAP, IFRS, or other Commission disclosure requirements would simplify issuer compliance efforts by reducing the number of rules to consider. To the extent that the redundant or duplicative requirements result in duplicative disclosures, elimination of these requirements also would be potentially beneficial to investors and other users. Academic research suggests that duplication is associated with less efficient price discovery [496] and that individuals invest more in firms with more concise financial disclosures.[497] Thus, to the extent that the proposed amendments alleviate duplication and do not affect the completeness of financial disclosures,[498] they could result in improved price discovery, enhance the allocative efficiency of the market, and facilitate capital formation.

The potential adverse effects of these proposed amendments on investors and other users are likely to be limited as these parties would still receive substantially the same information from issuers. However, potential costs to investors may arise if U.S. GAAP were to change in such a way that information previously required by Commission disclosure requirements is no longer provided under U.S. GAAP.[499] The potential for such changes may be mitigated by the FASB's transparent, public standard-setting process and our oversight of the FASB.[500]

2. Overlapping Requirements

We have preliminarily identified Commission disclosure requirements that are related to, but not the same as, U.S. GAAP, IFRS, or other Commission disclosure requirements. For certain of these overlapping requirements, the proposed amendments would: (a) Delete the overlapping Commission disclosure requirements or (b) integrate them with other related Commission disclosure requirements. For certain other overlapping requirements, we are soliciting comment on certain Commission disclosure requirements to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP. We discuss below the economic effects of the proposals and provide examples of requirements affected by the proposals.

First, some proposals may give rise to Disclosure Location Considerations. Where proposals relocate existing disclosure from outside the financial statements to within the financial statements, issuers may incur additional costs to comply with audit and/or interim review and internal control over financial reporting requirements, whereas investors and other users may benefit to the extent that information is considered more reliable.[501]

The relocation of existing disclosures, for example, from outside the financial statements to within the financial statements or from the face of the financial statements to the notes to the financial statements, may also affect the prominence of the disclosures. Some experimental research provides indirect evidence that users may treat information differently depending on the location of the disclosure. For instance, research shows a weaker relation between equity prices and disclosed items (in the notes to the financial statements) versus recognized items (on the face of the financial statements).[502] Additionally,

have been filed. Withdrawals and post-qualification amendments are excluded.

[494] The proposed amendments to Exchange Act Rules 17a–5, 17a–12, and 17h–1T, and Part III of Form X–17A–5 collectively affect approximately 4,230 broker-dealers who must file annual reports with the Commission. The proposed amendments to Part II of Form X–17A–5 affect approximately 470 broker-dealers, based on the number of broker-dealers who filed Part II as of September 30, 2015. The proposed amendments to Part IIA of Form X–17A–5 affect approximately 3,685 broker-dealers, based on the number of broker-dealers who filed Part IIA as of September 30, 2015. The proposed amendments to Part IIB of Form X–17A–5 affect approximately 4 broker-dealers, based on the number of broker-dealers who filed Part IIB as of September 30, 2015.

[495] As discussed in section III.E, we are not proposing amendments to this category of disclosure requirements in this release. Rather, the comments received in response to this release may inform both potential future Commission rulemaking and FASB standard-setting activities.

[496] *See* A. Cazier and R. Pfeiffer, *Say Again? Assessing Redundancy in 10–K Disclosures* (Working paper, 2015), available at *https://www2.aaahq.org/AM/display.cfm?Filename=SubID_2229.pdf&MIMEType=application%2Fpdf.*

[497] *See* A. Lawrence, *Individual Investors and Financial Disclosure,* Journal of Accounting and Economics 56, 2013 at 13–147.

[498] Recent academic research has suggested that more complete financial disclosures benefit investors and firms. *See, e.g.,* C. Leuz and P. Wysocki, *The Economics of Disclosure and Financial Reporting Regulation: Evidence and Suggestions for Future Research* (Working paper, 2015), available at *http://research.chicagobooth.edu/~/media/7628D551E7424DC08524879103870C12.pdf.*

[499] *See* discussion of current FASB projects with the potential to broadly affect the proposed amendments in section I.C.3.

[500] *See* discussion in section I.C.

[501] In contrast, some proposed amendments may require disclosure to be moved from inside the financial statements to outside the financial statements. In this case, the potential economic effects would be similar to the effects discussed above but in the opposite direction.

[502] *See, e.g.,* R.M. Harper Jr., W.G. Mister, and J.R. Strawser, *The Impact of New Pension Disclosure Rules on Perceptions of Debt,* Journal of Accounting Research 25, 1987 at 327 (showing that financial statement users do not treat pension information included in a note to the financial statements as they would a balance sheet liability); C. Viger, R. Belzile, and A.A. Anandarajan, *Disclosure versus Recognition of Stock Option Compensation: Effect on the Credit Decisions of Loan Officers,* Behavioral Research in Accounting 20, 2008 at 93–113 (showing that loan officers are more affected by the same earnings recognized in the income statement than disclosed in the notes to the financial statements); M. Müller, E.J. Riedl, and T. Sellhorn, *Recognition versus Disclosure of Fair Values,* The Accounting Review 90, 2015 at 2411–2447, (showing a lower association between equity prices and disclosed investment property fair values relative to recognized investment property fair values. The authors also find that reduced information processing costs and higher readability mitigates the discount applied to disclosed fair values); D. Aboody, *Recognition versus Disclosure in the Oil and Gas Industry,* Journal of Accounting Research 34, 1996, at 21–32 (using the disclosure

experimental research on laboratory participants shows that positioning pro-forma (non-GAAP) earnings earlier than U.S. GAAP earnings in an earnings announcement influences a nonprofessional investor's judgment.[503] Other research on the effect of disclosure location shows recognized and disclosed items are treated equivalently by investors.[504]

The relocation of existing disclosures from outside the financial statements to within the financial statements may also subject the disclosures to XBRL tagging requirements. Issuers may incur additional costs to comply with these requirements, whereas investors and other users may benefit from more readily-available information in structured formats. In general, we believe the marginal costs of applying XBRL data tagging likely would be relatively low, as issuers already have implemented software enabled processes and controls to structure previously mandated disclosures.

Furthermore, the relocation of existing disclosures may affect the extent of information that investors receive. Since the PSLRA does not provide a safe harbor for forward-looking information located within the financial statements, issuers may be less likely to voluntarily supplement those disclosures with forward-looking information as compared with disclosures made outside the audited financial statements. However, issuers retain the option of providing forward-looking information outside the financial statements if they so choose.

Second, some proposed deletions, such as those related to bright line disclosure thresholds, may change the mix of information available to investors. Bright line thresholds set forth explicit quantitative criteria for disclosure. If the bright line thresholds are consistent with the preferences of investors and other users, they will result in disclosure at an appropriate level of detail. If the bright line thresholds differ from the preferences of investors and other users, they will result in too much or too little detail.

The economic effects of replacing the bright line thresholds with new criteria will depend on the nature of the new criteria. If the new criteria are more consistent with the preferences of investors and other users, the changes may benefit them. If the new criteria are less consistent with the preferences of investors and other users, the changes may have negative impacts on them. On one hand, bright line thresholds may be easier to apply. On the other hand, although other criteria may require more judgment, may be more difficult to apply, and may lead to more variation in disclosure, they may also permit more tailored information to be presented.

a. Deletion of Commission Disclosure Requirements

When we believe that Commission disclosure requirements: (1) Require disclosures that convey reasonably similar information to or are encompassed by the disclosures that result from compliance with the overlapping U.S. GAAP, IFRS, or Commission disclosure requirements or (2) require disclosures incremental to the overlapping U.S. GAAP or Commission disclosure requirements and are no longer useful to investors, we are proposing to eliminate the requirements.

In addition to the economic effects of changing disclosure location and bright line disclosure thresholds, as discussed above, potential costs to investors may arise if U.S. GAAP were to change in such a way that information previously required by Commission disclosure requirements is no longer provided under U.S. GAAP.[505] As noted above, the potential for such changes may be mitigated by the FASB's transparent, public standard-setting process and the Commission's oversight of the FASB.[506]

The effects of the proposed deletion of these overlapping Commission disclosure requirements may also depend on the level of overlap between the requirements. On the one hand, eliminating overlapping requirements may reduce search costs and lead to more efficient information processing for investors. This, in turn, may lead to better informed investment decisions and an increase in allocative efficiency. On the other hand, to the extent eliminating a requirement results in a loss of information incremental to the overlapping requirement, it could result in a loss of information for investors.

The examples below illustrate the potential effects of the proposed elimination of Commission disclosure requirements on issuers, investors, and other users.

One example of an item we propose to delete due to its sufficient overlap with another item is Item 101(d)(3) of Regulation S–K. Item 101(d)(3) requires risk disclosures outside the financial statements relating to geographic areas. We believe this provision requires disclosures that are largely encompassed by the disclosures that result from compliance with other parts of Regulation S–K. More specifically, Item 101(d)(3) requires disclosure of ''any'' risks associated with an issuer's foreign operations. This requirement is similar to Item 503(c) of Regulation S–K, which requires disclosure of ''significant'' risk factors. Item 101(d)(3) also requires disclosures of a segment's dependence on foreign operations. This requirement is similar to Item 303(a) of Regulation S–K, which requires disclosure of trends and uncertainties by segment, if appropriate to an understanding of the issuer as a whole.

Since Item 101(d)(3) is more expansive than other parts of Regulation S–K, the economic effects of the deletion would depend on the nature of the incremental information required by Item 101(d)(3). Research shows that international corporate diversification may affect issuers' stock market performance and valuation. For example, the required rate of return among U.S. firms listed on the NYSE has been shown to reflect the benefit of

requirements for oil and gas companies, which requires the firm-specific effect of a macroeconomic event to be recognized in the financial statements for firms adopting the full cost method, but only requires disclosure in the notes to the financial statements for firms following the successful efforts method, to show that the effect of note disclosure on price differs from the effect of recognition on price); and H. Espahbodi, P. Espahbodi, Z. Rezaee, and H. Tehranian, *Stock Price Reaction and Value Relevance of Recognition versus Disclosure: The Case of Stock-Based Compensation,* Journal of Accounting and Economics 33 (3), 2002 at 343–373 (examining the equity price reaction to the announcements related to accounting for stock-based compensation to assess the value relevance of recognition (on the face of the financial statements) versus disclosure (in the notes to the financial statements) and concluding that recognition and disclosure are not substitutes).

[503] *See, e.g.,* W.B. Elliot, *Are Investors Influenced by Pro Forma Emphasis and Reconciliations in Earnings Announcements?* The Accounting Review 81 (1), 2006 at 113–133.

[504] P.Y. Davis-Friday, L.B. Folami, C.S. Liu, and H.F. Mittelstaedt, *The Value Relevance of Financial Statement Recognition vs. Disclosure: Evidence from SFAS No. 106,* The Accounting Review. 74 (4), 1999 at 403–423 (testing whether market agents treat disclosed and recognized amounts equivalently by examining firms' obligations for postretirement benefits other than pensions before and after formal recognition. This research focuses on a sample of 229 firms that elected disclosure of the postretirement benefit liability in the year(s) prior to adoption of SFAS 106). The authors find that both post-retirement benefit liabilities disclosed prior to adoption of SFAS No. 106, *Employers' Accounting for Postretirement Benefits Other than Pensions,* and those recognized subsequent to adoption significantly contribute to explaining stock prices, thus suggesting that market agents treat disclosed and recognized amounts equivalently).

[505] *See* discussion of current FASB projects with the potential to broadly affect the proposals in section I.C.3.

[506] *See* discussion in section I.C.

geographical diversification.[507] There is also a positive correlation between the level of foreign operations and firm value,[508] and studies have found that the positive impact of intangible assets on firm value can be enhanced by foreign operations to the extent the intangible assets may be used across multiple countries.[509] Therefore, some investors may want incremental information on foreign operations. Deletion of Item 101(d)(3) may adversely affect this group of investors. However, if the requirements in Item 101(d)(3), such as the requirement to disclose ''any'' risk associated with foreign operations, tend to yield immaterial disclosures, deletion of Item 101(d)(3) would benefit investors by eliminating immaterial information, reducing search costs, and facilitating more efficient information processing.[510]

Another example of an item we propose to delete because it results in reasonably similar disclosures as other requirements is Item 101(c)(1)(xi) of Regulation S–K. Item 101(c)(1)(xi) requires disclosure of the amount spent on research and development activities for all periods presented.[511] Although Commission disclosure requirements use different terminology than U.S. GAAP,[512] the meaning under U.S. GAAP is either no different or broader in scope than that in Regulation S–K. The most notable difference in terminology is Regulation S–K's reference to ''customer-sponsored'' research and development activities, as compared to U.S. GAAP's reference to ''research and development performed on behalf of others.'' Since the U.S. GAAP terminology is broader in scope, deletion of Item 101(c)(1)(xi) of Regulation S–K and Item 101(h)(4)(x) of Regulation S–K should not change the information available to investors and other users.

Finally, an example of a change that might affect the extent of information disclosed as a result of the disclosure no longer being subject to the PSLRA safe harbor involves Item 303(b) of Regulation S–K. Item 303(b) requires seasonality disclosures outside of the financial statements in interim periods. U.S. GAAP [513] similarly requires seasonality disclosures, but this disclosure is required in the notes to the interim financial statements. Eliminating the seasonality disclosure requirements in Item 303(b) would result in the removal of this information from MD&A, with the effect that investors and other users would likely have this disclosure available only in the notes to the financial statements, unless issuers voluntarily provide it in both locations. In addition, as discussed above, investors may not receive certain forward-looking information that may be supplementally provided on a voluntary basis in connection with seasonality disclosure in MD&A, as issuers do not receive safe harbor protection under the PSLRA for information disclosed in the notes to the financial statements.

b. Integration of Commission Disclosure Requirements

When we believe that Commission disclosure requirements overlap with, but require information incremental to, other Commission disclosure requirements, the proposed amendments integrate the Commission disclosure requirements. In addition to the economic effects of changing disclosure location and bright line disclosure thresholds, as discussed above, integration of overlapping Commission disclosure requirements would simplify issuer compliance efforts by reducing the number of rules to consider and the extent of disclosures that need to be provided. Integration of these requirements should also facilitate more efficient information processing by investors.

One example to illustrate the potential effects of the proposed integration of Commission disclosure requirements is Item 101(d)(4) of Regulation S–K. Item 101(d)(4) requires, when interim financial statements are presented, a discussion of the facts that indicate that the three-year financial data for geographic performance may not be indicative of current or future operations. This requirement is similar to requirements in Instruction 3 to Item 303(a) of Regulation S–K and Instruction 4 to Item 303(b) of Regulation S–K to identify elements of income which are not necessarily indicative of the issuer's ongoing business, except that there is no explicit reference to ''geographic areas'' in either item requirement. To integrate the requirements into one location of Regulation S–K, we propose to amend Item 303 explicitly to refer to ''geographic areas.'' As noted above, integration of these requirements should facilitate more efficient information processing by investors. We note, however, that to the extent that some investors focus more on the business description section or find it is easier to interpret geographic performance information when presented with other business description disclosures, these investors might be negatively affected if this information is relocated to MD&A.

c. Potential Modification, Elimination or FASB Referral of Commission Disclosure Requirements

When we believe that the Commission disclosure requirements overlap with, but require information incremental to, U.S. GAAP requirements, we solicit comment on certain Commission disclosure requirements to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP. The comments received in response to this proposal may inform both potential future Commission rulemaking and FASB standard-setting activities. If the disclosure requirements are ultimately

[507] *See* T. Agmon and D. R. Lessard, *Investor Recognition of Corporate International Diversification,* Journal of Finance 32(4), 1977 at 1049–1055 (arguing that multinational firms have an advantage relative to single-country firms because of their ability to overcome the barriers to portfolio capital flows). The empirical results of the study support the notion that U.S. investors recognize the international composition of the activities of U.S.-based corporations.

[508] *See* V. Errunza and L. Senbet, *International Corporate Diversification, Market Valuation and Size-Adjusted Evidence,* Journal of Finance 34, 1984 at 727 − 745 (developing a model where international corporate intermediation through direct foreign investment can undo barriers to international capital flows faced by individual investors and lead to a positive valuation effect associated with the degree of international involvement). The authors tested the model using generalized least squares and maximum likelihood procedures, controlling for the size and price to earnings effects, and obtain results consistent with the theoretical valuation effect.

[509] *See* R. Morck and B. Yeung, *Why Investors Value Multinationality,* Journal of Business, 64 (2), 1991 at 165 − 187 (examining the value of multinationality as reflected in Tobin's Q). The authors find that the positive impact of research and development and advertising spending on Q is enhanced by multinationality, but multinationality itself has no significant impact on Q, supporting the notion that multinational corporations have intangible assets that can be used internationally.

[510] *See* D. Hirshleifer and S. Teoh, *Limited Attention, Information Disclosure, and Financial Reporting,* Journal of Accounting and Economics 36, 2003 at 337–386 (developing a theoretical model where investors have limited attention and processing power). The authors show that with partially attentive investors, means of presenting information may have an impact on stock price reactions, misvaluation, long-run abnormal returns, and corporate decisions.

[511] Item 101(c)(1)(xi) of Regulation S–K for non-smaller reporting companies and Item 101(h)(4)(x) of Regulation S–K for smaller reporting companies.

[512] *See* ASC 730–10–50–1 and ASC 730–20–50–1.

[513] ASC 270–10–45–11 states: Revenues of certain entities are subject to material seasonal variations. To avoid the possibility that interim results with material seasonal variations may be taken as fairly indicative of the estimated results for a full fiscal year, such entities shall disclose the seasonal nature of their activities, and consider supplementing their interim reports with information for 12-month periods ended at the interim date for the current and preceding years.

added to U.S. GAAP and removed from Commission rules, some information would be relocated from outside the financial statements to within the financial statements, giving rise to Disclosure Location Considerations, potentially impacting issuers, investors, and other users.

In addition to the economic effects of changing disclosure location and bright line disclosure thresholds, as discussed above, a movement of disclosure requirements from Commission rules to U.S. GAAP may potentially increase costs to investors if U.S. GAAP were to change in a way that this information is no longer provided, as discussed above.[514] As noted above, the potential for such changes may be mitigated by the FASB's transparent, public standard-setting process and the Commission's oversight of the FASB.[515] The specific economic effects of any potential amendments to our disclosure requirements if these incremental disclosures are subsequently incorporated into U.S. GAAP would be considered in connection with any future rulemaking in this area.

As an alternative to referring these requirements to the FASB for potential incorporation into U.S. GAAP, we could simply eliminate the overlapping requirements and forego disclosure of the incremental information. Although such an alternative would simplify issuer compliance efforts, it also may result in less informed investment decisions and diminished investor protections. To help inform commenters' assessment of possible future changes to Commission disclosure requirements, we provide below salient examples examined in academic studies of potential economic uses of the incremental information from some of the overlapping provisions.

Waived Defaults: If a default of an obligation exists, but acceleration of the obligation has been waived for a period of time, Rule 4–08(c) of Regulation S–X requires disclosure of the amount of the obligation and the period of the waiver.[516] This disclosure requirement is incremental to U.S. GAAP, which sets forth requirements for when to present debt subject to a covenant violation as a current liability on the balance sheet, but does not require disclosure of the amount of the obligation and the period of the waiver for all waived defaults. Waivers often come with additional fees and concessions,[517] which likely vary with the amount of the obligation and the period of the waiver. These additional concessions typically include restrictions on investing and financing.[518] Therefore, information on the amount of the obligation and the period of waiver might be beneficial to investors and other users.

Major Customers: Regulation S–K and U.S. GAAP both require disclosures about major customers. However, the requirements in Regulation S–K and U.S. GAAP differ in the following respects. First, Item 101(c)(1)(vii) of Regulation S–K requires disclosure if loss of a customer, or a few customers, would have a material adverse effect on a segment, whereas U.S. GAAP requires disclosure, for each customer that comprises 10 percent or more of total revenue, of that fact. Second, Item 101(c)(1)(vii) of Regulation S–K requires disclosure of the name of any customer that represents 10 percent or more of the issuer's revenue and whose loss would have a material adverse effect on the issuer. Since the requirements in Regulation S–K differ from the current requirement in U.S. GAAP, the incorporation of these requirements into U.S. GAAP would potentially change the disclosure threshold and add a requirement to name certain customers.

Academic research shows that customer-supplier linkages affect stock performance—for instance, financial distress affecting the customer often spreads to suppliers.[519] Academic research also shows that the customer-supplier relationship has significant effects on firm capital structure and investment activities, which may affect an investor's valuation of the firm. For instance, a firm is more likely to make relationship-specific investments when its supply-chain partner has lower leverage.[520] Further, information on supply chain partners may inform portfolio decisions.[521] Therefore, incremental audited information on customers might be beneficial to investors and other users.

Amounts and Terms of Financing Arrangements: Regulation S–X [522] and U.S. GAAP [523] both require certain disclosures of an issuer's financing arrangements. However, Rule 5–02.19(b) incrementally requires disclosure of the amount and terms (including commitment fees and the conditions under which lines may be withdrawn) of unused lines of credit for short-term financing, the weighted average interest rate on short-term borrowings outstanding as of each balance sheet date, and the amount of any lines of credit which support a commercial paper borrowing or similar arrangement. Rule 5–02.22(b) requires similar disclosure of the amount and terms (including commitment fees and the conditions under which commitments may be withdrawn) of unused commitments for long-term financial arrangements.

Research shows that credit lines and short-term financing offer sources of liquidity to companies, affect investment decisions, and affect capital structure. With respect to saving cash, firms that may face capital market frictions save more cash out of cash flow,[524] while those with access to credit lines do not.[525] Among firms with access to credit lines, those with higher cash flows and cash holdings have smaller drawdowns from their credit lines, suggesting a substitution effect between internal and external liquidity.[526] Also among firms with credit lines, an increase in cash leads to an increase in investment activity, while for those without credit lines, increases

[514] *See* discussion of current FASB projects with the potential to broadly affect the proposals in section I.C.3.

[515] *See* discussion in section I.C.

[516] 17 CFR 210.4–08(c).

[517] *See, e.g.,* M. Beneish and E. Press, *Cost of Technical Violation of Accounting-Based Debt Covenants,* The Accounting Review 68, 1993 at 233–257.

[518] *See* G. Nini, D. C. Smith, and A. Sufi, *Creditor Control Rights and Firm Investment Policy,* Journal of Financial Economics 92 (3), 2009 at 400–420.

[519] M. G. Hertzel, Z. Li, M. Officer, and K. Rodgers, *Inter-Firm Linkages and the Wealth Effects of Financial Distress along the Supply Chain,* Journal of Financial Economics 87, 2008 at 374–387. Specifically, bankruptcy filings of customers are associated with negative price effects to suppliers.

[520] *See, e.g.,* Jayrant R. Kale and Husayn Shahrur. *Corporate Capital Structure and the Characteristics of Suppliers and Customers,* Journal of Financial Economics 83, 2007 at 321–365. A firm may need to encourage its supply chain partners to make relationship-specific investments. These relationship-specific investments may lose value if the firm goes into liquidation or bankruptcy. To reduce the chance of liquidation, the authors argue that the firm could reduce the debt in its capital structure, thereby reducing the risk that is associated with the relationship-specific investment. The authors find support for their argument.

[521] For example, recent academic research has suggested that public information about concentrated sales relationships may be profitably incorporated into equity trading strategies. *See,* D. Alldredge and D. Cicero D, *Attentive Insider Trading,* Journal of Financial Economics 115, 2015 at 84–101.

[522] 17 CFR 210.5–02.19(b) and 17 CFR 210. 5–02.22(b).

[523] ASC 470–10–50.

[524] H. M. Almeida, M. Campello, and M. Weisbach, *The Cash Flow Sensitivity of Cash,* Journal of Finance 59, 2004 at 1777–1804.

[525] A. Sufi, *Bank Lines of Credit in Corporate Finance: An Empirical Analysis,* Review of Financial Studies 22, 2009 at 1057–1088.

[526] M. Campello, G. Erasmo, J. Graham, and C Harvey, *Liquidity Management and Corporate Investment During a Financial Crisis,* Review of Financial Studies 24 (6), 2011 at 1944–1979. This study surveys 800 chief financial officers in early 2009 on how they manage liquidity and investment.

in cash are associated with a decrease in investment (increase in savings).[527] Availability of unused loan commitment financing affects capital structure decisions in that it is positively related to firm leverage and negatively related to the cost of funds.[528] Therefore, detailed information about a firm's credit lines and short-term financing might be beneficial to investors and other users.

3. Outdated Requirements

Outdated requirements are Commission disclosure requirements that we believe have become obsolete as a result of the passage of time or changes in the regulatory, business, or technological environment. The proposed amendments would eliminate certain outdated Commission disclosure requirements. Elimination of outdated disclosure requirements would simplify issuer compliance efforts by reducing the number of rules to consider and the extent of disclosures that need to be provided. In some cases, the proposed amendments also would require additional disclosure of information to reduce any loss of information or decrease the burden for investors and other users to retrieve such information from other sources. Such information is expected to be readily available at minimal to no cost to issuers.

The effect of these proposed amendments on investors and other users will depend on the information. If investors do not use the deleted information to make informed decisions, these amendments may have limited effect on investors, or the amendments may have a positive effect on investors since elimination of such disclosures may reduce search costs and facilitate more efficient information processing. This, in turn, could enhance the allocative efficiency of the market and facilitate capital formation. If the information is used by investors but can be retrieved from alternative sources with little or no cost to investors (*e.g.,* share prices), the effects of these revisions on investors should be minimal. In other cases where the information is less readily available from alternative sources (*e.g.,* average exchange rates for each of the five most recent financial years and any subsequent interim period), these amendments may lead to a loss of information for investors and other users with a potentially adverse effect on the cost of capital of issuers. We do not expect these potential adverse effects to be significant as we attempt to propose deletion of only those requirements that call for information that is either no longer relevant or is readily available or can be derived from alternative sources, and may, in fact, be more robust than the information currently required to be disclosed. As noted above, some proposed amendments require additional disclosure of information (*e.g.,* the issuer's Internet address, if available) to mitigate the loss of information or decrease the burden for investors and other users.

One example of outdated disclosure is the disclosure of historical market price information. We propose substituting this disclosure with disclosure of the issuer's ticker symbol, which can be used to obtain information on stock price, among other information. This additional disclosure may help reduce any loss of information as well as facilitate access to additional information while imposing minimal or no cost on issuers and saving them the expense of disclosing information that is readily available in more up to date form from alternative sources.

4. Superseded Requirements

Superseded requirements are Commission disclosure requirements that we believe are inconsistent with recent legislation, more recently updated Commission disclosure requirements, or more recently updated U.S. GAAP requirements. The proposed amendments would conform existing Commission disclosure requirements to the more recent requirements.

Elimination or amendment of Commission disclosure requirements that are inconsistent with recent legislation, more recently updated Commission disclosure requirements, or more recently updated U.S. GAAP may simplify issuer compliance efforts by resolving some confusion for issuers. Where there are superseded requirements, issuers may need to expend time and resources seeking advice from outside professionals or guidance from Commission staff as to compliance with such requirements. To the extent that, in practice, many issuers already comply with the more recently adopted requirements, we do not expect these costs to be significant. In addition, investors and other users may benefit from the reduction in the variation of disclosure practices that could result from confusion about the superseded requirements among issuers.

One example of superseded disclosure is the requirement to report the cumulative effect of a change in accounting principle in the income statement, which the FASB eliminated from U.S. GAAP in 2005. Instead, U.S. GAAP now requires the cumulative effect of retrospectively-applied changes in accounting principle to be reflected in the opening balance of retained earnings for the earliest period presented. The Commission disclosure requirements, by contrast, continue to refer to a line on the income statement for a cumulative effect of a change in accounting principle. Eliminating references to the cumulative effect of a change in accounting principle in the income statement in the Commission disclosure requirements would resolve this contradiction and remove any resulting issuer confusion.

As another example, Rule 10–01(b)(2) of Regulation S–X requires, for interim periods, the presentation of dividends per share applicable to common stock on the face of the income statement. These rules are inconsistent with U.S. GAAP, which prohibits presentation of dividends per share on the face of the income statement. We propose to delete Rule 10–01(b)(2) to conform to U.S. GAAP. We also propose to create a new requirement to disclose the amount of dividends per share for each class of shares, rather than only for common stock, as part of changes in stockholders' equity for interim periods.[529] Investors and other users may benefit from the additional information on dividends per share for each class of shares for interim periods. Shareholders may use dividends to value an issuer.[530] Information about dividends is also important for debtholders.[531] There may also be different dividend preferences based on an investor's characteristics.[532] Therefore, dividend disclosure is likely

[527] *Id.*

[528] R. L. Shockley, *Bank Loan Commitments and Corporate Leverage,* Journal of Financial Intermediation 4, 1995 at 272–301.

[529] *See supra* notes 414, 415, and 416.

[530] *See* M. Miller and F. Modigliani, *Dividend Policy, Growth, and the Valuation of Shares,* Journal of Business 34 (4), 1961 at 411–433 (providing an early theory of the effects of dividend policy on share price). *See also,* F. Black, *The Dividend Puzzle,* The Journal of Portfolio Management 2(2), 1976 at 5–8 (discussing reasons why firms pay dividends).

[531] *See* P. Healy and K. Palepu, *Effectiveness of Accounting-Based Dividend Covenants,* Journal of Accounting and Economics 12, 1990 at 97–123 (examining the effectiveness of dividend covenants in mitigating conflicts of interests between stockholders and bondholders). *See also,* H. Fan and S. Sundaresan, *Debt Valuation, Renegotiation, and Optimal Dividend Policy,* Review of Financial Studies 13 (4), 2000 at 1057–1099 (developing a theoretical framework for optimal dividend policy and capital structure).

[532] *See* R. Pettit, *Taxes, Transactions Costs and the Clientele Effect of Dividends,* Journal of Financial Economics 5 (3), 1977 at 419–436 (showing that individuals' preferences for dividends are influenced by their age and their tax rates on dividends and capital gains).

to be important to investors. The proposed amendments, however, may give rise to Disclosure Location Considerations, in that issuers would now disclose dividends in a separate financial statement or in the notes, instead of the face of the income statement. The proposed amendments may create additional costs for issuers to prepare the additional information (*i.e.,* dividends per share for other classes of stock). However, such costs would be limited to the extent that the required information is already available from the preparation of other aspects of the interim financial statements. Disclosure of additional information may also lead to additional costs for issuers, including Regulation A issuers, to comply with internal control over financial reporting, audit, and XBRL tagging requirements, as applicable.

C. Anticipated Effects on Efficiency, Competition and Capital Formation

As discussed above, the proposals may improve capital allocation efficiency by enabling investors and other users to make more efficient investment decisions. For example, the proposals may reduce search costs for investors by eliminating information that is redundant, duplicative, overlapping, outdated or superseded and therefore no longer useful to investors. Given that investors may have limited attention and limited information processing capabilities,[533] elimination of such information may facilitate more efficient investment decision-making. In addition, elimination of these disclosure requirements may reduce issuer compliance costs and encourage capital formation. The reduction in compliance costs might be particularly beneficial for smaller and younger issuers that are resource constrained. A better disclosure environment may make the U.S. capital markets more competitive relative to markets in other countries. However, we do not expect such effect to be substantial.

However, eliminating information could result in increased information asymmetries between issuers and investors. Such asymmetries may increase the cost of capital, reduce capital formation, and hamper efficient allocation of capital across companies. If a useful disclosure is no longer required, low-quality firms will be less likely to disclose information that signals their lower quality; this will make it more difficult for higher quality firms to distinguish their quality even with voluntary disclosures. Such negative effects might be more pronounced among smaller and younger issuers that suffer more from information asymmetries. Overall, though, to the extent that we are proposing to eliminate disclosure that is redundant, duplicative, overlapping, outdated, or superseded, we do not think these effects are likely.

D. Request for Comments

In addition to our request for comments in sections II through VI of this release, we request comment on various aspects of the costs and benefits of our proposals. We also request comment on any effect the proposals may have on efficiency, competition, and capital formation. In particular, we appreciate any data or analysis that may help quantify the potential costs and benefits identified.

VIII. Paperwork Reduction Act

A. Background

Certain provisions of the proposed amendments contain a ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[534] The Commission is submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[535] The hours and costs associated with preparing, filing, and sending the schedules and forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. The titles for the collections of information are:

Title	OMB Control No.
Regulation S–X[536]	3235–0009
Regulation S–K	3235–0071
Rule 405 of Regulation C	3235–0074
Rule 436 of Regulation C	3235–0074
Form S–1	3235–0065
Form S–3	3235–0073
Form S–11	3235–0067
Form S–4	3235–0324
Form F–1	3235–0258
Form F–3	3235–0256
Form F–4	3235–0325
Form F–6	3235–0292
Form F–7	3235–0383
Form F–8	3235–0378
Form F–10	3235–0380
Form F–80	3235–0404
Form SF–1	3235–0707
Form SF–3	3235–0690
Form 1–A	3235–0286
Form 1–K	3235–0720
Form 1–SA	3235–0721
Exchange Act Rule 10A–1	3235–0468
Exchange Act Rule 12b–2	3235–0062
Schedule 14A	3235–0059
Schedule 14C	3235–0057
Exchange Act Rule 15c3–1g	3235–0200
Exchange Act Rule 17a–5 and Form X–17A–5	3235–0123
Exchange Act Rule 17a–12	3235–0498
Exchange Act Rule 17h–1T	3235–0410
Form 10	3235–0064
Form 20–F	3235–0288
Form 40–F	3235–0381
Form 10–Q	3235–0070
Form 10–K	3235–0063
Form 11–K	3235–0082
Form 10–D	3235–0604
Form N–5	3235–0169
Form N–1A	3235–0307
Form N–2	3235–0026
Form N–3	3235–0316
Form N–4	3235–0318
Form N–6	3235–0503
Form N–8B–2	3235–0186

We adopted all of the existing regulations, schedules, and forms pursuant to the Securities Act, the Exchange Act, or the Investment Company Act. The regulations, schedules, and forms set forth the disclosure requirements for registration statements, periodic reports, and proxy and information statements filed by issuers to help investors make informed investment and voting decisions. Certain other forms and reports are filed by broker-dealers, entities regulated by the Investment Company Act and the Investment Advisors Act, and NRSROs in connection with the Commission's oversight of such entities.

We are proposing amendments as part of an initiative by the Division of Corporation Finance to review disclosure requirements applicable to issuers to consider ways to improve the requirements for the benefit of investors and issuers. We are also proposing these amendments as part of our efforts to implement title LXXII, section 72002(2) of the FAST Act.

Compliance with the proposed amendments would be mandatory. Responses to the collection would not be kept confidential, and there would be no mandatory retention period for the information disclosed.

[533] *See supra* note 510.

[534] 44 U.S.C. 3501 *et seq.*

[535] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[536] The paperwork burdens from Regulation S–X and Regulation S–K are imposed through the forms that are subject to the disclosure requirements in both regulations and are reflected in the analysis of these forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience we estimate the burden imposed by Regulation S–X and Regulation S–K to be a total of one hour for each regulation.

B. Summary of the Proposed Amendments' Impacts on Collection of Information

We propose amendments to certain of our disclosure requirements that may have become redundant, duplicative, overlapping, outdated, or superseded, in light of other Commission disclosure requirements, U.S. GAAP, IFRS, or changes in the information environment.

By eliminating the redundancy, duplication, and overlap in current Commission disclosure requirements, respondents would need to consider fewer rules and requirements in their compliance efforts even as they are preparing a substantially similar level of disclosures. As such, except for the proposed amendment to eliminate the requirement to disclose the ratio of earnings to fixed charges, which may decrease the paperwork burden, we believe that the proposed elimination of these redundant, duplicative, and overlapping Commission requirements would marginally reduce, if at all, respondents' overall paperwork burden.

Similarly, we expect that the proposed amendments to eliminate outdated requirements would marginally reduce the information collection burden on respondents by eliminating any efforts that were undertaken to prepare these disclosures. With the exception of the proposed amendments to require the disclosure of an issuer's Web site address and the ticker symbol of their common equity that is publicly traded, the proposed amendments related to outdated requirements would have no change or a minimal reduction in the paperwork burden associated with preparing such information when respondents are providing information in response to Forms 10, 10–K, 20–F, S–1, and F–1.

Finally, we believe that our proposed amendments to update superseded Commission disclosure requirements would marginally reduce, if at all, respondents' collection of information burden, except for the extension of the application of Rule 3–04 of Regulation S–X to interim period disclosures,[537] which we estimate may marginally increase the paperwork burden. While we intend to eliminate any existing confusion related to contradictory and inconsistent requirements, in many instances, we believe respondents are not providing information in response to the requirements that we are proposing to delete. Instead, we believe they provide information in response to U.S. GAAP or other Commission disclosure requirements that have been updated more recently, rather than the superseded requirement subject to the proposed amendments. As a result, we do not believe these proposed amendments would result in a change to respondents' overall paperwork burden.

C. Estimate of Burdens

1. Forms 10, 10–K, 10–Q, 20–F, and 1–SA

We believe the proposed amendments to eliminate the requirement to disclose the market prices for an issuer's common equity for the two most recent fiscal years would nominally reduce affected issuers current paperwork burdens. We estimate that issuers currently expend an average of 2 hours internally preparing the market price disclosure for inclusion in their Forms 10–K and 20–F. As such, we estimate that affected issuers would experience a 2 hour reduction in their annual paperwork burden.[538]

We believe the proposed amendments to require that issuers disclose their ticker symbol and internet address would result in a minimal increase in their paperwork burden. We estimate that these proposed requirements would increase the paperwork burden by 0.1 hours per year for the disclosure of the issuer's internet address and 0.05 hours per year for the disclosure of the issuer's ticker symbol.[539] We also estimate that there are 8,862 annual responses made in connection with Forms 10–K and 20–F. The table below illustrates the overall impact on respondents filing Forms 10–K and 20–F as a result of these proposed amendments.

	Number of responses	Reduction in incremental burden hours/ form	Total incremental burden hours reduction	Internal company time
	(A)	(B)	(C) = (A) * (B)	(D) = (C)
Form 10–K	8,137	(1.85)	(15,053.45)	(15,053.45)
Form 20–F	725	(1.85)	(1,341.25)	(1,341.25)

The proposed amendments to eliminate the requirement to disclose the market prices for an issuer's common equity for the two most recent fiscal years would not reduce the paperwork burden for the overwhelming majority of Form 10 filers.[540] Form 10 filers would be subject to the proposed requirements, if adopted, to disclose their ticker symbols or anticipated ticker symbols, if known, and internet address. We estimate that there are 238 annual responses made in connection with Form 10. The table below illustrates the overall impact on respondents filing Form 10 as a result of these proposed amendments.

[537] The extension of Rule 3–04 of Regulation S–X addresses both overlapping and superseded disclosure issues and is presented in both sections III.C.16 and V.B.5.

[538] Although the proposed additional requirement to disclose an issuer's ticker symbol would create a minimal paperwork burden increase, such increase would be far outweighed by the reduction in burden associated with the elimination of two years' worth of market price disclosure.

[539] The burden estimate for the issuer's Internet address and ticker symbol as it applies to Form 10 filers is not an annual burden because these registration statements are only filed upon the initial registration of a class of securities under the Exchange Act.

[540] Most filers of Form 10 do not have a class of common equity publicly traded at the time the registration statement is filed. Issuers that already have a class of common equity publicly traded are typically able to file a Form 8–A to register new classes of securities under the Exchange Act.

	Number of responses	Increase in incremental burden hours/ form	Total incremental burden hours increase	Internal company time
	(A)	(B)	(C) = (A) * (B)	(D) = (C)
Form 10	238	0.15	37.5	37.5

The proposed amendments discussed in sections III.C.16 and V.B.5, if adopted, would extend to interim periods the requirements under Rule 3–04 of Regulation S–X to disclose changes in stockholders' equity and dividends per share for each class of shares, rather than only for common stock. Currently, these disclosures are not required for interim periods. While this creates a new disclosure requirement for issuers, the information being required is generally readily available from the issuer's preparation of other aspects of its interim financial statements. As a result, we estimate that this proposed amendment would increase the paperwork burdens by 0.5 hours each time such information is required for inclusion.[541] We also estimate that there are 23,333 annual responses in connection with Forms 10, 10–Q, and 1–SA. The table below illustrates the overall impact on respondents filing Forms 10, 10–Q, and 1–SA, as a result of the proposed application of Rule 3–04 to interim period disclosures.[542]

	Number of responses	Increase in incremental burden hours/ form	Total incremental burden hours increase	Internal company time
	(A)	(B)	(C) = (A) * (B)	(D) = (C)
Form 10	238	0.5	119	119
Form 10–Q	22,907	0.5	11,453.5	11,453.5
Form 1–SA	188	0.5	94	94

2. Forms S–1, S–3, S–4, S–11, SF–1, SF–3, F–1, F–3, F–4, and 1–A

The proposed amendments to eliminate the market prices disclosure and require the disclosure of the ticker symbol for an issuer's common equity and the issuer's internet address have the same paperwork burden effect for Forms S–1, S–4, S–11, F–1, and F–4.[543] As such, we estimate that there would be a corresponding reduction in the burden estimate for these forms. We estimate that there are approximately 1,751 annual responses made in connection with the referenced forms. The table below illustrates the overall impact on respondents filing the referenced forms as a result of these proposed amendments.

	Number of responses	Reduction in incremental burden hours/ form	Total incremental burden hours reduction	Internal company time
	(A)	(B)	(C) = (A) * (B)	(D) = (C)
Form S–1	901	(1.85)	(1,666.85)	(1,666.85)
Form S–4	619	(1.85)	(1,145.15)	(1,145.15)
Form S–11	100	(1.85)	(185)	(185)
Form F–1	63	(1.85)	(116.55)	(116.55)
Form F–4	68	(1.85)	(125.8)	(125.8)

Additionally, we estimate that the paperwork burdens associated with Forms SF–1 and SF–3 would be minimally increased by the proposed amendment to disclose the issuer's internet address. We estimate that there are approximately 77 annual responses made in connection with the referenced forms. The table below illustrates the overall impact on respondents filing the referenced forms as a result of these proposed amendments.

[541] As Form 10–Q is filed for the first three quarters of an issuer's fiscal year, the annual burden increase is estimated to be 1.5 hours annually. As such, there is no increase to the paperwork burdens associated with preparing annual reports filed on Forms 10–K or 20–F. However, for registration statements filed on Form 10 and 20–F, to the extent that interim period disclosures are made, the issuer would experience an increase in paperwork burden.

[542] While this proposal would not impact foreign private issuers that file a Form 20–F as an annual report, it may impact those that file the form to register a class of securities when they would be required to provide interim period disclosures. However, the staff has observed that this does not occur frequently. As such, we have not included Form 20–F in this estimate.

[543] The information subject to the proposals discussed in this paragraph are incorporated by reference into Forms S–3 and F–3 and not provided in direct response to a form item requirement. As such, the proposals do not affect the paperwork burdens associated with Forms S–3 and F–3.

	Number of responses	Increase in incremental burden hours/ form	Total incremental burden hours increase	Internal company time
	(A)	(B)	(C) = (A) * (B)	(D) = (C)
Form SF–1	6	0.1	0.6	0.6
Form SF–3	71	0.1	7.1	7.1

The proposed amendments discussed in sections III.C.16 and V.B.5 to extend Rule 3–04 of Regulation S–X to interim periods would also impact the paperwork burdens of registration statements filed on Forms 1–A, S–1, S–4, S–11, F–1, and F–4 because such forms require interim period financial disclosures, when applicable.[544] We believe that the estimated burden increase of 0.5 hours discussed above similarly applies to the referenced registration statements. We estimate that there are approximately 2,001 annual responses made in connection with the referenced forms. The table below illustrates the overall impact on respondents filing the referenced forms as a result of these proposed amendments.

	Number of responses	Increase in incremental burden hours/ form	Total incremental burden hours increase	Internal company time
	(A)	(B)	(C) = (A) * (B)	(D) = (C)
Form S–1	901	0.5	450.5	450.5
Form S–4	619	0.5	309.5	309.5
Form S–11	100	0.5	50	50
Form F–1	63	0.5	31.5	31.5
Form F–4	68	0.5	34	34
Form 1–A	250	0.5	125	125

The proposed amendment to eliminate the requirements to disclose the ratio of earnings to fixed charges, when an issuer registers debt securities, and the ratio of combined fixed charges and preference dividends to earnings, when an issuer registers preference securities, would reduce the current paperwork burden for issuers registering such securities on Forms S–1, S–3, S–4, S–11, F–1, F–3 and F–4. Depending on the size and complexity of the issuer, the paperwork burden associated with preparing this information for inclusion in the aforementioned registration statements varies greatly. We estimate that issuers expend an average of 4 hours preparing this disclosure for inclusion in their registration statements. For the purposes of this analysis, we assume that the ratio is prepared internally, and we have estimated that there are approximately 2,195 annual responses made in connection with the referenced forms. Based on this average, the table below illustrates the overall impact on respondents filing the referenced forms as a result of the proposed amendments.

	Number of responses	Reduction in incremental burden hours/ form	Total incremental burden hours increase	Internal company time
	(A) [545]	(B)	(C) = (A) * (B)	(D) = (C)
Form S–1	450	(4)	(1,800)	(1,800)
Form S–3	1,000	(4)	(4,000)	(4,000)
Form S–4	525	(4)	(2,100)	(2,100)
Form S–11	35	(4)	(140)	(140)
Form F–1	32	(4)	(128)	(128)
Form F–3	98	(4)	(392)	(392)
Form F–4	55	(4)	(220)	(220)

D. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Evaluate the accuracy of our assumptions and estimates of the burden of the proposed collection of information;

[544] Filers of the referenced forms may have to provide interim period financial disclosures in order to comply with Rule 3–12 of Regulation S–X [17 CFR 210.3–12]. While the timing of the effectiveness of the registration statement or qualification of the offering statement may not trigger the requirement for interim period financial disclosure, we have used the full population of responses for our estimate to be conservative.

[545] The portion of registration statements filed on each referenced form that actually registers debt or preference securities varies from year to year. As a result, the numbers in this column are based on staff estimates using data samples obtained from EDGAR.

• Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;

• Evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and

• Evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the U.S. Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to, Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090, with reference to File No. S7–15–16. Requests for materials submitted to OMB by the Commission with regard to the collection of information should be in writing, refer to File No. S7–15–16 and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this proposed rule. Consequently, a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

IX. Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (''RFA'') [546] requires the Commission, in promulgating rules under section 553 of the Administrative Procedure Act, to consider the impact of those rules on small entities. The Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with section 603 of the RFA.[547] This IRFA relates to amendments proposed as part of the Disclosure Effectiveness Initiative, which aims to review the Commission's disclosure requirements applicable to issuers to consider ways to improve the requirements for the benefit of investors and issuers, and part of our efforts to implement title LXXII, section 72002(2) of the FAST Act.

A. Reasons for, and Objectives of, the Proposed Action

The primary reason for, and objectives of, the proposed amendments is to update and simplify the Commission's current disclosure requirements. Specifically, the proposed amendments would:

• Eliminate certain Commission disclosure requirements that are redundant or duplicative of requirements in U.S. GAAP, IFRS, or other Commission disclosure requirements;

• Streamline certain overlapping Commission disclosure requirements by deleting or integrating provisions that address disclosure topics covered elsewhere in our rules or regulations.

• Revise certain Commission disclosure requirements that are outdated.

• Revise certain superseded Commission disclosure requirements to update and conform our rules with recent legislation, more recently updated Commission disclosure requirements, or more recently updated U.S. GAAP requirements.

Additionally, as discussed in section III.E above, we are soliciting comment on certain overlapping Commission disclosure requirements to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP.

The proposed amendments are also part of our efforts to implement title LXXII, section 72002(2) of the FAST Act.

B. Legal Basis

We are proposing the rule and form amendments pursuant to sections 7, 10, 19(a), and 28 of the Securities Act, sections 3(b), 12, 13, 15, 23(a), and 36 of the Exchange Act, sections 8, 24(a), 24(g), 30, and 38 of the Investment Company Act, and title LXXII, section 72002(2) of the FAST Act.

C. Small Entities Subject to the Proposed Amendments

The proposed amendments would affect small entities that file registration statements under the Securities Act, the Exchange Act, and the Investment Company Act and periodic reports, proxy and information statements, or other reports under the Exchange Act and the Investment Company Act. The RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [548]

For the purposes of the RFA, under our rules, an issuer of securities, other than an investment company, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities that does not exceed $5 million.[549] We estimate that there are approximately 428 of such issuers that may be considered small entities. The proposed amendments would affect small entities conducting registered public or Regulation A offerings or that have a class of securities that are registered under section 12 of the Exchange Act.

An investment company, including a business development company, is considered to be a ''small business,'' for the purposes of the RFA, if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[550] We believe the proposed amendments would affect some small entities that are investment companies. We estimate that there are approximately 29 investment companies that would be subject to the proposed amendments that may be considered small entities.

For the purposes of the RFA, an investment adviser generally is a small entity if it: (1) Has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[551] We estimate that there are approximately 515 investment advisors that would be subject to the proposed amendments that may be considered small entities.

For the purposes of the RFA, a broker-dealer is considered to be a ''small business'' if its total capital (net worth plus subordinated liabilities) is less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to

[546] 5 U.S.C. 601 *et seq.*

[547] 5 U.S.C. 603.

[548] 5 U.S.C. 601(6).

[549] *See* Securities Act Rule 157 [17 CFR 230.157] and Exchange Act Rule 0–10(a) [17 CFR 240.0–10(a)].

[550] 17 CFR 270.0–10(a).

[551] *See* 17 CFR 275.0–7.

Rule 17a–5(d) under the Exchange Act,[552] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and that is not affiliated with any person (other than a natural person) that is not a small business or small organization.[553] The Commission estimates that there are approximately 1,349 broker-dealers that were ''small'' for the purposes Rule 0–10.[554]

The Commission has also stated, and continues to believe, that an NRSRO with total assets of $5 million or less would qualify as a ''small'' entity for purposes of the RFA.[555] Currently, there are 10 NRSROs and, based on their most recently filed annual reports pursuant to Rule 17g–3, two NRSROs are small entities under the above definition.

D. Duplicative, Overlapping, or Conflicting Federal Rules

We believe that the proposed amendments would not duplicate, overlap, or conflict with other federal rules.

E. Reporting, Recordkeeping, and Other Compliance Requirements

As noted above, the purpose of the proposed amendments is to update and simplify the Commission's disclosure requirements. As such, the proposed amendments do not impose any significant new disclosure obligations. If adopted, the majority of the proposed amendments would eliminate or integrate current Commission disclosure requirements and thus are expected to have a minimal effect on existing reporting, recordkeeping, and other compliance burdens for all issuers, including small entities. To the extent the proposed amendments do have an impact, it would likely be a reduction in these burdens.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish the stated objectives of our proposed amendments, while minimizing any significant adverse impact on small entities. Specifically, we considered the following alternatives: (1) Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance and reporting requirements for small entities; (3) using performance rather than design standards; and (4) exempting small entities from coverage of all or part of the proposed amendments.

With respect to clarification, consolidation, and simplification of compliance and reporting requirements for small entities, the proposed amendments do not impose any significant new disclosure obligations. As noted above, we are proposing amendments to certain of our disclosure requirements that may have become redundant, duplicative, overlapping, outdated, or superseded, in light of other Commission disclosure requirements, U.S. GAAP, IFRS, or changes in the information environment. The proposed amendments would simplify compliance for all issuers, including small entities.

For similar reasons, we do not believe it is necessary, and indeed would be contrary to the stated objectives of the proposed rulemaking, to establish different compliance or reporting requirements or timetables or to exempt small entities from all or part of the proposed amendments. We note in this regard that the Commission's existing disclosure requirements provide for scaled disclosure requirements and other accommodations for SRCs and EGCs, and the proposed amendments would not alter these existing accommodations.

Finally, with respect to use of performance rather than design standards, the proposed amendments to eliminate certain prescriptive Commission rules that call for information that duplicates or overlaps with information required by U.S. GAAP may result in issuers, including small entities, being provided with additional flexibility when preparing their disclosures. For instance, Rule 4–08(m) of Regulation S–X requires certain disclosures regarding repurchase agreements based on a 10 percent threshold and specified maturity levels. As we propose to delete the referenced requirements, as discussed in section III.C, under the proposed amendments issuers would be subject only to the corresponding the requirements in U.S. GAAP, which require similar disclosure but do not use similar bright line thresholds. While the proposed amendments do not use performance standards, they would have a similar effect—namely, to provide issuers, including small entities, with additional flexibility to present more tailored disclosures without meaningfully reducing the total mix of information provided to investors.

G. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- How the proposed amendments can achieve their objective while lowering the burden on small entities;
- The number of small entities that may be affected by the proposed amendments;
- The existence or nature of the potential impact of the proposed amendments on small entities discussed in the analysis; and
- How to quantify the impact of the proposed amendments.

Respondents are asked to describe the nature of any impact of the proposed amendments on small entities and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

X. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [556] we solicit data to determine whether the rule proposed amendments constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

Commenters should provide empirical data on: (1) The potential annual effect on the economy; (2) any increase in costs or prices for consumers or individual industries; and (3) any potential effect on competition, investment, or innovation.

XI. Statutory Authority

The amendments contained in this document are being proposed under the authority set forth in sections 7, 10, 19(a), and 28 of the Securities Act, sections 3(b), 12, 13, 15, 23(a), and 36

[552] *See* 17 CFR 240.17a–5(d).

[553] *See* 17 CFR 240.0–10(c).

[554] This estimate is based on the number of small broker-dealers as of December 31, 2014.

[555] *See, e.g., Final Rules: Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 72936 (Aug. 27, 2014) [79 FR 55077].

[556] 123 Public Law 104–121, Title II, 110 Stat. 857 (1996).

of the Exchange Act, sections 8, 24(a), 24(g), 30, and 38 of the Investment Company Act, and title LXXII, section 72002(2) of the FAST Act.

Text of Proposed Amendments

List of Subjects

17 CFR Part 210

Accountants, Accounting, Banks, banking, Employee benefit plans, Holding companies, Insurance companies, Investment companies, Oil and gas exploration, Reporting and recordkeeping requirements, Securities, Utilities.

17 CFR Part 229

Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Brokers, Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons stated in the preamble, the SEC is proposing to amend title 17, chapter II of the Code of the Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j–1, 78*l,* 78m, 78n, 78o(d), 78q, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, unless otherwise noted.

■ 2. Amend § 210.1–02 by:

■ a. Revising paragraphs (d), (w)(3) and (bb)(1)(ii); and

■ b. Adding paragraphs (cc) and (dd).

The revisions and additions read as follows:

§ 210.1–02 Definitions of terms used in Regulation S–X (17 CFR part 210).

* * * * *

(d) *Audit (or examination).* The term *audit* (or *examination*), when used in regard to financial statements of issuers as defined by section 2(a)(7) of the Sarbanes-Oxley Act of 2002, means an examination of the financial statements by an independent accountant in accordance with the standards of the Public Company Accounting Oversight Board (United States) (''PCAOB'') for the purpose of expressing an opinion thereon. When used in regard to financial statements of entities that are not issuers as defined by section 2(a)(7) of the Sarbanes-Oxley Act of 2002, the term means an examination of the financial statements by an independent accountant in accordance with either the standards of the PCAOB or U.S. generally accepted auditing standards (''U.S. GAAS'') as specified or permitted in the regulations and forms applicable to those entities for the purpose of expressing an opinion thereon. The standards of the PCAOB and U.S. GAAS may be modified or supplemented by the Commission.

* * * * *

(w) * * *

(3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes exclusive of amounts attributable to any noncontrolling interests exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

* * * * *

(bb) * * *

(1) * * *

(ii) Net sales or gross revenues, gross profit (or, alternatively, costs and expenses applicable to net sales or gross revenues), income or loss from continuing operations, net income or loss, and net income or loss attributable to the entity (for specialized industries, other information may be substituted for sales and related costs and expenses if necessary for a more meaningful presentation); and

* * * * *

(cc) *Statement(s) of comprehensive income.* The term *statement(s) of comprehensive income* means a financial statement that includes all changes in equity during a period except those resulting from investments by owners and distributions to owners. Comprehensive income comprises all components of net income and all components of other comprehensive income. The statement of comprehensive income may be presented either in a single continuous financial statement or in two separate but consecutive financial statements. A statement(s) of operations or variations thereof may be used in place of a statement(s) of comprehensive income if there was no other comprehensive income during the period(s).

(dd) *Restricted net assets.* The term *restricted net assets* shall mean that amount of the registrant's proportionate share of net assets of consolidated subsidiaries (after intercompany eliminations) which as of the end of the most recent fiscal year may not be transferred to the parent company by subsidiaries in the form of loans, advances or cash dividends without the consent of a third party (*i.e.,* lender, regulatory agency, foreign government, etc.). Not all limitations on transferability of assets are considered to be restrictions for purposes of this paragraph, which considers only specific third party restrictions on the ability of subsidiaries to transfer funds outside of the entity. For example, the presence of subsidiary debt which is secured by certain of the subsidiary's assets does not constitute a restriction under this paragraph. However, if there are any loan provisions prohibiting dividend payments, loans or advances to the parent by a subsidiary, these are considered restrictions for purposes of computing restricted net assets. When a loan agreement requires that a subsidiary maintain certain working capital, net tangible asset, or net asset levels, or where formal compensating arrangements exist, there is considered to be a restriction under this paragraph because the lender's intent is normally to preclude the transfer by dividend or otherwise of funds to the parent company. Similarly, a provision which requires that a subsidiary reinvest all of its earnings is a restriction, since this precludes loans, advances or dividends in the amount of such undistributed earnings by the entity. Where restrictions on the amount of funds which may be loaned or advanced differ from the amount restricted as to transfer in the form of cash dividends, the amount least restrictive to the subsidiary shall be used. Redeemable preferred stocks (§ 210.5–02, paragraph 27) and noncontrolling interests shall be deducted in computing net assets for purposes of this test.

■ 3. Amend § 210.2–01 by revising paragraph (f)(7)(ii)(B) to read as follows:

§ 210.2–01 Qualifications of accountants.

* * * * *

(f) * * *

(7) * * *

(ii) * * *

(B) The partner conducting a quality review under applicable professional standards and any applicable rules of the Commission to evaluate the significant judgments and the related conclusions reached in forming the overall conclusion on the audit or review engagement. (''engagement quality reviewer'' or ''engagement quality control reviewer'');

* * * * *

■ 4. Amend § 210.2–02 by revising paragraph (b)(1) to read as follows:

§ 210.2–02 Accountants' reports and attestation reports.

* * * * *

(b) * * *

(1) Shall state the applicable professional standards under which the audit was conducted; and

* * * * *

■ 5. Amend § 210.3–01 by revising paragraphs (c)(2) and (3) to read as follows:

§ 210.3–01 Consolidated balance sheets.

* * * * *

(c) * * *

(2) For the most recent fiscal year for which audited financial statements are not yet available the registrant reasonably and in good faith expects to report income attributable to the registrant, after taxes; and

(3) For at least one of the two fiscal years immediately preceding the most recent fiscal year the registrant reported income attributable to the registrant, after taxes.

* * * * *

■ 6. Amend § 210.3–02 by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 210.3–02 Consolidated statements of comprehensive income and cash flows.

(a) There shall be filed, for the registrant and its subsidiaries consolidated and for its predecessors, audited statements of comprehensive income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed or such shorter period as the registrant (including predecessors) has been in existence.

(b) In addition, for any interim period between the latest audited balance sheet and the date of the most recent interim balance sheet being filed, and for the corresponding period of the preceding fiscal year, statements of comprehensive income and cash flows shall be provided. Such interim financial statements may be unaudited and need not be presented in greater detail than is required by § 210.10–01.

* * * * *

■ 7. Amend § 210.3–03 by revising the section heading and paragraphs (b), (d), and (e) to read as follows:

§ 210.3–03 Instructions to statement of comprehensive income requirements.

* * * * *

(b) If the registrant is engaged primarily:

(1) In the generation, transmission or distribution of electricity, the manufacture, mixing, transmission or distribution of gas, the supplying or distribution of water, or the furnishing of telephone or telegraph service; or

(2) In holding securities of companies engaged in such businesses, it may at its option include statements of comprehensive income and cash flows (which may be unaudited) for the twelve-month period ending on the date of the most recent balance sheet being filed, in lieu of the statements of comprehensive income and cash flows for the interim periods specified.

* * * * *

(d) Any unaudited interim financial statements furnished shall reflect all adjustments which are, in the opinion of management, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, there shall be furnished information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

(e) Disclosures regarding segments required by generally accepted accounting principles shall be provided for each year for which an audited statement of comprehensive income (or statement of net income if comprehensive income is presented in two separate but consecutive financial statements or if no other comprehensive income) is provided. To the extent that the segment information presented pursuant to this instruction complies with the provisions of Item 101 of Regulation S–K (17 CFR 229.101), the disclosures may be combined by cross referencing to or from the financial statements.

■ 8. Revise § 210.3–04 to read as follows:

§ 210.3–04 Changes in stockholders' equity and noncontrolling interests.

An analysis of the changes in each caption of stockholders' equity and noncontrolling interests presented in the balance sheets shall be given in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which a statement of comprehensive income is required to be filed with all significant reconciling items described by appropriate captions with contributions from and distribution to owners shown separately. Also, state-separately the adjustments to the balance at the beginning of the earliest period presented for items which were retroactively applied to periods prior to that period. With respect to any dividends, state the amount per share and in the aggregate for each class of shares. Provide a separate schedule in the notes to the financial statements that shows the effects of any changes in the registrant's ownership interest in a subsidiary on the equity attributable to the registrant.

■ 9. Amend § 210.3–05 by revising paragraph (b)(4)(iii) to read as follows:

§ 210.3–05 Financial statements of businesses acquired or to be acquired.

* * * * *

(b) * * *

(4) * * *

(iii) Separate financial statements of the acquired business need not be presented once the operating results of the acquired business have been reflected in the audited consolidated financial statements of the registrant for a complete fiscal year unless such financial statements have not been previously filed or unless the acquired business is of such significance to the registrant that omission of such financial statements would materially impair an investor's ability to understand the historical financial results of the registrant. For example, if, at the date of acquisition, the acquired business met at least one of the conditions in the definition of significant subsidiary in § 210.1–02 at the 80 percent level, the statements of comprehensive income of the acquired business should normally continue to be furnished for such periods prior to the purchase as may be necessary when added to the time for which audited statements of comprehensive income after the purchase are filed to cover the equivalent of the period specified in § 210.3–02.

* * * * *

■ 10. Amend § 210.3–12 by revising paragraph (a) to read as follows:

§ 210.3–12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

(a) If the financial statements in a filing are as of a date the number of days specified in paragraph (g) of this section

or more before the date the filing is expected to become effective, or proposed mailing date in the case of a proxy statement, the financial statements shall be updated, except as specified in the following paragraphs, with a balance sheet as of an interim date within the number of days specified in paragraph (g) of this section and with statements of comprehensive income and cash flows for the interim period between the end of the most recent fiscal year and the date of the interim balance sheet provided and for the corresponding period of the preceding fiscal year. Such interim financial statements may be unaudited and need not be presented in greater detail than is required by § 210.10–01. Notwithstanding the above requirements, the most recent interim financial statements shall be at least as current as the most recent financial statements filed with the Commission on Form 10–Q.

* * * * *

■ 11. Amend § 210.3–14 by:

■ a. Revising the introductory text of paragraph (a); and

■ b. Redesignating the Note following paragraph (a)(1)(iii) as Note to paragraph (a)(1).

The revision reads as follows:

§ 210.3–14 Special instructions for real estate operations to be acquired.

(a) If, during the period for which statements of comprehensive income are required, the registrant has acquired one or more properties which in the aggregate are significant, or since the date of the latest balance sheet required has acquired or proposes to acquire one or more properties which in the aggregate are significant, the following shall be furnished with respect to such properties:

* * * * *

§ 210.3–15 [Amended]

■ 12. Amend § 210.3–15 by removing and reserving paragraphs (a) and (b).

■ 13. Amend § 210.3–17 by revising paragraph (a) to read as follows:

§ 210.3–17 Financial statements of natural persons.

(a) In lieu of the financial statements otherwise required, a natural person may file an unaudited balance sheet as of a date within 90 days of date of filing and unaudited statements of comprehensive income for each of the three most recent fiscal years.

* * * * *

■ 14. Amend § 210.3–20 by:

■ a. Redesignating paragraph (a) as paragraph (a)(1);

■ b. Adding paragraph (a)(2);

■ c. Redesignating paragraph (b) as paragraph (b)(1) and adding paragraph (b)(2); and

■ d. Revising paragraph (d).

The additions and revisions read as follows:

§ 210.3–20 Currency for financial statements.

(a) * * *

(2) An issuer that is not a foreign private issuer shall present its financial statements in U.S. dollars.

(b) * * *

(2) If there are material exchange restrictions or controls relating to the currency of a subsidiary's domicile, the currency held by a subsidiary, or the currency in which a subsidiary will pay dividends or transfer funds to the issuer or other subsidiaries, prominent disclosure of this fact shall be made in the financial statements.

* * * * *

(d) Notwithstanding the currency selected for reporting purposes, the issuer shall measure separately its own transactions, and those of each of its material operations (*e.g.,* branches, divisions, subsidiaries, joint ventures, and similar entities) that is included in the issuer's consolidated financial statements and not located in a hyperinflationary environment, using the particular currency of the primary economic environment in which the issuer or the operation conducts its business. Assets and liabilities so determined shall be translated into the reporting currency at the exchange rate at the balance sheet date; all revenues, expenses, gains, and losses shall be translated at the exchange rate existing at the time of the transaction or, if appropriate, a weighted average of the exchange rates during the period; and all translation effects of exchange rate changes shall be included as a separate component (''cumulative translation adjustment'') of shareholder's equity.

* * * * *

§ 210.3A–01 [Removed and reserved]

■ 15. Remove and reserve § 210.3A–01.

■ 16. Amend § 210.3A–02 by:

■ a. Revising the undesignated introductory text;

■ b. Revising paragraph (a);

■ c. Removing and reserving paragraph (b); and

■ d. Removing paragraphs (c) and (d).

The revisions read as follows:

§ 210.3A–02 Consolidated financial statements of the registrant and its subsidiaries.

In deciding upon consolidation policy, the registrant must consider what financial presentation is most meaningful in the circumstances and should follow in the consolidated financial statements principles of inclusion or exclusion which will clearly exhibit the financial position and results of operations of the registrant. There is a presumption that consolidated statements are more meaningful than separate statements and that they are usually necessary for a fair presentation when one entity directly or indirectly has a controlling financial interest in another entity. Other particular facts and circumstances may require combined financial statements, an equity method of accounting, or valuation allowances in order to achieve a fair presentation.

(a) *Majority ownership:* Among the factors that the registrant should consider in determining the most meaningful presentation is majority ownership. Generally, registrants shall consolidate entities that are majority owned and shall not consolidate entities that are not majority owned. The determination of ''majority ownership'' requires a careful analysis of the facts and circumstances of a particular relationship among entities. In rare situations, consolidation of a majority owned subsidiary may not result in a fair presentation, because the registrant, in substance, does not have a controlling financial interest (for example, when the subsidiary is in legal reorganization or in bankruptcy). In other situations, consolidation of an entity, notwithstanding the lack of technical majority ownership, is necessary to present fairly the financial position and results of operations of the registrant, because of the existence of a parent-subsidiary relationship by means other than record ownership of voting stock.

* * * * *

■ 17. Amend § 210.3A–03 by removing and reserving paragraph (a) and revising paragraph (b) to read as follows:

§ 210.3A–03 Statement as to principles of consolidation or combination followed.

* * * * *

(b) As to each consolidated financial statement and as to each combined financial statement, if there has been a change in the persons included or excluded in the corresponding statement for the preceding fiscal period filed with the Commission that has a material effect on the financial statements, the persons included and the persons excluded shall be disclosed.

§ 210.3A–04 [Removed]

■ 18. Remove § 210.3A–04.

§ 210.4–01 [Amended]

■ 19. Amend § 210.4–01 by removing paragraph (a)(3).

■ 20. Amend § 210.4–08 by:

■ a. Revising the undesignated introductory text;

■ b. Removing and reserving paragraph (a)

■ c. Revising paragraph (d);

■ d. Revising paragraph (e)(1) and the introductory text of paragraph (e)(3);

■ e. Revising paragraphs (f) and (h)(1);

■ f. Redesignating the Note following paragraph (h)(1) as Note to paragraph (h)(1);

■ g. Revising paragraph (h)(2) and removing paragraph (h)(3);

■ h. Removing and reserving paragraph (i);

■ i. Revising paragraph (k);

■ j. Revising paragraphs (m)(1)(i) and (ii) and (m)(2)(i); and

■ k. Removing paragraph (n) and the instructions to paragraph (n).

The revisions read as follows:

§ 210.4–08 General notes to financial statements.

If applicable to the person for which the financial statements are filed, the following shall be set forth on the face of the appropriate statement or in appropriately captioned notes. The information shall be provided for each statement required to be filed, except that the information required by paragraphs (b), (c), (d), (e) and (f) of this section shall be provided as of the most recent audited balance sheet being filed and for paragraph (j) of this section as specified therein. When specific statements are presented separately, the pertinent notes shall accompany such statements unless cross-referencing is appropriate.

* * * * *

(d) *Preferred shares.* Aggregate preferences on involuntary liquidation, if other than par or stated value, shall be shown parenthetically in the equity section of the balance sheet.

(e) * * *

(1) Describe the most significant restrictions on the payment of dividends by the registrant, indicating their sources, their pertinent provisions, and the amount of retained earnings or net income restricted or free of restrictions.

* * * * *

(3) The disclosures in paragraphs (e)(3)(i) and (ii) of this section shall be provided when material.

* * * * *

(f) *Significant changes in bonds, mortgages and similar debt.* Any significant changes in the authorized amounts of bonds, mortgages and similar debt since the date of the latest balance sheet being filed for a particular person or group shall be stated.

* * * * *

(h) * * *

(1) Disclosure shall be made in the statement of comprehensive income or a note thereto, of the components of income (loss) before income tax expense (benefit) as either domestic or foreign.

* * * * *

(2) In the reconciliation between the amount of reported total income tax expense (benefit) and the amount computed by multiplying the income (loss) before tax by the applicable statutory Federal income tax rate, if no individual reconciling item amounts to more than five percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate, and the total difference to be reconciled is less than five percent of such computed amount, no reconciliation need be provided unless it would be significant in appraising the trend of earnings. Reconciling items that are individually less than five percent of the computed amount may be aggregated in the reconciliation. Where the reporting person is a foreign entity, the income tax rate in that person's country of domicile should normally be used in making the above computation, but different rates should not be used for subsidiaries or other segments of a reporting entity. When the rate used by a reporting person is other than the United States Federal corporate income tax rate, the rate used and the basis for using such rate shall be disclosed.

* * * * *

(k) *Related party transactions that affect the financial statements.* (1) Amounts of related party transactions should be stated on the face of the balance sheet, statement of comprehensive income, or statement of cash flows.

(2) In cases where separate financial statements are presented for the registrant, certain investees, or subsidiaries, any intercompany profits or losses resulting from transactions with related parties and the effects thereof shall be disclosed.

* * * * *

(m) * * *

(1) * * *

(i) Separate presentation in the balance sheet of the aggregate amount of liabilities incurred pursuant to repurchase agreements shall include accrued interest payable thereon.

(ii) The interest rate(s) on the repurchase liabilities shall be disclosed.

* * * * *

(2) * * *

(i) If, as of the most recent balance sheet date, the aggregate carrying amount of ''*reverse repurchase agreements''* (securities or other assets purchased under agreements to resell) exceeds 10% of total assets:

(A) Disclose separately such amount in the balance sheet; and

(B) Disclose in an appropriately captioned footnote whether or not there are any provisions to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of default by the counterparty and if so, the nature of those provisions.

* * * * *

■ 21. Amend § 210.4–10 by revising paragraph (c)(7)(i) to read as follows:

§ 210.4–10 Financial accounting and reporting for oil and gas producing activities pursuant to the Federal securities laws and the Energy Policy and Conservation Act of 1975.

* * * * *

(c) * * *

(7) * * *

(i) For each cost center for each year that a statement of comprehensive income is required, disclose the total amount of amortization expense (per equivalent physical unit of production if amortization is computed on the basis of physical units or per dollar of gross revenue from production if amortization is computed on the basis of gross revenue).

* * * * *

■ 22. Amend § 210.5–02 by:

■ a. Removing the bracketed text immediately below the undesignated heading ''Current Assets, when appropriate'' and immediately above paragraph 1;

■ b. Revising paragraphs 6.(a)(2) and (3);

■ c. Revising the undesignated heading immediately above paragraph 19;

■ d. Revising the introductory text of paragraph 22.(a) and paragraphs 27.(c)(3), 28 and 29; and

■ e. Revising paragraph 30.(a) and adding a Note to paragraph 30.(a)

The revisions read as follows:

§ 210.5–02 Balance sheets.

* * * * *

6. * * *

(a) * * *

(2) inventoried costs relating to long-term contracts or programs (see paragraph (d) of this section);

(3) work in process;

* * * * *

Current Liabilities, When Appropriate

19. * * *

* * * * *

22. * * *

(a) State separately, in the balance sheet or in a note thereto, each issue or

type of obligation and such information as will indicate:

* * * * *

27. * * *

(c) * * *

(3) the changes in each issue for each period for which a statement of comprehensive income is required to be filed. (See also § 210.4–08(d).)

* * * * *

28. *Preferred stocks which are not redeemable or are redeemable solely at the option of the issuer.* State on the face of the balance sheet, or if more than one issue is outstanding state in a note, the title of each issue and the dollar amount thereof. Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. State on the face of the balance sheet or in a note, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate (see § 210.4–07). Show in a note or separate statement the changes in each class of preferred shares reported under this caption for each period for which a statement of comprehensive income is required to be filed. (See also § 210.4–08(d).)

* * * * *

29. *Common stocks.* For each class of common shares state, on the face of the balance sheet, the number of shares issued or outstanding, as appropriate (see § 210.4–07), and the dollar amount thereof. If convertible, this fact should be indicated on the face of the balance sheet. For each class of common shares state, on the face of the balance sheet or in a note, the title of the issue, the number of shares authorized, and, if convertible, the basis of conversion (see also § 210.4–08(d)). Show also the dollar amount of any common shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. Show in a note or statement the changes in each class of common shares for each period for which a statement of comprehensive income is required to be filed.

* * * * *

30. *Other stockholders' equity.* (a) Separate captions shall be shown for:

(1) Additional paid-in capital;

(2) Other additional capital;

(3) Retained earnings;

(i) Appropriated; and

(ii) Unappropriated (See § 210.4–08(e)); and

(4) Accumulated other comprehensive income.

Note to paragraph 30.(a). Additional paid-in capital and other additional capital may be combined with the stock caption to which it applies, if appropriate.

* * * * *

■ 23. Amend § 210.5–03 by:

■ a. Revising the section heading and paragraphs (a) and (b)7 and 9;

■ b. Removing and reserving paragraphs (b)15, 16, and 17;

■ c. Redesignating paragraph (b)21 as (b)25; and

■ d. Adding new paragraph (b)21 and paragraphs (b)22, 23, and 24.

The revisions and additions read as follows:

§ 210.5–03 Statements of comprehensive income.

(a) The purpose of this section is to indicate the various line items which, if applicable, and except as otherwise permitted by the Commission, should appear on the face of the statements of comprehensive income filed for the persons to whom this article pertains (see § 210.4–01(a)).

(b) * * *

7. *Non-operating income.* State separately in the statement of comprehensive income or in a note thereto amounts earned from dividends, interest on securities, profits on securities (net of losses), and miscellaneous other income. Amounts earned from transactions in securities of related parties shall be disclosed as required under § 210.4–08(k). Material amounts included under miscellaneous other income shall be separately stated in the statement of comprehensive income or in a note thereto, indicating clearly the nature of the transactions out of which the items arose.

* * * * *

9. *Non-operating expenses.* State separately in the statement of comprehensive income or in a note thereto amounts of losses on securities (net of profits) and miscellaneous income deductions. Material amounts included under miscellaneous income deductions shall be separately stated in the statement of comprehensive income or in a note thereto, indicating clearly the nature of the transactions out of which the items arose.

* * * * *

21. *Other comprehensive income.* State separately the components of and the total for other comprehensive income. Present the components either net of related tax effects or before related tax effects with one amount shown for the aggregate income tax expense or benefit. State the amount of income tax expense or benefit allocated to each component, including reclassification adjustments, in the statement of comprehensive income or in a note.

22. *Comprehensive income.*

23. *Comprehensive income attributable to the noncontrolling interest.*

24. *Comprehensive income attributable to the controlling interest.*

* * * * *

■ 24. Amend § 210.5–04 by revising paragraph (a)(2); and Schedule I to read as follows:

§ 210.5–04 What schedules are to be filed.

(a) * * *

(2) Schedule II of this section shall be filed for each period for which an audited statement of comprehensive income is required to be filed for each person or group.

* * * * *

Schedule I—Condensed financial information of registrant. The schedule prescribed by § 210.12–04 shall be filed when the restricted net assets (§ 210.1.02(dd)) of consolidated subsidiaries exceed 25 percent of consolidated net assets as of the end of the most recently completed fiscal year.

* * * * *

■ 25. Amend § 210.6–03 by revising the introductory text of paragraph (c)(1) to read as follows:

§ 210.6–03 Special rules of general application to registered investment companies.

* * * * *

(c) * * *

(1) Consolidated and combined statements filed for registered investment companies shall be prepared in accordance with §§ 210.3A–02 and 210.3A–03 (Article 3A), except that

* * * * *

■ 26. Amend § 210.6–04 by revising paragraph 17 to read as follows:

§ 210.6–04 Balance sheets.

* * * * *

17. *Total distributable earnings (loss).* Disclose total distributable earnings (loss), which generally comprise:

(a) Accumulated undistributed investment income—net;

(b) Accumulated undistributed net realized gains (losses) on investment transactions; and

(c) Net unrealized appreciation (depreciation) in value of investments at the balance sheet date.

* * * * *

■ 27. Amend § 210.6–07 by revising the undesignated introductory text to read as follows:

§ 210.6–07 Statements of operations.

Statements of operations, or statements of comprehensive income, where applicable, filed by registered investment companies, other than

issuers of face-amount certificates subject to the special provisions of § 210.6–08, shall comply with the following provisions:

* * * * *

■ 28. Amend § 210.6–09 by revising paragraph 7 to read as follows:

§ 210.6–09 Statements of changes in net assets.

* * * * *

7. *Net assets at the end of the period.*

■ 29. Amend § 210.6A–04 by revising the section heading and undesignated introductory text to read as follows:

§ 210.6A–04 Statements of comprehensive income and changes in plan equity.

Statements of comprehensive income and changes in plan equity filed under this section shall comply with the following provisions:

* * * * *

■ 30. Amend § 210.6A–05 by revising the introductory text of paragraph (a) and schedule III to read as follows:

§ 210.6A–05 What schedules are to be filed.

(a) Schedule I of this section shall be filed as of the most recent audited statement of financial condition and any subsequent unaudited statement of financial condition being filed. Schedule II of this section shall be filed as of the date of each statement of financial condition being filed. Schedule III of this section shall be filed for each period for which a statement of comprehensive income and changes in plan equity is filed. All schedules shall be audited if the related statements are audited.

* * * * *

Schedule III—Allocation of plan income and changes in plan equity to investment programs. If the plan provides for separate investment programs with separate funds, and if the allocation of income and changes in plan equity to the several funds is not shown in the statement of comprehensive income and changes in plan equity in columnar form or by the submission of separate statements for each fund, a schedule shall be submitted showing the allocation of each caption of each statement of comprehensive income and changes in plan equity filed to the applicable fund.

* * * * *

§ 210.7–02 [Amended]

■ 31. Amend § 210.7–02 by removing and reserving paragraph (b).

■ 32. Amend § 210.7–03 by:

■ a. Revising paragraphs (a)6 and (a)11; and

■ b. Removing and reserving paragraph (a)13.(b);

■ c. Removing paragraph (a)13.(c); and

■ d. Revising paragraphs (a)23.(a)(3) and (a)23.(c)(2).

The revisions read as follows:

§ 210.7–03 Balance sheets.

(a) * * *

6. *Reinsurance recoverable.*

* * * * *

11. *Separate account assets.* Include under this caption the portion of separate account-assets representing contract holder funds required to be reported in an insurance entity's financial statements as a summary total. An equivalent summary total for the related liability shall be included under caption 18.

* * * * *

23. *Other stockholders' equity.*

(a) * * *

(3) accumulated other comprehensive income,

* * * * *

(c) * * *

(2) property and liability insurance legal entities: The amount of statutory stockholders' equity as of the date of each balance sheet presented and the amount of statutory net income or loss for each period for which a statement of comprehensive income is presented.

* * * * *

■ 33. Amend § 210.7–04 by:

■ a. Revising the section heading;

■ b. Revising the undesignated introductory text;

■ c. Revising paragraph 3.(b);

■ d. Removing and reserving paragraph 3.(c);

■ e. Revising paragraphs 3.(d), 7 and 9;

■ f. Removing and reserving paragraphs 13, 14 and 15;

■ g. Redesignating paragraph 19 as paragraph 23; and

■ h. Adding new paragraph 19 and paragraphs 20, 21 and 22.

The revisions and additions read as follows:

§ 210.7–04 Statements of comprehensive income.

The purpose of this section is to indicate the various items which, if applicable, should appear on the face of the statements of comprehensive income and in the notes thereto filed for persons to whom this article pertains. (See § 210.4–01(a).)

* * * * *

3. * * *

(b) Indicate in a footnote the registrant's policy with respect to whether investment income and realized gains and losses allocable to policyholders and separate accounts are included in the investment income and realized gain and loss amounts reported in the statement of comprehensive income. If the statement of comprehensive income includes investment income and realized gains and losses allocable to policyholders and separate accounts, indicate the amounts of such allocable investment income and realized gains and losses and the manner in which the insurance enterprise's obligation with respect to allocation of such investment income and realized gains and losses is otherwise accounted for in the financial statements.

* * * * *

(d) For each period for which a statement of comprehensive income is filed, include in a note an analysis of realized and unrealized investment gains and losses on fixed maturities and equity securities. For each period, state separately for fixed maturities [see § 210.7–03.1(a)] and for equity securities [see § 210.7–03.1(b)] the following amounts:

* * * * *

7. *Underwriting, acquisition and insurance expenses.* State separately in the statement of comprehensive income or in a note thereto (a) the amount included in this caption representing deferred policy acquisition costs amortized to income during the period, and (b) the amount of other operating expenses. State separately in the statement of comprehensive income any material amount included in all other operating expenses.

* * * * *

9. *Income tax expense.* Include under this caption only taxes based on income (See § 210.4–08(h).)

* * * * *

19. *Other comprehensive income.* State separately the components of and the total for other comprehensive income. Present the components either net of related tax effects or before related tax effects with one amount shown for the aggregate income tax expense or benefit. State the amount of income tax expense or benefit allocated to each component, including reclassification adjustments, in the statement of comprehensive income or in a note.

20. *Comprehensive income.*

21. *Comprehensive income attributable to the noncontrolling interest.*

22. *Comprehensive income attributable to the controlling interest.*

* * * * *

■ 34. Amend § 210.7–05 by revising paragraph (a)(2) and schedules II and III to read as follows:

§ 210.7–05 What schedules are to be filed.

(a) * * *

(2) The schedules specified in this section as Schedule IV and V shall be filed for each period for which an audited statement of comprehensive income is required to be filed for each person or group.

* * * * *

Schedule II—Condensed financial information of registrant. The schedule prescribed by § 210.12–04 shall be filed when the restricted net assets (§ 210.1.02(dd)) of consolidated subsidiaries exceed 25 percent of consolidated net assets as of the end of the most recently completed fiscal year.

Schedule III—Supplementary insurance information. The schedule prescribed by § 210.12–16 shall be filed giving segment detail in support of various balance sheet and statement of comprehensive income captions. The required balance sheet information shall be presented as of the date of each audited balance sheet filed, and the statement of comprehensive income information shall be presented for each period for which an audited statement of comprehensive income is required to be filed, for each person or group.

* * * * *

■ 35. Amend § 210.8–01 by:

■ a. In Note 2 to § 210.8 revising paragraph a and removing and reserving paragraph b; and

■ b. Removing Note 6 to § 210.8.

The revisions read as follows:

§ 210.8–01 Preliminary Notes to Article 8.

* * * * *

Note 2 to § 210.8. * * *

■ a. The report and qualifications of the independent accountant shall comply with the requirements of Article 2 of this part (§§ 210.2–01 through 210.2–07); and

* * * * *

■ 36. Revise § 210.8–02 to read as follows:

§ 210.8–02 Annual financial statements.

Smaller reporting companies shall file an audited balance sheet as of the end of each of the most recent two fiscal years, or as of a date within 135 days if the issuer has existed for a period of less than one fiscal year, and audited statements of comprehensive income, cash flows and changes in stockholders' equity for each of the two fiscal years preceding the date of the most recent audited balance sheet (or such shorter period as the registrant has been in business).

■ 37. Amend § 210.8–03 by:

■ a. Revising the undesignated introductory text;

■ b. Revising paragraph (a)(2);

■ c. Adding paragraph (a)(5);

■ d. Removing and reserving paragraphs (b)(2) and (b)(4);

■ e. Revising paragraph (b)(5);

■ f. Removing paragraph (b)(6); and

■ g. Revising Instruction 1 to § 210.8–03.

The revisions and addition read as follows:

§ 210.8–03 Interim financial statements.

Interim financial statements may be unaudited; however, before filing, interim financial statements included in quarterly reports on Form 10–Q (§ 249.308(a) of this chapter) must be reviewed by an independent public accountant using applicable professional standards and procedures for conducting such reviews, as may be modified or supplemented by the Commission. If, in any filing, the issuer states that interim financial statements have been reviewed by an independent public accountant, a report of the accountant on the review must be filed with the interim financial statements. Interim financial statements shall include a balance sheet as of the end of the issuer's most recent fiscal quarter, a balance sheet as of the end of the preceding fiscal year, and statements of comprehensive income and statements of cash flows for the interim period up to the date of such balance sheet and the comparable period of the preceding fiscal year.

(a) * * *

(2) Statements of comprehensive income (or the statement of net income if comprehensive income is presented in two separate but consecutive financial statements) should include net sales or gross revenue, each cost and expense category presented in the annual financial statements that exceeds 20% of sales or gross revenues, provision for income taxes, and discontinued operations. (Financial institutions should substitute net interest income for sales for purposes of determining items to be disclosed.)

* * * * *

(5) Provide the information required by § 210.3–04.

(b) * * *

(5) *Material accounting changes.* The registrant's independent accountant must provide a letter in the first Form 10–Q (§ 249.308a of this chapter) filed after the change indicating whether or not the change is to a preferable method. Disclosure must be provided of any retroactive change to prior period financial statements, including the effect of any such change on income and income per share.

Instruction 1 to § 210.8–03. Where Article 8 of this part (§§ 210.8–01 to 210.8–08) is applicable to a Form 10–Q (§ 249.308a of this chapter) and the interim period is more than one quarter, statements of comprehensive income must also be provided for the most recent interim quarter and the comparable quarter of the preceding fiscal year.

* * * * *

■ 38. Amend § 210.8–04 by revising paragraph (b)(3) to read as follows:

§ 210.8–04 Financial statements of businesses acquired or to be acquired.

* * * * *

(b) * * *

(3) Compare the smaller reporting company's equity in the income from continuing operations before income taxes of the acquiree exclusive of amounts attributable to any noncontrolling interests to such consolidated income of the smaller reporting company for the most recently completed fiscal year.

* * * * *

■ 39. Amend § 210.8–05 by revising paragraphs (b)(1) and (2) to read as follows:

§ 210.8–05 Pro forma financial information.

* * * * *

(b) * * *

(1) If the transaction was consummated during the most recent fiscal year or subsequent interim period, pro forma statements of comprehensive income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any; or

(2) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet required by § 210.8–02 or § 210.8–03, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet. For a purchase, pro forma statements of comprehensive income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, are required.

■ 40. Amend § 210.8–06 by revising the undesignated introductory text to read as follows:

§ 210.8–06 Real estate operations acquired or to be acquired.

If, during the period for which statements of comprehensive income are required, the smaller reporting company has acquired one or more properties that in the aggregate are significant, or since the date of the latest balance sheet required by § 210.8–02 or § 210.8–03, has acquired or proposes to acquire one or more properties that in the aggregate

are significant, the following shall be furnished with respect to such properties:

* * * * *

■ 41. Amend § 210.9–03 by:

■ a. Revising paragraph 3;

■ b. Removing paragraph 6.(a) and removing and reserving paragraph 7.(d); and

■ c. Revising paragraphs 7.(e)(3) and 10.

The revisions read as follows:

§ 210.9–03 Balance sheets.

* * * * *

3. *Federal funds sold and securities purchased under resale agreements or similar arrangements.*

* * * * *

7. * * *

(e) * * *

(3) Notwithstanding the aggregate disclosure called for by paragraph (e)(1) of this section, if any loans were not made in the ordinary course of business during any period for which a statement of comprehensive income is required to be filed, provide an appropriate description of each such loan.

* * * * *

10. *Other assets.* Disclose separately on the balance sheet or in a note thereto any of the following assets or any other asset the amount of which exceeds thirty percent of stockholders equity. The remaining assets may be shown as one amount.

(1) Goodwill.

(2) Other intangible assets (net of amortization).

(3) Investments in and indebtedness of affiliates and other persons.

(4) Other real estates.

(a) Disclose in a note the basis at which other real estate is carried. A reduction to fair market value from the carrying value of the related loan at the time of acquisition shall be accounted for as a loan loss. Any allowance for losses on other real estate which has been established subsequent to acquisition should be deducted from other real estate. For each period for which a statement of comprehensive income is required, disclosures should be made in a note as to the changes in the allowances, including balance at beginning and end of period, provision charged to income, and losses charged to the allowance.

* * * * *

■ 42. Amend § 210.9–04 by:

■ a. Revising the heading and undesignated introductory text;

■ b. Revising paragraph 13.(h);

■ c. Removing and reserving paragraphs 14.(c), 17, 18 and 19;

■ d. Redesignating paragraph 23 as paragraph 27; and

■ e. Adding new paragraph 23 and paragraphs 24, 25 and 26.

The revisions and additions read as follows:

§ 210.9–04 Statements of comprehensive income.

The purpose of this section is to indicate the various items which, if applicable, should appear on the face of the statement of comprehensive income or in the notes thereto.

* * * * *

13. * * *

(h) Investment securities gains or losses. Related income taxes shall be disclosed.

* * * * *

23. *Other comprehensive income.* State separately the components of and the total for other comprehensive income. Present the components either net of related tax effects or before related tax effects with one amount shown for the aggregate income tax expense or benefit. State the amount of income tax expense or benefit allocated to each component, including reclassification adjustments, in the statement of comprehensive income or in a note.

24. *Comprehensive income.*

25. *Comprehensive income attributable to the noncontrolling interest.*

26. *Comprehensive income attributable to the controlling interest.*

* * * * *

■ 43. Amend § 210.9–05 by revising paragraph (b)(2) to read as follows:

§ 210.9–05 Foreign activities.

* * * * *

(b) * * *

(2) For each period for which a statement of comprehensive income is filed, state the amount of revenue, income (loss) before taxes, and net income (loss) associated with foreign activities. Disclose significant estimates and assumptions (including those related to the cost of capital) used in allocating revenue and expenses to foreign activities; describe the nature and effects of any changes in such estimates and assumptions which have a significant impact on interperiod comparability.

* * * * *

■ 44. Revise § 210.9–06 to read as follows:

§ 210.9–06 Condensed financial information of registrant.

The information prescribed by § 210.12–04 shall be presented in a note to the financial statements when the restricted net assets (§ 210.1–02(dd)) of consolidated subsidiaries exceed 25 percent of consolidated net assets as of the end of the most recently completed fiscal year. The investment in and indebtedness of and to bank subsidiaries shall be stated separately in the condensed balance sheet from amounts for other subsidiaries; the amount of cash dividends paid to the registrant for each of the last three years by bank subsidiaries shall be stated separately in the condensed statement of comprehensive income from amounts for other subsidiaries.

■ 45. Amend § 210.10–01 by:

■ a. Revising paragraphs (a)(3), (5), and (7);

■ b. Revising paragraphs (b)(1) through (3);

■ c. Removing and reserving paragraphs (b)(4) and (5);

■ d. Revising paragraphs (b)(6) and (8); and

■ e. Revising paragraphs (c)(2) and (4) and (d).

The revisions read as follows:

§ 210.10–01 Interim financial statements.

(a) * * *

(3) Interim statements of comprehensive income shall also include major captions prescribed by the applicable sections of this Regulation S–X (part 210 of this chapter). When any major statement of comprehensive income (or statement of net income if comprehensive income is presented in two separate but consecutive financial statements) caption is less than 15% of average net income for the most recent three fiscal years and the amount in the caption has not increased or decreased by more than 20% as compared to the corresponding interim period of the preceding fiscal year, the caption may be combined with others. In calculating average net income, loss years should be excluded. If losses were incurred in each of the most recent three years, the average loss shall be used for purposes of this test. Notwithstanding these tests, § 210.4–02 applies and de minimis amounts therefore need not be shown separately, except that registrants reporting under § 210.9 shall show investment securities gains or losses separately regardless of size.

* * * * *

(5) The interim financial information shall include disclosures either on the face of the financial statements or in accompanying footnotes sufficient so as to make the interim information presented not misleading. Registrants may presume that users of the interim financial information have read or have access to the audited financial statements for the preceding fiscal year and that the adequacy of additional

disclosure needed for a fair presentation may be determined in that context. Accordingly, footnote disclosure which would substantially duplicate the disclosure contained in the most recent annual report to security holders or latest audited financial statements, such as a statement of significant accounting policies and practices, details of accounts which have not changed significantly in amount or composition since the end of the most recently completed fiscal year, and detailed disclosures prescribed by § 210.4–08, may be omitted.

* * * * *

(7) Provide the information required by § 210.3–04.

(b) * * *

(1) Summarized statement of comprehensive income information shall be given separately as to each subsidiary not consolidated or 50 percent or less owned persons or as to each group of such subsidiaries or fifty percent or less owned persons for which separate individual or group statements would otherwise be required for annual periods. Such summarized information, however, need not be furnished for any such unconsolidated subsidiary or person which would not be required pursuant to § 240.13a–13 or § 240.15d–13 of this chapter to file quarterly financial information with the Commission if it were a registrant.

(2) The basis of the earnings per share computation shall be stated together with the number of shares used in the computation.

(3) If, during the most recent interim period presented, the registrant or any of its consolidated subsidiaries entered into a combination between entities under common control, supplemental disclosure of the separate results of the combined entities for periods prior to the combination shall be given, with appropriate explanations.

* * * * *

(6) For filings on Form 10–Q (§ 249.308(a) of this chapter), a letter from the registrant's independent accountant shall be filed as an exhibit (in accordance with the provisions of Item 601 of Regulation S–K (17 CFR 229.601)) in the first Form 10–Q after the date of an accounting change indicating whether or not the change is to an alternative principle which, in the accountant's judgment, is preferable under the circumstances; except that no letter from the accountant need be filed when the change is made in response to a standard adopted by the Financial Accounting Standards Board that requires such change.

* * * * *

(8) Any unaudited interim financial statements furnished shall reflect all adjustments which are, in the opinion of management, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, there shall be furnished information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

(c) * * *

(2) Interim statements of comprehensive income shall be provided for the most recent fiscal quarter, for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the corresponding periods of the preceding fiscal year. Such statements may also be presented for the cumulative twelve month period ended during the most recent fiscal quarter and for the corresponding preceding period.

* * * * *

(4) Registrants engaged in seasonal production and sale of a single-crop agricultural commodity may provide interim statements of comprehensive income and cash flows for the twelve month period ended during the most recent fiscal quarter and for the corresponding preceding period in lieu of the year-to-date statements specified in paragraphs (c)(2) and (3) of this section.

(d) *Interim review by independent public accountant.* Prior to filing, interim financial statements included in quarterly reports on Form 10–Q (17 CFR 249.308(a)) must be reviewed by an independent public accountant using applicable professional standards and procedures for conducting such reviews, as may be modified or supplemented by the Commission. If, in any filing, the company states that interim financial statements have been reviewed by an independent public accountant, a report of the accountant on the review must be filed with the interim financial statements.

* * * * *

■ 46. Amend § 210.11–02 by:

■ a. Revising paragraphs (b)(1), (3), (5), (6), and (7);

■ b. Redesignating the Instructions following paragraph (b)(8) consecutively as Instruction 1 to paragraph (b), Instruction 2 to paragraph (b), Instruction 3 to paragraph (b), Instruction 4 to paragraph (b), Instruction 5 to paragraph (b), Instruction 6 to paragraph (b), and Instruction 7 to paragraph (b);

■ c. Revising newly redesignated Instruction 1 to paragraph (b), Instruction 2 to paragraph (b), Instruction 5 to paragraph (b) and Instruction 7 to paragraph (b); and

■ d. Revising paragraphs (c)(2)(i) and (ii), (c)(3) and (c)(4).

The revisions read as follows:

§ 210.11–02 Preparation requirements.

* * * * *

(b) * * *

(1) Pro forma financial information shall consist of a pro forma condensed balance sheet, pro forma condensed statements of comprehensive income, and accompanying explanatory notes. In certain circumstances (*i.e.,* where a limited number of pro forma adjustments are required and those adjustments are easily understood), a narrative description of the pro forma effects of the transaction may be furnished in lieu of the statements described herein.

* * * * *

(3) The pro forma condensed financial information need only include major captions (*i.e.,* the numbered captions) prescribed by the applicable sections of this Regulation S–X (part 210). Where any major balance sheet caption is less than 10 percent of total assets, the caption may be combined with others. When any major statement of comprehensive income caption is less than 15 percent of average net income attributable to the registrant for the most recent three fiscal years, the caption may be combined with others. In calculating average net income attributable to the registrant, loss years should be excluded unless losses were incurred in each of the most recent three years, in which case the average loss shall be used for purposes of this test. Notwithstanding these tests, *de minimis* amounts need not be shown separately.

* * * * *

(5) The pro forma condensed statement of comprehensive income shall disclose income (loss) from continuing operations before nonrecurring charges or credits directly attributable to the transaction. Material nonrecurring charges or credits and related tax effects which result directly from the transaction and which will be included in the income of the registrant within the 12 months succeeding the transaction shall be disclosed separately. It should be clearly indicated that such charges or credits were not considered in the pro forma condensed statement of comprehensive income. If the transaction for which pro forma

financial information is presented relates to the disposition of a business, the pro forma results should give effect to the disposition and be presented under an appropriate caption.

(6) Pro forma adjustments related to the pro forma condensed statement of comprehensive income shall be computed assuming the transaction was consummated at the beginning of the fiscal year presented and shall include adjustments which give effect to events that are directly attributable to the transaction, expected to have a continuing impact on the registrant, and factually supportable. Pro forma adjustments related to the pro forma condensed balance sheet shall be computed assuming the transaction was consummated at the end of the most recent period for which a balance sheet is required by § 210.3–01 and shall include adjustments which give effect to events that are directly attributable to the transaction and factually supportable regardless of whether they have a continuing impact or are nonrecurring. All adjustments should be referenced to notes which clearly explain the assumptions involved.

(7) Historical primary and fully diluted per share data based on continuing operations (or net income if the registrant does not report discontinued operations) for the registrant, and primary and fully diluted pro forma per share data based on continuing operations before nonrecurring charges or credits directly attributable to the transaction shall be presented on the face of the pro forma condensed statement of comprehensive income together with the number of shares used to compute such per share data. For transactions involving the issuance of securities, the number of shares used in the calculation of the pro forma per share data should be based on the weighted average number of shares outstanding during the period adjusted to give effect to shares subsequently issued or assumed to be issued had the particular transaction or event taken place at the beginning of the period presented. If a convertible security is being issued in the transaction, consideration should be given to the possible dilution of the pro forma per share data.

(8) * * *

Instruction 1 to paragraph (b). The historical statement of comprehensive income used in the pro forma financial information shall not report discontinued operations. If the historical statement of comprehensive income includes such items, only the portion of the statement of comprehensive income through ''income from continuing operations'' (or the appropriate modification thereof) should be used in preparing pro forma results.

Instruction 2 to paragraph (b). For a business combination, pro forma adjustments for the statement of comprehensive income shall include amortization, depreciation and other adjustments based on the allocated purchase price of net assets acquired. In some transactions, such as in financial institution acquisitions, the purchase adjustments may include significant discounts of the historical cost of the acquired assets to their fair value at the acquisition date. When such adjustments will result in a significant effect on earnings (losses) in periods immediately subsequent to the acquisition which will be progressively eliminated over a relatively short period, the effect of the purchase adjustments on reported results of operations for each of the next five years should be disclosed in a note.

* * * * *

Instruction 5 to paragraph (b). Adjustments to reflect the acquisition of real estate operations or properties for the pro forma statement of comprehensive income shall include a depreciation charge based on the new accounting basis for the assets, interest financing on any additional or refinanced debt, and other appropriate adjustments that can be factually supported. See also Instruction 4 to paragraph (b) of this section.

* * * * *

Instruction 7 to paragraph (b). Tax effects, if any, of pro forma adjustments normally should be calculated at the statutory rate in effect during the periods for which pro forma condensed statements of comprehensive income are presented and should be reflected as a separate pro forma adjustment.

(c) * * *

(2) * * *

(i) Pro forma condensed statements of comprehensive income shall be filed for only the most recent fiscal year and for the period from the most recent fiscal year end to the most recent interim date for which a balance sheet is required. A pro forma condensed statement of comprehensive income may be filed for the corresponding interim period of the preceding fiscal year. A pro forma condensed statement of comprehensive income shall not be filed when the historical statement of comprehensive income reflects the transaction for the entire period.

(ii) For combinations between entities under common control, the pro forma statements of comprehensive income (which are in effect a restatement of the historical statements of comprehensive income as if the combination had been consummated) shall be filed for all periods for which historical statements of comprehensive income of the registrant are required.

(3) Pro forma condensed statements of comprehensive income shall be presented using the registrant's fiscal year end. If the most recent fiscal year end of any other entity involved in the transaction differs from the registrant's most recent fiscal year end by more than 93 days, the other entity's statement of comprehensive income shall be brought up to within 93 days of the registrant's most recent fiscal year end, if practicable. This updating could be accomplished by adding subsequent interim period results to the most recent fiscal year-end information and deducting the comparable preceding year interim period results. Disclosure shall be made of the periods combined and of the sales or revenues and income for any periods which were excluded from or included more than once in the condensed pro forma statements of comprehensive income (*e.g.,* an interim period that is included both as part of the fiscal year and the subsequent interim period). For investment companies subject to §§ 210.6–01 through 210.6–10, the periods covered by the pro forma statements must be the same.

(4) Whenever unusual events enter into the determination of the results shown for the most recently completed fiscal year, the effect of such unusual events should be disclosed and consideration should be given to presenting a pro forma condensed statement of comprehensive income for the most recent twelve-month period in addition to those required in paragraph (c)(2)(i) of this section if the most recent twelve-month period is more representative of normal operations.

■ 47. Amend § 210.11–03 by revising the introductory text of paragraph (a) and paragraph (a)(2) to read as follows:

§ 210.11–03 Presentation of financial forecast.

(a) A financial forecast may be filed in lieu of the pro forma condensed statements of comprehensive income required by § 210.11–02(b)(1).

* * * * *

(2) The forecasted statement of comprehensive income shall be presented in the same degree of detail as the pro forma condensed statement of comprehensive income required by § 210.11–02(b)(3).

* * * * *

■ 48. Amend § 210.12–16 by revising footnotes 4 and 5 to read as follows:

§ 210.12–16 Supplementary insurance information.

* * * * *

[4] The total of columns I and J should agree with the amount shown for statement of comprehensive income caption 7.

[5] Totals should agree with the indicated balance sheet and statement of comprehensive income caption amounts, where a caption number is shown.

■ 49. Amend § 210.12–17 by revising footnote 2 to read as follows:

§ 210.12–17 Reinsurance.

* * * * *

[2] This Column represents the total of column B less column C plus column D. The total premiums in this column should represent the amount of premium revenue on the statement of comprehensive income (or statement of net income if comprehensive income is presented in two separate but consecutive financial statements).

* * * * *

■ 50. Amend § 210.12–18 by revising footnote 1 to read as follows:

§ 210.12–18 Supplemental information (for property-casualty insurance underwriters).

* * * * *

[1] Information included in audited financial statements, including other schedules, need not be repeated in this schedule. Columns B, C, D, and E are as of the balance sheet dates, columns F, G, H, I, J, and K are for the same periods for which statements of comprehensive income are presented in the registrant's audited consolidated financial statements.

* * * * *

■ 51. Amend § 210.12–28 by removing from the heading in Column I of the first table the text ''Life on which depreciation in latest income statements is computed'' and adding in its place ''Life on which depreciation in latest statements of comprehensive income is computed'' and by revising footnote 4 to read as follows:

§ 210.12–28 Real estate and accumulated depreciation.[1]

* * * * *

[1] All money columns shall be totaled.

* * * * *

[4] In a note to this schedule, furnish a reconciliation, in the following form, of the total amount at which real estate was carried at the beginning of each period for which statements of comprehensive income are required, with the total amount shown in column E:

Balance at beginning of period		$							
Additions during period:									
Acquisitions through foreclosure	$								
Other acquisitions									
Improvements, etc									
Other (describe)		$							
Deductions during period:									
Cost of real estate sold	$								
Other (describe)									
Balance at close of period		$							

If additions, except acquisitions through foreclosure, represent other than cash expenditures, explain. If any of the changes during the period result from transactions, directly or indirectly with affiliates, explain the bases of such transactions and state the amounts involved.

A similar reconciliation shall be furnished for the accumulated depreciation.

* * * * *

■ 52. Amend § 210.12–29 by revising the text of footnote 6 between the tables to read as follows:

§ 210.12–29 Mortgage loans on real estate.[1]

* * * * *

[1] All money columns shall be totaled.

* * * * *

[6] In a note to this schedule, furnish a reconciliation, in the following form, of the carrying amount of mortgage loans at the beginning of each period for which statements of comprehensive income are required, with the total amount shown in column G:

Balance at beginning of period		$	
Additions during period:			
New mortgage loans	$		
Other (describe)		$	
Deductions during period:			
Collections of principal	$		
Foreclosures			
Cost of mortgages sold			
Amortization of premium			
Other (describe)			
Balance at close of period		$	

If additions represent other than cash expenditures, explain. If any of the changes during the period result from transactions, directly or indirectly with affiliates, explain the bases of such transactions, and state the amounts involved. State the aggregate mortgages (a) renewed and (b) extended. If the carrying amount of new mortgages is in excess of the unpaid amount of the extended mortgages, explain.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 53. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l,* 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78*ll,* 78 mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11 and 7201 *et seq.;* 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112–106, 126 Stat. 309; and Sec. 72002, Sec. 84001, Pub. L. 114–94, 129 Stat.1312.

■ 54. Amend § 229.10 by revising paragraphs (b)(2) and (e)(2)(i) to read as follows:

§ 229.10 (Item 10) General.

* * * * *

(b) * * *

(2) *Format for projections.* In determining the appropriate format for projections included in Commission filings, consideration must be given to, among other things, the financial items to be projected, the period to be covered, and the manner of presentation to be used. Although traditionally projections have been given for three financial items generally considered to be of primary importance to investors (revenues, net income (loss) and earnings (loss) per share), projection information need not necessarily be limited to these three items. However, management should take care to assure that the choice of items projected is not susceptible of misleading inferences through selective projection of only favorable items. Revenues, net income (loss) and earnings (loss) per share usually are presented together in order to avoid any misleading inferences that may arise when the individual items reflect contradictory trends. There may be instances, however, when it is appropriate to present earnings (loss) from continuing operations in addition to or in lieu of net income (loss). It generally would be misleading to present sales or revenue projections without one of the foregoing measures of income. The period that appropriately may be covered by a projection depends to a large extent on the particular circumstances of the company involved. For certain companies in certain industries, a projection covering a two or three year period may be entirely reasonable. Other companies may not have a reasonable basis for projections beyond the current year. Accordingly, management should select the period most appropriate in the circumstances. In addition, management, in making a projection, should disclose what, in its opinion, is the most probable specific amount or the most reasonable range for each financial item projected based on the selected assumptions. Ranges, however, should not be so wide as to make the disclosures meaningless. Moreover, several projections based on varying assumptions may be judged by management to be more meaningful than a single number or range and would be permitted.

* * * * *

(e) * * *

(2) * * *

(i) Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statement of comprehensive income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or

* * * * *

■ 55. Amend § 229.101 by:

■ a. Removing and reserving paragraphs (b), (c)(1)(v) and (xi), and (d);

■ b. Revising the introductory text of paragraph (e);

■ c. Revising paragraphs (e)(2) and (3);

■ d. Removing and reserving paragraph (h)(4)(x); and

■ e. Revising paragraph (h)(5)(iii).

The revisions read as follows:

§ 229.101 (Item 101) Description of business.

* * * * *

(e) *Available information.* Disclose the information in paragraphs (e)(1) through (3) of this section in any registration statement you file under the Securities Act (15 U.S.C. 77a *et seq.*), and disclose the information in paragraph (e)(3) of this section in your annual report on Form 10–K (§ 249.310 of this chapter). Further disclose the information in paragraph (e)(4) of this section if you are an accelerated filer or a large accelerated filer (as defined in § 240.12b–2 of this chapter) filing an annual report on Form 10–K (§ 249.310 of this chapter):

* * * * *

(2) State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*).

(3) Disclose your Internet address, if you have one.

* * * * *

(h) * * *

(5) * * *

(iii) State that the Commission maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (*http://www.sec.gov*). Disclose your Internet address, if available.

* * * * *

■ 56. Amend § 229.201 by:

■ a. Revising paragraph (a)(1);

■ b. Removing and reserving paragraphs (a)(2)(i), (c)(1), and (d);

■ c. Removing Instructions to paragraph (d);

■ d. Redesignating Instructions 1 through 5 to Item 201 consecutively as Instruction 1 to Item 201, Instruction 2 to Item 201, Instruction 3 to Item 201, Instruction 4 to Item 201 and Instruction 5 to Item 201;

■ e. Removing and reserving newly redesignated Instruction 1 to Item 201; and

■ f. Revising newly redesignated Instruction 2 to Item 201.

The revisions read as follows:

§ 229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.

(a) * * *

(1) * * *

(i) Identify the principal United States market or markets and the trading symbol(s) for each class of the registrant's common equity. In the case of foreign registrants, also identify the principal established foreign public trading market, if any, and the trading symbol(s), for each class of the registrant's common equity.

(ii) If the principal United States market for such common equity is not an exchange, indicate, as applicable, that any over-the-counter market quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not necessarily represent actual transactions.

(iii) Where there is no established public trading market for a class of common equity, furnish a statement to that effect and, if applicable, state the range of high and low bid information for each full quarterly period within the two most recent fiscal years and any subsequent interim period for which financial statements are included, or are required to be included by Article 3 of Regulation S–X (part 210 of this chapter), indicating the source of such quotations. Reference to quotations shall be qualified by appropriate explanation. For purposes of this Item the existence of limited or sporadic quotations should not of itself be deemed to constitute an ''established public trading market.''

* * * * *

Instruction 2 to Item 201. Bid information reported pursuant to this Item shall be adjusted to give retroactive effect to material changes resulting from

stock dividends, stock splits and reverse stock splits.

* * * * *

■ 57. Amend § 229.302 by:
■ a. Revising paragraphs (a)(1) and (3);
■ b. Redesignating the Instructions to paragraph (b) consecutively as Instruction 1 to paragraph (b), Instruction 2 to paragraph (b), and Instruction 3 to paragraph (b); and
■ c. Revising paragraphs (a) and (c) of newly redesignated Instruction 1 to paragraph (b).

The revisions read as follows:

§ 229.302 (Item 302) Supplementary financial information.

(a) * * *

(1) Disclosure shall be made of net sales, gross profit (net sales less costs and expenses associated directly with or allocated to products sold or services rendered), income (loss), per share data based upon such income (loss), net income (loss) and net income (loss) attributable to the registrant, for each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are included or are required to be included by Article 3 of Regulation S–X (part 210 of this chapter).

* * * * *

(3) Describe the effect of any discontinued operations and unusual or infrequently occurring items recognized in each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are included or are required to be included by Article 3 of Regulation S–X, as well as the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter.

* * * * *

(b) * * *

Instruction 1 to paragraph (b). (a) FASB ASC Subtopic 932–235 disclosures that relate to annual periods shall be presented for each annual period for which a statement of comprehensive income (as defined in § 210.1–02 of Regulation S–X) is required, * * * (c) FASB ASC Subtopic 932–235 disclosures required as of the beginning of an annual period shall be presented as of the beginning of each annual period for which a statement of comprehensive income (as defined in § 210.1–02 of Regulation S–X of this chapter) is required.

* * * * *

■ 58. Amend § 229.303 by:
■ a. Revising the introductory text of paragraph (a);
■ b. Revising paragraph (b)(2);
■ c. Redesignating paragraphs 1, 2, 3, 4, 5, 6, and 7 of the Instructions to paragraph (b) of Item 303 as Instruction 1 to paragraph (b), Instruction 2 to paragraph (b), Instruction 3 to paragraph (b), Instruction 4 to paragraph (b), Instruction 5 to paragraph (b), Instruction 6 to paragraph (b) and Instruction 7 to paragraph (b), respectively.
■ d. Removing and reserving newly redesignated Instruction 5 to paragraph (b); and
■ e. Adding an Instruction 8 to paragraph (b).

The revisions and addition read as follows:

§ 229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.

(a) *Full fiscal years.* Discuss registrant's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in paragraphs (a)(1) through (5) of this section and also shall provide such other information that the registrant believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Discussions of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the registrant's judgment a discussion of segment or geographic information or of other subdivisions of the registrant's business would be appropriate to an understanding of such business, the discussion shall focus on each relevant, reportable segment, geographic area, or other subdivision of the business and on the registrant as a whole.

* * * * *

(b) * * *

(2) *Material changes in results of operations.* Discuss any material changes in the registrant's results of operations with respect to the most recent fiscal year-to-date period for which a statement of comprehensive income (or statement of operations if comprehensive income is presented in two separate but consecutive financial statements or if no other comprehensive income) is provided and the corresponding year-to-date period of the preceding fiscal year. If the registrant is required to or has elected to provide a statement of comprehensive income (or statement of operations if comprehensive income is presented in two separate but consecutive financial statements or if no other comprehensive income) for the most recent fiscal quarter, such discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the registrant has elected to provide a statement of comprehensive income (or statement of operations if comprehensive income is presented in two separate but consecutive financial statements or if no other comprehensive income) for the twelve-month period ended as of the date of the most recent interim balance sheet provided, the discussion also shall cover material changes with respect to that twelve-month period and the twelve-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year. Notwithstanding the above, if for purposes of a registration statement a registrant subject to § 210.3–03(b) of Regulation S–X of this chapter provides a statement of comprehensive income (or statement of operations if comprehensive income is presented in two separate but consecutive financial statements or if no other comprehensive income) for the twelve-month period ended as of the date of the most recent interim balance sheet provided in lieu of the interim statements of comprehensive income (or statement of operations if comprehensive income is presented in two separate but consecutive financial statements or if no other comprehensive income) otherwise required, the discussion of material changes in that twelve-month period will be in respect to the preceding fiscal year rather than the corresponding preceding period.

Instructions to paragraph (b) of Item 303.

* * * * *

Instruction 8 to paragraph (b). The term statement of comprehensive income shall mean a statement of comprehensive income as defined in § 210.1–02 of Regulation S–X of this chapter.

* * * * *

■ 59. Amend § 229.503 by:
■ a. Revising the section heading;
■ b. Removing paragraph (d) and the Instructions to paragraph 503(d); and
■ c. Removing paragraph (e).

The revision reads as follows:

§ 229.503 (Item 503) Prospectus summary and risk factors.

* * * * *

■ 60. Amend § 229.512 by revising paragraph (a)(4) to read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(a) * * *

(4) If the registrant is a foreign private issuer, to file a post-effective amendment to the registration statement to include any financial statements required by Item 8.A of Form 20–F (§ 249.220f of this chapter) at the start of

any delayed offering or throughout a continuous offering. Financial statements and information otherwise required by section 10(a)(3) of the Act (15 U.S.C. 77j(a)(3)) need not be furnished, *provided* that the registrant includes in the prospectus, by means of a post-effective amendment, financial statements required pursuant to this paragraph (a)(4) and other information necessary to ensure that all other information in the prospectus is at least as current as the date of those financial statements. Notwithstanding the foregoing, with respect to registration statements on Form F–3 (§ 239.33 of this chapter), a post-effective amendment need not be filed to include financial statements and information required by section 10(a)(3) of the Act or Item 8.A of Form 20–F if such financial statements and information are contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Form F–3.

* * * * *

§ 229.601 [Amended]

■ 61. Amend § 229.601 by:
■ a. Removing and reserving entries (11) and (12) from the exhibit table in paragraph (a);
■ b. In entry (13) in the exhibit table in paragraph (a), adding an X in the column labelled ''10–Q'';
■ c. Removing and reserving entries (19), (22) and (26) from the exhibit table in paragraph (a);
■ d. Removing and reserving paragraphs (b)(11), (12), (19), and (22);
■ e. Removing and reserving paragraph (b)(26); and
■ f. Removing paragraph (c).
■ 62. Amend § 229.1010 by:
■ a. Revising paragraph (a)(2);
■ b. Removing and reserving paragraph (a)(3);
■ c. Revising paragraph (b)(2); and
■ d. Removing and reserving paragraph (c)(4).

The revisions read as follows:

§ 229.1010 (Item 1010) Financial statements.

(a) * * *

(2) Unaudited balance sheets, comparative year-to-date statements of comprehensive income (as defined in § 210.1–02 of Regulation S–X of this chapter) and related earnings per share data and statements of cash flows required to be included in the company's most recent quarterly report filed under the Exchange Act; and

(b) * * *

(2) The company's statement of comprehensive income and earnings per share for the most recent fiscal year and the latest interim period provided under paragraph (a)(2) of this section; and

* * * * *

■ 63. Amend § 229.1118 by revising paragraph (b)(2) to read as follows:

§ 229.1118 (Item 1118) Reports and additional information.

* * * * *

(b) * * *

(2) State that the Commission maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (*http://www.sec.gov*).

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 64. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 65. Amend § 230.158 by:
■ a. Revising the section heading and paragraph (a)(1) introductory text;
■ b. Designating as Note to paragraph (a) the undesignated text between paragraphs (a)(2)(ii) and (b) and revising it; and
■ c. Designating as Note to paragraph (b) the undesignated text between paragraphs (b)(2) and (c).

The revisions read as follows:

§ 230.158 Definitions of certain terms in the last paragraph of section 11(a) of the Act.

(a) * * *

(1) There is included the information required for statements of comprehensive income (as defined in § 210.1–02 of Regulation S–X of this chapter) contained either:

* * * * *

Note to paragraph (a). A subsidiary issuing debt securities guaranteed by its parent will be deemed to have met the requirements of paragraph (a) of this section if the parent's statements of comprehensive income (as defined in § 210.1–02 of Regulation S–X of this chapter) satisfy the criteria of this paragraph and information respecting the subsidiary is included to the same extent as was presented in the registration statement. An ''earning statement'' not meeting the requirements of paragraph (a) of this section may otherwise be sufficient for purposes of the last paragraph of section 11(a) of the Act.

* * * * *

■ 66. Amend § 230.405 by revising paragraphs (1) and (3) of the definition of *Significant subsidiary* to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Significant subsidiary. * * *

(1) The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for a proposed combination between entities under common control, this condition is also met when the number of common shares exchanged or to be exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

* * * * *

(3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

* * * * *

■ 67. Amend § 230.436 by revising paragraph (d)(4) to read as follows:

§ 230.436 Consents required in special cases.

* * * * *

(d) * * *

(4) A statement that a review of interim financial information is substantially less in scope than an audit conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States) (''PCAOB''), the objective of which is an expression of an opinion regarding the financial statements taken as a whole, and, accordingly, no such opinion is expressed; and

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 68. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78o(d), 78o–7 note, 78u–5, 78w(a),78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, 80a–37, and Sec. 71003 and Sec. 84001, Pub. L. 114–94, 129 Stat. 1312, unless otherwise noted.

* * * * *

§ 239.11 [Amended]

■ 69. Amend Form S–1 (referenced in § 239.11) by:
■ a. Revising the heading of Item 3; and

■ b. Revising Item 12.(b)(2)(ii).

The revisions read as follows:

Note: The text of Form S–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM S–1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

PART I—INFORMATION REQUIRED IN PROSPECTUS

* * * * *

Item 3. Summary Information and Risk Factors.

* * * * *

Item 12. Incorporation of Certain Information by Reference.

* * * * *

(b) * * *

(2) * * *

(ii) State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*).

* * * * *

§ 239.13 [Amended]

■ 70. Amend Form S–3 (referenced in § 239.13) by:

■ a. Revising General Instruction I.B.2;

■ b. Revising the heading of Item 3; and

■ c. Revising Item 12.(c)(2)(ii).

The revisions read as follows:

Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM S–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form S–3

* * * * *

B. Transaction Requirements. * * *

2. *Primary Offerings of Non-Convertible Securities Other than Common Equity.* Non-convertible securities, other than common equity, to be offered for cash by or on behalf of a registrant, provided the registrant (i) has issued (as of a date within 60 days prior to the filing of the registration statement) at least $1 billion in non-convertible securities, other than common equity, in primary offerings for cash, not exchange, registered under the Securities Act, over the prior three years; or (ii) has outstanding (as of a date within 60 days prior to the filing of the registration statement) at least $750 million of non-convertible securities, other than common equity, issued in primary offerings for cash, not exchange, registered under the Securities Act; or (iii) is a wholly-owned subsidiary of a well-known seasoned issuer (as defined in 17 CFR 230.405); or (iv) is a majority-owned operating partnership of a real estate investment trust that qualifies as a well-known seasoned issuer (as defined in 17 CFR 230.405).

* * * * *

PART I

INFORMATION REQUIRED IN PROSPECTUS

* * * * *

Item 3. Summary Information and Risk Factors.

* * * * *

Item 12. Incorporation of Certain Information by Reference.

* * * * *

(c) * * *

(2) * * *

(ii) State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*). Disclose your Internet address, if available.

* * * * *

§ 239.18 [Amended]

■ 71. Amend Form S–11 (referenced in § 239.18) by:

■ a. Revising the heading of Item 3; and

■ b. Revising Item 29.(b)(2)(ii).

The revisions read as follows:

Note: The text of Form S–11 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM S–11

FOR REGISTRATION UNDER THE SECURITIES ACT OF 1933 OF SECURITIES OF CERTAIN REAL ESTATE COMPANIES

* * * * *

PART I. INFORMATION REQUIRED IN PROSPECTUS

* * * * *

Item 3. Summary Information and Risk Factors.

* * * * *

Item 29. Incorporation of Certain Information by Reference.

* * * * *

(b) * * *

(2) * * *

(ii) State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*).

* * * * *

§ 239.25 [Amended]

■ 72. Amend Form S–4 (referenced in § 239.25) by:

■ a. Revising the heading of Item 3; and

■ b. Revising Items 11.(c)(2) and 13.(d)(2).

The revisions read as follows:

Note: The text of Form S–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM S–4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

PART I

INFORMATION REQUIRED IN THE PROSPECTUS

* * * * *

Item 3. Risk Factors and Other Information.

* * * * *

Item 11. Incorporation of Certain Information by Reference.

* * * * *

(c) * * *

(2) State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*). Disclose your Internet address, if available.

* * * * *

Item 13. Incorporation of Certain Information by Reference.

* * * * *

(d) * * *

(2) State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*). Disclose your Internet address, if available.

* * * * *

§ 239.31 [Amended]

■ 73. Amend Form F–1 (referenced in § 239.31) by:
■ a. Revising General Instruction II.C;
■ b. Revising the heading of Item 3;
■ c. Revising Item 4.b;
■ d. Removing and reserving Item 4.c;
■ e. Revising Item 4.d;
■ f. Adding Item 4.e.;
■ g. Removing Instruction 2 to Item 4;
■ h. Revising Item 4A.(b)1.iii.;
■ i. Revising the Instruction to Item 4A; and
■ j. Revising Item 5.(b)2.ii.

The revisions read as follows:

Note: The text of Form F–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM F–1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. A registrant must file the Form F–1 registration statement in electronic format via the Commission's Electronic Data Gathering and Retrieval System (EDGAR) in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR part 232), except that a registrant that has obtained a hardship exception under Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202) may file the registration statement in paper. For assistance with EDGAR questions, call the Filer Support Office at (202) 551–8900.

* * * * *

PART I—INFORMATION REQUIRED IN PROSPECTUS

* * * * *

Item 3. Summary Information and Risk Factors.

* * * * *

Item 4. Information with Respect to the Registrant and the Offering.

* * * * *

b. Information required by Item 18 of Form 20–F (Schedules required under Regulation S–X shall be filed as ''Financial Statement Schedules Pursuant to Item 8, Exhibit and Financial Statement Schedules, of this Form), as well as any information required by Rule 3–05 and Article 11 of Regulation S–X (§ 210 of this chapter).

c. [Reserved]

d. Information required by Item 16F of Form 20–F.

e. State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*). Disclose your Internet address, if available.

Item 4A. Material Changes.

* * * * *

(b)

1. * * *

iii. Restated financial statements where a combination of entities under common control has been consummated subsequent to the most recent fiscal year and the transferred businesses, considered in the aggregate, are significant under Rule 11–01(b) (§ 210.11–01(b) of this chapter); or

* * * * *

Instruction. Financial statements or information required to be furnished by this Item shall be reconciled pursuant to Item 18 of Form 20–F.

* * * * *

Item 5. Incorporation of Certain Information by Reference.

* * * * *

(b) * * *

2. * * *

ii. State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*).

* * * * *

§ 239.33 [Amended]

■ 74. Amend Form F–3 (referenced in § 239.33) by:
■ a. Revising General Instructions I.B.2, I.B.3, I.B.4 and II.D;
■ b. Revising the heading of Item 3;
■ c. Revising Item 5 Instructions 1 and 2; and
■ d. Revising Item 6.(e)(2).

The revisions read as follows:

Note: The text of Form F–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM F–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F–3

* * * * *

B. Transaction Requirements

* * * * *

2. Primary Offerings of Non-Convertible Securities Other than Common Equity. Non-convertible securities, other than common equity, to be offered for cash by or on behalf of a registrant, provided the registrant (i) has issued (as of a date within 60 days prior to the filing of the registration statement) at least $1 billion in non-convertible securities, other than common equity, in primary offerings for cash, not exchange, registered under the Securities Act, over the prior three years; or (ii) has outstanding (as of a date within 60 days prior to the filing of the registration statement) at least $750 million of non-convertible securities, other than common equity, issued in primary offerings for cash, not exchange, registered under the Securities Act; or (iii) is a wholly-owned subsidiary of a well-known seasoned issuer (as defined in 17 CFR 230.405); or (iv) is a majority-owned operating partnership of a real estate investment trust that qualifies as a well-known seasoned issuer (as defined in 17 CFR 230.405).

3. Transactions Involving Secondary Offerings. Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. The financial statements included in this registration statement must comply with Item 18 of Form 20–F. In addition, Form F–3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S–8 (§ 239.16b of this chapter). In the case of such securities, the financial statements included in this registration statement must comply with Item 18 of Form 20–F (§ 249.220f of this chapter).

4. Rights Offerings, Dividend or Interest Reinvestment Plans, and Conversions or Warrants. Securities to be offered: (a) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing security holders of the class of securities to which the rights attach; or (b) pursuant to a dividend or interest reinvestment plan; or (c) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer. The financial statements included in this registration statement must comply with Item 18 of Form 20–F. The registration of securities to be offered or sold in a standby underwriting in the

United States or similar arrangement is not permitted pursuant to this paragraph. See paragraphs B.1., B.2., and B.3. of this Instruction.

* * * * *

II. Application of General Rules and Regulations

* * * * *

D. A registrant must file the Form F–3 registration statement in electronic format via the Commission's Electronic Data Gathering and Retrieval System (EDGAR) in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR part 232), except that a registrant that has obtained a hardship exception under Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202) may file the registration statement in paper. For assistance with EDGAR questions, call the Filer Support Office at (202) 551–8900.

* * * * *

PART I—INFORMATION REQUIRED IN PROSPECTUS

* * * * *

Item 3. Summary Information and Risk Factors.

* * * * *

Item 5. Material Changes.

* * * * *

Instructions

1. Financial statements or information required to be furnished by this Item shall be reconciled pursuant to Item 18 of Form 20–F.

2. Material changes to be disclosed pursuant to Item 5(a) include changes in and disagreements with registrant's certifying accountant. *D*isclosure pursuant to Item 16F of Form 20–F should be provided as of the date of the registration statement or prospectus.

* * * * *

Item 6. Incorporation of Certain Information by Reference.

* * * * *

(e) * * *

(2) state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*). Disclose your Internet address, if available.

* * * * *

§ 239.34 [Amended]

■ 75. Amend Form F–4 (referenced in § 239.34) by:

■ a. Revising General Instruction D.4;

■ b. Revising the heading of Item 3;

■ c. Revising Instruction 1 of the instructions to paragraphs (e) and (f) of Item 3;

■ d. Revising Item 10.(c)(3);

■ e. Revising paragraph 1 of the Instructions between Items 11(a) and (b);

■ f. Revising Item 11.(c)(2);

■ g. Revising the introductory text of Items 12 and 12.(b)(2)

■ h. Revising Items 12.(b)(2)(iv) and 12.(b)(3)(vii) and (ix);

■ i. Revising paragraph 1 of the Instructions between Items 13.(b) and (c);

■ j. Revising Item 13.(c)(2); and

■ k. Revising Items 14.(h) and 14.(j).

The revisions read as follows:

Note: The text of Form F–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM F–4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

D. Application of General Rules and Regulations.

* * * * *

4. A registrant must file the Form F–4 registration statement in electronic format via the Commission's Electronic Data Gathering and Retrieval System (EDGAR) in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR part 232), except that a registrant that has obtained a hardship exception under Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202) may file the registration statement in paper. For assistance with EDGAR questions, call the Filer Support Office at (202) 551–8900.

* * * * *

PART I

INFORMATION REQUIRED IN THE PROSPECTUS

* * * * *

Item 3. Risk Factors and Other Information

* * * * *

Instructions to paragraphs (e) and (f).

1. For a business combination accounted for as a purchase, the financial information required by paragraphs (e) and (f) shall be presented only for the most recent fiscal year and interim period. For a combination of entities under common control, the financial information required by paragraphs (e) and (f) (except for information with regard to book value) shall be presented for the most recent three fiscal years and interim period. For a combination of entities under common control, information with regard to book value shall be presented as of the end of the most recent fiscal year and interim period. Equivalent pro forma per share amounts shall be calculated by multiplying the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction, pro forma book value per share, and the pro forma dividends per share of the registrant by the exchange ratio so that the per share amounts are equated to the respective values for one share of the company being acquired.

* * * * *

Item 10. Information With Respect to F–3 Companies

* * * * *

(c) * * *

(3) Restated financial statements prepared in accordance with or, if prepared using a basis of accounting other than IFRS as issued by the IASB, reconciled to U.S. GAAP and Regulation S–X where one or more business combinations accounted for as combinations of entities under common control have been consummated subsequent to the most recent fiscal year and the transferred businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X (§ 210.11–01(b) of this chapter); or

* * * * *

Item 11. Incorporation of Certain Information by Reference

* * * * *

(a) * * *

Instructions

1. All annual reports or registration statements incorporated by reference pursuant to Item 11 of this Form shall contain financial statements that comply with Item 18 of Form 20–F.

(b) * * *

(c) * * *

(2) state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*). Disclose your Internet address, if available.

* * * * *

Item 12. Information with Respect to F–3 Registrants

If the registrant meets the requirements for use of Form F–3 or

Form S–3 and elects to comply with this Item, furnish the information required by either paragraph (a) or (b) of this Item. However, the registrant shall not provide prospectus information in the manner allowed by paragraph (a) of this Item if the financial statements incorporated by reference pursuant to Item 13 reflect: (1) Restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X if there has been a change in accounting principles or a correction of an error where such a change or correction requires a material retroactive statement of financial statements; (2) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X where a combination of entities under common control has been consummated subsequent to the most recent fiscal year and the transferred businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X; or (3) any financial information required because of a material disposition of assets outside of the normal course of business.

* * * * *

(b) * * *

(2) Include financial statements and information as required by Item 18 of Form 20–F. In addition, provide: * * *

(iv) Restated financial statements prepared in accordance with or, if prepared using a basis of accounting other than IFRS as issued by the IASB, reconciled to U.S. GAAP and Regulation S–X where a combination of entities under common control has been consummated subsequent to the most recent fiscal year and the transferred businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X; and

* * * * *

(3) * * *

(vii) Financial statements required by Item 18 of Form 20–F, and financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued;

* * * * *

(ix) Item 16F of Form 20–F, change in registrant's certifying accountant.

Item 13. Incorporation of Certain Information by Reference

* * * * *

(b) * * *

Instructions

1. All annual reports incorporated by reference pursuant to Item 13 of this Form shall contain financial statements that comply with Item 18 of Form 20–F.

* * * * *

(c) * * *

(2) state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*). Disclose your Internet address, if available.

Item 14. Information With Respect to Registrants Other Than F–3 Registrants

* * * * *

(h) Financial statements required by Item 18 of Form 20–F. In addition, financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued. (Schedules required by Regulation S–X shall be filed as ''Financial Statement Schedules'' pursuant to Item 21 of this Form.);

* * * * *

(j) Item 16F of Form 20–F, change in registrant's certifying accountant.

* * * * *

§ 239.36 [Amended]

■ 76. Amend Form F–6 (referenced in § 239.36) by revising the first paragraph of General Instruction III.C to read as follows:

Note: The text of Form F–6 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM F–6

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 FOR DEPOSITARY SHARES EVIDENCED BY AMERICAN DEPOSITARY RECEIPTS

* * * * *

GENERAL INSTRUCTIONS

* * * * *

III. Application of General Rules and Regulations

* * * * *

C. You must file the Form F–6 registration statement in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR part 232). For assistance with EDGAR questions, call the Filer Support Office at (202) 551–8900.

* * * * *

§ 239.37 [Amended]

■ 77. Amend Form F–7 (referenced in § 239.37) by revising the first paragraph of General Instruction II.C to read as follows:

Note: The text of Form F–7 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM F–7

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. A registrant must file the registration statement in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR part 232). For assistance with EDGAR questions, call the Filer Support Office at (202) 551–8900.

* * * * *

§ 239.38 [Amended]

■ 78. Amend Form F–8 (referenced in § 239.38) by revising the first paragraph of General Instruction IV.C to read as follows:

Note: The text of Form F–8 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM F–8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

IV. Application of General Rules and Regulations

* * * * *

C. A registrant must file the registration statement in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR part 232). For assistance with EDGAR questions, call the Filer Support Office at (202) 551–8900.

* * * * *

§ 239.40 [Amended]

■ 79. Amend Form F–10 (referenced in § 239.40) by revising the first paragraph of General Instruction II.D to read as follows:

Note: The text of Form F–10 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM F–10

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

II. Application of General Rules and Regulations

* * * * *

D. A registrant must file the registration statement in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR part 232). For assistance with EDGAR questions, call the Filer Support Office at (202) 551–8900.

* * * * *

§ 239.41 [Amended]

■ 80. Amend Form F–80 (referenced in § 239.41) by revising the first paragraph of General Instruction IV.C to read as follows:

Note: The text of Form F–80 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM F–80

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

IV. Application of General Rules and Regulations

* * * * *

C. A registrant must file the registration statement in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR part 232). For assistance with EDGAR questions, call the Filer Support Office at (202) 551–8900.

* * * * *

§ 239.44 [Amended]

■ 81. Amend Form SF–1 (referenced in § 239.44) by revising Item 10.(b)(2)(ii) to read as follows:

Note: The text of Form SF–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM SF–1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

PART I

INFORMATION REQUIRED IN PROSPECTUS

* * * * *

Item 10. Incorporation of Certain Information by Reference.

* * * * *

(b)(2) * * *

(ii) State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*). Disclose your Internet address (or address of the specified transaction party where such information is posted), if available.

* * * * *

§ 239.45 [Amended]

■ 82. Amend Form SF–3 (referenced in § 239.45) by revising Item 10.(e)(2)(ii) to read as follows:

Note: The text of Form SF–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM SF–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

PART I

INFORMATION REQUIRED IN PROSPECTUS

* * * * *

Item 10. Incorporation of Certain Information by Reference.

* * * * *

(e)(1) * * *

(2) * * *

(ii) State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*). Disclose your Internet address (or address of the specified transaction party where such information is posted), if available.

* * * * *

§ 239.90 [Amended]

■ 83. Amend Form 1–A (referenced in § 239.90) by:

■ a. Revising the section entitled ''Financial Statements'' in Item 1 of Part I;

■ b. Removing and reserving Items 7.(a)(1)(iii) and 7.(b) of Part II;

■ c. Revising paragraph (3) of the Instruction to Item 9.(a) of Part II; and

■ d. Revising paragraphs (b)(4) and (5) and paragraph (c)(1)(i) of Part F/S of Part II.

The revisions read as follows:

Note: The text of Form 1–A does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 1–A

REGULATION A OFFERING STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

PART I—NOTIFICATION

* * * * *

ITEM 1. Issuer Information

* * * * *

Financial Statements

BILLING CODE 8011–11–P

* * * * *

[If "Other" is selected, display the following options in the Financial Statements table:]

Balance Sheet Information	
Cash and Cash Equivalents:	_____
Investment Securities:	_____
Accounts and Notes Receivable:	_____
Property, Plant and Equipment (PP&E):	_____
Total Assets:	_____
Accounts Payable and Accrued Liabilities:	_____
Long Term Debt:	_____
Total Liabilities:	_____
Total Stockholders' Equity:	_____
Total Liabilities and Equity:	_____
Statement of Comprehensive Income Information	
Total Revenues:	_____
Costs and Expenses Applicable to Revenues:	_____
Depreciation and Amortization:	_____
Net Income:	_____
Earnings Per Share – Basic:	_____
Earnings Per Share – Diluted:	_____

[If "Banking" is selected, display the following options in the Financial Statements tabl

Balance Sheet Information	
Cash and Cash Equivalents:	_____
Investment Securities:	_____
Loans:	_____
Property and Equipment:	_____
Total Assets:	_____
Accounts Payable and Accrued Liabilities:	_____
Deposits:	_____
Long Term Debt:	_____
Total Liabilities:	_____
Total Stockholders' Equity:	_____
Total Liabilities and Equity:	_____
	_____

Statement of Comprehensive Income Information

Total Interest Income: _____

Total Interest Expense: _____

Depreciation and Amortization: _____

Net Income: _____

Earnings Per Share – Basic: _____

Earnings Per Share – Diluted: _____

[If "Insurance" is selected, display the following options in the Financial Statements table:]

Balance Sheet Information

Cash and Cash Equivalents: _____

Total Investments: _____

Accounts and Notes Receivable: _____

Property and Equipment: _____

Total Assets: _____

Accounts Payable and Accrued Liabilities: _____

Policy Liabilities and Accruals: _____

Long Term Debt: _____

Total Liabilities: _____

Total Stockholders' Equity: _____

Total Liabilities and Equity: _____

Statement of Comprehensive Income Information

Total Revenues: _____

Costs and Expenses Applicable to Revenues: _____

Depreciation and Amortization: _____

Net Income: _____

Earnings Per Share – Basic: _____

Earnings Per Share – Diluted: _____

[End of section that varies based on the selection of Industry Group]

Name of Auditor (if any): _____

* * * * *

BILLING CODE 8011–11–C

PART II—INFORMATION REQUIRED IN OFFERING CIRCULAR

* * * * *

Item 7. Description of Business

(a) * * *

(1) * * *

(iii) [Reserved]

* * * * *

(b) [Reserved]

* * * * *

Item 9. Management's Discussion and Analysis of Financial Condition and Results of Operations

* * * * *

(a) * * *

Instruction to Item 9(a)

* * *

(3) When interim period financial statements are included, discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. Discuss any material changes in the issuer's results of operations with respect to the most recent fiscal year-to-date period for which a statement of comprehensive income (or statement of net income if comprehensive income is presented in two separate but consecutive financial statements or if no other comprehensive income) is provided and the corresponding year-to-date period of the preceding fiscal year.

* * * * *

Part F/S

* * * * *

(b) Financial Statements for Tier 1 Offerings

* * * * *

(4) *Statements of comprehensive income, cash flows, and changes in stockholders' equity.* File consolidated statements of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income), cash flows, and changes in stockholders' equity for each of the two fiscal years preceding the date of the most recent balance sheet being filed or such shorter period as the issuer has been in existence.

(5) *Interim financial statements.*

(i) If a consolidated interim balance sheet is required by (b)(3) of Part F/S, consolidated interim statements of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income) and cash flows shall be provided and must cover at least the first six months of the issuer's fiscal year and the corresponding period of the preceding fiscal year. An analysis of the changes in each caption of stockholders' equity presented in the balance sheets must be provided in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which a statement of comprehensive income is required to be filed with all significant reconciling items described by appropriate captions with contributions from and distributions to owners shown separately. Dividends per share for each class of shares shall also be provided.

(ii) Interim financial statements of issuers that report under U.S. GAAP may be condensed as described in Rule 8–03(a) of Regulation S–X.

(iii) The interim statements of comprehensive income for all issuers must be accompanied by a statement that in the opinion of management all adjustments necessary in order to make the interim financial statements not misleading have been included.

* * * * *

(c) **Financial Statement Requirements for Tier 2 Offerings**

(1) * * *

(i) Issuers that report under U.S. GAAP and, when applicable, other entities for which financial statements are required, must comply with Article 8 of Regulation S–X, as if they were conducting a registered offering on Form S–1, except the age of financial statements may follow paragraphs (b)(3)–(4) of this Part F/S.

* * * * *

§ 239.91 [Amended]

■ 84. Amend Form 1–K (referenced in § 239.91) by revising Item 7.(e) of Part II to read as follows:

Note: The text of Form 1–K does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 1–K

* * * * *

PART II

INFORMATION TO BE INCLUDED IN REPORT

* * * * *

Item 7. Financial Statements

* * * * *

(e) *Statements of comprehensive income, cash flows, and changes in stockholders' equity.* File audited consolidated statements of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income), cash flows, and changes in stockholders' equity for each of the two fiscal years preceding the date of the most recent balance sheet being filed or such shorter period as the issuer has been in existence.

* * * * *

§ 239.92 [Amended]

■ 85. Amend Form 1–SA (referenced in § 239.92) by:

■ a. Revising the third paragraph of the undesignated introductory text of Item 3;

■ b. Revising Item 3.(b);

■ c. Redesignating current Items 3.(d) and (e) as 3.(e) and (f), respectively;

■ d. Adding new Item 3.(d); and

■ e. Revising newly redesignated Item 3.(e).

The revisions and addition read as follows:

Note: The text of Form 1–SA does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 1–SA

[ ] SEMIANNUAL REPORT PURSUANT TO REGULATION A

or

[ ] SPECIAL FINANCIAL REPORT PURSUANT TO REGULATION A

* * * * *

INFORMATION TO BE INCLUDED IN REPORT

* * * * *

Item 3. Financial Statements

* * * * *

The financial statements included pursuant to this item may be condensed, unaudited, and are not required to be reviewed. For additional guidance on presentation of the financial statements, issuers that report under U.S. GAAP should refer to Rule 8–03(a) of Regulation S–X. The financial statements for all issuers must include the following:

* * * * *

(b) Interim consolidated statements of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income) must be provided for the six month interim period covered by this report and for the corresponding period of the preceding fiscal year. Statements of comprehensive income must be accompanied by a statement that in the opinion of management all adjustments necessary in order to make the interim financial statements not misleading have been included.

(c) * * *

(d) An analysis of the changes in each caption of stockholders' equity presented in the balance sheets must be provided in a note or separate statement. This analysis shall be presented in the form of a reconciliation

of the beginning balance to the ending balance for each period for which a statement of comprehensive income is required to be filed with all significant reconciling items described by appropriate captions with contributions from and distributions to owners shown separately. Dividends per share for each class of shares shall also be presented.

(e) Footnote and other disclosures should be provided as needed for fair presentation and to ensure that the financial statements are not misleading. Issuers that report under U.S. GAAP should refer to Rule 8–03(b) of Regulation S–X for examples of disclosures that may be needed.

(f) Financial Statements of Guarantors and Issuers of Guaranteed Securities.

* * *

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 86. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o*, 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 87. Amend § 240.3a51–1 by revising paragraph (a)(2)(i)(A)(*3*) to read as follows:

§ 240.3a51–1 Definition of ''penny stock''.

* * * * *

(a) * * *

(2) * * *

(i) * * *

(A) * * *

(*3*) Net income of $750,000 (excluding non-recurring items) in the most recently completed fiscal year or in two of the last three most recently completed fiscal years;

* * * * *

■ 88. Amend § 240.10A–1 by revising paragraph (b)(3) to read as follows:

§ 240.10A–1 Notice to the Commission Pursuant to Section 10A of the Act.

* * * * *

(b) * * *

(3) Submission of the report (or documentation) by the independent accountant as described in paragraphs (b)(1) and (2) of this section shall not replace, or otherwise satisfy the need for, the newly engaged and former accountants' letters under Items 304(a)(2)(D) and 304(a)(3) of Regulation S–K, §§ 229.304(a)(2)(D) and 229.304(a)(3) of this chapter, respectively, and shall not limit, reduce, or affect in any way the independent accountant's obligations to comply fully with all other legal and professional responsibilities, including, without limitation, those under the standards of the Public Company Accounting Oversight Board and the rules or interpretations of the Commission that modify or supplement those auditing standards.

* * * * *

■ 89. Amend § 240.12b–2 by:

■ a. Revising the introductory text of paragraph (3) of the definition of *Significant subsidiary;* and

■ b. Redesignating the Computational note following paragraph (3) as Computational note to paragraph (3).

The revision reads as follows:

§ 240.12b–2 Definitions.

* * * * *

Significant subsidiary. * * *

(3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes exclusive of amounts attributable to any non-controlling interests exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

* * * * *

■ 90. Amend § 240.13a–10 by revising paragraphs (b) and (g)(3) to read as follows:

§ 240.13a–10 Transition reports.

* * * * *

(b) The report pursuant to this section shall be filed for the transition period not more than the number of days specified in paragraph (j) of this section after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report shall be filed on the form appropriate for annual reports of the issuer, shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements for the transition period filed therewith shall be audited. Financial statements, which may be unaudited, shall be filed for the comparable period of the prior year, or a footnote, which may be unaudited, shall state for the comparable period of the prior year, revenues, gross profits, income taxes, income or loss from continuing operations and net income or loss. The effects of any discontinued operations as classified under the provisions of generally accepted accounting principles also shall be shown, if applicable. Per share data based upon such income or loss and net income or loss shall be presented in conformity with applicable accounting standards. Where called for by the time span to be covered, the comparable period financial statements or footnote shall be included in subsequent filings.

* * * * *

(g) * * *

(3) The report for the transition period shall be filed on Form 20–F (§ 249.220f of this chapter) responding to all items to which such issuer is required to respond when Form 20–F is used as an annual report. The financial statements for the transition period filed therewith shall be audited. The report shall be filed within four months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later.

* * * * *

■ 91. Amend § 240.13b2–2 by revising paragraphs (b)(2)(i) and (ii) to read as follows:

§ 240.13b2–2 Representations and conduct in connection with the preparation of required reports and documents.

* * * * *

(b) * * *

(2) * * *

(i) To issue or reissue a report on an issuer's financial statements that is not warranted in the circumstances (due to material violations of generally accepted accounting principles, the standards of the Public Company Accounting Oversight Board, or other professional or regulatory standards);

(ii) Not to perform audit, review or other procedures required by the standards of the Public Company Accounting Oversight Board or other professional standards;

* * * * *

§ 240.14a–101 [Amended]

■ 92. Amend § 240.14a–101 by:

■ a. Removing paragraph (c) from Item 10. Compensation Plans and the Instructions to paragraph (c) of Item 10. Compensation Plans; and

■ b. Removing the undesignated center heading ''Instructions'' following paragraph (b)(2)(ii)(G) and adding in its place ''Instructions to Item 10''.

■ 93. Amend § 240.15c3–1g by revising paragraphs (b)(1)(i)(A), (b)(1)(ii)(A), (b)(1)(ii)(E) and (b)(2)(i)(A) and (D) to read as follows:

§ 240.15c3–1g Conditions for ultimate holding companies of certain brokers or dealers (Appendix G to 17 CFR 240.15c3–1).

* * * * *

(b) * * *
(1) * * *
(i) * * *

(A) A consolidated balance sheet and income statement (including notes to the financial statements) for the ultimate holding company and statements of allowable capital and allowances for market, credit, and operational risk computed pursuant to paragraph (a) of this section, *except* that the consolidated balance sheet and income statement for the first month of the fiscal year may be filed at a later time to which the Commission agrees (when reviewing the affiliated broker's or dealer's application under § 240.15c3–1e(a)). A statement of comprehensive income (as defined in § 210.1–02 of Regulation S–X of this chapter) shall be included in place of an income statement, if required by the applicable generally accepted accounting principles.

* * * * *

(ii) * * *

(A) Consolidating balance sheets and income statements for the ultimate holding company. The consolidating balance sheet must provide information regarding each material affiliate of the ultimate holding company in a separate column, but may aggregate information regarding members of the affiliate group that are not material affiliates into one column. Statements of comprehensive income (as defined in § 210.1–02 of Regulation S–X of this chapter) shall be included in place of an income statement, if required by the applicable generally accepted accounting principles;

* * * * *

(E) For a quarter-end that coincides with the ultimate holding company's fiscal year-end, the ultimate holding company need not include consolidated and consolidating balance sheets and income statements (or statements of comprehensive income, as applicable) in its quarterly reports. The consolidating balance sheet and income statement (or statement of comprehensive income, as applicable) for the quarter-end that coincides with the fiscal year-end may be filed at a later time to which the Commission agrees (when reviewing the affiliated broker's or dealer's application under § 240.15c3–1e(a));

* * * * *

(2) * * *
(i) * * *

(A) Consolidated (including notes to the financial statements) and consolidating balance sheets and income statements for the ultimate holding company. Statements of comprehensive income (as defined in § 210.1–02 of Regulation S–X of this chapter) shall be included in place of income statements, if required by the applicable generally accepted accounting principles;

* * * * *

(D) For a quarter-end that coincides with the ultimate holding company's fiscal year-end, the ultimate holding company need not include consolidated and consolidating balance sheets and income statements (or statements of comprehensive income, as applicable) in its quarterly reports. The consolidating balance sheet and income statement (or statement of comprehensive income, as applicable) for the quarter-end that coincides with the fiscal year-end may be filed at a later time to which the Commission agrees (when reviewing the affiliated broker's or dealer's application under § 240.15c3–1e(a)).

* * * * *

■ 94. Amend § 240.15d–2 by revising paragraph (a) to read as follows:

§ 240.15d–2 Special financial report.

(a) If the registration statement under the Securities Act of 1933 did not contain certified financial statements for the registrant's last full fiscal year (or for the life of the registrant if less than a full fiscal year) preceding the fiscal year in which the registration statement became effective, the registrant shall, within 90 days after the effective date of the registration statement, file a special report furnishing certified financial statements for such last full fiscal year or other period, as the case may be, meeting the requirements of the form appropriate for annual reports of the registrant. If the registrant is a foreign private issuer as defined in § 230.405 of this chapter, then the special financial report shall be filed on the appropriate form for annual reports of the registrant and shall be filed by the later of 90 days after the date on which the registration statement became effective, or four months following the end of the registrant's latest full fiscal year.

* * * * *

■ 95. Amend § 240.15d–10 by revising paragraphs (b) and (g)(3) to read as follows:

§ 240.15d–10 Transition reports.

* * * * *

(b) The report pursuant to this section shall be filed for the transition period not more than the number of days specified in paragraph (j) of this section after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report shall be filed on the form appropriate for annual reports of the issuer, shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements for the transition period filed therewith shall be audited. Financial statements, which may be unaudited, shall be filed for the comparable period of the prior year, or a footnote, which may be unaudited, shall state for the comparable period of the prior year, revenues, gross profits, income taxes, income or loss from continuing operations and net income or loss. The effects of any discontinued operations as classified under the provisions of generally accepted accounting principles also shall be shown, if applicable. Per share data based upon such income or loss and net income or loss shall be presented in conformity with applicable accounting standards. Where called for by the time span to be covered, the comparable period financial statements or footnote shall be included in subsequent filings.

* * * * *

(g) * * *

(3) The report for the transition period shall be filed on Form 20–F (§ 249.220f of this chapter) responding to all items to which such issuer is required to respond when Form 20–F is used as an annual report. The financial statements for the transition period filed therewith shall be audited. The report shall be filed within four months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later.

* * * * *

■ 96. Amend § 240.17a–5 by adding a Note to paragraph (d)(2)(i) to read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(d) * * *
(2) * * *
(i) * * *

Note to paragraph (d)(2)(i): If there is other comprehensive income in the period(s) presented, the financial report must contain a Statement of Comprehensive Income (as defined in § 210.1–02 of Regulation S–X of this chapter) in place of a Statement of Income.

* * * * *

■ 97. Amend § 240.17a–12 by adding a Note to paragraph (b)(2) to read as follows:

§ 240.17a–12 Reports to be made by certain OTC derivatives dealers.

* * * * *

(b) *Annual filing of audited financial statements.* * * *

(2) * * *

Note to paragraph (b)(2): If there is other comprehensive income in the period(s) presented, the financial report must contain a Statement of Comprehensive Income (as defined in § 210.1–02 of Regulation S–X of this chapter) in place of a Statement of Income.

* * * * *

■ 98. Amend § 240.17g–3 by revising paragraph (a)(1)(i) to read as follows:

§ 240.17g–3 Annual financial and other reports to be filed or furnished by nationally recognized statistical rating organizations.

(a) * * *

(1) * * *

(i) Include a balance sheet, an income statement (or a statement of comprehensive income, as defined in § 210.1–02 of Regulation S–X of this chapter, if required by the applicable generally accepted accounting principles noted in paragraph (a)(1)(ii) of this section) and statement of cash flows, and a statement of changes in ownership equity;

* * * * *

■ 99. Amend § 240.17h–1T by adding a Note to Paragraph (a)(1)(v) to read as follows:

§ 240.17h–1T Risk assessment recordkeeping requirements for associated persons of brokers and dealers.

(a) * * *

(1) * * *

(v) * * *

Note to paragraph (a)(1)(v): Statements of comprehensive income (as defined in § 210.1–02 of Regulation S–X of this chapter) must be included in place of income statements, if required by the applicable generally accepted accounting principles.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 100. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; and Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309, unless otherwise noted.

* * * * *

§ 249.220f [Amended]

■ 101. Amend Form 20–F (referenced in § 249.220f) by:

■ a. Revising General Instructions A.(b), D.(a), E.(c), G.(c) and G.(f)(1);

■ b. Removing Item 3.A.3;

■ c. Revising Instruction 2. of the Instructions to Item 3.A;

■ d. Adding Item 4.A.8;

■ e. Revising Item 5.C;

■ f. Revising Item 8.A.1.(b) and Item 8.A.5;

■ g. Revising Instruction 2 of the Instructions to Items 8.A.2 and 8.A.4;

■ h. Revising Item 9.A.4;

■ i. Revising Item 10.F;

■ j. Removing and reserving Instruction 1 to General Instructions to Items 11(a), 11(b), 11(c), 11(d), and 11(e);

■ k. Revising Instruction 1 of the Instructions to Item 12;

■ l. Removing Instruction to Item 14.B;

■ m. Removing Item 15T;

■ n. Removing and reserving Instruction 1 to Instructions to Item 16F;

■ o. Revising Instruction to Item 16G;

■ p. Removing and reserving Instruction 3 to Item 17;

■ q. Removing *Special Instruction for Certain European Issuers* to Item 17;

■ r. Revising Instruction 1 to Instruction to Item 18;

■ s. Removing *Special Instruction for Certain European Issuers* to Item 18; and

■ t. Removing and reserving Instructions 6 and 7 of the Instructions as to Exhibits.

The revisions read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 20–F

REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

OR

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

* * * * *

GENERAL INSTRUCTIONS

A. Who May Use Form 20–F and When It Must be Filed.

* * * * *

(b) A foreign private issuer must file its annual report on this Form within four months after the end of the fiscal year covered by the report.

* * * * *

D. How to File Registration Statements and Reports on this Form.

(a) You must file the Form 20–F registration statement or annual report in electronic format via our Electronic Data Gathering and Retrieval System (EDGAR) in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR part 232). The Form 20–F registration statement or annual report must be in the English language as required by Regulation S–T Rule 306 (17 CFR 232.306). You must provide the signatures required for the Form 20–F registration statement or annual report in accordance with Regulation S–T Rule 302 (17 CFR 232.302). If you have EDGAR questions, call the Filer Support Office at (202) 551–8900.

* * * * *

E. Which Items to Respond to in Registration Statements and Annual Reports.

* * * * *

(c) *Financial Statements.* (1) An Exchange Act registration statement or annual report filed on this Form must contain the financial statements and related information specified in Item 18 of this Form. Note that Items 17 and 18 may require you to file the financial statements of other entities in certain circumstances. These circumstances are described in Regulation S–X.

(2) The issuer's financial statements must be audited in accordance with the standards of the Public Company Accounting Oversight Board (United States) (''PCAOB''), and the auditor must be qualified and independent in accordance with Article 2 of Regulation S–X. The financial statements of entities other than the issuer must be audited in accordance with applicable professional standards. If you have any questions about these requirements, contact the Office of Chief Accountant in the Division of Corporation Finance at (202) 551–3400.

* * * * *

G. First-Time Application of International Financial Reporting Standards.

* * * * *

(c) *Selected Financial Data.* The selected historical financial data required pursuant to Item 3.A shall be based on financial statements prepared in accordance with IFRS and shall be presented for the two most recent financial years.

* * * * *

(f) *Financial Information.*

(1) *General.* With respect to the financial information of the issuer required by Item 8.A, all instructions contained in Item 8, including the instruction requiring audits in accordance with the standards of the PCAOB, shall apply.

* * * * *

PART I

* * * * *

Item 3. Key Information

* * * * *

Instructions to Item 3.A:

* * * * *

2. *You may present the selected financial data on the basis of the accounting principles used in your primary financial statements. If you use a basis of accounting other than IFRS as issued by the IASB, however, you also must include in this summary any reconciliations of the data to U.S. generally accepted accounting principles and Regulation S–X, pursuant to Item 17 or 18 of this Form. For financial statements prepared using a basis of accounting other than IFRS as issued by the IASB, you only have to provide selected financial data on a basis reconciled to U.S. generally accepted accounting principles for (i) those periods for which you were required to reconcile the primary annual financial statements in a filing under the Securities Act or the Exchange Act, and (ii) any interim periods. An issuer that adopted IFRS as issued by the IASB during the past three years is only required to provide selected financial data for the periods that it prepared financial statements in accordance with IFRS as issued by the IASB.*

* * * * *

Item 4. Information on the Company

* * * * *

A. * * *

8. State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*). Disclose your Internet address, if available.

* * * * *

Item 5. Operating and Financial Review and Prospects

* * * * *

C. Research and development, patents and licenses, etc. Provide a description of the company's research and development policies for the last three years.

* * * * *

Item 8. Financial Information

* * * * *

A. * * *

1. * * *

(b) statement of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income);

* * * * *

5. If the document is dated more than nine months after the end of the last audited financial year, it should contain consolidated interim financial statements, which may be unaudited (in which case that fact should be stated), covering at least the first six months of the financial year. The interim financial statements should include a balance sheet, statement of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income), cash flow statement, and a statement showing either (i) changes in equity other than those arising from capital transactions with owners and distributions to owners, or (ii) all changes in equity (including a subtotal of all non-owner items recognized directly in equity). Each of these statements may be in condensed form as long as it contains the major line items from the latest audited financial statements and includes the major components of assets, liabilities and equity (in the case of the balance sheet); income and expenses (in the case of the statement of comprehensive income) and the major subtotals of cash flows (in the case of the cash flow statement). The interim financial statements should include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the year end balance sheet. If not included in the primary financial statements, a note should be provided analyzing the changes in each caption of shareholders' equity presented in the balance sheet. The interim financial statements should include selected note disclosures that will provide an explanation of events and changes that are significant to an understanding of the changes in financial position and performance of the enterprise since the last annual reporting date. If, at the date of the document, the company has published interim financial information that covers a more current period than those otherwise required by this standard, the more current interim financial information must be included in the document. Companies are encouraged, but not required, to have any interim financial statements in the document reviewed by an independent auditor. If such a review has been performed and is referred to in the document, a copy of the auditor's interim review report must be provided in the document.

* * * * *

Instructions to Item 8.A.2:

* * * * *

2. The financial statements of the issuer must be audited in accordance with the standards of the PCAOB and the auditor must comply with the U.S. and Commission standards for auditor independence. Refer to Article 2 of Regulation S–X, which contains requirements for qualifications and reports of accountants.

* * * * *

Instructions to Item 8.A.4:

* * * * *

2. *The additional requirement that financial statements be no older than 12 months at the date of filing applies only in those limited cases where a nonpublic company is registering its initial public offering of securities. A company may comply with only the 15-month requirement in this item if the company is able to represent that it is not required to comply with the 12-month requirement in any other jurisdiction outside the United States and that complying with the 12-month requirement is impracticable or involves undue hardship. File this representation as an exhibit to the registration statement.*

* * * * *

Item 9. The Offer and Listing.

* * * * *

A. * * *

4. Identify the host and principal market(s) and trading symbol(s) for those markets for each class of the registrant's common equity. If significant trading suspensions occurred in the prior three years, they shall be disclosed. If the securities are not regularly traded in an organized market, information shall be given about any lack of liquidity.

* * * * *

Item 10. Additional Information.

* * * * *

F. *Dividends and paying agents.* Disclose the date on which the entitlement to dividends arises, if known, and any procedures for nonresident holders to claim dividends. Identify the financial organizations which, at the time of admission of shares to official listing, are the paying agents of the company in the countries where admission has taken place or is expected to take place.

* * * * *

Item 11. Quantitative and Qualitative Disclosure About Market Risk.

* * * * *

General Instructions to Items 11(a), 11(b), 11(c), 11(d), and 11(e).

1. [Reserved]

* * * * *

Item 12. Description of Securities Other Than Equity Securities.

* * * * *

Instructions to Item 12:

1. *Except for Item 12.D.3. and Item 12.D.4, you do not need to provide the information called for by this Item if you are using this form as an annual report.*

* * * * *

Item 16F. Change in Registrant's Certifying Accountant.

* * * * *

Instructions to Item 16F:

1. [Reserved]

* * * * *

Item 16G. Corporate Governance.

* * * * *

Instructions to Item 16G:

Item 16G only applies to annual reports, and not to registration statements on Form 20–F. Registrants should provide a brief and general discussion, rather than a detailed, item-by-item analysis.

* * * * *

Item 17. Financial Statements.

* * * * *

Instructions:

* * * * *

3. [Reserved]

* * * * *

Item 18. Financial Statements.

* * * * *

Instructions to Item 18:

1. *All of the instructions to Item 17 also apply to this Item.*

* * * * *

INSTRUCTIONS AS TO EXHIBITS

* * * * *

6. [Reserved]

7. [Reserved]

* * * * *

§ 249.240f [Amended]

■ 102. Amend Form 40–F (referenced in § 249.240f) by revising the first paragraph of General Instruction D.(7) to read as follows:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 40–F

□ REGISTRATION STATEMENT PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

OR

□ ANNUAL REPORT PURSUANT TO SECTION 13(a) OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

* * * * *

GENERAL INSTRUCTIONS

* * * * *

D. Application of General Rules and Regulations

* * * * *

(7) A filer must file the Form 40–F registration statement or annual report in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR part 232). For assistance with EDGAR questions, call the Filer Support Office at (202) 551–8900.

* * * * *

§ 249.310 [Amended]

■ 103. Amend Form 10–K (referenced in § 249.310) by:

■ a. Reserving paragraph J.(1)(e) of the General Instructions; and

■ b. Revising paragraph J.(1)(f) of the General Instructions and Item 12.

The revisions read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10–K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

GENERAL INSTRUCTIONS

* * * * *

J. * * *

(1) * * *

(e) [Reserved]

(f) Item 5, Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities;

* * * * *

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

Furnish the information required by Item 403 of Regulation S–K (§ 229.403 of this chapter).

* * * * *

§ 249.311 [Amended]

■ 104. Amend Form 11–K (referenced in § 249.311) by revising paragraph 2 of Required Information to read as follows:

Note: The text of Form 11–K does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 11–K

FOR ANNUAL REPORTS OF EMPLOYEE STOCK PURCHASE, SAVINGS AND SIMILAR PLANS PURSUANT TO SECTION 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

* * * * *

REQUIRED INFORMATION

* * * * *

2. An audited statement of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income) and changes in plan equity for each of the latest three fiscal years of the plan (or such lesser period as the plan has been in existence).

* * * * *

§ 249.312 [Amended]

■ 105. Amend Form 10–D (referenced in § 249.312) by removing and reserving Item 5.

Note: The text of Form 10–D does not, and this amendment will not, appear in the Code of Federal Regulations.

§ 249.617 [Amended]

■ 106. Amend the Form X–17A–5 Part II (FOCUS Report) (referenced in § 249.617) by:

■ a. Revising under the heading ''Statement of Financial Condition'' paragraph 29 by redesignating current paragraphs 29.E and F as paragraphs 29.F and G, respectively and adding a new paragraph 29.E; and

■ b. Revising the heading ''Statement of Income (Loss)'' and under that heading, revising the subheading ''Net Income'', removing and reserving paragraphs 32, 32.a and 33, revising paragraph 34, redesignating current paragraph 35 as paragraph 37, adding new paragraph 35 and paragraphs 35.a and 36, and revising newly redesignated paragraph 37.

The revisions and additions read as follows:

Note: The text of Form X–17A–5 Part II does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM X-17A-5
FOCUS REPORT
(Financial and Operational Combined Uniform Single Report)
PART II 11

* * * * *

STATEMENT OF FINANCIAL CONDITION

* * * * *

29. * * *

E. Accumulated other comprehensive income _____ 99999

F. Total _____ 1795

G. Less capital stock in treasury (_____) 1796

* * * * *

STATEMENT OF INCOME (LOSS) or STATEMENT OF COMPREHENSIVE INCOME (as defined in § 210.1-02 of Regulation S-X), as applicable

* * * * *

NET INCOME/COMPREHENSIVE INCOME

* * * * *

32. [RESERVED]

a. [RESERVED]

33. [RESERVED]

34. Net income (loss) after Federal income taxes $_____ 4230

35. Other comprehensive income (loss) _____ 99999

a. After Federal income taxes of _____ 99999

36. Comprehensive income (loss) $_____ 99999

MONTHLY INCOME

37. Income (current month only) before provision for Federal income taxes $ _____ 4211

§ 249.617 [Amended]

■ 107. Amend the Form X–17A–5 Part II (FOCUS Report) (referenced in § 249.617) General Instructions by:

■ a. Revising the heading ''Statement of Income (Loss)'' and removing from under that heading the subheadings ''Extraordinary Items'' and ''Effect of Changes in Accounting Principles'' and their related text; and

■ b. Revising under the heading ''Statement of Changes in Ownership Equity (Sole Proprietorship, Partnership or Corporation)'' the text related to the subheading ''Net Income (Loss) For Period''.

The revisions read as follows:

Note: The text of Form X–17A–5 Part II does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM X–17A–5 PART II

(FOCUS Report)

GENERAL INSTRUCTIONS

* * * * *

STATEMENT OF INCOME (LOSS) or STATEMENT OF COMPREHENSIVE INCOME (as defined in § 210.1–02 of Regulation S–X), as applicable

If there are no items of other comprehensive income in the period presented, the broker or dealer is not required to report comprehensive income.

* * * * *

STATEMENT OF CHANGES IN OWNERSHIP EQUITY

(SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION)

* * * * *

Net Income (Loss) For Period

Report the amount of net income (loss) for the period reported on the Statement of Income (Loss) or Statement of Comprehensive Income, as applicable.

* * * * *

§ 249.617 [Amended]

■ 108. Amend the Form X–17A–5 Part IIA (FOCUS Report) (referenced in § 249.617) by:

■ a. Revising under the heading ''Statement of Financial Condition for Noncarrying, Nonclearing and Certain other Brokers or Dealers'' paragraph 23 by redesignating current paragraphs 23.E and F as paragraphs 23.F and G, respectively and adding a new paragraph 23.E; and

■ b. Revising the heading ''Statement of Income (Loss)'' and under that heading, revising the subheading ''Net Income'', removing and reserving paragraphs 20, 20.a and 21, revising paragraph 22, redesignating current paragraph 23 as paragraph 25, adding new paragraph 23 and paragraphs 23.a and 24, and revising newly redesignated paragraph 25.

The revisions and additions read as follows:

Note: The text of Form X–17A–5 Part IIA does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM X-17A-5
FOCUS REPORT
(Financial and Operational Combined Uniform Single Report)
PART IIA 12

* * * * *

STATEMENT OF FINANCIAL CONDITION FOR NONCARRYING, NONCLEARING AND CERTAIN OTHER BROKERS OR DEALERS

* * * * *

23. * * *

E. Accumulated other comprehensive income _____ 99999

F. Total _____ 1795

G. Less capital stock in treasury ▼16 (_____) 1796

* * * * *

STATEMENT OF INCOME (LOSS) or STATEMENT OF COMPREHENSIVE INCOME (as defined in § 210.1-02 of Regulation S-X), as applicable

* * * * *

NET INCOME/COMPREHENSIVE INCOME

* * * * *

20. [RESERVED]

a. [RESERVED]

21. [RESERVED]

22. Net income (loss) after Federal income taxes $_____ 4230

23. Other comprehensive income (loss) _____ 99999

a. After Federal income taxes of _____ 99999

24. Comprehensive income (loss) $_____ 99999

MONTHLY INCOME

25. Income (current month only) before provision for Federal income taxes $____ 4211

§ 249.617 [Amended]

■ 109. Amend the Form X–17A–5 Part IIA (FOCUS Report) (referenced in § 249.617) General Instructions by:

■ a. Revising the heading ''Statement of Income (Loss)'' and removing from under that heading paragraphs 20 and 21; and

■ b. Revising under the heading ''Statement of Changes in Ownership Equity (Sole Proprietorship, Partnership or Corporation)'' the text related to the subheading ''Net Income (Loss) For Period''.

The revisions read as follows:

Note: The text of Form X–17A–5 Part IIA does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM X–17A–5 PART IIA

(FOCUS Report)

GENERAL INSTRUCTIONS

* * * * *

STATEMENT OF INCOME (LOSS) or STATEMENT OF COMPREHENSIVE INCOME

(as defined in § 210.1–02 of Regulation S–X), as applicable

If there are no items of other comprehensive income in the period presented, the broker or dealer is not required to report comprehensive income.

* * * * *

STATEMENT OF CHANGES IN OWNERSHIP EQUITY

(SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION)

* * * * *

Net Income (Loss) For Period

Report the amount of net income (loss) for the period reported on the Statement of Income (Loss) or Statement of Comprehensive Income, as applicable.

* * * * *

§ 249.617 [Amended]

■ 110. Amend the Form X–17A–5 Part IIB (FOCUS Report) (referenced in § 249.617) by:

■ a. Revising under the heading ''Statement of Financial Condition for OTC Derivatives Dealers'' paragraph 28 by redesignating current paragraphs 28.E and F as paragraphs 28.F and G, respectively and adding a new paragraph 28.E; and

■ b. Revising the heading ''Statement of Income (Loss)'' and under that heading, revising the subheading ''Net Income'', removing and reserving paragraphs 29, 29.a and 30, revising paragraph 31, redesignating current paragraph 32 as paragraph 34. adding new paragraph 32 and paragraphs 32.a and 33, and revising newly redesignated paragraph 34.

The revisions and additions read as follows:

Note: The text of Form X–17A–5 Part IIB does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM X-17A-5
FOCUS REPORT
(Financial and Operational Combined Uniform Single Report)
PART IIB 11

* * * * *

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

* * * * *

28. * * *

E. Accumulated other comprehensive income _____ 99999

F. Total _____ 1795

G. Less capital stock in treasury (_____) 1796

* * * * *

STATEMENT OF INCOME (LOSS) or STATEMENT OF COMPREHENSIVE INCOME (as defined in § 210.1-02 of Regulation S-X), as applicable

* * * * *

NET INCOME/COMPREHENSIVE INCOME

* * * * *

29. [RESERVED]

A. [RESERVED]

30. [RESERVED]

31. Net income (loss) after Federal income taxes $_____ 4230

32. Other comprehensive income (loss) _____ 99999

A. After Federal income taxes of _____ 99999

33. Comprehensive income (loss) $_____ 99999

MONTHLY INCOME

34. Income (current month only) before provision for Federal income taxes $____ 4211

§ 249.617 [Amended]

■ 111. Amend the Form X–17A–5 Part III (FOCUS Report) (referenced in § 249.617) by revising under the heading ''Oath or Affirmation'' checkbox (c) to read as follows:

Note: The text of Form X–17A–5 Part III does not, and this amendment will not, appear in the Code of Federal Regulations.

ANNUAL AUDITED REPORT

FORM X–17A–5

PART III

* * * * *

OATH OR AFFIMRATION

* * * * *

☐ (c) Statement of Income (Loss) or, if there is other comprehensive income in the period(s) presented, a Statement of Comprehensive Income (as defined in § 210.1–02 of Regulation S–X).

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 112. The authority citation for part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, 80a–29, and Public Law 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

§§ 239.24 and 274.5 [Amended]

■ 113. Amend Form N–5 (referenced in §§ 239.24 and 274.5) by revising Item 3.(i) to read as follows:

Note: The text of Form N–5 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N–5

REGISTRATION STATEMENT OF SMALL BUSINESS INVESTMENT COMPANY UNDER THE SECURITIES ACT OF 1933 AND THE INVESTMENT COMPANY ACT OF 1940 *

* * * * *

PART I. INFORMATION REQUIRED IN REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940

* * * * *

Item 3. Policies with Respect to Security Investments.

* * * * *

(i) Whether the registrant and its investment adviser and principal underwriter have adopted codes of ethics under Rule l 7j–1 of the Investment Company Act of 1940 [17 CFR 270.17j–1] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the registrant. Also explain that these codes of ethics are available on the EDGAR Database on the Commission's Internet site at *http://www.sec.gov*, and that copies of these codes of ethics may be obtained, after paying a duplicating fee, by electronic request at the following Email address: *publicinfo@sec.gov*.

* * * * *

§§ 239.15A and 274.11A [Amended]

■ 114. Amend Form N–1A (referenced in §§ 239.15A and 274.11A) by:

■ a. Revising Item 1.(b)(3);

■ b. Revising Instruction 3.(c)(ii) to Item 3 and Instruction 2.(a)(ii) to Item 27.(d)(1); and

■ c. Removing Item 27.(d)(3)(iii) and redesignating current Item 27.(d)(3)(iv) as Item 27.(d)(3)(iii).

The revisions read as follows:

Note: The text of Form N–1A does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N–1A

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REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940

* * * * *

PART A INFORMATION REQUIRED IN PROSPECTUS

* * * * *

Item 1. Front and Back Cover Pages

* * * * *

(b) * * *

(3) State that reports and other information about the Fund are available on the EDGAR Database on the Commission's Internet site at *http://www.sec.gov*, and that copies of this information may be obtained, after paying a duplicating fee, by electronic request at the following Email address: *publicinfo@sec.gov*.

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Item 3. Risk/Return Summary: Fee Table

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Instructions

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3. * * *

(c) * * *

(ii) ''Other Expenses'' do not include extraordinary expenses. ''Extraordinary expenses'' refers to expenses that are distinguished by their unusual nature and by the infrequency of occurrence. Unusual nature means the expense has a high degree of abnormality and is clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the fund, taking into account the environment in which the fund operates. Infrequency of occurrence means the expense is not reasonably expected to recur in the foreseeable future, taking into consideration the environment in which the fund operates. The environment of a fund includes such factors as the characteristics of the industry or industries in which it operates, the geographical location of its operations, and the nature and extent of governmental regulation. If extraordinary expenses were incurred that materially affected the Fund's ''Other Expenses,'' disclose in a footnote to the table what ''Other Expenses'' would have been had the extraordinary expenses been included.

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Item 27. Financial Statements

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(d) * * *

(1) * * *

Instructions

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2. * * *

(a) * * *

(ii) For purposes of this Item 27(d)(1), ''Other Expenses'' include extraordinary expenses. ''Extraordinary expenses'' refers to expenses that are distinguished by their unusual nature and by the infrequency of occurrence. Unusual nature means the expense has a high degree of abnormality and is clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the fund, taking into account the environment in which the fund operates. Infrequency of occurrence means the expense is not reasonably expected to recur in the foreseeable future, taking into consideration the environment in which the fund operates. The environment of a fund includes such factors as the characteristics of the industry or industries in which it operates, the geographical location of its operations, and the nature and extent of governmental regulation. If extraordinary expenses were incurred that materially affected the Fund's ''Other Expenses,'' the Fund may disclose in a footnote to the Example what ''actual expenses'' would have

been had the extraordinary expenses not been included.

* * * * *

(3). *Statement Regarding Availability of Quarterly Portfolio Schedule.* A statement that: (i) The Fund files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year on Form N–Q; (ii) the Fund's Forms N–Q are available on the Commission's Web site at *http://www.sec.gov*; and (iii) if the Fund makes the information on Form N–Q available to shareholders on its Web site or upon request, a description of how the information may be obtained from the Fund.

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§§ 239.14 and 274.11a–1 [Amended]

■ 115. Amend Form N–2 (referenced in §§ 239.14 and 274.11a–1) by:

■ a. Revising Item 18.15; and

■ b. Revising Instruction 6.b to Item 24.

The revisions read as follows:

Note: The text of Form N–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N–2

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REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

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REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940

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PART B—INFORMATION REQUIRED IN A STATEMENT OF ADDITIONAL INFORMATION

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Item 18. Management.

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15. *Codes of Ethics:* Provide a brief statement disclosing whether the Registrant and its investment adviser and principal underwriter have adopted codes of ethics under Rule 17j–1 of the 1940 Act [17 CFR 270.17j–1] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the Registrant. Also explain in the statement that these codes of ethics are available on the EDGAR Database on the Commission's Internet site at *http://www.sec.gov*, and that copies of these codes of ethics may be obtained, after paying a duplicating fee, by electronic request at the following email address: *publicinfo@sec.gov*.

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Item 24. Financial Statements

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Instructions

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6. * * *

b. a statement that: (i) The Registrant files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year on Form N–Q; (ii) the Registrant's Forms N–Q are available on the Commission's Web site at *http://www.sec.gov*; and (iii) if the Registrant makes the information on Form N–Q available to shareholders on its Web site or upon request, a description of how the information may be obtained from the Registrant.

* * * * *

§§ 239.17a and 274.11b [Amended]

■ 116. Amend Form N–3 (referenced in §§ 239.17a and 274.11b) by:

■ a. Revising Instruction 4.(c)(i) to Item 3.(a);

■ b. Revising Item 20.(m); and

■ c. Removing Instruction 6.(ii)(C) to Item 28.(a) and redesignating current Instruction 6.(ii)(D) to Item 28.(a) as Instruction 6.(ii)(C) to Item 28.(a).

The revisions read as follows:

Note: The text of Form N–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N–3

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REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

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REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940

* * * * *

PART A—INFORMATION REQUIRED IN A PROSPECTUS

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Item 3. Synopsis or Highlights

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Instructions

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4. * * *

(c) * * *

(i) ''Other Expenses'' do not include extraordinary expenses. ''Extraordinary expenses'' refers to expenses that are distinguished by their unusual nature and by the infrequency of occurrence. Unusual nature means the expense has a high degree of abnormality and is clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the fund, taking into account the environment in which the fund operates. Infrequency of occurrence means the expense is not reasonably expected to recur in the foreseeable future, taking into consideration the environment in which the fund operates. The environment of a fund includes such factors as the characteristics of the industry or industries in which it operates, the geographical location of its operations, and the nature and extent of governmental regulation. If extraordinary expenses were incurred that materially affected the Registrant's ''Other Expenses,'' the Registrant should disclose in the narrative following the table what the ''Other Expenses'' would have been had extraordinary expenses been included.

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Item 20. Management

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(m) Provide a brief statement disclosing whether the Registrant and its investment adviser and principal underwriter have adopted codes of ethics under Rule 17j–1 of the 1940 Act [17 CFR 270.17j–1] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the Registrant. Also explain in the statement that these codes of ethics are available on the EDGAR Database on the Commission's Internet site at *http://www.sec.gov*, and that copies of these codes of ethics may be obtained, after paying a duplicating fee, by electronic request at the following Email address: *publicinfo@sec.gov*.

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Item 28. Financial Statements

(a) * * *

Instructions

(6) * * *

(ii) a statement that: (A) The Registrant files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year on Form N–Q; (B) the Registrant's Forms N–Q are available on the Commission's Web site at *http://www.sec.gov*; and (C) if the Registrant makes the information on Form N–Q available to contractowners on its Web site or upon request, a description of how the information may be obtained from the Registrant;

* * * * *

§§ 239.17b and 274.11c [Amended]

■ 117. Amend Form N–4 (referenced in §§ 239.17b and 274.11c) by:

■ a. Revising Item 1.(a)(v); and
■ b. Revising Instruction 17.(b) to Item 3(a).

The revisions read as follows:

Note: The text of Form N–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N–4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

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REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940

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INFORMATION REQUIRED IN A PROSPECTUS

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Item 1. Cover Page

(a) * * *

(v) a statement or statements that: (A) The prospectus sets forth the information about the Registrant that a prospective investor ought to know before investing; (B) the prospectus should be kept for future reference; (C) additional information about the Registrant has been filed with the Commission and is available upon written or oral request without charge (This statement should explain how to obtain the Statement of Additional Information, whether any of it has been incorporated by reference into the prospectus, and where the table of contents of the Statement of Additional Information appears in the prospectus. If the Registrant intends to disseminate its prospectus electronically, also include the information that the Commission maintains a Web site (*http://www.sec.gov*) that contains the Statement of Additional Information, material incorporated by reference, and other information regarding registrants that file electronically with the Commission.);

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Item 3. Synopsis

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Instructions

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17. * * *

(b) ''Total Annual [Portfolio Company] Operating Expenses'' do not include extraordinary expenses. ''Extraordinary expenses'' refers to expenses that are distinguished by their unusual nature and by the infrequency of occurrence. Unusual nature means the expense has a high degree of abnormality and is clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the fund, taking into account the environment in which the fund operates. Infrequency of occurrence means the expense is not reasonably expected to recur in the foreseeable future, taking into consideration the environment in which the fund operates. The environment of a fund includes such factors as the characteristics of the industry or industries in which it operates, the geographical location of its operations, and the nature and extent of governmental regulation. If extraordinary expenses were incurred by any portfolio company that would, if included, materially affect the minimum or maximum amounts shown in the table, disclose in a footnote to the table what the minimum and maximum ''Total Annual [Portfolio Company] Operating Expenses'' would have been had the extraordinary expenses been included.

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§§ 239.17c and 274.11d [Amended]

■ 118. Amend Form N–6 (referenced in §§ 239.17c and 274.11d) by revising Item 1.(b)(3) and Instruction 4.(c) to Item 3 to read as follows:

Note: The text of Form N–6 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N–6

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

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REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940

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PART A: INFORMATION REQUIRED IN A PROSPECTUS

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Item 1. Front and Back Cover Pages

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(b) * * *

(3) State that reports and other information about the Registrant are available on the Commission's Internet site at *http://www.sec.gov*.

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Item 3. Risk/Benefit Summary: Fee Table

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Instructions.

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4. * * *

(c) ''Total Annual [Portfolio Company] Operating Expenses'' do not include extraordinary expenses. ''Extraordinary expenses'' refers to expenses that are distinguished by their unusual nature and by the infrequency of occurrence. Unusual nature means the expense has a high degree of abnormality and is clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the fund, taking into account the environment in which the fund operates. Infrequency of occurrence means the expense is not reasonably expected to recur in the foreseeable future, taking into consideration the environment in which the fund operates. The environment of a fund includes such factors as the characteristics of the industry or industries in which it operates, the geographical location of its operations, and the nature and extent of governmental regulation. If extraordinary expenses were incurred by any Portfolio Company that would, if included, materially affect the minimum or maximum amounts shown in the table, disclose in a footnote to the table what the minimum and maximum ''Total Annual [Portfolio Company] Operating Expenses'' would have been had the extraordinary expenses been included.

* * * * *

§ 274.12 [Amended]

■ 119. Amend Form N–8B–2 (referenced in § 274.12) by revising Item 52.(e) to read as follows:

Note: The text of Form N–8B–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N–8B–2

REGISTRATION STATEMENT OF UNIT INVESTMENT TRUSTS WHICH ARE CURRENTLY ISSUING SECURITIES

* * * * *

VII

POLICY OF REGISTRANT

52. * * *

(e) Provide a brief statement disclosing whether the trust and its principal underwriter have adopted codes of ethics under rule 17j–l of the Act [17 CFR 270.l7j– l] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the trust. Also explain that these codes of ethics are available on the EDGAR Database on the Commission's Internet site at *http://www.sec.gov*, and that copies of these codes of ethics may be obtained, after paying a duplicating fee, by electronic

request at the following Email address: *publicinfo@sec.gov*.

* * * * *

By the Commission.

Dated: July 13, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–16964 Filed 8–3–16; 8:45 am]

BILLING CODE 8011–01–P

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration
Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing—Underwater Acoustic Thresholds for Onset of Permanent and Temporary Threshold Shifts; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC969

Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing—Underwater Acoustic Thresholds for Onset of Permanent and Temporary Threshold Shifts

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

ACTION: Notice.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the availability of its final Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing—Underwater Acoustic Thresholds for Onset of Permanent and Temporary Threshold Shifts (Technical Guidance or Guidance) that provides updated received levels, or acoustic thresholds, above which individual marine mammals under NMFS' jurisdiction are predicted to experience changes in their hearing sensitivity (either temporary or permanent) for all underwater anthropogenic sound sources.

ADDRESSES: The Technical Guidance is available in electronic form via the Internet at *http://www.nmfs.noaa.gov/pr/acoustics/.*

FOR FURTHER INFORMATION CONTACT: Amy R. Scholik-Schlomer, Office of Protected Resources, 301–427–8449, *Amy.Scholik@noaa.gov.*

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Service in consultation with the National Ocean Service has developed Technical Guidance to help assess the effects of underwater anthropogenic sound on marine mammal species under NMFS' jurisdiction. Specifically, the Guidance identifies the received levels, or acoustic thresholds, above which individual marine mammals are predicted to experience changes in their hearing sensitivity (either temporary or permanent) for all underwater anthropogenic sound sources. NMFS compiled, interpreted, and synthesized scientific literature to produce updated acoustic thresholds for the onset of both temporary (TTS) and permanent threshold shifts (PTS). This is the first time NMFS has presented this information in a single, comprehensive document. This Technical Guidance is intended for use by NMFS analysts and managers and other relevant user groups and stakeholders, including other federal agencies, when seeking to determine whether and how their activities are expected to result in hearing impacts to marine mammals via acoustic exposure.

The main body of the document contains NMFS' updated acoustic thresholds for onset of PTS for marine mammals exposed to underwater sound and NMFS' plan for periodically updating acoustic thresholds. Other information such as details on the development marine mammal auditory weighting functions and acoustic thresholds, research recommendations, alternative methodology (formerly referred to as a User Guide), the peer review and public comment process, and a glossary of acoustic terms can be found in the Technical Guidance appendices.

These thresholds update those currently in use by NMFS. Updates include a protocol for deriving PTS and TTS onset levels for impulsive (*e.g.,* airguns, impact pile drivers) and non-impulsive (*e.g.,* tactical sonar, vibratory pile drivers) sound sources and the formation of marine mammal hearing groups (low- (LF), mid- (MF), and high-frequency (HF) cetaceans and otariid (OW) and phocid (PW) pinnipeds in water) and associated auditory weighting functions. Acoustic thresholds are presented using the dual metrics of cumulative sound exposure level (SEL_{cum}) and peak sound pressure level (PK) for impulsive sounds and the SEL_{cum} metric for non-impulsive sounds. While the updated acoustic thresholds are more complex than what has been in use by NMFS and regulated entities, they more accurately reflect the current state of scientific knowledge regarding the characteristics of sound that have the potential to impact marine mammal hearing sensitivity. Given the specific nature of these updates, it is not possible to generally or directly compare the updated acoustic thresholds presented in this document with the thresholds they will replace because outcomes will depend on project-specific specifications.

Although NMFS has updated the acoustic thresholds, and these changes may necessitate new methodologies for calculating impacts, the application of the thresholds in the regulatory context of applicable statutes (Marine Mammal Protection Act (MMPA), Endangered Species Act (ESA), and National Marine Sanctuaries Act (NMSA)) remains consistent with current NOAA practice (see Regulatory Context in this **Federal Register** Notice). It is important to emphasize that these updated acoustic thresholds do not represent the entirety of an impact assessment, but rather serve as one tool (in addition to behavioral impact thresholds, auditory masking assessments, evaluations to help understand the ultimate effects of any particular type of impact on an individual's fitness, population assessments, etc.), to help evaluate the effects of a proposed action.

NMFS recognizes that action proponents may have varying abilities to model and estimate exposure and that the Technical Guidance may be more complex than some action proponents are able to incorporate. Thus, NMFS has provided alternative methodology and an associated User Spreadsheet to aid action proponents with SEL_{cum} thresholds and marine mammal auditory weighting functions (*http://www.nmfs.noaa.gov/pr/acoustics/*).

The Technical Guidance is classified as a Highly Influential Scientific Assessment (HISA) by the Office of Management and Budget. As such, three independent peer reviews were undertaken, at three different stages of the development of the Technical Guidance, including a follow-up to one of the peer reviews, prior to broad public dissemination by the Federal Government. Details of each peer review can be found within the Technical Guidance (Appendix C) and at the following Web site: *http://www.nmfs.noaa.gov/pr/acoustics/.* NMFS acknowledges and thanks the Marine Mammal Commission (Commission) and the Acoustical Society of America's Underwater Technical Council for nominating peer reviewers and thanks the peer reviewers for their time and expertise in reviewing this document.

In additional to three independent peer reviews, the Technical Guidance was the subject of three public comment periods. NMFS evaluated all substantive comments made during each public comment period to determine their relevance to the Technical Guidance as it was revised. Public comments made on aspects of the Technical Guidance that are no longer relevant have not been included here. Substantive and relevant comments and NMFS' responses are included below (see Comments and Responses).

The Technical Guidance does not create or confer any rights for or on any person, or operate to bind the public. An alternative approach that has undergone independent peer review may be proposed (by federal agencies or prospective action proponents) and used if case-specific information/data indicate that the alternative approach is likely to produce a more accurate

portrayal of take for the project being evaluated, if NOAA determines the approach satisfies the requirements of the applicable statutes and regulations.

Transitioning to the Technical Guidance

NMFS considers the updated thresholds and associated weighting functions in the Technical Guidance to be the best available information for assessing whether exposure to specific activities is likely to result in changes in marine mammal hearing sensitivity (temporary or permanent). Prospective applicants for incidental take authorizations under the MMPA and federal agencies seeking ESA section 7 consultations that have not yet started their acoustic analyses should begin using the new Technical Guidance immediately. At the same time, we recognize that for some proposed actions, analyses may have already substantially progressed using the existing thresholds or other methods for assessing hearing effects, and it may be impractical to begin those analyses anew, taking into account timing constraints, expense, and other considerations. In such ''pipeline'' cases, the applicant or action agency should contact NMFS as soon as possible to discuss how to best include consideration of the Technical Guidance to satisfy the applicable requirements. A non-exhaustive list of factors that could affect the extent to which the Technical Guidance will be considered for an action include: The relative degree to which the Technical Guidance is expected to affect the results of the acoustic impact analyses; how far in the process the application or prospective application has progressed; when the activity is scheduled to begin or other timing constraints; the complexity of the analyses and the cost and practicality of redoing them; and the temporal and spatial scope of anticipated effects. We anticipate that after the initial transition period, all applications for MMPA incidental take authorization (ITA) and all requests for ESA section 7 consultations involving noise that may affect marine mammals will include full consideration of the Technical Guidance.

National Environmental Policy Act (NEPA)

In 2005, NMFS published a **Federal Register** Notice of Public Scoping and Intent to Prepare an EIS for a similar action (70 FR 1871, January 11, 2005). The nature of the Guidance has evolved significantly since then. After evaluating the contents of the Technical Guidance and the standards for a categorical exclusion under NAO 216–6, sec. 6.03c.3(i), we have determined the Technical Guidance is categorically excluded from further NEPA review.

NAO 216–6, sec. 6.03c.3(i), provides that a categorical exclusion is appropriate for ''policy directives, regulations, and guidelines of an administrative, technical, or procedural nature, or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case by case.''

Although changes to the PTS and TTS thresholds will likely change the take estimates for at least some portion of activities, any environmental effects of the draft guidance alone, without reference to a specific activity, are too speculative or conjectural to lend themselves to meaningful analysis at this stage. Effects analyses under the MMPA, ESA, and NMSA (and appropriate mitigation and monitoring) are activity-specific exercises that cannot be conducted absent some level of specificity regarding the nature of the proposed activity, the general location, and the time and duration. Moreover, direct comparisons cannot be made between the thresholds currently used and the updated thresholds, due to the different metrics and taxa-specific frequency weighting used in the new thresholds.

Any environmental effects from application of the updated PTS and TTS thresholds will flow from future actions that are the subject of ITAs under the MMPA and related consultations under the ESA or NMSA. The nature and magnitude of such effects will depend on the specific actions themselves, each of which would be subject to the NEPA process.

Because any effects from the Technical Guidance are speculative and conjectural, NOAA has determined it cannot meaningfully analyze potential effects in the manner contemplated by NEPA, which is to inform agency decisions about the effects of an action (and reasonable alternatives) on the environment. Any changes in future effects analyses resulting from the Guidance will be part of the NEPA and other statutorily-required analyses conducted for specific actions in the future.

Finally, the proposed action does not trigger any of the exceptions for categorical exclusions described in section 5.05c of NAO 216–6. It does not involve a geographic area with unique characteristics, is not a subject of public controversy due to potential environmental consequences, have uncertain environmental impacts or unique or unknown risks, establish a precedent or decision in principle about future proposals, result in cumulatively significant impacts, or have any adverse effects upon endangered or threatened species or their habitats.

Regulatory Context

NMFS uses acoustic thresholds to help quantify ''take'' and as part of more comprehensive effects analyses under several statutes. The Technical Guidance's updated acoustic thresholds do not represent the entirety of the comprehensive effects analysis, but rather serve as one tool among others (*e.g.,* behavioral impact thresholds, auditory masking assessments, evaluations to help understand the ultimate effects of any particular type of impact on an individual's fitness, population assessments, etc.) to help evaluate the effects of a proposed action and make findings required by NOAA's various statutes.

Under current agency practice, NMFS considers the onset of PTS, which is an auditory injury, as an example of ''Level A Harassment'' as defined in the MMPA and as ''harm'' as defined in ESA regulations, such that exposing an animal to weighted received sound levels at or above the indicated PTS threshold is predicted to result in these two types of ''take'' (*i.e.,* Level A Harassment under the MMPA and harm under ESA).

As explained below, NMFS does not consider a TTS to be an auditory injury under the MMPA or ESA, and thus it does not qualify as Level A harassment or harm. Nevertheless, TTS is an adverse effect that historically has been treated as ''take'' by ''Level B Harassment'' under the MMPA and ''harassment'' under the ESA. The broad definition of ''injury'' under the NMSA regulations includes both PTS and TTS (as well as other adverse changes in physical or behavioral characteristics that are not addressed in the Technical Guidance).

Marine Mammal Protection Act

The MMPA prohibits the take of marine mammals, with certain exceptions, one of which is the issuance of ITAs. Sections 101(a)(5)(A) & (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. Through delegation by the Secretary of Commerce, NMFS is

required to authorize the incidental taking of marine mammals if it finds that the total taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses. NMFS must also set forth the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings. (The ''small numbers'' and ''specified geographical region'' provisions do not apply to military readiness activities.)

The term ''take'' means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill any marine mammal. 16 U.S.C. 1362(13).

Except with respect to certain activities described below, ''harassment'' means any act of pursuit, torment, or annoyance which:

- Has the potential to injure a marine mammal or marine mammal stock in the wild *(Level A Harassment),* or
- 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).*

See id. at 1362(18)(A)(i) & (ii) (emphasis added).

Congress amended the definition of ''harassment'' as it applies to a ''military readiness activity'' or research conducted by or on behalf of the federal government consistent with MMPA section 104(c)(3) as follows (section 3(18)(B) of the MMPA):

- Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild *(Level A Harassment*); or
- Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered *(Level B Harassment).*

See id. at 1362(18)(B)(i) & (ii) (emphasis added).

The term ''negligible impact'' is defined 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. 50 CFR 216.103.

In support of the analysis that is necessary to make the required statutory determinations, MMPA implementing regulations require ITA action proponents to provide NMFS with specific information. Although they may also be used to inform the development of mitigation measures, the updated acoustic thresholds are particularly relevant to the following two of the fourteen required pieces of information:

- The *type* of incidental taking authorization that is being requested (*i.e.,* takes by Level B Harassment only; *Level A Harassment;* or serious injury/mortality) and the method of incidental taking;
- By age, sex, and reproductive condition (if possible), the *number* of marine mammals (by species) that may be taken *by each type* of taking identified in paragraph (a)(5) of this section, and the number of times such takings by each type of taking are likely to occur.

50 CFR 216.104 (emphasis added).

Endangered Species Act

Section 9 of the ESA prohibits the take of ESA-listed species, with limited exceptions. Section 7 of the ESA requires that each federal agency, in consultation with NMFS and/or the U.S. Fish and Wildlife Service (USFWS), ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. *See* 16 U.S.C. 1536(a)(2). Provided that NMFS or the USFWS reaches these conclusions through a ''formal consultation'' process, incidental take of ESA-listed species may be exempted from the section 9 take prohibition through an ''incidental take statement'' that must specify the impact, *i.e.,* the amount or extent, of the taking on the species. *See id.* at section 1536(b)(4). Incidental take statements must also include reasonable and prudent measures necessary or appropriate to minimize the impact, and the terms and conditions required to implement those measures.

Under ESA, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. *See id.*at section 1532(19). ''Harm'' is defined in NMFS regulations as ''an act which actually kills or injures fish or wildlife'' (and can include significant habitat modification or degradation). *See* 50 CFR 222.102.

Under NMFS and the USFWS implementing regulations for section 7 of the ESA, ''jeopardize the continued existence of'' means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species. *See id.*at § 402.02.

In support of the analysis necessary to conduct the consultation, the ESA implementing regulations state that in order to initiate formal consultation, the federal action agency must submit a written request for formal consultation to the Director (of NMFS or the USFWS) that includes, among other things, a description of the manner in which the action may affect any listed species. *See id.*at § 402.14(c).

National Marine Sanctuaries Act

Section 304(d) of the NMSA requires federal agencies whose actions are likely to destroy, cause the loss of, or injure a sanctuary resource to consult with the Office of National Marine Sanctuaries (ONMS) before taking the action. *See* 16 U.S.C. 1434(d)(1). The NMSA defines sanctuary resource as ''any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the sanctuary.''16 U.S.C. 1432(8). Through the sanctuary consultation process, ONMS may recommend reasonable and prudent alternatives that will protect sanctuary resources. Recommended alternatives may include alternative locations, timing, and/or methods for conducting the proposed action. *See id.*at § 1434(d)(2). Monitoring may also be recommended to better characterize impacts to sanctuary resources or accompany mitigation.

The term ''injure'' is defined in the ONMS implementing regulations as to ''change adversely, either in the short or long term, a chemical, biological or physical attribute of, or the viability of.'' 15 CFR 922.3.

In support of the analysis necessary to conduct the consultation, the NMSA requires that any federal agency proposing an action that may injure a sanctuary resource provide ONMS with a written statement (''sanctuary resource statement'') describing the action and its potential effects on sanctuary resources. *See* 16 U.S.C. 1434(d)(1)(B).

Application of Acoustic Thresholds for Permanent Threshold Shift

The acoustic thresholds for PTS will be used in conjunction with sound source characteristics, environmental factors that influence sound propagation, anticipated marine mammal occurrence and behavior in the vicinity of the activity, as well as other available activity-specific factors, to quantitatively estimate (acknowledging the gaps in scientific knowledge and the

inherent uncertainties in a marine environment) the takes of marine mammals (by Level A harassment and harm under the MMPA and ESA, respectively) and facilitate compliance with the MMPA, ESA, and NMSA as described above.

NMFS will use the same PTS acoustic thresholds in the identification and quantification of MMPA Level A harassment for both military readiness and non-military readiness activities. Because the acoustic thresholds for PTS predict the onset of PTS, they are inclusive of the ''potential'' and ''significant potential'' language in the two definitions of Level A harassment. The limited data now available do not support the parsing out of a meaningful quantitative difference between the ''potential'' and ''significant potential'' for injury and, therefore, the designated PTS acoustic thresholds will be treated as Level A harassment for both types of activities.

Estimating the numbers of take by Level A harassment and harm is one component of the fuller analyses that inform NMFS' ''negligible impact'' and ''jeopardy'' determinations under the MMPA and ESA, respectively, as well as ''likely to injure'' or ''may affect'' determinations under the NMSA. Last, the PTS acoustic thresholds may be used to inform the development of mitigation and monitoring measures (such as shut-down zones) pursuant to the MMPA, ESA, or NMSA.

When initiating any of the MMPA, ESA, or NMSA processes described above, agencies and other action proponents should utilize the PTS acoustic thresholds, in combination with activity-specific information, to predict whether, and if so how many, instances of PTS are expected to occur.

Application of Acoustic Thresholds for Temporary Threshold Shift

As previously stated, NMFS has not considered TTS an auditory injury for purposes of the MMPA and ESA, based on the work of a number of investigators that have measured TTS before and after exposure to intense sound. For example, Ward (1997) suggested that a TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury. In addition, Southall *et al.* (2007) indicates that although PTS is a tissue injury, TTS is not because the reduced hearing sensitivity following exposure to intense sound results primarily from fatigue, not loss, of cochlear hair cells and supporting structures, and is reversible. Accordingly, TTS has been considered take by Level B harassment under the MMPA and harassment under the ESA, which will be the subject of future guidance. However, TTS is considered injury under the broad definition of the term ''injury'' in NMSA regulations (along with PTS and behavioral impacts). For now, NMFS will continue the practice of requiring applicants to estimate take by TTS for explosive sources.

MMPA Level B harassment and ESA harassment are broad categories that encompass not only TTS but also other behaviorally related impacts that almost always involve a lower onset threshold than that for onset of TTS. In quantifying take by Level B harassment or harassment, NMFS considers *all* effects that fall into those categories of take, not just TTS. NMFS will be developing updated acoustic thresholds for the onset of behavioral effects and will further consider the best approach for considering TTS at that time. When that process is completed, NMFS will provide further guidance regarding how to best consider and/or quantify TTS for non-pulse and impulse sources not involving instantaneous explosives (see exception below for underwater explosives). In the meantime, action proponents not using instantaneous explosives do not need to quantify estimates of TTS separately from their overall behavioral harassment take calculations. For now, the TTS acoustic thresholds presented in the Technical Guidance will be considered as part of the larger comprehensive effects analyses under the MMPA and the ESA.

With respect to instantaneous explosives (as distinguished from repeated explosives such as gunnery exercises), NMFS already requires quantification of TTS estimates because an instantaneous explosive will not have a separate behavioral component from a lower exposure threshold and there is no time accumulation involved. The rationale for calculating TTS for instantaneous explosives continues to apply with the updated TTS thresholds for explosives.

NMFS is aware of studies by Kujawa and Liberman (2009) and Lin *et al.* (2011), which found that despite completely reversible TS that leave cochlear sensory cells intact, large (but temporary) TS could cause synaptic level changes and delayed cochlear nerve degeneration in mice and guinea pigs. However, the large TS (*i.e.,* maximum 40 decibel dB) that led to the synaptic changes shown in these studies are in the range of the large shifts used by Southall *et al.* (2007) and in the Technical Guidance to define PTS onset (*i.e.,* 40 dB). It is unknown whether smaller levels of TTS would lead to similar changes or the long-term implications of irreversible neural degeneration. The effects of sound exposure on the nervous system are complex, and this will be re-examined as more data become available.

The occurrence of, and estimated number of, TTS takes is one component of the larger analysis that informs NMFS's ''negligible impact'' and ''jeopardy'' determinations under the MMPA and ESA, respectively, as well as ''likely to injure'' or ''may affect'' determinations under the NMSA. As with PTS, TTS acoustic thresholds also may be used to inform the development of mitigation and monitoring measures pursuant to the MMPA, ESA, or NMSA.

Comments and Responses

On December 27, 2013, NMFS published the initial Draft Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammals: Acoustic Thresholds for Onset of Permanent and Temporary Threshold Shifts for a 30-day public comment period (78 FR 78822), which was extended an additional 45-days (79 FR 4672; January 29, 2014) based on public request. During the public comment period, NMFS received comments from U.S. Representatives from Congress, Federal agencies, an international government agency, state governments, Alaskan native groups, industry groups, and non-governmental organizations, individual subject matter experts, a professional society, a regulatory watchdog group, and 89 private citizens.

After the close of the initial public comment period, as NMFS was addressing public comments and working towards finalizing the Guidance, a new methodology for identifying marine mammal auditory weighting functions and acoustic thresholds was developed by the U.S. Navy (Dr. James Finneran, SPAWAR Systems Center Pacific) based on new science. Additionally, NMFS re-evaluated its methods for defining threshold usage for sources characterized as impulsive or non-impulsive based on comments received during the initial public comment period. Incorporating these updated methodologies resulted in substantial changes to the Guidance, necessitating additional peer review, as well as another public comment period. As a result, NMFS solicited public comment on a revised Draft Guidance (July 2015) via a second 45-day public comment period (80 FR 45642, July 31, 2015). During the second public comment period, NMFS received 20 comments from Federal agencies, industry groups, environmental consultants, Alaskan native groups, non-governmental

organizations, individual subject matter experts, a professional society, a regulatory watchdog group, and two private citizens.

While NMFS was working to address public comments from the second public comment period and finalize the Guidance, NMFS and the Navy (Dr. James Finneran, SPAWAR Systems Center Pacific) further evaluated certain aspects of the U.S. Navy's methodology. As a result of the Navy's and NMFS' review, several focused recommendations/modifications were suggested, which did not change the overall methodology provided in the July 2015 Draft Guidance (the primary changes were related to deriving a composite audiogram for LF cetaceans). After consideration of these recommendations, NMFS updated sections of the July 2015 Draft Guidance to reflect the suggested changes and solicited public comment on those focused revisions via a focused 14-day public comment period (81 FR 14095, March 16, 2016). During this third public comment period, NMFS received 20 comments from Federal agencies, industry groups, non-governmental organizations, individual subject matter experts, a professional society, and a private citizen. Please refer to these **Federal Register** Notices for additional background about the 2013 and 2015 Draft Guidance, as well as the document containing proposed changes to the Draft Guidance during the public comment period in 2016.

During these three public comment periods several commenters' remarks pertained to topics beyond the scope of the final Technical Guidance (*e.g.,* impacts beyond hearing: Non-auditory injury, mortality, gas emboli, stranding events, masking, stress, cumulative effects, ecosystem-wide effects, behavioral disturbance; activity-specific issues associated with specific permit/authorization; effects of airborne noise on pinniped hearing; effects of noise on fishes and sea turtles; propagation modeling; animal distribution/density; data or modeling requirements; take estimation methodology). NMFS did not address comments outside the scope of this document. Additionally, in re-evaluating substantive public comments made during the first (2013/2014), second (2015), and third (2016) public comment periods, those earlier comments pertaining to sections of the document no longer included in the final Technical Guidance are not addressed (*e.g.,* proposed 1-hour accumulation period, transition range methodology, alternative thresholds).

Technical Guidance Scope

Comment 1: Several commenters were concerned about the potential impacts of sound on polar bear, sea otter, and walrus and asked if NMFS coordinated with the USFWS or other branches of NMFS when evaluating and establishing thresholds in the Guidance.

Response: The Technical Guidance only addresses the effects of underwater anthropogenic sound on marine mammal species under NMFS' jurisdiction. The Technical Guidance does not pertain to marine mammal species under the USFWS's jurisdiction (*e.g.,* walrus, polar bears, manatees, sea otters). The USFWS is aware of this document and was provided an opportunity to comment. NMFS Headquarters, Regions, and Science Centers coordinated in the development this Guidance, as did the National Ocean Service.

Comment 2: Multiple commenters, citing the technical complexity of the Draft Guidance, requested an extension during all three public comment periods. Additionally, multiple commenters expressed concern that the public comment period associated with the March 2016 Proposed Changes document was rushed, resulted in arbitrary decisions, and did not allow for meaningful input from those action proponents most impacted by changes (*i.e.,* activities producing low-frequency sound). These commenters advocated that instead of NMFS adopting the changes in the March 2016 document, the July 2015 Draft Guidance instead be finalized.

Response: NMFS extended the initial 30-day public comment period on the 2013 Draft Guidance by an additional 45 days (79 FR 4672, January 29, 2014). In consideration of an appropriate duration for the 2015 Draft Guidance public comment period (80 FR 45642, July 31, 2015), NMFS chose a 45-day (opposed to 30 days) public comment period, based on the extent of changes from the Draft 2013 Guidance, but did not extend that public comment period. Regarding the third public comment period, due to the focused nature of the most recent proposed revision, presented in a standalone 24-page document, and significant previous opportunities for public comment, NMFS deemed a 14-day public comment period appropriate (81 FR, 14095, March 16, 2016) and did not extend public comment period in response to requests. Based on input received during the robust review process (*i.e.,* three public comment periods and three peer reviews, as well as follow-up peer review), NMFS does not believe additional or extended public comment periods were necessary to finalize the Technical Guidance.

NMFS disagrees that the March 2016 public comment period was rushed or resulted in arbitrary decisions. The March 2016 public comment period was the third opportunity given to the public to review our Draft Guidance (following the 75-day first public comment period and 45-day second public comment period). Previous versions of the Draft Guidance had already been revised based upon peer review and public input. Due to the focused nature of the proposed changes since the prior draft (which were described in a 24-page standalone document) and balanced against the lengthy process to date and need for updated thresholds, NMFS determined a 14-day public comment period was appropriate.

Comment 3: A few commenters indicated that the 2015 Draft Guidance and the 2016 Proposed Changes document was incomplete and the Guidance should not be finalized until the public has an opportunity to comment on the following missing sections: Agency response to comments made during the initial and second public comment periods; optional User Spreadsheet for determining isopleths; and references associated with sirenian data used in the March 2016 Proposed Changes document.

Response: NMFS disagrees that the 2015 Draft Guidance and 2016 Proposed Changes document were incomplete for public comment. In finalizing the Technical Guidance (via this **Federal Register** Notice), NMFS has addressed to substantive comments provided during all three public comment periods, except those no longer relevant due to subsequent changes to the Draft Guidance. Both the 2015 Draft Guidance and the 2016 Proposed Changes document encompassed modifications based on comments received during the first and second public comment periods.

NMFS disagrees that the User Spreadsheet associated with the Technical Guidance's alternative methodology requires public comment. This spreadsheet precisely follows the alternative methodology provided in the Technical Guidance (Appendix D), which was available for public comment. There is nothing additional or new provided by this spreadsheet.

As for the sirenian data used in the March 2016 Proposed Changes document, in response to this comment, these references (Gerstein *et al.,* 1999; Mann *et al.,* 2009) have been included in the finalized Technical Guidance. However, NMFS does not believe additional public review is necessary.

Comment 4: A few commenters requested clarification as to how the Technical Guidance will be used in management decisions (*i.e.,* is the Technical Guidance's use a requirement? Is the Technical Guidance a rule?).

Response: The Technical Guidance provides a robust assessment and synthesis of a body of scientifically complex information to assess impacts of sound on marine mammal hearing. Although its use is not a binding requirement, it currently reflects the agency's expert assessment of the scientific literature and represents what the agency believes is the best approach for assessing auditory impacts. The Guidance allows for an alternative approach if case-specific information/data indicate that such an approach is likely, in NMFS' view following peer review, to produce an equally or a more accurate estimate of auditory impacts.

Comment 5: Multiple commenters requested NMFS include a brief statement in the Guidance about what standards are currently in use and why they need to be updated. Additionally, the Commission requested that the Guidance include updated explosive thresholds for mortality (extensive lung injury) and injury (slight lung and gastrointestinal (G.I.) tract).

Response: A new section has been added to the Technical Guidance (see Section 1.1 of Main Document) to explain the justification for the updated acoustic thresholds for PTS and TTS. The Technical Guidance explicitly indicates that the thresholds within the document are meant to update all thresholds currently in use by NMFS for assessing PTS onset, including generic injury thresholds (*i.e.,* root mean square sound pressure level (RMS SPL) thresholds of 180/190 dB), and PTS/TTS thresholds for explosives.

NMFS acknowledges that future Technical Guidance is needed for non-auditory impacts, but is planning on addressing this in a separate guidance document and recommends current non-auditory thresholds for explosives remain in use until updates can be completed via the appropriate processes.

Comment 6: Multiple commenters requested clarification on the applicability the National Environmental Policy Act (NEPA) to the Guidance.

Response: NMFS determined that the Technical Guidance satisfies the standards for a categorical exclusion under NAO 216–6. NAO 216–6, sec. 6.03c.3(i), which provides that a categorical exclusion is appropriate for ''policy directives, regulations, and guidelines of an administrative, technical, or procedural nature, or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case by case.'' See the section addressing NEPA earlier in this Notice.

Comment 7: The Center for Regulatory Effectiveness (CRE) indicated that any use of the Guidance by NMFS in rules would have to be supported by cost-benefit analyses because it ''could have a potential impact of more than $500 million in any one year on either the public or private sector; or . . . the dissemination is novel, controversial, or precedent-setting; or . . . [it has] significant interagency interest.''

Response: The Technical Guidance is not a regulatory action subject to a cost-benefit analysis under Executive Orders 12866 and 13563. The Technical Guidance was classified as a HISA because it was novel and precedent setting, not due to the potential financial implications. The Technical Guidance will inform assessments of activities that occur in a regulatory context as they arise. The Technical Guidance does not address or change NMFS' application of the thresholds in the regulatory context, under applicable statutes. Any required cost-benefit considerations will take place during future actions that are the subject of regulatory action, such as ITAs under the MMPA. The nature and magnitude of such effects will depend on the specific actions themselves. Because any direct effects from the Technical Guidance are speculative and conjectural, NMFS cannot meaningfully analyze potential effects by a cost-benefit analysis.

Comment 8: The CRE states that NMFS needs to prepare and obtain Office of Management and Budget (OMB) approval of a new Paperwork Reduction Act (PRA) Information Collection Request (ICR) in compliance with Information Quality Act (IQA) Guidelines before they can use the Technical Guidance for any sound source.

Response: There is no collection of information requirement associated with the Technical Guidance. However, NMFS' information collection for Applications and Reporting Requirements for Incidental Taking of Marine Mammals by Specified Activities Under the Marine Mammal Protection Act, OMB approval number 0648–0151, could be affected by applicants using the Technical Guidance, possibly in added response time to prepare applications using the Guidance. The current approval expires in March 2017 and will require renewal before then with an opportunity for public comment. In preparation for that renewal, NMFS will consider the effect of the Technical Guidance, specifically whether a revision in the burden hour estimates is appropriate, and invite public comment on its assessment. NMFS has complied with the IQA Guidelines with the development of the Guidance.

Comment 9: A commenter requested that NMFS provide more information how the Guidance's updated thresholds would be applied in conjunction with thresholds used to assess MMPA Level B behavioral harassment.

Response: The Technical Guidance does not provide updated acoustic thresholds for levels that could result in behavioral effects. NMFS' current acoustic thresholds for these impacts are not affected by the Technical Guidance. NMFS recognizes the Technical Guidance provides updated metrics that are different than those used for estimating behavioral harassment. Accordingly, where calculations or modeling suggest that some animals will be exposed to sound levels that are at or above the relevant PTS threshold under the Technical Guidance but behavioral harassment under the current behavioral harassment thresholds, an individual should be counted ''taken'' one time, by the more severe impact (*i.e.,* PTS onset). However, the qualitative and contextual analysis of the likely impacts on that animal, at these exposure levels, will consider both the impacts of the likely PTS as well as anticipated behavioral responses.

Comment 10: During the third public comment period, the Commission recommended that NMFS review and revise this document every two years via a small expert panel, as opposed to the proposed three to five year schedule. Revising the Guidance on a two-year basis was also supported by other commenters. Additionally, the Commission recommended that rather than developing independent guidance, NMFS instead incorporate by reference technical reports and peer-reviewed literature already summarizing the best available science.

Response: NMFS will continue to monitor and evaluate new data as they become available and will periodically convene staff from our various offices, regions, and science centers, and to update the Guidance as appropriate (anticipating updates to occur on a three to five year cycle). NMFS believes this timeline is appropriate and does not need to be modified.

NMFS disagrees with the Commission's recommendation to incorporate by reference other reports or peer-reviewed literature and believes the process of developing Technical Guidance requires a more thorough evaluation of the science in the context of NOAA statutory requirements. Public comment would also be needed.

Comment 11: Several commenters expressed uncertainty and requested clarification as to how the Guidance would apply to mitigation and monitoring requirements (*e.g.,* exclusion zones), often prescribed by the conditions of an MMPA permit or authorization.

Response: Mitigation and monitoring requirements associated with an MMPA authorization or ESA consultation or permit are independent management decisions made in accordance with statutory and regulatory standards in the context of a proposed activity and comprehensive effects analysis, and are beyond the scope of the Technical Guidance. NMFS acknowledges that in practice, exclusion zones and monitoring zones have often corresponded to acoustic impact thresholds, but that is not a legal requirement, and the updated thresholds may make such a simple correlation more challenging, given their greater complexity. The Technical Guidance will be used with other relevant information to inform impact assessments, and that in turn will be considered in the development of mitigation and monitoring.

Peer Review Process

Comment 12: One commenter expressed concerned about the peer review process and choice of peer reviewers, particularly in regards to potential financial ties to NMFS.

Response: NMFS adhered to appropriate procedures in the selection of the peer reviewers to prevent any real or perceived conflicts of interest. The Commission, specifically their Commissioners and members of their Committee of Scientific Advisors, nominated the peer reviewers for each of the three peer reviews. Additionally, the Acoustical Society of America's Underwater Technical Council nominated some of the peer reviewers in association with the third peer review. Each peer reviewer, for all three reviews, submitted a conflict of interest form. None of the Technical Guidance's reviewers indicated having a conflict of interest, defined as ''any financial or other interest which conflicts with the service of the individual because it (1) could significantly impair the individual's objectivity, or (2) could create an unfair competitive advantage for any person or organization.''

Comment 13: Several commenters expressed concern that the March 2016 Proposed Changes document did not undergo peer review and believed peer review would result in significant changes to the Guidance necessitating the need for a fourth public comment period. If NMFS does not conduct a fourth public comment period, the commenters advocated that NMFS retract its March 2016 Proposed Changes document and proceed with issuing the July 2015 Draft Guidance (modified based on public comments from the first and second public comment period) as its finalized Guidance.

Response: The comments are incorrect. NMFS conducted a follow-up peer review concurrent with the third public comment period. NMFS disagrees with the recommendation to retract the March 2016 Proposed Changes document and that a fourth public comment period is needed based on comments made by the peer reviewers during this follow-up review. The follow-up peer review report is publicly available via: *http://www.cio.noaa.gov/services_programs/prplans/ID43.html* and was available before the Guidance was finalized (May 2016).

Comment 14: One commenter indicated that Guidance should not be used until NMFS addresses all the peer reviewers' comments from its three peer reviews, and that failing to doing so would cause the finalized Guidance to be IQA non-compliant.

Response: NMFS adhered to IQA procedures and NOAA's IQG, making the finalized Technical Guidance IQA compliant. NMFS received valuable input from the peer reviewers and made changes to the Technical Guidance based on their comments during all three peer reviews, as well as during the follow-up review. The peer reviewers' comments greatly improved the Technical Guidance before it was available for public comment during the initial and second public comment periods. The manner in which NMFS addressed the peer reviewers' comments, from all three peer reviews, as well as the follow-up review, appear within our Peer Review Reports: *http://www.cio.noaa.gov/services_programs/prplans/ID43.html*.

Comment 15: A commenter considered NMFS' treatment and peer review of the Finneran Technical Report, associated with the July 2015 Draft Guidance (Appendix A), as inconsistent, asserting the Finneran Technical Report should have been treated similarly to other publications that did not undergo formal peer review associated with publication in a scientific journal. The commenter questioned why the methodology from the Finneran and Jenkins (2012) technical report was not subjected to an independent peer review by NMFS but was used in its 2013 Draft Guidance.

Response: NMFS disagrees that there was an inconsistency in its treatment of Finneran Technical Report (the methodology used for Navy's ''Phase 3'' environmental compliance analyses in any of the versions of our Technical Guidance. NMFS considered Finneran and Jenkins (2012) in the development of the 2013 Draft Guidance. However, that particular technical report served as a summary of methodology and previously published data on impacts of sound on protected species (*i.e.,* it did not contain any new data). Although Finneran and Jenkins (2012) was not published, the portions used directly in the 2013 Draft Guidance were supported by peer reviewed publications. A separate peer review of Finneran and Jenkins (2012) was neither necessary nor required under HISA requirements.

For the 2015 Draft Guidance, the Finneran Technical Report, used to derive updated marine mammal auditory weighting functions and thresholds for the Navy's Phase 3 analyses, was directly incorporated into the Guidance via Appendix A. This was the first time the Finneran Technical Report was made public, and thus, was subject to HISA requirements for inclusion in the Technical Guidance, including peer review. We also note that after the July 2015 public comment period, part of the Finneran Technical Report, specifically a summary of available data on noise-induced hearing loss in marine mammals, was published in a peer reviewed journal (Finneran *et al.,* 2015).

Comment 16: Several commenters expressed concerns over NMFS adopting the Finneran Technical Report within the Guidance. One commenter specifically stated that the Guidance ''effectively results in the US Navy writing its own regulations'' and recommended that the entire Guidance process be reconvened using a fully independent panel of experts.

Response: NMFS disagrees with the commenters' assessment. The author of the Finneran Technical Report that was incorporated into Technical Guidance (Appendix A) is a well-respected and recognized scientist with over 50 peer reviewed publications on marine mammal hearing and has served on the Southall *et al.,* 2007 expert panel, as well as the current Southall panel that

is updating their 2007 publication. Additionally, this methodology underwent an independent peer review convened by NMFS and was evaluated internally within NMFS before it was incorporated into our Technical Guidance. NMFS believes the Finneran Technical Report represents the best available science, which is why we incorporated it in the Technical Guidance.

Comment 17: One commenter requested that the NMFS share their original documents and peer reviews from the first peer review (2013), in order to facilitate common understanding as to those aspects of science related to marine mammal behavior that may be limiting NMFS' ability to establish guidance and promote studies that would address significant data gaps.

Response: As noted in the first peer review report (2013), in light of the peer reviewers' comments and based upon internal discussions, NMFS decided to re-evaluate its proposed methodology for deriving acoustic thresholds for behavior and, therefore, included only thresholds for PTS and TTS onset in the Draft Technical Guidance (*i.e.,* Draft 2013 and 2015 and 2016 Proposed Changes public comment versions). NMFS did not include peer reviewer comments on proposed behavioral thresholds in the peer review report because they were no longer relevant to the scope of the Draft Guidance contents. NMFS will publish this information, if relevant, once we re-evaluate our approach for establishing updated guidance for behavior effects.

Use of Published Versus Unpublished Data

Comment 18: Several commenters remarked on the use of published and unpublished literature in the Guidance and sought clarification regarding the sources considered in the development of the Guidance.

Response: Not all data considered in the development of the Technical Guidance have been published in a peer review journal. For the development of PTS and TTS onset acoustic thresholds and marine mammal auditory weighting functions, NMFS primarily relied on published data. The scientific aspects of the Technical Guidance underwent some form of peer review, either via formal publication in a scientific journal and/or via the HISA process.

Comment 19: Several commenters recommended that unpublished information from more recent scientific conferences should be considered in the Guidance. One commenter specifically indicated Southall *et al.* (2007) will be updated in the near future and that the Guidance's finalization should be delayed for this publication or NMFS should commit to updating its Guidance within six months of the finalization of the updated Southall *et al.* (2007) publication.

Response: NMFS notes that when these more recent studies become available, they can be considered and incorporated into future updates of the Technical Guidance. NMFS is aware that Southall *et al.* (2007) is being updated. We anticipate that the methodology in the Technical Guidance will be similar to that provided in the updated publication (the author of the Navy's Finneran Technical Report is also on the panel updating Southall *et al.,* 2007). NMFS will evaluate and consider the updated Southall *et al.* publication when it becomes available and does not believe delaying the Technical Guidance is necessary. Regarding the request to update the Technical Guidance within six months of the updated Southall *et al.* (2007) publication, NMFS will evaluate the Southall update and consider next steps at the time rather than commit to any timeframe in advance.

Comment 20: One commenter suggested that the Verboom and Kastelein's (2005) unpublished report, specifically the ''discomfort threshold,'' be included for consideration in the Guidance.

Response: NMFS reviewed Verboom and Kastelein (2005) and concluded the data are more relevant for consideration in future behavioral effects guidance.

Sound Sources

Comment 21: Some commenters indicated that the Guidance appears to focus on five sound sources (*i.e.,* underwater detonations, seismic airguns, impact pile drivers, vibratory pile drivers, and sonar). They recommended the document consider other sound sources that have the potential to result in noise-induced hearing loss and provide a list of these potential sources within the Technical Guidance, so that other sounds sources are given explicit recognition.

Response: The Technical Guidance identifies the received levels, or thresholds, above which individual marine mammals are predicted to experience changes in their hearing sensitivity for acute, incidental exposure to all underwater anthropogenic sound sources. NMFS believes providing a list of all potential sounds sources within the Technical Guidance is unnecessary and would limit the document's utility (*e.g.,* if there was a new source that was not specifically listed).

Comment 22: Multiple commenters remarked that the Guidance's definitions of ''non-impulsive'' and ''impulsive'' sounds are vague (*i.e.,* NMFS does not define what is meant by ''high peak sound pressure level'' or ''rapid rise time'') and do not objectively distinguish between these two types of sound. The commenters recommended that clear, technical definitions be included. Further, commenters noted that impulsive sounds become increasingly continuous with distance, due to multipath arrivals and other factors, and may have continuous components even at short distances due to reverberation and requested NMFS also consider waveform data at the location of the marine mammal to categorize sound sources.

Response: The Technical Guidance relied on defining sound sources based on previously established definitions and standards (*i.e.,* American National Standards Institute (ANSI)). NMFS categorized sound sources as impulsive or non-impulsive based on temporal characteristics of the sound at the source. The definition of an impulsive sound source in the Technical Guidance relates specifically to noise-induced hearing loss and specifies the physical characteristics of an impulsive sound source, which likely gives impulsive sounds a higher potential to cause auditory injury than non-impulsive sounds. Unfortunately, these standards do not provide quantitative definitions for terms like ''high'' peak sound pressure level and ''rapid'' rise time, especially in the context of underwater sources.

NMFS acknowledges that sound propagation is complex and the physical property of sounds change as they travel through the environment. The July 2015 Draft Guidance proposed a methodology for examining when impulsive sounds are less likely to possess the physical characteristics that make them more injurious (*i.e.,* peak sound pressure level and pulse duration). This proposed methodology underwent an independent peer review (Guidance's third peer review). However, based on comments received during the public comment period for the 2015 Draft Guidance, NMFS decided the proposed methodology would benefit from by further research, removed the proposed methodology from main Guidance document, and highlighted it in the Research Recommendations, Appendix B. Included in the Technical Guidance's Research Recommendations is a call to identify sound characteristics associated with injury, which may allow for more

detailed definitions in future iterations of this Guidance.

Comment 23: One commenter suggested that the Guidance definition of impulsive sound sources as those with signals less than one second in duration could possibly capture sources that are not truly impulsive and recommended that impulsive sources be defined as those which exceed some threshold of impulse, defined as ''the time integral of a force over the time that the force is applied (ANSI 1994).'' Another commenter suggested characterizing impulsive sources based on metrics which consider rise time, crest factor, or the signal kurtosis (*i.e.,* statistical quantity that represents the impulsiveness ''peakedness'' of the event). A follow-up comment acknowledged that kurtosis in the time domain may not be practical and suggested considering kurtosis in the frequency domain.

Response: The terms impulsive and non-impulsive as defined in the Technical Guidance are based on several ANSI standards. If action proponents are unclear which category their source might fit, they may contact NMFS for further discussion. NMFS acknowledges that the additional factors suggested by the commenters could be useful for defining source types. However, these are not currently commonly used descriptors by action proponents or those conducting marine mammal noise-induced hearing loss studies (*i.e.,* data are not typically collected and published using these metrics), and would not be easily implementable at this time. Additional metrics can be considered as more data become available in a broader array of metrics. A better understanding of appropriate metrics has been identified as an area for recommended research in Appendix B of the Technical Guidance. In regards to using kurtosis in the frequency domain, NMFS re-examined this metric based on the comment received. However, upon evaluation, it was determined that this metric is still not currently practical to implement.

Comment 24: The Commission recommended that the 2015 Finneran Technical Report definitions of impulsive and non-impulsive sounds be adopted by NMFS and used in all contexts, including MMPA Level B behavioral harassment.

Response: The Technical Guidance definitions of impulsive and non-impulsive sounds comply with ANSI definitions and were subject to independent peer review (third peer review). These specific definitions were chosen to capture those physical characteristics that make a sound more or less injurious in terms of noise-induced hearing loss. The Technical Guidance does not address direct behavioral impacts from sound and so does not adopt definitions that bear on behavior. Classification of sound sources in terms of behavioral harassment will be examined when we develop guidance for these types of impacts.

Comment 25: Multiple commenters expressed concern that seismic waterguns produce higher frequency sounds than seismic airguns and should not be used to set thresholds for airguns.

Response: NMFS established Technical Guidance for all impulsive sounds based on the currently available data, which may not include every potential sound source to which a marine mammal could be exposed. Watergun data were used to represent airguns, as well as impact pile driving for most hearing groups. However it should be noted that the HF cetacean TTS onset impulsive thresholds are derived directly from data obtained from a harbor porpoise exposed to a single airgun. Incorporating marine mammal auditory weighting functions into exposure models allows for the consideration that airguns predominantly produce lower frequencies compared to waterguns.

Comment 26: A group of commenters expressed concern the Guidance will restrict the use of marine vibrators, which are designed to be more environmentally friendly by avoiding the generation of sound in the ''best hearing'' range of most marine animals, and generate a significantly lower overall sound pressure level throughout the frequency band relative to seismic airguns.

Response: The Technical Guidance does not restrict or allow any activity. It sets out science-based thresholds for the onset of auditory impacts based on our evaluation and synthesis of available data. Decisions about various sound-generating activities are outside the scope of the Technical Guidance.

Comment 27: A commenter noted that when considering sound source characterization, recording equipment can be limited in bandwidth and dynamic range (*i.e.,* equipment may not be able to accurately characterize the sound source).

Response: NMFS agrees that fully characterizing the complete spectrum of a sound source, within the hearing ranges of marine mammals, is essential to accurately assess potential impacts, as is ensuring that sources meet manufacturer specifications (*i.e.,* sometimes sources are capable of producing sounds outside their specified bands, which have the potential to fall within the hearing range of marine mammals; Deng *et al.,* 2014; Hastie *et al.,* 2014). This factor is important in considering the potential of a sound source to impact a specific hearing group, and text addressing this point has been added to the Technical Guidance.

Comment 28: One commenter remarked that the Guidance was unclear whether NMFS will require sound source verification (SSV), associated with the application of the Guidance's acoustic thresholds. The comment noted that conducting a SSV poses a complicated and unnecessary burden on operations because the results are highly variable due to constantly changing conditions in the environment.

Response: The Technical Guidance does not impose any such requirements. NMFS has added text to the introduction of the Technical Guidance to clarify this point.

Metrics

Comment 29: One commenter recommended additional clarification on various sound metrics to prevent confusion between the peak sound pressure level (PK) used in the current Guidance and maximum RMS SPL used to describe prior NMFS thresholds.

Response: NMFS agrees and added clarification to the Technical Guidance to distinguish between metrics used in this document and those associated with previous thresholds, as well as including *definitions of these metrics in the Glossary (Appendix E).*

Comment 30: One commenter requested clarity on the definition of ''peak pressure'' used in the Guidance, which the commenter assumes to be the equivalent of a ''zero-to-peak'' value. This commenter further indicated that the Guidance has been inconsistent in converting between ''peak-to-peak'' and RMS values to ''zero-to-peak'' values.

Response: NMFS has defined peak sound pressure level in the Glossary (Appendix E) and has clarified the definition in the Technical Guidance to indicate a zero-to-peak value. NOAA disagrees that there are inconsistencies in the Technical Guidance because there have been no conversions made between zero-to-peak and peak-to-peak sound pressure levels or from RMS sound pressure to any other metric anywhere in this document.

Comment 31: To match what was provided in the Finneran Technical Report (Appendix A of July 2015 Draft Guidance), the Commission and some other commenters recommended that NMFS only provide dual metrics for PTS onset for impulsive sources (*i.e.,*

remove peak pressure metric threshold for non-impulsive sources). Conversely, a commenter was not supportive of removing the peak pressure thresholds for non-impulsive sources, as was suggested in the 2016 Proposed Changes document. Finally, there was some confusion as to how and when the PK threshold needs to be considered based on the updates in the 2016 Proposed Changes document.

Response: Upon further evaluation, NMFS agrees and has removed the PK thresholds for non-impulsive source in the Technical Guidance, since it is highly unlikely that the dominant metric for non-impulsive sources will be the peak sound pressure level. However, the Technical Guidance caveats that if a non-impulsive sound has the potential of exceeding the PK threshold associated with impulsive sources, these thresholds should still be considered. Thus, in the Technical Guidance, there remain dual criteria associated with impulsive sources (*i.e.,* applicant should consider whichever threshold results in the largest effect distance (isopleth)).

Comment 32: A few commenters remarked SEL_{cum} is not a standardized acoustic notation and that the Guidance should adhere to existing standards in terms of terminology, definitions, symbols, and acronyms in order to promote clarity and reduce confusion. It was also recommended that NMFS work with standards-setting bodies to develop a consistent system of notation for marine bioacoustics applications (*e.g.,* ANSI or International Organization for Standardization (ISO)).

Response: NMFS acknowledges that neither the 2013 nor the 2015 Draft Guidance documents consistently used notations complying with available standards. The final Technical Guidance has been revised to better reflect ANSI standards (*e.g.,* terminology, abbreviation, and symbols). Further, NMFS is aware of the work of ISO 18405 to develop standards specifically for underwater acoustics and will re-evaluate the Guidance's notations in future updates once the ISO work becomes finalized.

Comment 33: One commenter noted an inconsistency in the Guidance with both PK and SEL_{cum} acoustic thresholds being derived from the same study. The commenter noted that if the energy from a transmission does not cause an impact at a given frequency because of an animal's reduced sensitivity (or capability) to hear that signal, then the ability to be impacted by the PK should also be reduced for that frequency.

Response: NMFS does not agree there is an inconsistency in how data were assessed. Data from Lucke *et al.* (2009) were used to derive both thresholds for HF cetaceans exposed to impulsive sources. For MF cetaceans, both thresholds come from belugas exposed to waterguns (Finneran *et al.,* 2002). For both the Lucke *et al.* (2009) and Finneran *et al.* (2002) study, TTS onset was recorded in multiple metrics, with two of these metrics (*i.e.,* PK and SEL_{cum}) directly used in the Technical Guidance. NMFS disagrees that auditory weighting functions are appropriate for use with the PK metric, as direct mechanical damage associated with sounds having high peak sound pressures typically does not strictly reflect the frequencies an individual species hears best (*i.e.,* why PK thresholds should be considered unweighted/flat-weighted within the entire frequency band of a hearing group).

Comment 34: Multiple commenters noted that the SEL_{cum} metric within the Guidance is used under the assumption that a low amplitude/long signal having an equal SEL_{cum}, as a high amplitude/short signal, will have the same effects on the auditory system (*i.e.,* the Equal Energy Hypothesis (EEH)). A commenter further stated that the EEH may be correct in certain conditions, but that an increasing body of evidence indicates that the EEH does not hold true for most marine mammal sound exposures. It was suggested that as more data become available, NMFS should perform more analyses to determine what model or equation best fits the EEH and revise the acoustic thresholds to more accurately reflect the potential for TTS changes with duration and amplitude.

Response: NMFS agrees that EEH may not be valid for all exposure situations. However, the Technical Guidance provides acoustic thresholds in the SEL_{cum} metric, based on the belief that the EEH is the best means of incorporating this metric (also recommended by Southall *et al.,* 2007). NMFS maintains that despite the shortcomings, having a metric that includes the duration of exposure is critical for predicting effects of noise on marine mammal hearing. The evaluation of appropriate metrics and EEH has specifically been identified as an area where more research is needed (Guidance Appendix B).

Comment 35: One commenter indicated since ''SEL'' is the accumulated acoustic energy in a signal and cumulative by definition, whether calculated over one second or a single pulse event, the Guidance's use of ''SEL_{cum}'' to describe cumulative sound exposure is unnecessary. The commenter suggested NMFS should simply use the abbreviation ''SEL''.

Response: NMFS agrees that the SEL implies accumulation. The ANSI definition indicates that accumulation occurs over a stated time interval, which is typically referenced to one second. In order to clarify that the duration of accumulation in the Guidance is not one second (*i.e.,* 24 hours), NMFS chose to use the notation $SEL_{cum.}$

Use of Data From Captive Marine Mammals

Comment 36: Multiple commenters indicated that the use of data from captive individuals was a poor proxy (*e.g.,* over-estimate TTS onset or hearing thresholds, may be habituated or have different survival tactics) for their free-ranging counterparts and suggested that data from captive bottlenose dolphins be adjusted to be more representative.

Response: NMFS acknowledges that captive individuals may be habituated to their test environment, making them less than ideal proxies for their free-ranging counterparts for studying behavioral reactions to noise. However, we believe habituation has minimal effects on testing auditory capabilities and the impacts of noise on hearing, which is the focus of this Technical Guidance.

For example, NMFS notes that data from Castellote *et al.* (2014), from free-ranging belugas in Alaska, indicate of the seven healthy individuals tested (3 females/4 males; 1 subadult/6 adults), all had hearing abilities ''similar to those of belugas measured in zoological settings.'' Thus, from this one study, it appears that for baseline hearing measurements, captive individuals might be an appropriate surrogate for free-ranging animals. However, this is currently the only study of its kind, and more research is needed to examine if this trend applies to other species (see Appendix B: Research Recommendations).

NMFS also finds an adjustment to bottlenose dolphin data is unnecessary. The Technical Guidance methodology for deriving marine mammal auditory weighting functions incorporates data from a multitude of species (~20 species), beyond just bottlenose dolphins, and is considered representative based on the best available science.

Comment 37: Several commenters expressed concern over the ages of many of the captive individuals used in TTS studies as not being representative (*e.g.,* thresholds obtained from younger bottlenose dolphin in Johnson 1968 are on average 10 dB lower than from older individuals) and considers them sources of uncertainty. Many commenters suggested that data from older

individuals should either be adjusted or excluded from consideration.

Response: NMFS disagrees that data from older individuals needs to be excluded or adjusted and notes that Houser and Finneran (2006) did a comprehensive study on the hearing sensitivity of the Navy bottlenose dolphin population (*i.e.,* tested 42 individuals from age 4 to 47 years; 28 males/14 females) and found that high-frequency hearing loss typically began between the ages of 20 and 30 years. For example, at frequencies where this species is most susceptible to noise-induced hearing loss (*i.e.,* 10 to 30 kilohertz (kHz)), these are the frequencies where there is the lowest variability in mean thresholds between individuals of different ages. Additionally, for harbor seals, similar levels of TTS onset were found in Kastelein *et al.* (2012a) for individuals of 4 to 5 years of age compared to the individual from in Kastak *et al.* (2005), which was 14 years old. For belugas similar levels of TTS were measured in Popov *et al.* (2014) for an individual 2 years old compared to those used in Schlundt *et al.* (2000), which were 20 to 22 years old or 29 to 31 years old.

Further, Houser and Finneran 2006 attribute the lower thresholds recorded by the individual from Johnson (1968) to differences in methodology (*i.e.,* Johnson (1968) used behavioral protocol to test hearing versus electrophysiological methodology by Houser and Finneran (2006)). The Technical Guidance relies primarily on behavioral data associated with hearing and threshold shift measurements, as opposed to those obtained via other means (*e.g.,* auditory evoked potentials (AEP)) because we consider these data to be most representative of hearing ability and noise-induced hearing loss, which further eliminates the need for any adjustment.

Comment 38: One commenter indicated that studies show that marine mammals tend to avoid disruptive sound sources, which could significantly diminish the potential for noise-induced hearing loss. Therefore, the commenter suggests that the data collected in laboratory experiments are likely to result in overestimates of exposure because the subjects are exposed to longer and louder sounds than they would be in the natural environment.

Response: NMFS agrees that when considering exposure durations for animals under realistic exposure conditions, generally, it is predicted that most individuals will only be in the closest ranges to a sound source/activity for a minimal amount of time (*e.g.,* animals are capable of moving horizontally and vertically in the water column to reduce exposure, and/or individuals are exposed to mobile sources). Thus, using laboratory data from animals exposed to unusually long, continuous durations of sound (*i.e.,* animals cannot leave exposure scenario and the level during exposure remains constant) may not best reflect scenarios expected to be encountered by wild individuals, when exposed to sound over long periods of time. However, measurements of TTS from laboratory studies are the only data currently available, and they remain informative regarding sound exposure that may impact marine mammal hearing. Appendix B of the Guidance recommends future TTS studies to address exposures animals are likely to receive in the natural environment and provide more representative results.

Marine Mammal Hearing Ranges

Comment 39: One commenter noted that the establishment of hearing groups is fundamentally flawed because it is based on the assumption that similar exposures will result in similar effects in all group members. The commenter believes it is important to consider species differences in behavior (*e.g.,* movement away from the noise source) when calculating cumulative exposure associated with PTS onset.

Response: NMFS agrees that marine mammal behavioral responses could result in differences in noise exposures and accumulation scenarios (*i.e.,* SEL_{cum}). However, NMFS disagrees that such responses necessarily indicate that hearing physiology is dissimilar or that levels causing noise-induced threshold shifts are dissimilar between species within a hearing group. Further, differences in behavioral responses to sound will be considered in the development of behavioral effects thresholds.

Comment 40: One commenter indicated that the method for determining the limits of the functional hearing ranges was not clearly indicated in the Guidance and suggests that NMFS should indicate how the limits were obtained for each group. Another commenter indicated that the term ''functional hearing range'' is intended to convey the range over which the majority of the species' hearing ability is found. However, there are at least two examples of a species' ability to hear a signal outside its functional hearing range (*i.e.,* false killer whale and Risso's dolphin (Au *et al.,* 1997)).

Response: Based on the revised methodology for establishing marine mammal auditory weighting functions (Appendix A), NMFS has replaced the concept of functional hearing range with the establishment of what the Technical Guidance terms ''generalized hearing range'' for each hearing group. The latter is recommended for consideration associated with flat weighting for PK thresholds and when determining general risk of auditory impacts from noise. The generalized hearing ranges were chosen based on the approximate 65 dB threshold from the normalized composite audiogram. NMFS believes that outside the generalized hearing range, the risk of auditory impacts from sounds (*i.e.,* TTS or PTS) is considered to be either zero or very low (the exception would be if a sound above/below this range was determined to have the potential to cause physical injury, *i.e.,* lung or gastrointestinal tract injury from explosives) and added additional information to clarify this in the Technical Guidance.

NMFS is aware of the Au *et al.* (1997) paper, which examines the effect of the 75 Hz acoustic thermometry of ocean climate (ATOC) signal on hearing sensitivity of a single false killer whale and single Risso's dolphin, both mid-frequency (MF) cetaceans. Hearing thresholds for both species, from this study, were 139 dB or higher (false killer whale: Thomas *et al.,* 1988; Risso's dolphin: Nachtigall *et al.,* 1995). Thus, this ATOC signal is considered beyond the generalized hearing range of MF cetaceans.

Comment 41: Several commenters questioned the justification used to support the PW and OW pinnipeds' upper hearing limit in the Technical Guidance. The commenters noted that newer studies have consistently shown that 75 kHz is a more reasonable upper cutoff for PW pinnipeds underwater. These commenters recommended that NMFS choose the median value, not the most conservative value, for the PW pinniped upper hearing range limit. For OW pinnipeds, the 2013 Draft Guidance does not clearly explain why 40 kHz was selected as a high-frequency cut-off for OW pinnipeds instead of 50 kHz reported in Finneran and Jenkins (2012).

Response: As indicated in the previous comment/response, NMFS has provided generalized hearing ranges by marine mammal hearing group. The generalized hearing ranges are supported by available pinniped audiogram data that were used to derive the composite audiogram for this group (Terhune 1988; Kastak and Schusterman 1999; Kastelein *et al.,* 2009; Reichmuth *et al.,* 2013; Sills *et al.,* 2014; and Sills *et al.,* 2015). The generalized frequency ranges are intended to be broad enough to encompass the hearing range of the

entire hearing group (*i.e.,* choice of using 65 dB threshold compared to 60 dB threshold typically used to define human and other terrestrial mammal hearing ranges). Thus, NMFS disagrees that using a median is preferred. For PW and OW pinnipeds, the upper range based in the finalized Technical Guidance is 86 kHz and 39 kHz, respectively.

Comment 42: One commenter noted that current ESA and MMPA analyses are based on data collected while monitoring previous activities, with little of that data having been analyzed by hearing group. The commenter suggested that until more data are available, it will be difficult to find data upon which to base the analyses.

Response: NMFS disagrees that it will be difficult to complete analyses and believes that hearing group data and marine mammal auditory weighting functions provided in the Technical Guidance are based on the best available science and can be applied to any source. Additionally, the Technical Guidance states that the application of marine mammal auditory weighting functions should be completed after data collection (*i.e.,* auditory weighting functions should not be applied beforehand), with the total spectrum of sound preserved for later analysis (*i.e.,* if weighting functions are updated or if there is interest in additional species, data can still be used).

General Auditory Weighting Functions

Comment 43: NMFS' exclusion of AEP data in establishing marine mammal composite audiograms and auditory weighting functions was criticized by several commenters. These commenters noted that by including AEP datasets, the statistical power of the assessment would be improved.

Response: In deriving marine mammal composite audiograms, NMFS established an informal data hierarchy in terms of assessing these types of data. Specifically, audiograms obtained via behavioral methodology provide the most representative presentation (most sensitive) on hearing ability, followed by AEP data, lastly by mathematical models for species where no data are available (*i.e.,* low-frequency or LF cetaceans). Thus, the highest quality data available for a specific hearing group should be used, which for all hearing groups, except LF cetaceans, is behavioral. Additional clarifying text on this informal data hierarchy has been provided in the Technical Guidance.

It also should be noted that marine mammal AEP audiograms have been based almost exclusively on measurements of the auditory brainstem response, and thus do not take into account contributions to hearing from higher centers of the brain and auditory nervous system, and no means have been established for ''correcting'' AEP data so that they may be more comparable to those obtained via behavioral methods. AEP thresholds are typically elevated compared to behavioral thresholds in a frequency-dependent manner, especially at lower frequencies (*e.g.,* Szymanski *et al.,* 1999; Yuen *et al.,* 2005; Houser and Finneran 2006); therefore including the low-frequency AEP data in the composite audiogram would cause an artificial increase in audiogram low-frequency slope and cause the resulting weighting function to be more narrow at low frequencies.

Despite not directly including AEP audiograms in the development of a hearing groups' composite audiogram, these data were evaluated to ensure species were placed within the appropriate hearing group and to ensure that a species for which only AEP data were available were within the bounds of the composite audiogram for that hearing group. Further, AEP TTS data are presented within the Guidance for comparative purposes alongside TTS data collected by behavioral methods illustrating that the AEP TTS data are within the bounds (the majority of the time above) of those collected by behavioral methods (*i.e.,* Figures A18 and A19).

Comment 44: One commenter remarked that the Guidance may change as improved information becomes available, which means that auditory weighting functions may also change. The commenter suggested that NMFS develop a mechanism for allowing updates until a widely-accepted weighting procedure for marine mammals is standardized by expert consensus (*e.g.,* through the ANSI or ISO standardization processes).

Response: NMFS agrees that as additional data become available, the auditory weighting functions, among other factors, may require modification. For that reason, NMFS has added specifications to the Technical Guidance indicating that auditory weighting functions should be applied *after* data are collected (*i.e.,* during data collection, the complete spectrum of sound should be collected) to ensure they are available for re-analysis if updated weighting functions become available. The Technical Guidance also establishes protocols for evaluating new data and updating the document.

Comment 45: Multiple commenters noted that each of Guidance's hearing groups contains species whose sound production and regions of best hearing sensitivity do not overlap to a high degree. A few commenters further added that applying results from one or two aging bottlenose dolphins to all members of a hearing group is inadequate.

Response: The auditory weighting functions are meant to assess risk of noise-induced hearing loss and not necessarily encompass the entire range of best hearing for every species within the hearing group. NMFS' use of auditory weighting functions is consistent with how weighting functions are used in human noise standards, which is to assess the overall hazard of noise on hearing. Specifically, the human auditory weighting function provides a ''rating that indicates the injurious effects of noise on human hearing'' (OSHA 2013). While these weighting functions are based on regions of equal loudness and best hearing, they are meant to reflect the susceptibility of the ear to noise-induced threshold shifts, and as such, the region of enhanced susceptibility to noise exposure may not perfectly mirror a species' region of best hearing (*e.g.,* TTS data from bottlenose dolphin, belugas, and Yangtze finless porpoise support this).

Further, updated methodology in the July 2015 revised Draft Guidance used composite audiograms based on multiple species to derive marine mammal auditory weighting functions. Thus, data from more than just bottlenose dolphins were used to derive these functions (*i.e.,* MF cetacean composite audiograms are derived using data from eight different species).

As for how animal age could impact hearing susceptibility, please see Response to Comment 37.

Comment 46: Multiple commenters expressed concern that the Guidance's marine mammal auditory weighting functions are invalid, since they are based on assumptions that have not been subject to uncertainty analysis for frequencies below 3 kHz.

Response: NMFS disagrees that there is greater uncertainty for frequencies below 3 kHz, since audiogram data were collected for frequencies below 3 kHz for a multitude of species in the MF and HF cetacean and PW and OW pinniped hearing groups (*e.g.,* see Figure A5 in Technical Guidance). Further, low-frequency data from the composite audiogram is used to directly determine the slope of the weighting function.

Comment 47: A commenter requested clarification on what NMFS intended by the term ''smaller isopleth'' in discussing the effects marine mammal

auditory weighting functions have on exposure modeling results.

Response: The Technical Guidance thresholds associated with a hearing group themselves do not change depending on how much a sound may overlap a group's most susceptible frequency range. Instead, how weighting functions affect exposure modeling/analysis is related to the size of the isopleth (area) associated with the threshold based on how susceptible that particular hearing group is to the particular sound being modeled. For example, a hearing group could have different size isopleths associated with the same threshold, if one sound was within its most susceptible frequency range and the other was not (*i.e.,* sound in the most susceptible hearing range will result in larger isopleth compared to sound outside the most susceptible hearing range). We have provided additional text in the Technical Guidance to clarify this concept.

Comment 48: One commenter expressed concern as to the practicality of obtaining and maintaining modeled sound field results for broadband sources (*e.g.,* airguns or impact pile drivers) in order for weighting functions (current or revised) to be applied at a later date.

Response: The Technical Guidance recommends that marine mammal auditory weighting functions be applied after sound field measurements have been obtained (*i.e.,* post-processing; auditory weighting functions should not be applied beforehand), with the total spectrum of sound preserved for later analysis (*i.e.,* if weighting functions are updated or if there is interest in additional species, data can still be used). This recommendation applies to *actual field measurements* and *not* modeling results. The final Technical Guidance includes additional text to clarify this point.

Uncertainty and Statistical Analyses Associated With Auditory Weighting Functions

Comment 49: Several commenters expressed concern about uncertainty in the development of the marine mammal auditory weighting functions and acoustic thresholds, especially because of the reliance on mean and median values without reporting variation (*i.e.,* methodology does not account for variability/confidence intervals associated with small sample sizes). Alternative methodologies to account for uncertainty were suggested for consideration (*e.g.,* inverse Bayesian formulations with Markov-chain Monte Carlo and Metropolis-Hastings sampling methods; Wright 2015; Potential Biological Removal (PBR); human noise standards (NIOSH 1998)).

Further, Wright (2015) claimed that inconsistencies within the methodology used to establish the auditory weighting functions and acoustic thresholds contributed to uncertainty; namely, that: (a) The hearing threshold (audiogram)-to-TTS onset component, on a per individual basis, is neglected (recommends calculating audiogram-to-TTS onset for each individual); (b) it is inappropriate for non-adjusted (non-normalized) TTS onset data points for individuals to be fit to composite audiograms; and (c) there is a discrepancy between the frequency of best sensitivity for the composite audiogram and exposure function, which results in the weighting/exposure function gain parameters (*i.e.,* parameters ''*K*'' and ''*C*'') underestimating TTS onset.

Finally, it was requested that NMFS (1) provide the underlying data used to derive the weighting functions so that uncertainty and statistical analyses can be evaluated by those outside NMFS and (2) delay the Guidance's finalization until this outside process can be completed.

Response: NMFS acknowledges the small sample size associated with the available marine mammal data used to derive weighting functions and thresholds presents challenges. However, the Technical Guidance's methodology is designed to predict the mostly likely (realistic) outcome using the central tendencies (means/median) associated with the best available science. The intent is not to predict the worst-case-scenario by relying on the lowest limits for every possible step in the methodology (*i.e.,* Technical Guidance is for accurately predicting exposures and not for establishing ''safe limits,'' where there is limited to no risk). Despite not using statistical methodology to report variability, Appendix A provides the full suite of available data for consideration and comparison to the values used in the Technical Guidance (*e.g.,* Figures A5 and A6 for audiogram data and Figures A18–A20 for TTS data). With respect to data used to derive composite audiograms, auditory thresholds are typically defined by the 50 percent detection threshold (ANSI 2009), and equal loudness contours used to derive human weighting functions are derived using averages (*e.g.,* Fletcher and Munson 1933), as opposed to relying on the lowest value (*i.e.,* there is a precedence for using medians/means). Additionally, it is important to remember that the derived weighting functions are based on more than the just the composite audiogram (*i.e.,* the audiogram shapes are adjusted to best fit the existing TTS data) resulting in a function that is always broader than the composite audiogram (*e.g.,* Figure A17).

Human noise risk assessments (NIOSH 1998) are not equivalent (or applicable) to thresholds provided in the Technical Guidance, since they are used to predict hearing loss based on a daily 8-h exposure over 40 years (*i.e.,* current marine mammal TTS are only available to predict exposure periods of 24 h or less and cannot be used to assess or predict risk associated with a lifetime of exposure; See Response to Comment 79) and are based on larger sample sizes of human listeners (*e.g.,* NIOSH 1972 and 1997 risk assessments were based on a sample size of 1,172 people). As pointed out in Wright 2015, NIOSH criteria provide a 95 percent confidence interval for their human noise standards but also allows for an excess risk of material hearing impairment, defined as an average threshold elevation for both ears that exceeds 25 dB, of eight percent (*i.e.,* human noise standards limits do allow for some risk; risk is not zero percent and specifically that eight percent of the population is still capable of developing noise-induced hearing loss exceeding 25 dB when exposed to the 85 dB NIOSH level). For how the Technical Guidance's TTS thresholds encompass available data, see Response to Comment 72 and Appendix A, Figures A18–A20, which provide all available marine mammal TTS data collected via both behavioral and AEP techniques). Additionally, methodology associated with the calculation of PBR (*i.e.,* use of twentieth percentile) was based on simulations specific to a particular dataset (Wade 1998) and is not applicable to the Technical Guidance.

With respect to specific comments made in Wright (2015), NMFS disagrees there are inconsistencies in the methodology in the Technical Guidance. Specifically related to the assertion in part (a) of the comment that NMFS neglected the hearing threshold (audiogram)-to-TTS onset component: In re-examining available data sets, in terms of offset between hearing threshold and TTS onset, only six individuals (three MF cetacean, one OW pinniped, and two PW pinnipeds) have measurements available for both hearing threshold and TTS onset. Differences in TTS onset at frequency of best hearing (from the exposure function) and threshold at frequency of best hearing (from the composite audiogram) are reflected by hearing group in the Technical Guidance in Table A7 (Appendix A, ''Difference'' column).

Unfortunately, comparisons between the difference hearing thresholds and TTS onset from the same individual to differences depicted in Table A7 are difficult, since none of the individual TTS data occur in the frequency of best hearing. However, TTS onset (SEL_{cum} metric) predicted from the exposure function is within 1 dB or lower compared to TTS onset based on these five individuals. Further, this specific recommendation from Wright (2015), to consider data from individual audiograms, counters other recommendations made elsewhere in that paper that data from the same species should be considered correlated and combined to reduce issues associated pseudoreplication (See Response to Comments 53).

As for non-adjusted TTS data points being fit to normalized composite audiograms (point b), the Guidance's methodology examines the best fit of TTS data points to *both* original (non-normalized) and normalized composite audiogram data to establish the ''delta *T*'' parameter (*i.e.,* both non-normalized and normalized data are used to derive delta *T*). Additionally, the ''*K*'' parameter is derived using the original (non-normalized) audiogram data and is defined to minimize the square error between the exposure function and TTS data for each hearing group.

As to point (c), NMFS acknowledges that there is a shift (discrepancy) in frequency between the best sensitivity in terms of the composite audiogram and resulting exposure function for a hearing group, but disagrees that this leads to an underestimation of TTS onset. Any difference in minimum value between the exposure function and audiogram is an outcome of the fitting process used to fit the exposure function to the available TTS data, and thus, reflects the underlying TTS data. This shift in minimal value results in an identical (PW and OW pinnipeds) or lower TTS onset threshold (MF and HF cetaceans) than predicted by considering the composite audiogram alone (See Table A7 vs. A8 in Technical Guidance). Further, the ''*C*'' parameter results in a minimal adjustment to the final TTS onset threshold (maximum 1 dB; See Table A8 in Appendix A).

Finally, NMFS believes it is unnecessary to provide underlying datasets associated with the Technical Guidance and delay publication, since the majority of the underlying data (with a few exceptions) are published and freely available.

Comment 50: Commenters indicated that sound reception is an essential ability of marine mammals, particularly cetaceans, for survival, and these commenters, citing Nowacek *et al.* (2007), indicated that PTS can lead in many cases to mortality of individuals which may have serious consequences for the survival of populations.

Response: NMFS agrees that the ability to accurately interpret the surrounding environment via hearing is essential for marine mammals. However, NMFS' review of Nowacek *et al.* (2007) as well as all other available information did not locate any statements that PTS can result in mortality.

Comment 51: Some commenters recommended that audiograms from individuals of the same species should be treated as correlated in the determination of composite audiograms. Further, in order to determine a conservative representative sensitivity for each hearing group, the highest measured sensitivity, lowest threshold (behavioral or AEP), per frequency per species should be assessed. Commenters indicated that this would be a more cautionary approach than relying on the mean.

Response: NMFS does not disagree that audiograms from individuals of the same species may be correlated but disagrees with the recommendation to collapse available audiograms, so that there is only one per species. Employing this recommendation would further reduce already limited data sets (see Response to Comment 53 regarding pseudoreplication recommending a similar procedure and similar issue with data limitations) For NMFS' response relating to the use of AEP data, see Response to Comment 43, and for our response regarding relying on the lowest threshold, see Response to Comment 49. NMFS believes that the Guidance's current approach maximizes the use of the best available science.

That said, based on this comment, NMFS re-evaluated AEP data available for consideration in the development of composite audiograms. The inclusion of AEP resulted in only minimal changes to the composite audiogram (*i.e.,* majority of AEP audiogram data had equal, if not higher thresholds, than those collected by behavioral methods, which would only result in a less conservative composite audiogram).

Comment 52: Based on Wright 2015, commenters recommended that NMFS develop marine mammal auditory weighting functions based on envelope functions, which incorporate all available audiogram points. Additionally, these same commenters objected to NMFS' comparison between the Guidance's weighting functions and inverted audiograms (*i.e.,* Guidance's weighting functions are broader than inverted audiograms that have been suggested). The commenters stressed that inverted audiograms have only been recommended for individual species and not entire hearing groups.

Response: NMFS disagrees with this recommendation (See Response to Comment 49). As far as comparing the Technical Guidance's weighting functions to inverted audiograms, NMFS agrees that the comparison to inverse audiograms may not have been applicable and removed it from the Technical Guidance. Nevertheless, the point that the Technical Guidance auditory weighting functions are broader than the corresponding hearing group's composite audiogram, as well as any audiogram associated with an individual species, is still valid.

Comment 53: Pseudoreplication was highlighted as a significant deficiency of the Guidance by several commenters. It was recommended that NMFS evaluate TTS on a species-by-species basis, rather than on an individual basis.

Response: NMFS understands the concerns regarding pseudoreplication. However, marine mammal hearing and noise-induced hearing loss data are limited, not only in the number of species but also in the number of individuals available. Unfortunately, any means of minimizing pseudoreplication would further reduce these already limited data sets. Specifically, with marine mammal behavioral TTS studies, behaviorally-derived data are only available for two MF cetacean species (*i.e.,* bottlenose dolphin, beluga) and two PW pinniped species (*i.e.,* harbor seal and northern elephant seal), with OW pinnipeds and HF cetaceans only having behaviorally-derived data from one species. Thus, NMFS believes that the current approach makes the best use of the given data (See Response to Comment 72 for more information on the inclusion of available TTS data). Appropriate means of reducing pseudoreplication may be considered in the future, if more data become available.

Comment 54: Several commenters requested that a list of data gaps and research recommendations should be included in the Guidance to inform funding groups and the research community of critical data needs.

Response: NMFS agrees and has identified several data gaps and added a Research Recommendations Appendix (B) to the Technical Guidance.

Low-Frequency Cetacean Hearing and Auditory Weighting Functions

Comment 55: Several commenters questioned the justification for

expanding the upper hearing limit of LF cetaceans beyond that proposed in Southall *et al.* (2007) in the 2013 Draft Guidance (*i.e.,* 22 kHz to 30 kHz).

Response: NMFS has replaced the use of functional hearing range with generalized hearing range, which is derived based upon more consistent methodology (See Response to Comment 40).

Comment 56: One commenter indicated that recent data suggest that within the LF cetacean hearing group, new divisions are appropriate to consider (*e.g.,* Ultra Low: blue and fin whales; Low: bowhead and right whales; Low to Mid: humpback and gray whales; and Mid: minke whale groups).

Response: NMFS acknowledges that as more data become available, marine mammal hearing ranges may warrant modification, or that it may be appropriate to divide LF cetaceans into subdivisions. However, NMFS does not believe there currently are enough data to support further LF cetacean divisions and subsequent auditory weighting functions, especially since so little direct information on hearing is available for this hearing group.

Comment 57: Several commenters questioned the sufficiency of data to support the LF cetacean auditory weighting function provided in various versions of the Draft Guidance. Some recommended using the M-weighting function provided by Southall *et al.* (2007) until more data could be collected or developing a LF cetacean weighting function based on the known low-frequency vocal range of this hearing group, ensuring that the weighting function encompasses ultra-low-frequencies (*i.e.,* <30 Hz) used by blue and fin whales. One commenter further suggested that the LF cetacean weighting function be flat down to 0 Hz to ensure low-frequency sound does not compromise critical communication signals.

Counter to those recommendations, other commenters expressed concern that the low-frequency slope parameter (''*a*'' parameter) of the LF weighting function (*i.e.,* 20 dB/decade) was not scientifically supportable and should be more reflective of mammalian data (30 to 40 dB/decade). Furthermore, the selection of this parameter was criticized because it resulted in an exposure function that predicts an unrealistically low-frequency hearing (80 dB threshold above best hearing occurring well below 1 Hz; *e.g.,* only a −26 dB weighting function amplitude at 10 Hz), which is not reflective of what is known about other low-frequency specialist mammals, like humans and kangaroo rats. Additionally, these same commenters commended NMFS for not using vocalizations, especially frequencies associated with blue and fin whales, as a direct means for deriving the LF cetacean predicted audiogram.

Finally, NMFS received a comment from a group of subject matter experts offering information on ambient noise levels below 2 kHz from Clark and Ellison (2004) as additional scientific justification for the LF cetacean weighting function contained in the March 2016 Proposed Changes.

Response: NMFS acknowledges the limited data predicting LF cetacean hearing sensitivity but disagrees that utilizing the M-weighting functions from Southall *et al.* (2007) or creating a weighting function that is flat to 0 Hz reflects the best available science. Via the Technical Guidance public comment and peer review processes, NMFS determined that the methodology in the March 2016 Proposed Changes document best reflects the currently available data for deriving marine mammal auditory weighting/exposure functions, including those methods to derive surrogate parameters for LF cetaceans.

Regarding the appropriateness of using vocal range to establish weighting functions, see Response to Comment 45. As for the frequencies used by fin and blue whales, NMFS acknowledges that the weighting function amplitude is > -16 dB at frequencies below 30 Hz. However, predicted hearing sensitivity for LF cetaceans based on ambient noise levels from Clark and Ellison (2004) offer additional scientific support to NMFS' weighting function below 2 kHz (for direct comparison to the 2016 LF cetacean weighting function see: *https://www.regulations.gov/#!documentDetail;D=NOAA-NMFS-2013-0177-0155*). Additionally, Cranford and Krysl (2015) predicted that since low-frequency sound propagates further than those containing higher frequencies, this might explain the potential mismatch between the frequencies associated with best hearing and vocalizations for LF cetaceans. Furthermore, creating a weighting function to ensure communication signals are not compromised is beyond the scope of this document (the Technical Guidance weighting functions are meant to reflect a hearing group's susceptibility to noise-induced hearing loss).

As for the low-frequency slope associated with the LF cetacean weighting function, NMFS believes it is reflective of currently available predictive data for this hearing group. For example, predictive audiograms based on anatomical modeling for minke whale (Tubelli *et al.,* 2012), fin whale (Cranford and Krysl 2015), and humpback whale (Houser *et al.,* 2001) all indicate this hearing group may have a shallower low-frequency slope compared to other terrestrial and marine mammals. Specifically, Tubelli *et al.* (2012) offers that the ''extra'' 20 dB difference in the low-frequency slope between other cetaceans (HF and MF cetaceans) may be a result of the inner ear anatomy of this hearing group (*i.e.,* open auditory bulla and the resulting pressure differences along the ''glove finger''). Finally, ambient noise levels with slopes ~20 dB/decade support the predicted low-frequency slope for this hearing group (Wenz 1962).

Comment 58: Multiple commenters indicated the LF cetacean exposure function's ''*K*'' parameter, which the commenters classified as a metric of dynamic range, was arbitrary and inappropriately based on data from a beluga and a harbor porpoise for impulsive sounds.

Response: NMFS disagrees with the commenters' classification of the exposure function's ''*K*'' parameter as a metric of dynamic range and the criticism. This parameter is set to match the weighted threshold for TTS or PTS onset based on available data in the SEL_{cum} metric (*i.e.,* NMFS' dynamic range methodology is for deriving PK thresholds; See Response to Comment 87). NMFS agrees that for impulsive sounds, TTS data are extremely limited (*i.e.,* beluga data from Finneran *et al.* (2002) and harbor porpoise data from Lucke *et al.* (2009)). Nevertheless, the methodology for establishing a surrogate value for this parameter for hearing groups where no data are available is consistent with the derivation of other surrogate parameters within the Technical Guidance.

Comment 59: Numerous commenters, including the Commission, identified an inconsistency in how NMFS derived the ''F_2'' parameter, which predicts the high-frequency portion of the composite audiogram for LF cetaceans. Specifically, this parameter was adjusted to achieve a threshold at 30 kHz of 40 dB relative to the lowest threshold. However, in earlier discussions of the low-frequency parameter ''F_1,'' the March 2016 Proposed Changes document mentioned predictive modeling of LF cetacean hearing indicating 40 dB of best sensitivity occurring at ~25 kHz (*i.e.,* not 30 kHz). Commenters were unclear if this was an error or if 30 kHz was chosen deliberately and if so, why.

Response: NMFS acknowledges the potential for confusion and chose to

adjust the ''F_2'' parameter to achieve a threshold value at 30 kHz of 40 dB relative to the lowest threshold as a means to account for uncertainty associated with this hearing group and to avoid too gradual of a cutoff at the high-frequency end (*i.e.,* decision to adjust parameter at 30 kHz vs. 25 kHz). Additional text was added to the final Technical Guidance for more clarity on this decision.

Comment 60: Numerous commenters criticized the potential for ''takes''/isopleths/mitigation ranges to increase dramatically based on updated weighting functions/thresholds for LF cetacean hearing group (*i.e.,* comparison between 2015 Draft Guidance and 2016 Proposed Changes document).

Response: NMFS acknowledges that the LF cetacean predicted weighting function and PTS onset thresholds in the 2016 Proposed Changes document/Technical Guidance are more conservative than those presented in the 2015 Draft Guidance. However, in our judgement, the changes reflect the best available science and account for uncertainty associated with this particular hearing group where data are limited. In response to how the Technical Guidance could impact mitigation ranges, see Response to Comment 11.

Mid- and High-Frequency Cetacean Hearing and Auditory Weighting Functions

Comment 61: Multiple commenters indicated that the Guidance's auditory weighting functions do not represent the hearing sensitivities of all included species, indicating that bottlenose dolphins are not appropriate surrogates for killer whales or sperm whales, which are known to have regions of greatest hearing sensitivities at much lower frequencies, and that harbor porpoises and finless porpoise may not represent the auditory ability of Irrawaddy, Ganges River, Commerson's, and Peale's dolphins.

Response: See Response to Comment 45. In the Guidance, a broader range of species were considered in the development of the MF auditory weighting function via the composite audiogram. Specifically, for MF cetaceans, the composite audiograms are derived from data compiled from eight species (bottlenose dolphins, beluga, false killer whale, Risso's dolphin, striped dolphin, and tucuxi) and 22 individuals of these species, of which only six individuals are bottlenose dolphins. Further, two individuals of these are killer whales, which from these available audiogram data indicate thresholds consistent with other MF cetaceans (*i.e.,* current audiograms do not indicate this species has better low-frequency hearing than other MF cetaceans). Currently, there are no direct measurements available on sperm whale hearing (only an incomplete audiogram exists for a stranded sperm whale neonate from Ridgway and Carder (2001)). NMFS considers sperm whale placement within MF cetaceans appropriate based on Ketten (2000), which classified sperm whales as having Type I cochlea, similar to other MF cetaceans and considers the MF cetacean auditory weighting function representative of all species within this hearing group based on the best available science.

For HF cetaceans, composite audiograms are derived from more limited data (*i.e.,* four individuals from two species: harbor porpoise and Amazon River dolphin; AEP data are only available for Yangtze finless porpoise). Thus, it is unclear how these two species represent others in this hearing group, since no other data are available (*i.e.,* no data on hearing ability of Irrawaddy, Ganges River, Commerson's and Peale's dolphins). The need for additional audiograms, particularly from the HF cetacean hearing group was added as a Research Recommendation (Appendix B) in the Technical Guidance.

Comment 62: One commenter noticed an error in the audiograms used to construct the composite audiogram for HF cetacean in the July 2015 Draft Guidance. They indicated that the harbor porpoise audiogram by Kastelein *et al.* (2002), was later revised due to a problem with the analysis of the sound stimuli, with the correct audiogram found in Kastelein *et al.* (2010). Thus, it is recommended that NMFS use the 2010 data, instead of the 2002 data.

Response: NMFS re-evaluated the data used to construct the composite audiogram for HF cetaceans and confirmed the assertion made by the commenter that the wrong data set was initially used. This error has been corrected for in the final Technical Guidance.

Comment 63: Several commenters, including the Commission, were in support of moving the white-beaked dolphin from MF cetaceans to HF cetaceans.

However, numerous other commenters indicated that moving this species to a new hearing group was not scientifically supported. The Navy specifically recommended that this species remain in the MF cetacean hearing group based upon the following scientific support: (1) A hearing threshold comparison between white-beaked dolphin (Nachtigall *et al.,* 2008), bottlenose dolphin (Johnson 1967), and harbor porpoise (Kastelein *et al.,* 2002; Kastelein *et al.,* 2010) indicating white-beaked dolphin do not have significantly better high-frequency hearing than the bottlenose dolphin (for figure depicting comparison see: *https://www.regulations.gov/#!documentDetail;D=NOAA-NMFS-2013-0177-0152*); (2) white-beaked dolphin echolocation are more similar to those of bottlenose dolphins (*i.e.,* resembling broadband, exponentially-damped sinusoids containing only a few cycles; Au 1980; Rasmussen and Miller 2002) in contrast to echolocation emissions for harbor porpoises and other species placed into the HF cetacean hearing group (*e.g., Cephalorhynchus* sp., *Lagenorhynchus australis*) (*i.e.,* more narrowband, longer in duration, and contain mostly high-frequency energy; Tougaard and Kyhn 2010); and (3) Ketten's (2000) categorization of the cochlea of white-beaked dolphin and bottlenose dolphin as ''Type II,'' while the harbor porpoise cochlea is categorized as ''Type I'' (*i.e.,* reinforcing the idea that the white-beaked dolphin is acoustically more-closely related to the bottlenose dolphin than to porpoises).

Response: Upon re-evaluation, NMFS concurs that based on currently available data, it is more appropriate for the white-beaked dolphin to remain in the MF cetacean hearing group. The scientific support to move this species from MF to HF cetaceans is not to the level of that of two other members of the genus *Lagenorhynchus* Peale's and hourglass dolphins. (*Note:* In the Navy's justification above, Ketten (2000) did not analyze white-beaked dolphin cochlea but instead Pacific and Atlantic white-sided dolphins (also members of the genus *Lagenorhynchus*)).

Comment 64: The Commission supported NMFS' decision to include the newly published audiogram of a harbor porpoise (Kastelein *et al.,* 2015) in the March 2016 Proposed Changes document. However, other commenters indicated that NMFS provided incomplete information on this dataset making it impossible to conduct a meaningful comparison to the July 2015 Draft Guidance.

Response: NMFS disagrees that incomplete information was provided in the March 2016 Proposed Changes document associated with the addition of a newly published harbor porpoise audiogram (Kastelein *et al.,* 2015). The addition of this audiogram did not change the fundamental methodology associated with the Guidance (*i.e.,* Appendix A), rather it only added a

newly available dataset, as will be the case as new data become available in the future.

Pinniped Hearing and Auditory Weighting Functions

Comment 65: NMFS received a comment indicating that there are not enough data to establish two separate weighting functions for pinnipeds.

Response: NMFS disagrees. There are audiogram data available from three species (eight individuals) of OW pinnipeds and four species (eight individuals) of PW pinnipeds. Further, based on NMFS' review of the literature, phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range. This is believed to be because phocid ears are anatomically distinct from otariid ears in that phocids have larger, more dense middle ear ossicles, inflated auditory bulla, and larger portions of the inner ear (*i.e.,* tympanic membrane, oval window, and round window), which make them more adapted for underwater hearing. If one examines the composite audiograms for these two pinniped groups, distinct differences appear, supporting NMFS' decision to establish two distinct pinniped hearing groups.

Comment 66: Numerous commenters questioned the justification for the removal of some of the pinniped datasets based on non-representative hearing in the March 2016 Proposed Changes document. The commenters noted that masking is a common issue with obtaining audiogram data for animals in captivity and indicated that NMFS must provide a specific explanation for why these particular datasets contain unique masking problems that are unlike the other datasets used in the Guidance. An additional commenter requested NMFS provide the exact procedures as to how and why it removed unrepresentative or outlier data from its datasets and consider that one reason for unrepresentative data is due to exposure to anthropogenic sound. Other commenters, including the Commission, were in favor of removing these datasets.

Response: Decisions to exclude data were based on comparison of the individual published audiograms and ambient noise characteristics with those for other individuals of the same or closely related species. The most common reasons for excluding an individual's data were abnormal audiograms featuring high-frequency hearing loss (typically seen in older animals) or ''notches'' in the audiogram, or data collected in the presence of relatively high ambient noise which resulted in elevated thresholds. Excluding these data ensured that the composite audiograms were not artificially elevated, which could result in unrealistically high impact thresholds. NMFS disagrees that previous exposure to anthropogenic sources is the basis for deeming the datasets unrepresentative, since currently available audiograms are derived from captive individuals (*i.e.,* there is no indication that anthropogenic sound in captivity is directly impacting auditory thresholds, other than via possible masking).

Comment 67: NMFS received several comments indicating that the proposed changes to the PW pinniped ''*a*'' parameter, which defines the slope of the low-frequency portion of the weighting function, were arbitrary and unsupported. Additionally, a commenter noted an inconsistency in this parameter (*i.e.,* ''*a*'' parameter value provided did not seem to match what was depicted on the PW pinniped weighting function). Finally, the commenters criticized that the March 2016 Proposed Changes document illustrated (Figure PC5) that the PW exposure functions was only based on one data point.

Response: The PW pinniped ''*a*'' parameter is directly derived from PW pinniped behavioral audiograms (8 individuals of 4 species). Additionally, the 2016 Proposed Changes document removed unrepresentative datasets, which resulted in a steeper slope (''*a*'' = 1.0) compared to the 2015 Draft Guidance (''*a*'' = 0.8).

Upon re-evaluation, NMFS agrees that there was a slight discrepancy with the ''*a*'' parameter depicted in the weighting function provided for PW pinnipeds in the March 2016 Proposed Changes document. This has been remedied with the correct value portrayed for this hearing group's auditory weighting function.

Finally, the March 2016 Proposed Changes document (Figure PC5) illustrates available TTS data for all hearing groups. NMFS agrees that data are limited particularly for PW pinnipeds (*i.e.,* two TTS onset data points). Nevertheless, it should be noted that the exposure/weighting functions are not merely based on TTS onset data but also incorporate available audiogram data each for hearing group.

Comment 68: A commenter questioned if there was an error in Appendix A, specifically with the best-fit parameters associated with the derivation of the composite audiogram (original and normalized data) for PW pinnipeds in Table A4. These tables indicate an unusually high ''F_1'' value (excess of 300 kHz) and an anomalous ''T_0'' value of negative decibels.

Response: Upon re-evaluation, NMFS determined that the best-fit parameters for PW are not anomalous or in error. These parameters mentioned by the commenter are merely fitting parameters for equation 9 in Appendix A and do not directly correspond to a particular feature of the audiogram (*i.e.,* F_1 does not represent the frequency at which the audiogram reaches a specific value). The value for F_1 influences the frequency at which thresholds begin to plateau near the best sensitivity. Very large values for F_1 (and the accompanying small value for T_0) simply reflect little or no plateau in the thresholds in the region of best sensitivity. In many respects, the specific numeric values applied to Equation 9 in Appendix A of Technical Guidance are not key; what matters are the resulting shapes of the composite audiograms and how well they match the underlying threshold data.

Comment 69: One commenter suggested that the two species of PW pinnipeds (*i.e.,* harbor seal and northern elephant seal) mentioned in the Guidance are commonly found in close proximity to human population centers and are not good proxies for Arctic and Antarctic seals.

Response: The Technical Guidance relies on more data than from harbor seal and northern elephant seal. Additionally data from two Arctic species (spotted seal from Sills *et al.* (2014) and ringed seal from Sills *et al.* (2015)) were used to derive composite audiogram for PW pinnipeds. Thus, data from four different PW pinniped species were used to derive composite audiograms for this hearing group. NMFS believes currently available data are representative of all PW pinnipeds, including polar species.

Application of Auditory Weighting Functions

Comment 70: One commenter requested that NMFS provide additional clarification as how the auditory weighting functions were applied to the data used to develop acoustic thresholds (*e.g.,* were the auditory weighting functions applied to the entire raw data before calculating the SEL_{cum}) and examples of software that could be used to apply these weighting functions.

Response: Marine mammal auditory weighting were directly incorporated in the derivation of thresholds associated with non-impulsive sounds and then were directly applied in the derivation of impulsive thresholds, since only limited data are available (Details in

Appendix A). Section 2.2.4 of the Technical Guidance (Main Document) provides more detail on how to implement/apply these weighting functions. For a source consisting of a single tone, the application of auditory weighting functions is a straight forward process (*i.e.,* only single frequency to consider). For broadband sounds, the application is more complicated (*i.e.,* must consider multiple frequencies), which is why NMFS included alternative weighting factor adjustments for when frequency weighting functions cannot be fully incorporated (Appendix D).

Comment 71: One commenter noted that the LF cetacean acoustic thresholds do not appear to be adjusted based on the LF cetacean auditory weighting functions and asked whether the threshold for LF cetaceans exposed to an airgun/watergun with most of its energy in their primary hearing band as measured in the experiment should be adjusted.

Response: Marine mammal TTS data for impulsive sources exist only for two hearing groups (*i.e.,* MF and HF cetaceans). For other groups, alternative methodology was developed using MF and HF cetaceans as surrogate data and assuming the relationship between impulsive and non-impulsive thresholds is conserved among hearing groups (*i.e.,* methodology resulted in a TTS onset threshold for impulsive sources that is 11 dB lower than the TTS threshold onset for non-impulsive sources). NMFS disagrees that any adjustment needs to be made to the LF cetacean acoustic thresholds. Weighting functions are also implemented in exposure modeling, which will take into account whether or not a sound falls within a hearing group's most susceptible frequency range.

Comment 72: A few commenters indicated that Tougaard *et al.* (2013) note that auditory weighing functions cannot themselves be ''conservative'' if applied in establishing and then implementing acoustic thresholds. To achieve a conservative approach, the commenters suggested the application of a more tailored function at the acoustic threshold determination stage in combination with a wider and more energy-inclusive function at the implementation stage. The commenters suggested that NMFS use a function normalized to a lower level (*e.g.,* −3 dB) for establishing acoustic thresholds, while using functions normalized to a higher level (*e.g.,* 0 dB) for estimating the number of ''takes'' when implementing these thresholds. The commenters provided the example that JASCO Applied Sciences typically incorporates a 3-dB precautionary adjustment in their propagation modeling to account for uncertainty.

Response: The Technical Guidance explains that auditory weighting functions are considered within both the data evaluation and implementation processes, as pointed out by Tougaard *et al.* (2013) (now published Tougaard *et al.,* 2015). NMFS acknowledges that adjustments during the data evaluation process that result in a lower threshold could potentially translate to smaller isopleths, if a source has energy in frequencies outside a hearing groups most susceptible hearing range (*i.e.,* weighting functions are essentially filters; their application results either in the same size or in smaller isopleths or the same or lower thresholds). Tougaard *et al.* (2015) provide some important factors for consideration when applying weighting functions in both the context of data evaluation and implementation. However, NMFS does not find it appropriate to normalize the Technical Guidance's acoustic thresholds, as suggested by the commenters, as there are no data to support doing so. Further, several conservative assumptions were applied to the derivation of acoustic thresholds to account for uncertainty and limited data (see Response to Comment 77). Finally, NMFS' application of auditory weighting functions is consistent with what has been done for humans (*i.e.,* A-weighted thresholds used in conjunction with A-weighting during implementation).

As for the 3-dB adjustment JASCO Applied Sciences makes to the results of their propagation models, this adjustment is based on their best fit analysis, where 90 percent of all their measured values fall within 3 dB of the mean level (*e.g.,* see any recent SSV reports from JASCO Applied Sciences, like Beland *et al.* (2013), for more details). NMFS used this same premise to re-examine the TTS onset thresholds for non-impulsive sources for data collected via both the preferred behavioral technique as well as AEP methodology, the next tier in our data hierarchy (the same analysis could not be done for impulsive sources, where data are limited to two studies). It was found that for all hearing groups, except PW pinnipeds, the TTS onset thresholds encompassed more than 90 percent of available TTS data (MF cetaceans, only two points below the onset threshold, with maximum point only 2 dB below), and in some situations 100 percent of TTS data (*i.e.,* OW and HF cetaceans; although both these groups are data limited). For PW, which are also data limited, only one of the five available data points was below the TTS onset threshold (*i.e.,* 1 dB below the threshold). Thus, NMFS believes any further adjustments to the thresholds are unnecessary and that they provide realistic predictions, based on currently available data, of noise-induced hearing loss in marine mammals.

Temporary Threshold Shifts

Comment 73: One commenter cautioned that a 6 dB threshold shift may be appropriate for testing TTS but should not be confused with the level that is biologically important (*e.g.,* 6 dB corresponds to a roughly 8-fold decrease in the volume in which biologically significant sounds can be detected through passive listening).

Response: The Technical Guidance considers a threshold shift of 6 dB the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability and is typically the minimum amount of threshold shift that can be differentiated in most experimental conditions (Schlundt *et al.,* 2000; Finneran *et al.,* 2000; Finneran *et al.,* 2002). Similarly, for humans, NIOSH (1998) regards the range of audiometric testing variability to be approximately 5 dB. Because the Technical Guidance does not address the biological significance of passive listening, NMFS has set the onset of TTS at the lowest level that exceeds recorded variation and could be considered biologically significant.

Comment 74: One commenter noted that the Guidance appeared to use temporary threshold shift (TTS) when it may mean threshold shift (TS) and suggested that NMFS use terms consistently and clearly.

Another commenter requested the Guidance make clear that a threshold shift is a symptom of noise exposure rather than an impact (*i.e.,* a manifestation of an anatomical alteration that deters or eliminates auditory responses). The commenter emphasized that impairments arise from other acoustic features associated with what the ear receives (*i.e.,* not necessarily characteristics associated with the source), and there are multiple components to any received sound (*e.g.,* received level, timing, intensity, sensitivity, time course, recovery period), all of which may act singly or in concert to impact an ear at any frequency and for any species, whether in air or water. As such, the commenter suggested the Guidance include a brief statement indicating the choice of using a threshold shift to assess the effects of noise on hearing is one driven by practicality (*i.e.,* Guidance does not address all critical features associated

with impacts from sound, but there is an awareness and expectation that other features require investigation and that these may ultimately alter the thresholds according to their interplay and relative potential for harm).

Response: NMFS has revised the Technical Guidance to clearly distinguish between a threshold shift (temporary or permanent) as a term which indicates the increase in threshold of audibility (*i.e.,* 6 dB for onset of TTS and 40 dB for onset of PTS) versus the exposure level (*i.e.,* acoustic threshold) associated with that shift.

NMFS agrees that a threshold shift is a ''symptom'' rather than an ''impact.'' However, in the context of the Technical Guidance and in terms of how the acoustic thresholds will be used, the term/concept of ''impact'' is one that readers of the document will be more familiar with. NMFS also agrees that features of the signal at the receiver are most important, but are often most difficult to determine. The Technical Guidance includes more information explaining when choices are based on considerations of practicality because of complexity and makes various research recommendations to address these issues (Appendix B).

Comment 75: Several commenters requested clarification on the application of TTS onset acoustic thresholds presented in the Guidance under NMFS' relevant statutes, including the Commission, which recommended all applicants be required to use the Guidance's TTS onset thresholds. The Commission requested further clarification on how the Guidance's TTS thresholds are to be implemented in conjunction with NMFS' generic RMS SPL 120/160 dB behavioral thresholds.

Response: The Technical Guidance sets forth the levels at which TTS and PTS onset are likely to occur. In this **Federal Register** Notice (Regulatory Context), we describe our current agency practice for assessing take and refer readers to that section (this information previously appeared in the Draft Guidance Regulatory Context section). In short, PTS onset is treated as Level A harassment under the MMPA and harm under the ESA (as well as injury under NMSA as administered by NOS' National Marine Sanctuary Program), and NMFS recommends using the Technical Guidance to estimate take from PTS exposures in regulatory compliance documents.

Regarding TTS, with the exception of underwater explosives (see Regulatory Context), NMFS does not currently recommend calculations of TTS exposures separate from assessments of Level B harassment or ESA harassment using the prior existing thresholds for enumerating behavioral takes. NMFS is in the process of evaluating behavioral effects thresholds and intends to develop related guidance for use in its regulatory processes. Because the effects in consideration when TTS is incurred are behavioral and temporary in nature, much like behavioral responses, we intend to address those effects in the context of regulatory compliance at that time.

Comment 76: Multiple commenters indicated an inconsistency in the Guidance in the characterization of TTS among NOAA's various statutes (*i.e.,* NMFS collectively does not consider TTS an auditory injury, but TTS is considered injury under the broad definition of the NMSA) and suggested NOAA implement a consistent regulatory interpretation of the term injure when addressing acoustic exposures on marine mammals.

Response: The Guidance is a technical document that compiles, interprets, and synthesizes the scientific literature, to produce updated, scientifically-based, impact thresholds for assessing the effects of noise on hearing. Although these changes may necessitate new methodologies for calculating impacts, the application of the thresholds under applicable statutes remains consistent with past and current NMFS practice. See Regulatory Context section in this **Federal Register** Notice. That information was moved out of the main body of the Guidance to emphasize the distinction between the scientific exercise of developing updated thresholds, which is science-based, and the application of thresholds in the regulatory arena, which is also informed by policy and legal considerations.

Comment 77: Multiple commenters recommended that NMFS consider threshold shifts requiring extended recovery periods (*e.g.*, in excess of 24 hours), as well as nerve and other related damage, to be included in the definition of injury. The commenters expressed concern that NMFS did not consider the results of Kujawa and Liberman (2009) and Lin *et al.* (2011), and suggested the Guidance state that the PTS acoustic thresholds will be conservatively revised in the future to reflect any new evidence showing correlations of injurious effects of TTS below these new acoustic thresholds.

Response: NMFS recognizes this is an area where additional study is needed. NMFS has included several conservative assumptions in its protocol for examining marine mammal hearing loss data (*e.g.*, using a 6 dB threshold shift to represent TTS onset, not directly accounting for exposure levels that did not result in threshold shifts, assuming there is no recovery with the 24-h baseline accumulation period or between intermittent exposures, etc.).

The Technical Guidance includes information from Kujawa and Liberman (2009) and Lin *et al.* (2011) as a way to illustrate the complexity associated with noise-induced hearing loss and as an area where more research is needed (Appendix B). NMFS finds that these studies would be informative for use as qualitative considerations within the comprehensive effects analysis. NMFS acknowledges the complexity of sound exposure on the nervous system, and will re-examine this issue as more data become available.

Comment 78: One commenter indicated that in Germany, TTS is considered the onset of injury. The commenter suggested that since many countries may adopt this Guidance rather than developing their own, NMFS make clear that choosing PTS as onset for injury is based on U.S. legal considerations.

Response: This **Federal Register** Notice contains a section explaining the current U.S. regulatory context for using the acoustic thresholds contained in the Technical Guidance.

Comment 79: Several commenters indicated that chronic, repeated exposures to levels capable of inducing TTS can lead to PTS and recommended that NMFS consider cumulative effects of all anthropogenic sound sources in terms of long-term exposure in the development of the Guidance's acoustic thresholds, as well as within the context of NEPA. Specifically, it was suggested that, apart from the accumulation time applied to any single activity (*i.e.*, acoustic thresholds), NMFS add repeated, intermittent exposure to multiple acoustic activities to its table of ''qualitative factors for consideration.''

Response: NMFS acknowledges that cumulative effects and long-term exposure of noise are important considerations in understanding the impacts of sound on marine mammals and that repeated exposures initially resulting in TTS have the potential to result in PTS. However, they are beyond the scope of this document, in terms of developing quantitative acoustic thresholds and are being considered by other mechanisms within or supported by NOAA (*e.g.*, NOAA Ocean Noise Strategy and CetSound Projects; National Research Council's Ocean Studies Board's Cumulative Effects of Human Activities on Marine Mammal Populations Study). The Technical Guidance focuses on acute exposures to

noise and threshold shifts associated with these types of exposures. Additionally, the TTS data currently available for marine mammals only support deriving thresholds for these types of short-term exposures, rather than long-term/chronic exposure. Having data to address more realistic exposure scenarios, including repeated exposures, have been identified within our Research Recommendation Appendix (Appendix B).

NMFS has added cumulative exposures to its recommended qualitative factors to consider within a comprehensive effects analysis. The discussion of qualitative factors has been moved from the main Guidance document to Appendix B (See Response to Comment 130).

Comment 80: One commenter recommended that since seismic activities do not cause PTS and TTS ''during realistic field conditions,'' there is no need to apply the new PTS and TTS acoustic thresholds levels in the Guidance to these activities.

Response: NMFS notes that the only marine mammal TTS data available are from laboratory studies, and that there are no TTS data available for any sound source in more realistic field conditions. Nevertheless, marine mammal laboratory studies offer vital information on exposure situations that can result in noise-induced threshold shifts, and NMFS used this information to establish acoustic thresholds for free-ranging animals exposed to anthropogenic sound sources in their natural environment. NMFS is not aware of any evidence to indicate that seismic sound sources should be treated differently than any other anthropogenic sound source.

Uncertainty and Statistical Analyses Associated With Temporary Threshold Shift Data

Comment 81: Several commenters suggested that where a potential for uncertainty exists NMFS should proceed cautiously and consider adjustments to thresholds that are most protective of the animals. One commenter specifically urged NMFS to consider the precautionary principle within the Guidance and NOAA's need to comply with its own statutes.

Response: The Technical Guidance identifies areas of uncertainty and data limitations (Appendix A) and has made several conservative assumptions to account for this (*e.g.*, defining TTS onset as the level just above where individual variability in hearing occurs, not accounting for exposures where TTS onset did not occur, etc.). See Response to Comment 49 for more details on the issue of uncertainty. Additionally, a Research Recommendations section has been added to identify data gaps (Appendix B). As more data become available, NMFS can explore more sophisticated means of analysis.

As previously indicated, the acoustic thresholds do not represent the entirety of an effects analysis, but rather serve as one tool to help evaluate the effects of a proposed action and make findings required by NOAA's various statutes. Further, other measures can be employed to account for uncertainty beyond considerations within the Technical Guidance (*e.g.*, mitigation/monitoring requirements).

Comment 82: Multiple commenters recommended that the procedures for establishing acoustic thresholds be revised to use the lowest available value or correction factor to account for the full representation of the distribution of TTS/PTS onset in a population rather than using the median value if five or more data points are available. Specifically, commenters expressed concern that NMFS is producing a threshold closer to the population mean (*i.e.*, the point at which the first ''take'' is estimated to occur is roughly 50 percent of any given population will have already experienced a threshold shift) by relying on the median value. These commenters suggested that NMFS investigate statistical methods that deal with probabilities and distributions (*e.g.*, Bayesian statistics), which particularly account for individual variability and uncertainty over the mean of threshold shift onset. These commenters further indicated that these statistical methods or a simple less precise alternative where the lowest reported TTS onset value was always selected (instead of the median) would likely provide a more appropriate estimation of TTS/PTS onset for a given proportion of the population.

Contrary to the comments above, another commenter cautioned against relying on the lowest onset with limited data because these data could be outliers and result in overly conservative acoustic thresholds. The commenter further indicated that overly conservative thresholds could result in unrealistic exposure estimates and suggested NMFS' protocol be modified to examine the distribution of the data and make a reasoned decision about whether the lowest threshold might be an outlier and whether (and how) it should be included in the determination of a threshold.

Response: NMFS incorporated several conservative assumptions into the derivation of the acoustic thresholds to account for uncertainty and variability (see Response to Comment 77). The comment's reference to use of a median value if five or more data points are available refers to proposed methodology from the 2013 Draft Guidance. The 2015 Draft Guidance contained updated methodology for deriving TTS/PTS onset acoustic thresholds which better account for available marine mammal data (see Response to Comment 72).

NMFS used the best available science to develop the Technical Guidance. As more data are collected, NMFS will be better able to identify outliers (*e.g.*, one individual has an unusually high or low threshold or testing procedures led to flawed results) and consider necessary adjustments (*i.e.*, removal of an outlier datum).

Comment 83: Multiple commenters expressed concern associated with the Guidance's low acoustic thresholds for the HF cetacean hearing group. Specifically, the commenters indicated that for impulsive sound, the thresholds are based on data from a single study involving a single animal (harbor porpoise) (Lucke *et al.,* 2009), and for non-impulsive sound, the threshold is based on a single study involving only two animals (Popov *et al.*, 2011). The commenters remarked that both studies have potential biases and uncertainty and urged NMFS to allow for flexibility in the implementation of acoustic thresholds in future regulatory processes.

Response: NMFS acknowledges that, for most hearing groups, data are available only from a limited number of species and a limited number of individuals within that species. The need for more data from all species is highlighted in the newly added Research Recommendation section of the Technical Guidance (Appendix B).

In addition, new data have become available since the NMFS received this comment during the first public comment period. As indicated in the Technical Guidance, the acoustic threshold (SEL_{cum} metric) for HF cetaceans exposed to non-impulsive sound was derived using data from three studies (*i.e.*, Kastelein *et al.*, 2012, Kastelein *et al.*, 2014a, and Kastelein *et al.*, 2014b, not Popov *et al.*, 2011a, which did not derive TTS onset and relied on AEP methodology). These new studies support results from Lucke *et al.* 2009 indicating that harbor porpoises have a lower TTS onset than other cetaceans (*i.e.*, reason for separating MF and HF cetaceans into separate hearing groups).

NMFS recognizes that acoustic thresholds for HF cetaceans, which are based exclusively from harbor porpoise

data, are much lower than other hearing groups, and therefore some additional considerations may be warranted on a case-by-case basis. However, it also should be noted that auditory weighting functions should be considered when evaluating impacts of sound on HF cetaceans, which are most susceptible to injury from higher frequency sounds (*e.g.*, 25 to 60 kHz).

Comment 84: Multiple commenters recommended a precautionary approach (*i.e.*, more conservative thresholds) when applying the Guidance to activities and species in the Arctic.

Response: NMFS recognizes that marine mammals in the Arctic are experiencing increasing pressures from human activities (*e.g.*, climate change, increased commercial activities). However, NMFS does not find that there are data to indicate greater susceptibility of Arctic species to noise-induced hearing loss compared to non-Arctic species. Data from two Arctic species (spotted seal from Sills *et al.*, 2014 and ringed seal from Sills *et al.*, 2015) were used to derive composite audiograms for PW pinnipeds. Additionally, measured underwater hearing of two captive spotted seals (Sills *et al.*, 2014) and two captive ringed seals (Sills *et al.*, 2015) found these species' hearing abilities are comparable to harbor seals. Thus, harbor seals (*i.e.*, only phocid with TTS data are available) are believed to be an appropriate surrogate for ice seal species.

Further, audiogram data from belugas (n=9; more individuals of this species than any other) were specifically used to derive composite audiograms for MF cetaceans. In addition, recent data from Castellote *et al.* (2014), from free-ranging belugas in Alaska, indicate of the seven individuals tested (3 females/4 males; 1 subadult/6 adults), all had hearing abilities ''similar to those of belugas measured in zoological settings.'' Thus, from this study, it appears that for baseline hearing measurements, captive individuals are an appropriate surrogate for free-ranging animals. The Technical Guidance also incorporates TTS data (*i.e.*, TTS onset and TTS growth rate) are available from four individual belugas (*e.g.*, Schlundt *et al.*, 2000; Popov *et al.*, 2014)

Thus, data from Arctic species are directly incorporated into numerous aspects of the Technical Guidance's methodology. These data indicate additional conservative adjustments in determining thresholds unnecessary. Precautionary adjustments may be made elsewhere (*e.g.*, applied in a specific regulatory context of fully evaluating effects, authorizing, and developing mitigation for an action).

Cetacean Temporary Threshold Shift Data

Comment 85: There was concerned expressed that the low TTS onset thresholds for HF cetaceans exposed to impulsive sources results from a AEP study, opposed to one using behavioral methods, and that this violates the methodology of only using behavioral data stipulated in Appendix A of the Guidance. Contrary to this comment, multiple commenters advocated for the inclusion of TTS data derived using AEPs into the Guidance's methodology.

Response: As mentioned in earlier, NMFS established an informal data hierarchy in consideration of the development of the Technical Guidance's composite audiograms and acoustic thresholds (see Response to Comment 43), with the best-representative data being used over other sources. In the case of deriving TTS acoustic thresholds for HF cetaceans, only one dataset is currently available (Lucke *et al.*, 2009), which relies on AEP measurements. Appendix A specifically addresses this issue: ''Note that the data from Lucke *et al.* (2009) are based on AEP measurements and may thus under-estimate TTS onset; however, they are used here because of the very limited nature of the impulse TTS data for marine mammals and the likelihood that the high-frequency cetaceans are more susceptible than the mid-frequency cetaceans (*i.e.*, use of the mid-frequency cetacean value is not appropriate).''

There have been limited comparisons of TTS data collected via behavioral versus AEP methods for any marine mammals, especially marine mammals. There is only one available marine mammal study (Finneran *et al.*, 2007) that found threshold shifts of 40 to 45 dB associated with AEP methods and 19 to 33 dB thresholds shifts measured via behavioral methods. These two methodologies do not provide the same results (*i.e.*, AEP methods consistently produce higher thresholds compared to behavioral techniques), and there is currently no accurate means available to ''correct'' AEP data so that it can be more comparable to those obtained via behavioral techniques.

Comment 86: One commenter requested the Guidance provide additional clarification on the TTS PK acoustic threshold of 224 dB for MF cetaceans and suggested a 226 dB value be used instead, as is cited in Finneran *et al.* (2002).

Response: NMFS notes the Guidance's MF cetacean TTS onset PK threshold is based on the pressure levels originally expressed as pounds per square inch (psi) presented in Finneran *et al.* (2002). This value was then converted from psi to peak pressure levels (*i.e.*, 23 psi is equivalent to PK 224 dB). The PK 226 dB, referred to by the commenter, was a peak-to-peak pressure level and not a peak pressure level (*i.e.*, different metric), which was why it was not directly applied to the Technical Guidance.

Comment 87: The Commission recommended that instead of using the MF cetaceans' PK thresholds as surrogates for other hearing groups where no data are available that NMFS consider dynamic range (*i.e.*, difference between threshold at frequency of best hearing sensitivity and peak pressure threshold) for deriving peak pressure thresholds, as has been used for humans (*e.g.*, 140 dB from Occupational Safety and Health Administration, OSHA). The Commission specifically suggested NMFS apply the measured dynamic range from HF cetaceans to the derive thresholds for LF cetaceans, PW pinnipeds, and OW pinnipeds.

Contrary to the Commission's recommendation, several commenters criticized NMFS' use of dynamic range to predict PK thresholds. Specifically, commenters questioned NMFS use of onset TTS to define dynamic range, since the onset of TTS is not equivalent to the threshold of pain and therefore overly conservative (*i.e.*, different between TTS onset and PTS is approximately 40 dB). Additionally, these commenters indicated that dynamic range data are available for both pinniped hearing groups (Kastak *et al.*, 2005) and should be used instead of surrogate data from MF and HF cetaceans.

Additionally, one group of commenters requested NMFS provide more information on why the median dynamic range for MF and HF cetaceans was used as a surrogate for LF cetaceans.

Response: NMFS evaluated the Commission's recommendation of an alternative methodology for deriving PK thresholds using dynamic range and determined that it is a more valid approach to approximating PK thresholds for hearing groups where no data exist. However, NMFS determined that using the dynamic range for HF cetaceans for other hearing groups was not appropriate and instead used the median of the dynamic range from both MF and HF cetaceans to derive PK thresholds for PW and OW pinnipeds and LF cetaceans.

As for comments criticizing the Technical Guidance's methodology for establishing PK thresholds based on dynamic range, NMFS notes that

''dynamic range'' can have many connotations. In the Technical Guidance, we relate hearing threshold and TTS onset levels, and therefore define dynamic range based on hearing threshold and TTS onset. Furthermore, NMFS does consider a 40 dB threshold shift to represent the PTS onset and uses this value to approximate PTS onset thresholds from available TTS onset data (*i.e.*, TTS growth rate data). NMFS re-evaluated data within Kastak *et al.* (2005) to consider for establishing PK pressure thresholds for pinnipeds, rather than using surrogate MF and HF cetacean data. Within this publication, NMFS could not find any information on dynamic range for pinnipeds or any other publication that provides impulsive data for pinnipeds. Therefore, dynamic range cannot be directly calculated for pinnipeds and surrogate data had to be used.

As for the request for more information on why a surrogate dynamic range from MF and HF cetacean data was used for LF cetaceans, NMFS relied on the methodology used in other situations to derive surrogate values for species groups where data do not exist (*i.e.*, use data from other hearing groups, assuming groups where data are not available fall within the bounds of existing marine mammal data). Until data become available for these hearing groups, NMFS believes this method is an appropriate means of deriving surrogate values.

Comment 88: Multiple commenters expressed concern that the Guidance excludes studies in which TTS was not induced, and that, as a result, the acoustic thresholds could represent exposure scenarios that will not necessarily result in TTS under all conditions. The commenters suggested that Guidance's thresholds should only be used to estimate the number of animals that could potentially experience TTS (*i.e.*, acoustic exposure levels describe potential and not actual TTS onset for all exposure scenarios) and that exposures not inducing TTS be directly included and used to develop the Guidance's acoustic thresholds. The commenters stressed that this distinction is important because the Draft Guidance defines TTS, not ''potential TTS,'' as Level B harassment and that how Level B harassment is estimated has important relevance to the ''small numbers'' and ''negligible impact'' determinations that must be made in support of MMPA incidental take authorizations.

Response: The Technical Guidance itself does not rely upon or address regulatory practice or interpretations. The section of the Draft Guidance that discussed application of thresholds in the regulatory context for informational purposes has been more appropriately placed in this **Federal Register** Notice (see Regulatory Context). However, to account for uncertainty and limited data, the Technical Guidance used a conservative protocol to estimate the onset of TTS (see Response to Comment 77). NMFS agrees that exposure scenarios where TTS could not be induced are not directly accounted for in the development of the quantitative acoustic thresholds. Nevertheless, in some situations, studies where TTS could not be induced are used to evaluate (cross-check) the Guidance thresholds (*e.g.*, HF cetacean pile driving data; MF cetacean seismic airgun data, MF cetacean explosion simulator data). As more data become available, NMFS may explore alternative means of deriving acoustic thresholds (*e.g.*, protocol that directly accounts for scenarios when threshold shifts do and do not occur).

Comment 89: The Commission indicated that TTS data have not been collected for either HF or MF cetaceans below 1 kHz. Further, they recommend that measurements of TTS frequencies lower than 1 kHz and TTS measurements associated with exposure to multiple pulses/hammers strikes be added the Guidance's Research Recommendations (Appendix B).

Response: Although limited, TTS data have been collected at frequencies below 1 kHz for HF and MF cetaceans. Finneran *et al.* (2015) exposed bottlenose dolphins (MF cetaceans) to multiple impulses from seismic airguns measured TTS at a range of frequencies (0.5 to 64 kHz) for three individuals (see Figure 6 in Finneran *et al.*, 2015b). Additionally, Kastelein *et al.* (2015) exposed a harbor porpoise (HF cetacean) to playbacks of offshore pile driving and measured TTS at a range of frequencies from 0.5 to 125 kHz. Finally, Kastelein *et al.* (2014) exposed harbor porpoise (HF cetaceans) to 1 to 2 kHz sonar sweeps and measured TTS at 1.5 kHz. NMFS agrees with the Commission's recommendations for additional research and has added them to Appendix B of the Guidance (*i.e.*, Sound Exposure to More Realistic Scenarios).

Pinniped Temporary Threshold Shift Data

Comment 90: One commenter remarked that pinnipeds are likely to be less sensitive to noise compared to cetaceans and expressed concern that the Guidance's extrapolations using cetaceans as surrogates for pinnipeds may be flawed. Given the current lack of information, the commenter suggested the highest threshold values from any of the cetacean hearing groups (and not any higher) be used to establish the underwater acoustic thresholds for pinnipeds.

Response: In establishing the pinniped thresholds, NMFS used the best available data (*i.e.*, non-impulsive TTS thresholds are based on measurements collected from three individual harbor seals and a single California sea lion) and acknowledges that in some situations where no pinniped data were available, cetacean data were used as surrogate data to derive acoustic thresholds for pinnipeds. As an example, for PK thresholds, data from MF cetaceans and HF cetaceans were used to determine an appropriate dynamic range for pinnipeds, but this surrogate dynamic range was then combined with direct data on hearing thresholds from pinnipeds to derive these thresholds (*i.e.*, combination of pinniped and other marine mammal data). As more direct pinniped data become available, NMFS will re-evaluate these acoustic thresholds. This has specifically been identified as a data gap within the Research Recommendation Appendix (Appendix B) of the Technical Guidance.

Comment 91: A commenter expressed concern that the thresholds for OW pinnipeds were much higher than other hearing groups, especially that the SEL_{cum} thresholds are not much lower than the PK threshold. It was indicated that these values appear anomalous and should be verified.

Response: NMFS re-evaluated the data used to derive the OW pinniped acoustic thresholds. There are only limited data available for this hearing group, with TTS onset thresholds for non-impulsive sources coming from a single California sea lion. This threshold is 18 dB higher than that for PW pinnipeds and at least 20+ dB higher than the thresholds for the cetacean hearing group. Additionally, with the updated methodology to estimate PK thresholds using dynamic range (2016 Proposed Changes document), the OW pinniped PK thresholds have increased by 2 dB compared to the thresholds in the 2015 Draft Guidance. Due to lack of data for OW pinnipeds, surrogate datasets or methodologies to approximate TTS onset for impulsive sounds and PTS onset levels had to be used. These approximations build upon the one data set available for OW pinnipeds. Thus, all the resulting thresholds are higher than those of other hearing groups. This has been highlighted within the Technical

Guidance's Appendix B: Research Recommendations.

Alternative Acoustic Thresholds (Optional Means To Incorporate Weighting Functions)

Comment 92: One commenter suggested that there is no justification or explanation for the process for alternative acoustic thresholds within the 2015 Draft Guidance and that attempts to compare the results of using these alternative thresholds seem to produce conservative (*i.e.*, higher) levels of exposure when compared to the thresholds the encompass the full auditory weighting function.

Response: Based on public comment, NMFS re-evaluated its proposed alternative acoustic thresholds and replaced this methodology with optional weighting factor adjustments (WFAs) that more realistically incorporate marine mammal auditory weighting functions for all hearing groups (not just HF and MF cetaceans) and allow for all action proponents to use the same acoustic thresholds.

NMFS has included additional explanation in the final Technical Guidance's Appendix D. For situations where the full auditory weighting functions cannot be incorporated, updated weighting factor adjustments are provided, which are based on broader, simpler consideration of weighting functions (*i.e.*, relies on using a single frequency that best represents where a particular sound has energy). Incorporating optional WFAs should result in similar if not identical isopleths for narrowband sources and slightly more conservative isopleths (albeit more realistic than the previous alternative threshold methodology) for broadband sources compared to those action proponents that can fully incorporate the Technical Guidance's auditory weighting functions.

Comment 93: The Commission questioned the utility of two sets of thresholds in the Guidance (*i.e.*, weighted and unweighted), noting that if an action proponent can calculate or determine the isopleths (distances) to the relevant thresholds (weighted or unweighted) then that same action proponent should be able to apply the auditory weighting functions. The Commission suggested that NMFS require action proponents to use the best available science, including auditory weighting functions and relevant weighted thresholds, rather than give action proponents the choice of using unweighted thresholds.

Response: NMFS notes that the updated optional WFAs, which replace the Draft Guidance alternative thresholds, are provided for action proponents unable to fully incorporate auditory weighting functions. This is because, especially for broadband sources (which most anthropogenic sources are), this incorporation is not a simple calculation (*i.e.*, it depends upon the spectrum of the source). NMFS regards the practicality of applying more complex, updated thresholds an important consideration. This is why NMFS has provided the simpler optional WFA approach, which allows action proponents to apply weighting in a simpler manner (*i.e.*, most appropriate single frequency). The use of WFAs results in all action proponents using on the same thresholds.

Comment 94: Several commenters suggested that the Guidance provide clear direction on which thresholds should be used and under what specific circumstances. Further, multiple commenters noted that the Guidance's alternative thresholds (updated WFAs in final Technical Guidance) represent a simple and conservative way to present the thresholds and recommended that they be applied to all action proponents. Doing so, the commenters suggested, would simplify implementation for all authorization action proponents, as well as those processing and reviewing the applications, including the associated public comment by increasing transparency and reducing application processing time.

Response: As indicated in the Response to the previous comment, alternative thresholds have been removed from the final Technical Guidance, such that all action proponents are using identical thresholds, regardless of their ability to incorporated marine mammal weighting functions. NMFS appreciates the need for clarity and has included more information in the final Technical Guidance's Appendix D regarding when optional WFAs should be used. Specifically, text has been added to indicate that NMFS recognizes that the implementation of marine mammal auditory weighting functions represents a new and complicating factor for consideration, which may extend beyond the capabilities of some action proponents and that NMFS has developed optional WFAs for those who cannot fully apply weighting functions associated with the SEL_{cum} metric. Action proponents are encouraged to incorporate as many factors, like full auditory weighting functions, into their exposure models as possible.

Comment 95: One commenter suggested that NMFS include a more detailed definition of the term ''narrowband,'' one that includes explanatory text with regard to the derivation, terms and application within the Guidance. Additionally, it was pointed out that NMFS is incorrect to assume that narrowband sources will precisely adhere to manufacture specifications and that harmonics or subharmonics are unusual occurrences with these sources.

Response: NMFS agrees and has included additional clarification in the Technical Guidance regarding the derivation and application of WFAs in Appendix D (see Response to Comment 70). The term ''bandwidth'' is defined in the Glossary (Appendix E). Additionally, based on this comment, NMFS has revised the Technical Guidance to indicate harmonics and sub-harmonics are almost always present and should be considered when evaluating a source. The terms ''harmonics'' and ''sub-harmonics'' have also been added to the Glossary (Appendix E) of the Technical Guidance.

24-Hour Accumulation Period

Comment 96: One commenter suggested the Guidance's SEL_{cum} metric should require that the accumulation period be based on the time an animal is or could be exposed to the sound and not necessarily the time the noise occurs.

Along these same lines, the Commission noted that the accumulation period should account for the biology, ecology, and ecological setting (*e.g.*, semi-enclosed bay, steep-sided underwater canyon) of the affected animals and recommended that for activities that last at least 24 hours, NMFS consult with scientists and acousticians regarding the applicability of an accumulation time for species that occur in a confined or small geographic area during an extended period of time and for activities that may affect resident populations or marine mammals involved in certain behavior states (*e.g.*, feeding, breeding/nursing, socializing). Several other commenters provided similar examples and made similar recommendations.

Response: NMFS agrees that the accumulation time associated with SEL_{cum} metric should be based on the time the animal is exposed, but notes that this can be exceedingly difficult if not impossible or practical to determine (*i.e.*, an animal's movement can vary over space and time).

Further, NMFS acknowledges for exposure scenarios that occur in confined geographic areas with resident populations, case-specific modifications can be made, if appropriate, to the accumulation period to capture the

potential for extended exposure periods for these populations. Various factors could be considered, including consulting with scientists, if appropriate.

Comment 97: One commenter expressed concern that implementing a fixed accumulation period that is not based on physiology could have unintended consequences. The commenter provided the example of when an operation lasts for more than 24 hours, the use of a fixed 24-h accumulation period may result in animals being ''taken'' multiple times and that this may skew the risk assessment.

Response: The Technical Guidance focuses on predicting onset of PTS and TTS, including consideration of energy accumulation. In the regulatory context, NMFS acknowledges that the application of the updated acoustic thresholds for quantifying take could result in scenarios where an animal could be ''taken'' on multiple days (*i.e.*, a stationary source near resident animals; mobile source continuing over multiple days), but this is no different from how take calculations are done under the current thresholds, nor should it skew the broader effects analysis. Ultimately, other factors would have to be taken into consideration within a comprehensive effect analysis, including if the same animals are exposed or ''taken'' on multiple days.

Comment 98: Several commenters recommended that the accumulation period encompass the entire duration of an activity and suggested NMFS revise the Technical Guidance to allow for the option of SEL_{cum} modeling for the duration of the activity, in order to allow action proponents the ability to utilize the approach with the smallest estimated number of marine mammal exposures.

Response: NMFS determined the data currently available for deriving acoustic thresholds do not support an accumulation period beyond 24 hours (*e.g.*, available marine mammal TTS data are only available for shorter duration exposures). Further, a key consideration in accurately accumulating exposure beyond the recommended 24-h period is the ability to accurately predict the location of the receiver relative to the source. Again, the understanding of marine mammal distribution and movement, especially during periods of sound exposure, is limited. These data limitations hamper the ability to make realistic exposure predictions for longer duration exposures. However, NMFS acknowledges that there may be specific exposure situations where this accumulation period requires adjustment and will work with action proponents to make these adjustments (*e.g.*, a resident population found in a small and/or confined area; continuous stationery activity nearby an area where marine mammals congregate, like a pinniped pupping beach). Finally, NMFS recommends use of the approach that produces the most accurate results for an activity (*i.e.*, not necessarily the one that produces the smallest or largest number of exposures).

Comment 99: Multiple commenters requested clarification as to whether the Guidance accounts for the accumulation of sound from multiple activities in the same area and multiple sources/phases associated with a single activity. The commenters requested that an alternative method/metric be developed for multiple sources active in the same area at the same time (*i.e.*, to better address cumulative exposure associated with the entire soundscape). Specifically, the Commission recommended that NMFS require action proponents use the Guidance thresholds for determining the relevant isopleths associated with activities that use multiple sound sources in the same area during the same timeframe (*e.g.*, multibeam echosounders and sub-bottom profilers simultaneously with airguns during a seismic survey, various types of sonar and/or impulsive sources used simultaneously during a military exercise), rather than requiring action proponents to apply the thresholds to discrete sources used during a specific activity.

Response: The Technical Guidance recommends application of the SEL_{cum} metric to assess the impacts of noise on hearing for individual activities/sources. Because current data available for deriving acoustic thresholds are based on exposure to only a single source, this metric is not intended for accumulating sound exposure from multiple activities occurring within the same area or over the same time or for multiple sources within a single activity. Currently, NMFS is unaware of alternative metrics available to assess the impacts of noise on hearing from multiple sound sources. As more data become available, NMFS can re-evaluate the use of this metric for application of exposure from multiple activities occurring in space and time. In other contexts, such as masking, which is expected to occur at much lower levels and much more likely to result from the contributions of multiple sources, NMFS is supporting efforts to better assess the impact of multiple sound sources on marine mammals (*e.g.*, NOAA Ocean Noise Strategy and CetSound Projects; National Research Council's Ocean Studies Board's Cumulative Effects of Human Activities on Marine Mammal Populations Study).

Comment 100: The Commission requested that NMFS provide additional guidance on how action proponents unable to incorporate moving sources should determine the total ensonified area (and consequently the number of ''takes'') and recommended that action proponents unable to model moving receivers and/or sources determined the total ensonified area based on a model accumulating the energy for 24 hours and then multiplying that ensonified area by the marine mammal density to determine the total number of ''takes.'' The Commission's approach does not assume a constant distance from the source, but rather a total ensonified area associated with activity lasting 24 hours (or less if appropriate) and a uniform density.

Response: Instead of the approach recommended by the Commission, NMFS created a simple User Spreadsheet (released with Technical Guidance) to aid action proponents in determining the isopleth associated with their particular activity, if they are unable to employ more sophisticated modeling techniques. The updated simple methodology is based on the concept of ''safe distance'' presented in Sivle *et al.* (2014) for moving sources, with more details presented in Appendix D of the Guidance. The ''safe distance'' is equivalent to isopleths applicants have calculated in the past, with area and marine mammal exposures calculated by the same means (*i.e.*, multiply isopleth times marine mammal density) applicants have used with NMFS' current thresholds (*e.g.*, generic RMS SPL 180/190 dB).

Comment 101: One commenter requested clarification on several questions related to the modeling of exposures using more and less sophisticated methods: (1) Must a model be able to incorporate the movement of both the source and the receivers or at least the receiver? (2) How will NMFS determine whether an action proponent has the ability to model moving receivers or not? (3) What will be the difference between an action proponent employing more sophisticated modeling capabilities versus those with less sophisticated capabilities?

Response: An action proponent is responsible for determining their own modeling capabilities and, depending on the source and/or receiver, this might include movement or not in order to recreate the most realistic source-receiver separation (*i.e.*, variation in spacing between source and receiver over space and time). While NMFS does

not require any particular models be used, they do evaluate the appropriateness of models and associated methodologies used in estimating acoustic exposures on a case-by-case basis in the context of a proposed activity. NMFS has provided an optional User Spreadsheet for action proponents unable to employ more sophisticated modeling on their own. Generally speaking, because it intentionally includes multiple conservative assumptions, we expect the simple, alternative method generally will result in higher estimates of PTS-level exposure (which in turn will translate into higher take estimates). A comprehensive effects analysis for an action would take into consideration the fact that the alternative method results in overestimates.

Comment 102: Several commenters indicated that the Guidance needs to better address the potential of noise-induced hearing loss from more continuous sources that operate 24 hours a day for multiple days (*e.g.*, renewable energy wind farms/tidal operations; communication/navigation beacons). Additionally, a commenter urged NMFS to consider complementary devices operating synchronously in arrays as a continuous sound source, rather than discrete sources. This same commenter requested consideration for continuous noise sources having the potential to displace an animal from critical feeding habitat.

Response: In U.S. waters, NMFS is aware of very few sources with the potential of operating continuously (*i.e.*, 24 hours a day, 7 days a week, year-round). However, renewable energy platforms have the capabilities for these types of continuous operations. NMFS acknowledges that continuous operations can result in higher potential for exposure accumulation, but the majority of renewable energy operations produce relatively low levels of sound (*i.e.*, close to ambient, especially in environments conducive to wave or tidal devices; *e.g.*, Coping *et al.*, 2014; Schuster *et al.*, 2015) that even over an accumulation period of 24-h are unlikely to exceed the PTS onset thresholds. As for the operation of communication/navigation beacons, these types of sources have a multitude of characteristics (*e.g.*, source level, duty cycle, frequency band, beam width/orientation) but generally have relatively short pulse lengths and produce higher frequencies (*i.e.*, greater ability for sound to attenuate) reducing the likelihood of exposure resulting in cumulative effects. Finally, regarding the comment about displacing an animal from critical feeding habitat, the Technical Guidance focuses on the effects of noise on marine mammal hearing and does not address displacement.

As previously addressed in a prior comment, because a sound operates 24-h a day does not necessarily mean a receiver is exposed to that source for that entire period (*i.e.*, marine mammals are capable of moving vertically or horizontally in the water column) or that it is exposed to levels capable of inducing noise induced threshold shifts. In other words, having an accurate understanding of the spatial and temporal overlap between a source and receiver is important in being able to accurately predict exposures.

Recovery

Comment 103: Multiple commenters recommended that the Guidance consider data on marine mammal recovery from noise exposure. Specifically, one commenter suggested the use of a ''leaky-integrator model'' that accumulates sound energy and account for potential physiological recovery in a time-dependent manner (described by a time constant). The commenter indicated that the value of the time constant(s) is not known but could be conservatively estimated.

Contrary to this comment, another commenter cautioned that recovery times have generally been measured only during quiet periods within laboratory settings and that in the open ocean, it is likely that free-ranging animals will be exposed to sound during the recovery period.

Response: Recovery is an important consideration in assessing the effects of noise on marine mammals, and the Technical Guidance includes general information on recovery. We also agree recovery in the open ocean is more complex than measured in a laboratory setting. Currently, there are not enough data to directly take recovery into consideration in the development of acoustic thresholds (and this is specifically identified as a research recommendation in Appendix B), including the integration of a ''leaky-integrator model.'' As more data become available, NMFS can re-evaluate this issue. NMFS has provided additional text in the Technical Guidance to address why recovery was not directly considered in a quantitative manner. NMFS has also provided more clarification in the text regarding recovery and the Technical Guidance baseline accumulation period.

Comment 104: One commenter suggested that the Guidance's accumulation period be ''reset'' to zero only when there has been a sufficiently long silent period (*i.e.*, not automatically after 24 hours). The commenter referred to NMFS' interim injury impact pile driving criteria for fishes, which assumes that accumulation from zero occurs only after a recovery period of 12 hours without sound exposure.

Response: NMFS' interim injury criteria for fishes pertain to smaller pile driving activities (*i.e.*, primarily associated with construction) that only occur during daylight hours, where resetting the accumulation period and allowing for a 12-h recovery period is possible. However, some activities covered by the scope of this Technical Guidance continue for longer than 24 hours (*e.g.*, seismic survey) and only resetting the accumulation after a sufficiently long silent period (*i.e.*, 12 to 24 hours) is not feasible. The data currently available for deriving acoustic thresholds do not support an accumulation period beyond 24 hours, and accumulating over the entire activity duration (*i.e.*, beyond 24 hours) could result in unrealistic exposure results (*e.g.*, difficult to predict the temporal and spatial variability of a receivers over multiple days; see Response to Comment 79).

Comment 105: One commenter noted that if TTS and/or PTS are caused by build-up of free radicals in the hair cell synapses (*e.g.*, McFadden *et al.*, 2005), then exposure over extended periods must take the clearance rate of the free radicals into consideration. The commenter indicated that a 24-h period might be a reasonable approach based on human audiometry but that given the absence of sufficient marine mammal data, it may be necessary to consider SEL_{cum} over periods of greater than 24 hours in situations where sources are loudest (*e.g.*, large seismic airgun surveys) and propagation loss is lowest.

Response: NMFS acknowledges there are a multitude of factors that affect recovery from noise-induced hearing loss, including clearance of free radicals, making recovery complex. Further, there is a lack of data, especially for marine mammals. That said, NMFS acknowledges there may be some situations where the accumulation period needs to be extended beyond 24 hours depending on case-specific scenarios. However, these should be exceptions and not the norm (*i.e.*, proposed accumulations periods represent the typical exposure scenario; see Response to Comment 79).

Comment 106: Multiple commenters expressed concern that several of the recovery time lengths in the marine mammal TTS literature have been reported to exceed 24 hours and

indicate the Guidance's acoustic thresholds may not be sufficiently conservative. Further, several commenters requested that NMFS consider recovery in terms of exposure to other stressors, since these stressors may exacerbate threshold shifts and/or recovery.

Response: NMFS acknowledges that recovery from noise exposure is extremely complex and depends on a multitude of factors, which is why recovery was not directly integrated into the Technical Guidance's recommended accumulation period or into the acoustic thresholds. As NMFS notes in the Technical Guidance, threshold shifts on the order of the established PTS onset (*i.e.*, 40 dB) recorded in marine mammal laboratory studies have still resulted in recovery. Additionally, NMFS has made several conservative assumptions in the development of its acoustic thresholds (see Response to Comment 77). NMFS has added a research recommendation relating to examining noise under realistic exposure scenarios, including consideration of other stressors.

Comment 107: Several commenters suggested that the accumulation period allow for the consideration of periods of reduced or no sound (*e.g.*, power-downs and line turns during seismic activities).

Response: NMFS agrees that power-downs associated with line turns (not associated with mitigation, which can be unpredictable) should be accounted for in modeling, particularly with the accumulation period (*i.e.*, total exposure period within a 24-h period, excluding periods when there is no exposure).

Appendix D: Alternative Methodology (Formerly Identified as the User Guide)

Comment 108: Several commenters indicated that the Guidance should not be finalized until the public has been given the opportunity to evaluate NMFS' user tools (*i.e.*, having these tools is necessary to perform a thorough analysis of the Guidance).

Response: NMFS disagrees. See Response to Comment 3.

Comment 109: It was suggested by a commenter that an alternative method is unnecessary, as it is unlikely animals will remain close enough to a source to exceed the Guidance's SEL_{cum} thresholds (*i.e.*, PK is anticipated to be the dominant metric, resulting in the largest isopleth for most, if not all situations).

Response: NMFS disagrees that the PK should be assumed to be the threshold resulting in the most conservative (*i.e.*, largest) isopleth for most sources. Furthermore, as a result of public comment, NMFS decided to remove the PK thresholds for non-impulsive sounds. For impulsive sounds, NMFS recommends an action proponent fully evaluate their sound source to determine which metric would be dominant. NMFS agrees it may be unlikely that animals would remain close to a source for extended periods of time in most exposure situations. However, predicting animal movement and distribution, especially during sound exposure scenarios, is difficult. Finally, NMFS recognizes that in updating our acoustic thresholds to reflect the best available science, they have become more complex. Thus, Appendix D provides a set of tools, examples, and weighting factor adjustments to allow action proponents with different levels of exposure modeling capabilities to reasonably approximate PTS onset, using the updated acoustic thresholds, for all sound sources.

Comment 110: Several commenters requested NMFS explain how the SEL_{cum} acoustic threshold should be used to determine if an auditory impact would occur. Commenters recommended more guidance on how this would be implemented for a couple of example projects (*i.e.* stationary source such as pile driving, and moving source such as seismic).

Response: Due to the diverse array of potential sound sources, it is impractical for NMFS to provide specific, detailed example calculations within the Technical Guidance. However, NMFS is providing a simple optional User Spreadsheet to aid action proponents unable to perform more sophisticated exposure modeling. This spreadsheet specifically provides a means of applying the Technical Guidance's thresholds and simplified weighting (WFAs) and calculates isopleths associated with thresholds expressed as SEL_{cum}. Thus, example calculations can be completed by using the optional User Spreadsheet. Those using more sophisticated models (*e.g.*, animats) would presumably have some other means of accounting for cumulative exposure, like an ''acoustic dosimeter,'' and would not necessarily need to determine a SEL_{cum} threshold distance (see Response to Comment 114).

Comment 111: Concern was expressed by several commenters that the alternative methodology provided in Appendix D would limit flexibility to assess the impacts of noise on marine mammal hearing.

Response: Action proponents are not obligated to use the alternative methodology and may perform more sophisticated modeling or consider additional action- or location-specific factors, if able. Thus, action proponents are given flexibility in terms of their exposure modeling.

Comment 112: Several commenters were concerned that the highly technical nature of the Guidance does not lend itself to direct and consistent application, particularly by non-experts and indicated that alternative methodology could result in more restrictive acoustic criteria for the smaller action proponents.

Response: NMFS has produced an associated simple optional User Spreadsheet that has been finalized with the Technical Guidance to assist stakeholders in applying the updated acoustic thresholds associated with the more complex SEL_{cum} thresholds, including tools to help those that cannot incorporate more complicated auditory weighting functions (see Response to Comments 70 and 100).

NMFS acknowledges that less sophisticated exposure models may result in higher exposure estimates because these models do not incorporate as many factors as more sophisticated models. Action proponents are encouraged to incorporate as many appropriate factors into their modeling as possible. An action proponent is not obligated to use the simpler tools provided by NMFS, if they can provide equally or more realistic exposure modeling on their own.

Comment 113: One commenter noted that the NMFS' West Coast Region provides a SEL_{cum} calculator for estimating impacts to fishes during impact pile driving, including the incorporation of an ''effective quiet'' value, and requested a similar calculator be provided for marine mammals. The commenter recommended a consistent process for accumulating energy and assessing impacts to all species under NMFS' purview.

Response: The Technical Guidance provides a similar SEL_{cum} calculator for marine mammals, but effective quiet will not be directly incorporated into the marine mammal calculator because NMFS determined there are not enough data at this time to do so. NMFS believes it is consistent in how it assesses acoustic impacts for the various species under its jurisdiction but, there may be exceptions that depend on various factors (*e.g.*, species-specific considerations, data availability, etc.).

Model Specifications

Comment 114: Multiple commenters indicated that the Guidance suggests that a variety of model approaches could be employed in applying the Guidance's acoustic thresholds. Instead, the commenters suggested that NMFS

recommended standardized computer models or modeling requirements, which would allow regulators, industry, and the public to run repeatable analysis to verify acoustic data based on NMFS' recommendations. The commenters expressed concern that it is likely that both the current range of modeling vendor choices and their capacity will be inadequate to fulfill the agency's requirements, which could lead to unwarranted permitting delays or costs, and suggested a transition period to necessitate the expansion of the pool of adequate modeling expertise and vendors. Finally, a commenter recommended that NMFS undertake model validation/verification as part of the process of developing the final acoustic criteria.

Response: Providing standard computer models for analysis or modeling requirements associated with the application of the Technical Guidance's acoustic thresholds and/or auditory weighting functions, as well as model validation/verification, is beyond the scope of this exercise. The adequacy of models will depend on a multitude of factors, including the activity (source) and potential receivers. Because the updated acoustic thresholds are more complex, simpler alternatives have been provided (*e.g.*, User Spreadsheet with weighting factor adjustments for those unable to fully incorporate auditory weighting functions), which can be used until the pool of adequate modeling expertise is expanded. Further, NMFS recognizes there will be a transition period before the Guidance is fully used. (See previous section in this Notice on Transitioning to the Technical Guidance).

Comment 115: The Commission recommended that the Guidance provide specifications necessary to perform exposure modeling. They indicate that it is NMFS' responsibility, as a regulatory agency, to make required findings and direct action proponents to the appropriate types of models, including inputs and appropriate factors to be considered within those models.

Response: NMFS does not currently provide modeling specifications and has no current plans to do so. NMFS will provide some technical assistance to prospective applicants who request it and will continue to evaluate the models that are used in submitted compliance documents to ensure they are adequate and appropriate.

Comment 116: The Commission commented on the two alternative models (*i.e.*, one for moving sources and one for stationary sources) provided in the 2015 Draft Guidance Appendix D. Specifically, the Commission requested that more information be provided whether the 3–D ''safe distance'' methodology of Sivle *et al.* (2014) for moving sources is applicable to NMFS' 2–D application specified in the Guidance. The Commission requests this aspect be submitted for peer review.

BOEM expressed concern that the methodology of Sivle *et al.* (2014) is not appropriate for directional sources or for receivers that are not at the same depth as the source (*e.g.*, sperm whales). The Guidance states that this methodology is independent of exposure duration, and BOEM states this is inconsistent with the document's recommendation of a 24-h baseline accumulation period. Further, BOEM recommended that this method include a representative depth typical of the species being modeled.

Response: NMFS reiterates that the two models referred by the Commission are alternative methods. Action proponents are not obligated to use these methods. Although Sivle *et al.* (2014) accounted for the depth of herring to determine the percent of the winter and summer populations exceeding the ''safe distance'' associated with exposure to naval sonar, the calculation of ''safe distance'' (*i.e.*, equations in the Technical Guidance) makes minimal assumptions associated with the receiver (*i.e.*, the receiver is stationary and does not exhibit avoidance or attraction to the source) and does not directly account for receiver depth or density. It only provides the distance from the source (*i.e.*, isopleth) beyond which a threshold is exceeded. Thus, NMFS believes that this methodology is appropriate for 2–D applications. NMFS has added information about the assumptions associated with the receiver within the Technical Guidance for clarity. NMFS does not believe additional peer review is need for this aspect of the Technical Guidance because the methodology (Sivle *et al.*, 2014) has already undergone peer review as part of its publication in ICES Journal of Marine Science.

Addressing concerns raised by BOEM, it is correct that the methods of Sivle *et al.* (2014) may not be representative for directional sources and are likely to result in more conservative exposures (*i.e.*, model does not account for source directivity and isopleths produced assume an omnidirectional source; meaning that it produces an isopleth equal in all directions). However for directional sources, the source level parameter associated with this methodology assumes the values provided are those relating to the direction producing the maximum level. Again, this optional methodology does not make any assumptions about the depth of the receiver: it only provides an isopleth associated with a particular acoustic threshold. It is possible that the depth of the receiver can accounted for in terms of depth-dependent density (*i.e.*, percentage of time species is located at a particular depth). However, accounting for specific characteristics associated with the receiver (*e.g.*, depth distribution, density, behavioral response, etc.) is beyond the scope of this document.

Finally, the reason this optional methodology is independent of exposure duration is because it only considers one pass of the source relative to receiver, with the closest points of approach incurring the greatest accumulation (*i.e.*, once the source moves past the closest point of approach accumulation is only further reduced as the source moves farther and farther away). Accumulating past the recommended 24-h accumulation period does not result in the addition of any significant amount to the cumulative sound exposure of the receiver. The model can be adjusted to account for shorter accumulation periods. However, the equations become more complex and more difficult to implement.

Comment 117: Several commenters expressed concerns over a potential short-coming associated with the optional ''safe distance'' method (Sivle *et al.*, 2014) accounting for cumulative exposure for moving sources, specifically its ability to allow only for the inclusion of spherical spreading as a propagation model. It was suggested that other propagation models, especially those more conservative spreading models associated with shallow water, need to be incorporated into this methodology. Related to this, BOEM indicated that the Guidance's ''source factor'' definitions closely resembled cylindrical spreading ($10^{TL/10}$), rather than spherical spreading ($10^{TL/20}$) and expressed a concern over whether Mean Squared Pressure (MSP) or Equivalent Plane Wave Intensity (EPWI) terms were used, and that the terms ''S,'' ''S_E,'' and ''E_0'' in the Guidance appear to have similar units, but they do not.

Additionally, these commenters provided an example to assess the appropriateness of the ''safe distance'' methodology by examining the modeled radii from four parallel passes, within a 24-h period, from a 3300 cubic inch airgun. Based on their modeling, it was suggested that NMFS lower thresholds for LF cetacean and PW pinnipeds, raise thresholds for HF cetaceans, and adjust the same distance methodology to

account for the number of passes within an area during a 24-h period. There was no detail provided by the commenter on what these adjustments should be.

Response: NMFS acknowledges the concerns and potential limitations of the optional ''safe distance'' methodology but believes other assumptions associated with this methodology ensure as a whole it remains precautionary. The incorporation of other types of spreading models results in a more complicated equation making the methodology less easy to implement. However, many mobile sources, like seismic airguns or sonar, produce sound that is highly-directional (*i.e.*, most of time sound source is directed to the ocean floor, with less sound propagating horizontally, compared to the vertical direction), and directionality is not accounted for with this methodology (see Response to previous comment). Additionally, many higher-frequency sounds, like sonar, are also attenuated by absorption, which is also not taken into account in this methodology. Thus, there are other considerations beyond spherical spreading, including other conservative factors (*i.e.*, simplified incorporation of auditory weighting factors, the receiver does not avoid the source, etc.) to consider when assessing whether the use of this optional methodology will result in a potential underestimate of exposure. Thus, despite these simple assumptions, NMFS believes the optional ''safe distance'' approach offers a better approximation of the source-receiver distance over space and time for various mobile sources than choosing a set accumulation period for all sources, which assumes a fixed source-receiver distance over that time, and encourages the development/validation of alternative models, including the assessment optional models provided in the Technical Guidance (see Appendix B: Research Recommendations).

As for BOEM's comments regarding MSP vs. EPWI terms, by following ANSI definitions within the Guidance, NMFS is implicitly using MSP terms. The term ''source factor'' within the Guidance is based on a source level being defined as pressure squared, which why it may appear to resemble cylindrical spreading, rather than spherical spreading. This additional information was added to provide clarity. BOEM is correct that the terms ''S,'' ''S_E,'' and ''E_0'' that appear in the Technical Guidance do not have identical units. NMFS understands the potential confusion, since this information was not included in the 2015 July Draft Guidance. A section has been added in Appendix D providing these units in the Technical Guidance (*i.e.*, See section 3.2.1.1 Linear Equivalents).

In response to the commenter's modeled example, NMFS disagrees with the appropriateness of this comparison. One of the assumptions associated with the optional ''safe distance'' methodology is that the source moves at a constant speed and in a constant direction. Thus, this model is not sophisticated enough to account for situations for multiple passes and should not be used for these situations (*i.e.*, NMFS would recommend an action proponent in this situation to find a more appropriate means of modeling exposure, or work with NMFS to determine if the ''safe distance'' methodology can be appropriately modified to account for multiple passes from a source). Thus, it is not unexpected that there are several discrepancies between the commenter's modeled isopleths and those provided by the ''safe distance'' method, including the use of different weighting functions and thresholds, by the commenter, compared to those in the Technical Guidance. NMFS believes the Technical Guidance represents the best available science and disagrees that adjustments to the document's acoustic thresholds is supported.

Technical Guidance Implementation and Regulatory Context

Comment 118: One commenter recommended that the Guidance solely focus on providing the technical basis for acoustic thresholds (*i.e.*, best available science) rather than containing substantial implementation language in the document. The commenter indicated that limiting the purpose of the Guidance to solely providing technical background would allow flexibility to incorporate new technologies and information as they become available.

Response: NMFS agrees and revised the title of the Guidance to reflect its technical, scientific nature. The Technical Guidance is a compilation, interpretation, and synthesis of the available literature. Application of the updated acoustic thresholds remains consistent with current NMFS practice. That information on regulatory context has been moved to this Notice. Any changes to application in the regulatory context are separate from the basis for updating the thresholds themselves, where advances in scientific knowledge are the drivers.

Comment 119: One commenter requested the Technical Guidance provide a brief reference to its use in the current 14-question MMPA incidental take application.

Response: The Technical Guidance is a compilation, interpretation, and synthesis of the scientific literature on the impacts of sound on marine mammal hearing. There is no change to the use of thresholds in the regulatory context. No specific reference is required in our implementing regulations.

Comment 120: One commenter noted that the MMPA mandates that ''Level A'' harassment includes not only the actual or likely onset of injury, but also the potential for injury and that the ESA definition of ''harm'' encompasses temporary injuries or impairments that impact essential behavior. The commenter expressed concern that setting the threshold for ''Level A'' harassment under the MMPA and ''harm'' under the ESA at the actual onset of injury is inconsistent with the statutory mandates, which seek to protect against the risk of, or potential for, injury and recommended that NMFS must set a protective threshold in order to comply with its statutory mandates (*i.e.*, one that interprets the existing literature conservatively enough to reflect the potentiality of harm).

Response: The Technical Guidance auditory impact thresholds were based on scientifically-based judgments, including accounting for uncertainty and variability, developed to stand independent of interpretations of statutory terms such as ''take,'' ''harm,'' and ''harassment.'' At the same time, the thresholds were designed for use in NMFS' regulatory analyses.

NMFS incorporated several conservative assumptions in the development of the PTS onset thresholds to account for the potential for PTS onset (see Response to Comment 77). Further, there are several examples of marine mammal exposure exceeding the Guidance's PTS thresholds, where recovery has occurred (see recent review in Finneran 2015).

Comment 121: Several commenters provided examples of how the weighting function and thresholds compare to data collected in the field during SSV measurements (*e.g.,* seismic and impact piled driving). The commenters' analysis operated on the assumption that the weighting functions and thresholds should provide equal results when compared to the weighting functions and thresholds in Southall *et al.* (2007), and argued that results stemming from the Guidance ''did not yield the most reliable or cautionary results.'' In one example, it is stated that these comparisons are ''at odds with the

reports of the sensitivity of beaked whales to pulsed sounds.''

Response: NMFS appreciates the commenter's efforts to provide examples and comparisons using the Technical Guidance. However, we disagree that the Technical Guidance must yield similar results to those provided in Southall *et al.* (2007), since available data and methodology has significantly evolved since 2007. For example, marine mammal weighting functions (M-weighting) from Southall *et al.* (2007) were derived in a more simplistic manner than the updated methodology provided in Appendix A, which directly uses audiogram and TTS data to derive weighting functions. Thus, the Southall *et al.* (2007) M-weighting functions are broader than those provided in the Technical Guidance and would inherently result in larger, more conservative isopleths. Although the isopleths derived using the Technical Guidance results are smaller in comparison to those from Southall *et al.* (2007), they are not necessarily unreliable.

In addition, NMFS is aware that the Southall *et al.* (2007) panel is in the process of updating its paper. It is anticipated that their proposed weighting functions will not be as broad (most susceptible frequency range) as their original M-weighting functions (*i.e.,* they will be more aligned with those presented in the Technical Guidance). Regarding beaked whale sensitivity, NMFS agrees these species are often classified as a ''particularly sensitive'' group, but in the context of behavioral responses. The Technical Guidance does not pertain to behavioral responses, only effects of noise on hearing. The assumption that this enhanced sensitivity carries over to hearing and susceptibility to noise-induced hearing loss is currently unsupported by beaked whale AEP measurements (*e.g.,* Finneran *et al.,* 2009; Pacini *et al.*. 2011) or transmission pathway modeling (*e.g.,* Cranford *et al.,* 2008) .

Comment 122: Several commenters remarked that the Guidance does not explain the anticipated impact of the acoustic thresholds on the regulated community. Because the Guidance will be applied in a range of regulatory actions, it was recommended that NMFS undertake a study comparing the assessment approach described in the Guidance with the current assessment methods to demonstrate the regulatory implications of the proposed acoustic thresholds.

Response: The Technical Guidance represents the culmination of a robust assessment of the scientific literature to derive updated, science-based auditory impact thresholds for marine mammals. The overall assessment approach in the regulatory context has not changed from current agency practice.

The acoustic thresholds presented in the Technical Guidance use different metrics compared to the current thresholds. In some situations, depending on the sound source, species of interest, and duration of exposure, application of the updated acoustic thresholds may result in greater estimates of PTS (and therefore more ''takes'') than under the existing thresholds, while in other situations the opposite result may occur. Examining all possible scenarios associated with the wide range of potential activities is not feasible.

Comment 123: Multiple commenters expressed concern that the Guidance will unnecessarily result in an increased burden to action proponents during the permitting process and would lead to an increased number of shutdowns or longer survey duration, with increased costs and safety risks.

Response: NMFS recognizes the advancing science on auditory impacts has led to more complex set of thresholds and methodology for evaluating impacts and has provided a simplified alternative methodology to alleviate some of the burden associated with applying the more complex acoustic thresholds and auditory weighting functions.

In terms of effects on activities themselves, the Guidance does not address consequences for mitigation requirements in a regulatory context. This will depend on the particular aspects of an action, taking into account the comprehensive effects analysis and regulatory considerations. NMFS notes that there are no requirements that mitigation measures directly correspond to acoustic thresholds (See Response to Comment 11).

Comment 124: One commenter expressed concern that applying the alternative methods provided in the Guidance could result in unrealistically high exposure estimates. The commenter recommended that the Guidance include more explanation to inform action proponents about the potential costs, benefits, and consequences of methodologies that directly use auditory weighting functions and those that do not (alternative methods).

Response: NMFS notes it will be an action proponent's decision as to how they model and estimate their potential impacts to marine mammals. Analyzing the potential cost/benefits of the methodologies applied is beyond the scope of the document and will vary depending on the activity/sound source and species impacted. The optional WFAs provided in the Technical Guidance should assist action proponents with incorporating auditory weighting functions and should provide very similar (if not identical) results for narrow-band sources and larger isopleths for broadband sources, depending on how much information the action proponent can provide regarding the frequency composition of their source (*i.e.,* can provide the 95 percent frequency contour percentile or rely on the more conservative default WFA values).

Comment 125: Multiple commenters requested more information on how NMFS will transition from previously applied thresholds to the acoustic thresholds provided in the Guidance (*e.g.,* how will it affect applications/consultations completed, in process and beyond) and expressed concerned over the potential for delays and NMFS' time requirements to process permits based on the Guidance.

Further, one commenter remarked that NMFS' intention to update the acoustic thresholds based on newly available information is valid from a scientific point of view, but from a practical aspect could be confusing, could promote regulatory uncertainty, and has the potential to affect permitting timelines. The commenter indicated that planning for certain activities can take multiple years to complete, with the introduction of additional uncertainty potentially adversely affecting the ability of action proponents to plan for and comply with the Guidance.

Similarly, several commenters requested clarification as to how the Guidance would be implemented in (a) the context of a five-year incidental take regulation (ITR) (with specific take authorizations by letters of authorization (LOA)) and (b) when numerous IHAs are issued for a given area in the absence of an ITR. Specifically, a commenter asked if different methods will be used to estimate the amount of authorized incidental ''take'' in each of these contexts and how, if at all, will authorized ''take'' be allocated over certain periods of time in one or both of these contexts?

Response: NMFS acknowledges there will be some lag between updates in the best available information and the ability to incorporate that new information into ongoing processes. We refer readers to the section of this Notice addressing Transitioning to the

Technical Guidance for more information.

Comment 126: One commenter suggested that the Guidance provides an opportunity for NMFS to clarify its policy on ''takes'' vs. ''animals taken.'' The commenter indicated that just because an animal is ''exposed'' to a sound source does not necessarily equate to a ''take'' or an impact as defined in the MMPA and provided the following example with migratory (*e.g.,* 50 takes with individuals being taken once) vs. resident species (*e.g.,* 50 takes with ten individuals being taken five time each). Similarly, a commenter requested that NMFS should clarify that, in estimating numbers of auditory impacts for management purposes, take numbers will be calculated for each day of exposure and then added to obtain the total estimate. For example, assuming an equal daily risk of eight exposures that exceed PTS thresholds for some species over a 10-day pile-driving project, the total potential PTS-level take would be 80 animals. The Navy has long employed this method of calculation, but its use by other applicants (*e.g.,* seismic operators) has been inconsistent. Notably, this method would not account for multiple takes of individual marine mammals and the cumulative impact on hearing that would result from those takes.

Response: The Technical Guidance is designed for assessing the impact of underwater noise on marine mammal hearing by providing scientifically-based auditory weighting functions and acoustic thresholds. It does not address how to calculate takes in various situations. Those considerations are case-specific and based on multiple considerations, including spatial and temporal overlap between the sound source and a receiver). Moreover, factors like whether a marine mammal species or stock is migratory or resident (among numerous other factors), are considered within a broader comprehensive effects analysis when such information is available.

Comment 127: The Commission commented that the Guidance states that an alternative approach may be proposed (by federal agencies or other action proponents) and used if case-specific information or data indicate that the alternative approach is likely to produce a more accurate estimate of Level A Harassment, harm, or auditory injury for the proposed activities. Such a proposed alternative approach may be used if NMFS determines that the approach satisfies the requirements of the applicable statutes and regulations. The Commission noted that NMFS has not provided any criteria under which such an exception could be invoked and is allowing action proponents to waive the Guidance's acoustic thresholds. The Commission does not support this approach and recommends that NMFS require all action proponents to implement the final acoustic thresholds until such time that they are amended or revised by NMFS.

Similar to the Commission's concerns, another commenter indicated any alternative approach must be at least as protective as methods prescribed in the Guidance, which have at least undergone peer review and public notice and comment. Alternatively, the commenter suggested that more conservative approaches should be used if a project's circumstances require a lower threshold for ''take'' based on specific factors, such as geographic region, oceanographic conditions, low abundance, species site fidelity, prey impacts or cumulative impacts.

Contrary to the comments above, a few commenters indicated that they welcome the opportunity for action proponents to propose alternative approaches to those presented in the Guidance. The commenters noted that this flexibility will enable innovation within the bounds of regulatory compliance and that are appropriate and justified (*e.g.,* there are many ways to estimate potential exposures of marine mammals to various sound levels).

Response: The Technical Guidance is not a regulation or rule. It does not create or confer any rights for or on any person, or operate to bind the public. However, it is NMFS' assessment of the best available information for determining auditory impacts from exposure to anthropogenic sound and it has undergone extensive peer and public review. With that in mind, NMFS agrees with the comment that any alternative approach should be peer reviewed before it is used instead of the updated thresholds in the Technical Guidance (or the alternative methodology). With that addition to NMFS' statement in the Draft Guidance, an alternative approach that has undergone independent peer review may be proposed if in NMFS' view it ''is likely to produce an equally or more accurate estimate of auditory impacts for the project being evaluated, if NMFS determines the approach satisfies the requirements of the applicable statutes and regulations.'' NMFS believes this sets a fairly high bar as to what type of data/alternative approach would justify a departure from the Guidance's auditory weighting functions and/or acoustic thresholds, especially in terms of the HISA standards to which this Guidance adheres. Additionally, action proponents are afforded flexibility for factors beyond the Guidance's auditory weighting functions and/or acoustic thresholds (*e.g.,* propagation modeling, exposure modeling) as a means to accurately predict and assess the effects of noise on marine mammals.

Comment 128: Multiple commenters requested flexibility associated with the accumulation period, especially for projects with a stationary source and for action proponents with limited ability to conduct detailed modeling (*e.g.,* pile driving projects). The commenters recommended that NMFS allow for the flexibility to make project-specific adjustments based on physical or biological factors associated with the activity.

Response: NMFS acknowledges that all action proponents may not have the same level capabilities to apply the Technical Guidance and has provided an optional User Spreadsheet for action proponents that wish to avail themselves of it. Additionally, NMFS recognizes there may be some situations where project-specific modification may be necessary (*i.e.,* action proponent should contact NMFS to discuss project-specific issues that are beyond scope of Technical Guidance).

Comment 129: One commenter expressed concern that the updated acoustic thresholds could underestimate instances of PTS/TTS from permitted activities because marine mammals can be elusive and observations from protected species observers are few in relation to the estimated abundance. Similarly, one commenter asked how the acoustic thresholds would be used to calculate ''take'' after an activity is completed.

Response: The acoustic thresholds are just one tool used to predict ''take'' calculations. Other factors (*e.g.,* sound propagation or marine mammal density/occurrence) contribute to these calculations though they are beyond the scope of the Technical Guidance. NMFS notes that the Technical Guidance's intended purpose is as a tool for predicting potential impacts of noise on hearing before an activity occurs (and perhaps afterward).

Comment 130: The Commission requested clarification on how and when action proponents should use the qualitative factors identified within the Guidance and expressed concern that these factors could be used to allow for a reduction in ''take'' estimates based on subjective judgments rather than best available science. The Commission recommended that NMFS remove the list of qualitative factors listed and incorporate it by reference in the text and not allow action proponents to use

those factors to modify isopleths or numbers of ''takes'' resulting from the quantitative thresholds.

Response: NMFS' intent of providing qualitative factors for consideration was to acknowledge that when additional data may become available in the future; these additional factors may be incorporated with quantitative PTS onset thresholds. At this time, however, it is not NMFS' intent for these factors to reduce quantitative exposure estimates based on subjective judgment. The Technical Guidance acknowledges that these factors are important for consideration within the comprehensive effects analysis on a qualitative basis. To avoid confusion, NMFS removed the list of qualitative factors from the threshold tables and placed this information in Appendix B: Research Recommendations.

Miscellaneous Issues

Comment 131: One commenter requested clarification was on how much an acoustic threshold would need to change to update the Technical Guidance and suggested updates only occur when thresholds change by at least 5 dB.

Response: NMFS has provided a procedure and timeline for updating the Guidance (Section III of main Guidance document) and will evaluate new studies as they become available, including in the context of existing data, before determining the impact to the acoustic thresholds.

Comment 132: One commenter recommended the Guidance include a table indicating a species' hearing ability, sound production characteristics, and genetic relatedness to other species in order to determine when there are enough individuals of a particular species or genus to warrant species- or genus-specific acoustic thresholds, rather than relying on hearing group thresholds.

Response: NMFS has used the best available science to support the division marine mammals into five hearing groups, including the derivation of composite audiograms based on available hearing data, and declines to include the requested table as it goes beyond the scope of the Technical Guidance. As science progresses (*i.e.,* more data on hearing, sound production, genetics become available), NMFS will determine if further refinements of hearing groups and their associated auditory thresholds are needed.

Comment 133: Several commenters requested that additional terms be better defined in the Guidance (*e.g.,* isopleth, narrowband, roll-off, equal latency).

Response: NMFS has added and defined these terms in the Glossary (Appendix E) and/or provided more clarification within the Technical Guidance.

Comment 134: A few commenters suggested improvements to the Guidance, including technical editing, literature citation verification, and the inclusion of more plain language.

Response: NMFS has verified that all references used in the Technical Guidance appear in the Literature Cited section and has included more plain language, when possible. However, NMFS notes this is a highly technical document, with most of the terms not easily subjected to plain language revisions without altering the accepted meaning of those terms. Additionally, definitions for technical terms used in this document are defined in the Glossary (Appendix E).

Dated: July 29, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

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Part V

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Data Collection for Analytics and Surveillance and Market-Based Rate Purposes; Proposed Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM16–17–000]

Data Collection for Analytics and Surveillance and Market-Based Rate Purposes

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations to collect certain data for analytics and surveillance purposes from market-based rate (MBR) sellers and entities trading virtual products or holding financial transmission rights and to change certain aspects of the substance and format of information submitted for MBR purposes. The revisions proposed herein include new requirements for those entities to report certain information about their legal and financial connections to other entities to assist the Commission in its analytics and surveillance efforts. The Commission previously proposed to require certain market participants in the Commission-jurisdictional organized wholesale electric markets to file similar information about their financial and legal connections in the Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators Notice of Proposed Rulemaking issued in Docket No. RM15–23–000 (Connected Entity NOPR). However, as described herein, this proposal presents substantial revisions from what the Commission proposed in the Connected Entity NOPR, including, among other things: A different set of filers; a reworked and substantially narrowed definition of Connected Entity; and a different submission process. With respect to the MBR program, the proposals include: Adopting certain changes to reduce and clarify the scope of ownership information that MBR sellers must provide, similar to the notice of proposed rulemaking issued in Docket No. RM16–3–000 (Ownership NOPR); reducing the information required in asset appendices; and collecting currently-required MBR information and certain new information in a consolidated and streamlined manner. The Commission proposes all of these changes in order to eliminate duplication, ease compliance burdens, modernize its data collections, and render information collected through its programs usable and accessible for the Commission and its staff. In furtherance of this effort, in orders being issued concurrently with the instant NOPR, the Commission withdraws the Connected Entity NOPR issued in Docket No. RM15–23–000 and the Ownership NOPR issued in Docket No. RM16–3–000.[1] The Commission also proposes to eliminate the requirement that MBR sellers submit corporate organizational charts adopted in Order No. 816 in Docket No. RM14–14–000.

DATES: Comments are due September 19, 2016.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

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1. The Federal Energy Regulatory Commission (Commission) proposes in this Notice of Proposed Rulemaking (NOPR) to amend its regulations to add Subpart K to Title 18 of the Code of Federal Regulation (CFR), which would include data collection requirements for market-based rate (MBR) sellers [2] and certain other participants in the organized wholesale electric markets subject to the Commission's jurisdiction pursuant to the Federal Power Act (FPA), and revise part 35, subpart H, which governs MBR authorization for wholesale sales of electric energy, capacity, and ancillary services by public utilities.[3] Specifically, the Commission is proposing to revise its regulations to add new data submission requirements for MBR sellers and entities, other than FPA section 201(f) entities,[4] that trade virtual products [5] or

[1] *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators,* 156 FERC ¶ 61,046 (2016); *Ownership Information in Market-Based Rate Filings,* 156 FERC ¶ 61,047 (2016).

[2] All references in this NOPR to ''MBR seller'' (or ''MBR sellers'') refer to both entities seeking to obtain MBR authority by filing applications with the Commission and to MBR sellers seeking to retain market-based rate authority and is intended to have the same meaning as the defined term ''Seller'' in 18 CFR 35.36(a)(1).

[3] The organized wholesale electric markets subject to the Commission's jurisdiction refers to the markets operated by Regional Transmission Organizations (RTOs) and Independent System Operators (ISO) operating in the United States. These RTOs and ISOs include: PJM Interconnection, LLC (PJM), New York Independent System Operator, Inc. (NYISO), ISO New England Inc. (ISO–NE), California Independent System Operator Corporation (CAISO), Midcontinent Independent System Operator, Inc. (MISO), and Southwest Power Pool, Inc. (SPP).

[4] *See* 18 U.S.C. 824(f) (2012).

[5] ''Virtual trading involves sales or purchases in an RTO/ISO day-ahead market that do not go to physical delivery. For example, virtual bidding allows entities that do not serve load to make purchases in the day-ahead market. Such purchases are subsequently sold in the real-time spot market. Likewise, entities without physical generating assets can make power sales in the day-ahead

hold financial transmission rights (FTR)[6] in the organized wholesale electric markets subject to the Commission's jurisdiction (Virtual/FTR Participants). The Commission is also proposing to require Virtual/FTR Participants to submit certain information to the Commission within 30 days of commencing trading of virtual or FTR products.

2. The purpose of this new data collection is to assist the Commission in understanding the financial and legal connections among market participants and other entities and their activities in Commission-jurisdictional electric markets. In this NOPR, the Commission also proposes to modify its regulations to change certain aspects of the substance and format of information submitted for MBR purposes. Specifically, we propose to collect currently-filed MBR information and the new information proposed to be collected in this NOPR in a consolidated and streamlined manner through a relational database,[7] which will eliminate duplication and render information collected for its MBR and analytics and surveillance purposes more usable and accessible to the Commission and its staff.

3. As reflected in this NOPR, the Commission has reworked and substantially narrowed the definitions proposed in the Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators NOPR in Docket No. RM15–23–000 (Connected Entity NOPR),[8] conforming them where possible to existing MBR affiliate definitions, and has entirely eliminated large portions of the data proposed for collection in that NOPR. In orders being issued concurrently with the instant NOPR, the Commission withdraws the Connected Entity NOPR[9] and the Ownership Information in Market-Based Rate Filings NOPR in Docket No. RM16–3–000 (Ownership NOPR)[10] and terminates those dockets.[11] The Commission also proposes to remove the existing requirement that MBR sellers submit corporate organizational charts adopted in Order No. 816 in Docket No. RM14–14–000.[12]

I. Background

4. Recently, the Commission sought to improve its analytics and surveillance of the electric markets by issuing the Connected Entity NOPR, which proposed collecting information from participants in Commission-jurisdictional organized wholesale electric markets concerning their ownership, employee, debt, and contractual connections. This information was to be submitted to the RTOs and ISOs, which in turn would provide the necessary information to the Commission. In some cases, the information sought under the Connected Entity NOPR was similar to, but somewhat different from, the information to be provided by MBR sellers.

5. The desirability of consolidating MBR and Connected Entity data under one reporting regime was advocated to the Commission by members of the industry in comments responding to the Connected Entity NOPR. In the Connected Entity NOPR, the Commission proposed that each RTO and ISO be required to electronically deliver to the Commission, on an ongoing basis, data from its market participants[13] that would: (i) Identify the market participants by means of a common alpha-numerical identifier, specifically, a Legal Entity Identifier (LEI);[14] (ii) list their ''Connected Entities,'' which would include entities that have certain ownership, employment, debt, or contractual relationships with market participants; and (iii) describe in brief the nature of the relationship of each Connected Entity. The Commission observed that there is a risk that a market participant may take actions to benefit another entity that bears a financial or legal relationship to it, and that entities under common control may collude to manipulate the market. Given the potential for such conduct, the Commission found it needed to understand the relationships and corresponding incentives between entities to help determine whether they might be engaging in acts of market manipulation. The Commission also described the deficiencies in scope, format, and timing of the existing data sources for the requisite information.[15]

6. Many commenters objected to the proposed data submissions on the grounds that the information would be largely duplicative of other Commission reporting requirements, especially that of its MBR program. Several commenters objected to the Connected Entity NOPR on the grounds that the information to be submitted was based on a Connected Entity definition that was similar to, yet different from, the affiliate definition currently used in the MBR program. A common theme in the comments was the desirability of

market that are subsequently purchased in the real-time market. By making virtual energy sales or purchases in the day-ahead market and settling these positions in the real-time, any market participant can arbitrage price differences between the two markets.'' *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at n.1047, *clarified,* 121 FERC ¶ 61,260, at P 921 n.1047 (2007), *order on reh'g,* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268, *clarified,* 124 FERC ¶ 61,055, *order on reh'g,* Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g,* Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g,* Order No. 697–D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel* v. *FERC,* 659 F.3d 910 (9th Cir. 2011), *cert. denied,* 133 S. Ct. 26 (2012). Organized wholesale electric markets offer various virtual products, including Up-To Congestion products, for which no generation is dispatched and no load is served, and obligations are met through cash settlement. *Coaltrain Energy, L.P., et al.,* 155 FERC ¶ 61,204 at P 15 (2016). ''While virtual products carry no obligation to buy or sell physical power, they serve a direct role in day-ahead price formation as reflected in day-ahead [Locational Marginal Prices (LMP)]. As such, virtual products can: (i) be the price setting marginal factor in determining day-ahead LMPs; (ii) affect day-ahead dispatch; and (iii) affect other market participant positions.'' *Id.*

[6] The term ''FTR'' as used in this NOPR is intended to cover not only Financial Transmission Rights, a term used by PJM, ISO–NE., and MISO, but also Transmission Congestion Contracts in NYISO, Transmission Congestion Rights in SPP, and Congestion Revenue Rights in CAISO.

[7] A relational database, or RDB, is a database model whereby multiple data tables relate to one another via unique identifiers. A relational database contains a table for each subject (*e.g.,* generation assets) with every row in the table representing information regarding a single variable of that subject (*e.g.,* a particular generation unit) and each column containing a particular quality of that variable (*e.g.,* a generation unit's capacity rating). Relational databases are structured to allow for easy data retrieval while avoiding inconsistencies and redundancies.

[8] *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators,* FERC Stats. & Regs. ¶ 32,711 (2015) (Connected Entity NOPR).

[9] Connected Entity NOPR, FERC Stats. & Regs. ¶ 32,711.

[10] *Ownership Information in Market-Based Rate Filings,* FERC Stats & Regs. ¶ 32,713 (2015) (Ownership NOPR).

[11] *Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators,* 156 FERC ¶ 61,046 (2016); *Ownership Information in Market-Based Rate Filings,* 156 FERC ¶ 61,047 (2016).

[12] The organizational chart requirement was first suspended in the order that partially extended the compliance effective date of Order No. 816. *See Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 816, 80 FR 67,056 (Oct. 30, 2015), FERC Stats. & Regs. ¶ 31,374 (2015), *order on reh'g,* Order No. 816–A, 81 FR 33,375 (May 26, 2016), FERC Stats. & Regs. ¶ 31,382 (2016). The organizational chart requirement was again suspended in Order No. 816–A ''until the Commission issues an order at a later date addressing this requirement.'' Order No. 816–A, FERC Stats. & Regs. ¶ 31,382 at P 47.

[13] The Connected Entity NOPR proposed to require all RTO/ISO market participants, including MBR sellers and entities that solely participate in the RTO/ISO virtual and/or FTR markets, to report Connected Entity information.

[14] An LEI is a unique 20-digit alpha-numeric code assigned to a single entity. They are issued by the Local Operating Units of the Global LEI System.

[15] *See* Connected Entity NOPR, FERC Stats. & Regs. ¶ 32,711 at PP 6–14.

reconciling reporting requirements to accommodate the needs of both the MBR and analytics and surveillance programs, thus eliminating the necessity of maintaining disparate, but partially overlapping, reporting regimes.

7. In the Connected Entity NOPR, the Commission also proposed that the Connected Entity information be submitted to the RTOs and ISOs, who would then pass it on to the Commission. A number of commenters objected to this mechanism as unwieldy and unnecessarily burdensome.

8. Over the last two years, the Commission has also sought to modify, clarify, and streamline the Commission's MBR requirements to, among other things, ease burdens on industry and the Commission. This initiative involved eliminating or refining some existing MBR requirements. The resulting reforms were set forth in Order Nos. 816 and 816–A,[16] and in the Ownership NOPR. In the Ownership NOPR, the Commission proposed to reduce and clarify the scope of ownership information that MBR sellers must provide, specifically to eliminate reporting of comprehensive ownership information required under Order No. 697–A that is not necessary for the Commission's assessment of horizontal or vertical market power. Specifically, the Commission proposed that an MBR seller be required to identify and describe only two categories of ''affiliate owners'' (*i.e.,* certain owners that meet the definition of ''affiliate'' in 18 CFR 35.36(a)(9)).[17] These two categories are: (1) ''Ultimate affiliate owner(s),'' defined as the furthest upstream affiliate owner(s) in the ownership chain; and (2) affiliate owners that have a franchised service area or MBR authority, or that directly own or control generation; transmission; intrastate natural gas transportation, storage or distribution facilities; or physical coal supply sources or ownership of or control over who may access transportation of coal supplies.[18]

9. The information proposed to be collected under the two separate NOPRs was different in scope. Commenters to the Connected Entity NOPR suggested that this incongruity be removed and that the information proposed in the Ownership NOPR and Connected Entity NOPR be collected contemporaneously to eliminate the burden of submitting duplicative information to the Commission.

II. Discussion

10. The Commission appreciates these comments and agrees that compliance burdens should be minimized where possible. In response, the Commission considered whether the various reporting requirements needed for MBR and analytics and surveillance purposes could be combined in such a way as to eliminate duplication and unnecessary differences, with the aim of providing the Commission with the information it needs in the least burdensome manner possible.

11. The result of these efforts is embodied in the instant NOPR. In this NOPR, we propose to collect certain data for analytics and surveillance purposes and to change certain aspects of the substance and format of information submitted for MBR purposes. Specifically, this NOPR sets out two categories of information submission requirements: requirements applicable only to MBR sellers (MBR Information); and requirements applicable to MBR sellers and Virtual/FTR Participants (Connected Entity Information). Connected Entity Information would be submitted both by MBR sellers (although not pursuant to the MBR program), and Virtual/FTR Participants. MBR Information would be submitted only by MBR sellers. As discussed below, we propose certain changes to the types of information currently required for MBR purposes and to the electronic format in which certain data will be submitted.

12. In this NOPR, we first describe the revised proposals regarding Connected Entity Information and proposals regarding MBR Information. Next, we discuss the need and authority for the collection of the Connected Entity Information as well as the nature of that information. We then discuss the proposed use of LEIs and discuss confidentiality and due diligence relating to the submission of Connected Entity Information. We next propose certain submission requirements for existing and new Virtual/FTR Participants and a baseline submission required of existing MBR sellers. Lastly, we propose ongoing Connected Entity Information submission requirements and ongoing MBR seller filing requirements.

13. Like the Connected Entity NOPR, this NOPR does not impose any filing requirements on entities that only sell natural gas.[19] Also, like the Connected Entity NOPR, this NOPR proposes that entities that submit the required data to the Commission obtain and submit an LEI; however, it does not propose requiring reported Connected Entities or affiliate owners to obtain LEIs. Additionally, this NOPR proposes that all Connected Entity Information and most of the MBR Information be consolidated and submitted electronically into a relational database.

14. Specifically, we propose to consolidate the Commission's collection of certain information for MBR and analytics and surveillance purposes in a relational database. We propose that the relational database information be submitted using an extensible markup language (XML) schema,[20] which will permit filers to assemble an XML filing package that includes all of the necessary attachments, including the cover letter and any related MBR tariffs.

[16] Order No. 816, FERC Stats. & Regs. ¶ 31,374, *order on reh'g,* Order No. 816–A, FERC Stats. & Regs. ¶ 31,382.

[17] As specified in the Commission's regulations, ''affiliate'' of a specified company means: (i) Any person that directly or indirectly owns, controls, or holds with power to vote 10 percent of more of the outstanding voting securities of the specified company; (ii) Any company 10 percent or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by the specified company; (iii) Any person or class or persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to the specified company that there is liable to be an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the person be treated as an affiliate; and (iv) Any person that is under common control with the specified company. For purposes of the affiliate definition in § 35.36(a)(9), owning, controlling or holding with the power to vote, less than 10 percent of the outstanding voting securities of a specified company creates a rebuttable presumption of lack of control. 18 CFR 35.36(a)(9)(v) (2015).

[18] Ownership NOPR, FERC Stats. & Regs. ¶ 32,713 at P 9.

[19] Entities that only sell natural gas may, however, be reported by an MBR seller or Virtual/FTR Participant if they qualify as Connected Entities under the proposed definition of Connected Entity.

[20] As the Commission previously explained, XML schemas facilitate the sharing of data across different information systems, particularly via the Internet, by structuring the data using tags to identify particular data elements. For example, each filed tariff change will include tags for the relevant information. The tagged information can be extracted and separately searched. *See Electronic Tariff Filings,* Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 12 & n.8 (2008). The Commission currently collects other data, including Electric Quarterly Reports (EQR) and eTariffs using XML. *See* Order No. 714, FERC Stats. & Regs. ¶ 31,276 (using XML for eTariff filings); *see also Revised Public Utility Filing Requirements,* Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reh'g denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filing,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filings,* Order No. 2001–D, 102 FERC ¶ 61,334 (2003), *order refining filing requirements,* Order No. 2001–E, 105 FERC ¶ 61,352 (2003), *clarification order,* Order No. 2001–F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements,* Order No. 2001–G, 120 FERC ¶ 61,270, *order on reh'g and clarification,* Order No. 2001–H, 121 FERC ¶ 61,289 (2007), *Order revising filing requirements,* Order No. 2001–I, FERC Stats. & Regs. ¶ 31,282 (2008) (using XML for EQRs).

Upon the receipt of the filing, the XML schema will enable the Commission to parse [21] the filed package into its component parts, place the filed documents into its eLibrary system where appropriate and provide the metadata [22] that will permit automated organization of the filing and permit the Commission to search the relational database. The mechanics of and formatting for data submission by filers would be provided on the Commission's Web site.

15. A data dictionary posted on the Commission's Web site would define the framework, *i.e.,* terms and values, to be followed by users in submitting MBR and Connected Entity Information for inclusion in the relational database. The Commission would also post to its Web site any minor and non-material changes to the data dictionary as necessary and alert relational database users via email of any changes.[23] The current draft of this data dictionary is attached in Attachment D. We seek comment on the specific content for the relational database as set forth in the current draft of the data dictionary that is attached. In addition, Commission staff has been and will continue to conduct substantial outreach with the industry, including meetings and technical workshops on the data dictionary and the submittal process. A notice for the first workshop, which will focus on the draft data dictionary included as Attachment D, is being issued contemporaneously with this NOPR.[24]

16. We anticipate that the data dictionary, the XML schema definition with appropriate validations, and a temporary test environment will be posted on the Commission Web site upon issuance of a final rule in this proceeding. In addition, we would also provide an email portal and other points of contact on the Commission Web site for filers to seek guidance from Commission staff on the final rule and technical aspects of making the required submissions.

A. Proposals Regarding Connected Entity Information

17. The Commission received many comments objecting to the scope of the Connected Entity NOPR. The Commission carefully considered those comments and substantially clarified and narrowed the definitions proposed in this NOPR from those proposed in the Connected Entity NOPR. In addition, the definitions proposed in this NOPR reflect, where possible, the affiliate definitions found in the MBR regulations. To better align the Connected Entity Information requirements with the MBR Information requirements, we propose that the definition of Connected Entity ownership information be limited to ''affiliates,'' as defined for purposes of MBR requirements in section 35.36(a)(9) of the Commission's regulations, that are either: (i) An ''ultimate affiliate owner'' of the entity, as defined for purposes of MBR requirements in section 35.37(a)(2); (ii) an entity that participates in Commission-jurisdictional organized wholesale electric markets; or (iii) an entity that purchases or sells financial natural gas or electric energy derivative products that settle off of the price of physical electric or natural gas energy products. We also propose to replace the category of ''employees'' proposed in the Connected Entity NOPR with a much narrower category of ''Trader,'' which we propose to define as ''a person who makes, or participates in, decisions and/or devises strategies for buying and selling physical or financial electric or natural gas energy products.'' In addition, we propose to eliminate entirely the reporting of debt instruments. We also propose to narrow and rework the category of contractual Connected Entities reported from that originally proposed in the Connected Entity NOPR. As narrowed, the category will refer only to entities that have entered into an agreement with a submitting entity that ''confers control over an electric generation asset that is used in, or offered into, wholesale electric markets.''

18. We also propose a reporting process that would permit, where possible, unified submissions of both MBR and Connected Entity Information. Additionally, we propose that, as discussed below, all the required data be submitted directly to the Commission rather than to the RTOs and ISOs. This will obviate the need for RTOs and ISOs to act as middlemen in the collection process, as proposed in the Connected Entity NOPR, and eliminate the need for multiple RTO/ISO filings for entities that participate in more than one Commission-jurisdictional organized wholesale electric market.

19. Because there are separate legal justifications and regulations for the various data submissions proposed in this NOPR, it is useful to think of the requirements in two parts: those pertaining to the MBR program, and those pertaining to analytics and surveillance. As discussed below, we propose that all MBR sellers largely continue to submit data under the existing MBR regulations, with certain modifications proposed in this NOPR.[25] We further propose that MBR sellers be required to submit data under the Connected Entity regulations proposed in this NOPR. We propose that Virtual/FTR Participants that do not require MBR authority would submit data only under the Connected Entity regulations proposed in this NOPR. We propose to require that the XML filing indicate whether a particular piece of information is submitted for MBR purposes. Undesignated information would, therefore, be considered as provided pursuant to the Connected Entity requirements. These indications are necessary to allow an entity seeking to obtain or retain MBR authority to identify the specific information necessary to support its requested authorization consistent with our regulations. Entities that trade solely virtual instruments and/or FTRs are not required to obtain MBR authority, and therefore would not be required to submit MBR Information. Therefore, the only information such entities would need to submit to the Commission would be that needed for analytics and surveillance purposes.

20. The Commission believes that entities submitting only Connected Entity data should be subject to the same candor requirements of section

[21] Parse means to capture the hierarchy of the text in the XML file and transform it into a form suitable for further processing. Order No. 714, FERC Stats. & Regs. ¶ 31,276 at n.9.

[22] Metadata is data or information beyond or about other data. For example, in the XML schema for eTariff, one required element is a proposed effective date and another element is the text of the tariff provision. The proposed effective date is considered to be metadata relative to the tariff text. *See* Order No. 714, FERC Stats. & Regs. ¶ 31,276 at P 12 & n.10.

[23] The Commission proposes to utilize the same procedures set forth in the recently issued order addressing, among other things, revisions to the EQR Data Dictionary. *See Filing Requirements for Electric Utility Service Agreements,* 155 FERC ¶ 61,280, at P 3 (2016) (''Going forward, consistent with [§] 35.10b of the Commission's regulations, future minor or non-material changes to the reporting requirements and EQR Data Dictionary will be posted directly to the Commission's Web site, and EQR users will be alerted via email. This process will enable the Commission to make necessary minor or non-material changes in a more timely manner. Conversely, significant changes to the EQR reporting requirements and the EQR Data Dictionary will be proposed in a Commission order or rulemaking, which would provide an opportunity for comment.'').

[24] Notice of Technical Workshop on the Draft Data Dictionary Attached to the Data Collection for Analytics and Surveillance and Market-Based Rate Purposes Notice of Proposed Rulemaking, 156 FERC ¶ 61,045 (2016).

[25] For a short-hand comparison of the Ownership NOPR and the Existing MBR Requirements with the current NOPR proposal, s*ee* Attachment A: Comparison of Ownership NOPR and Existing MBR Requirements with the Current NOPR Proposal.

35.41(b) of the Commission's regulations as are MBR sellers. This regulation requires MBR ''sellers,'' as defined in section 35.36(a)(1) of the Commission's regulations, to submit accurate, factual, and complete information in any communication with the Commission, Commission-approved market monitors, RTOs, and ISOs. Therefore, we propose to add a new section 35.50(d) that would require the same candor from Virtual/FTR Participants in any of their communications with the Commission, Commission-approved market monitors, RTOs, and ISOs, and jurisdictional transmission providers.[26]

B. Proposals Regarding MBR Information

21. The Commission uses a two-part approach when assessing whether a seller should be granted MBR authority: (1) Whether the seller and its affiliates lack, or have adequately mitigated, market power in generation (*i.e.,* horizontal market power); and (2) whether the seller and its affiliates lack, or have adequately mitigated, market power in transmission and whether the seller or its affiliates can erect other barriers to entry (*i.e.,* vertical market power).[27] In Order No. 697, the Commission adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.[28] The pivotal supplier screen evaluates the MBR seller's potential to exercise market power based on the seller's uncommitted capacity at the time of annual peak demand in the relevant market. The wholesale market share screen measures whether a seller has a dominant position in the market by analyzing the number of megawatts (MW) of uncommitted capacity it owns or controls, relative to the uncommitted capacity of the relevant market.

22. With respect to the vertical market power analysis, in cases where a public utility or its affiliates owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved Open Access Transmission Tariff (OATT) on file or that the seller or its applicable affiliate qualifies for waiver of the OATT requirement.[29] The Commission also considers an MBR seller's ability to erect other barriers to entry as part of the vertical market power analysis.[30] As such, the Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies.[31]

23. MBR sellers currently are required to submit an asset appendix in an electronic spreadsheet format listing all generation assets owned or controlled by the MBR seller and its affiliates, broken out by balancing authority and geographic region and including, among other things, the in-service date and certain capacity rating information. The asset appendix also must reflect all electric transmission and natural gas intrastate pipelines and/or gas storage facilities owned or controlled by the MBR seller and its affiliates and the location of such facilities and include the size of the facility. Finally, in Order No. 816, the Commission instituted a requirement that the asset appendix include certain information regarding long-term power purchase agreements and, in Order No. 816–A, the Commission modified certain asset appendix reporting requirements.[32]

1. Ownership Information

24. In Order No. 697–A, the Commission set forth a requirement that an MBR seller seeking to obtain or retain MBR authority must identify *all* of its upstream owners as well as describe the business activity of its owners and whether they are involved in the energy industry. Specifically, footnote 258 of Order No. 697–A states:

> A seller seeking market-based rate authority must provide information regarding its affiliates and its corporate structure or upstream ownership. To the extent that a seller's owners are themselves owned by others, the seller seeking to obtain or retain market-based rate authority must identify those upstream owners. Sellers must trace upstream ownership until all upstream owners are identified. Sellers must also identify all affiliates. Finally, an entity seeking market-based rate authority must describe the business activities of its owners, stating whether they are in any way involved in the energy industry.[33]

25. As noted above, a seller seeking MBR authority must show that it and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power. Given that information about owners that do not meet the definition of affiliates under section 35.36(a)(9) is not necessary to evaluate horizontal or vertical market power, continuing to require information on unaffiliated owners may create a burden that is unrelated to the Commission's determination whether a MBR seller qualifies for MBR authority. Thus, the instant NOPR proposes to revise the requirements of Order No. 697–A such that MBR sellers would only be required to provide information on certain ''affiliate owners'' (*i.e.,* owners that meet the definition of ''affiliate'' provided in 18 CFR 35.36(a)(9)).[34] That is, consistent with the proposal in the Ownership NOPR, we propose that MBR sellers need to identify only those affiliate owners that either: (1) Are an ''ultimate affiliate owner,'' defined as the furthest upstream affiliate owner(s) in the ownership chain; or (2) have a franchised service area or MBR authority, or directly own or control generation; transmission; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies.[35]

26. In addition, consistent with the Commission's proposal in the Ownership NOPR, we propose that, where an MBR seller is directly or indirectly owned or controlled by a foreign government or any political subdivision of a foreign government or any corporation which is owned in whole or in part by such entity, the MBR seller identify such foreign government, political subdivision, or corporation as part of its ownership narrative.[36] This information is useful in protecting public utility customers against inappropriate cross-subsidization and affiliate abuse

[26] In the Connected Entity NOPR, the Commission proposed to require market participants to certify, on a yearly basis, that their Connected Entity data is comprehensive and accurate. Connected Entity NOPR, FERC Stats. & Regs. ¶ 32,711 at P 30. This NOPR does not propose to include that requirement.

[27] *See* Order No. 816, FERC Stats. & Regs. ¶ 31,374 at P 4; Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 399.

[28] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62–63.

[29] *Id.* P 408. *See also Kingfisher Wind, LLC,* 151 FERC ¶ 61,276, at PP 26–27 (2015) (providing guidance on how qualified sellers can claim blanket OATT waiver under Order No. 807 and demonstrate lack of vertical market power).

[30] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 440–451.

[31] *Id.* P 447; 18 CFR 35.37(e) (2015). The Commission previously had also required MBR sellers to describe sites for generation capacity, but eliminated this requirement in Order No. 816. *See* Order No. 816, FERC Stats. & Regs. ¶ 31,274.

[32] *See* Order No. 816, FERC Stats. & Regs. ¶ 31,374 at PP 139–145, app. B, Asset Appendix; Order No. 816–A, FERC Stats. & Regs. ¶ 31,382 at PP 58, 61, 63, app. B, Asset Appendix.

[33] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at n.258.

[34] The Ownership NOPR similarly proposed to limit the ownership information requirements to information regarding affiliate owners. *See* Ownership NOPR, FERC Stats. & Regs. ¶ 32,713 at P 9.

[35] *See id.*

[36] *See* Ownership NOPR, FERC Stats. & Regs. ¶ 32,713 at P 11.

concerns possible when controlling interests in a public utility are held by a foreign government, any political subdivision of a foreign government, or any corporation which is owned in whole or in part by such entity. Finally, we also propose, as the Commission did in the Ownership NOPR, that with respect to any owners that an MBR seller represents to be passive, the MBR seller affirm in its ownership narrative that its passive owner(s) own a separate class of securities, have limited consent rights, do not exercise day-to-day control over the company, and cannot remove the manager without cause.[37]

27. We believe that limiting the category of owners for which MBR sellers have to provide information will be less burdensome for the industry and more useful to the Commission for purposes of determining whether a seller qualifies for MBR authority. We propose changes to the regulatory text in section 35.37(a)(2) to implement the changes to the level of ownership information required and to require that certain ownership information be provided in a format specified on the Commission's Web site, so that it can be included in the relational database.

28. We propose that the first time an entity is identified as an affiliate owner by an MBR seller in an XML submission, the relational database will create a unique identifier for that entity. A list of all of these entities and their associated unique identifiers, along with limited identifying information (*e.g.,* business address) would be published on the Commission's Web site. Once a unique identifier is assigned to an entity, all MBR sellers would be responsible for using this unique identifier when identifying their affiliate owners in future XML submissions.[38] To the extent an MBR seller submits its relationship with an affiliate owner as privileged under § 388.112 of the Commission's regulations, the MBR seller-affiliate owner relationship would remain confidential if it qualifies for such treatment. However, the identity of the affiliate owner and its unique identifier or LEI (without an indication of its affiliations) would be included in the public list on the Commission's Web site. We seek comment on this proposal.

29. Once the MBR seller submits all the required affiliate owner information to the relational database through the XML filing, the database would be able to generate a corporate organizational chart. Thus, we also propose to amend § 35.37(a)(2) to remove the requirement for MBR sellers to submit corporate organizational charts adopted in Order No. 816.

30. While there will be some increased burden in the short-term associated with providing ownership information in the relational database, the reduction of ownership information required to be reported and the elimination of the corporate organizational chart requirement represent a net decrease in burden for MBR sellers. We seek comment on these proposals.

2. Asset Appendix Information

31. Currently, MBR sellers submit in an electronic spreadsheet format an asset appendix that contains information about long-term firm purchases and assets that they and all of their affiliates own or control. We propose to amend this requirement such that, for purposes of the asset appendix requirement: (i) Information be submitted in XML format as specified on the Commission's Web site so that it can be included in the relational database; and (ii) each MBR seller would no longer report assets owned by its affiliates with MBR authority.[39] Once an MBR seller identifies its ultimate affiliate owner(s), the relational database would be able to identify all the affiliates (*i.e.,* those with a common upstream owner) with MBR authority (that have each filed an asset appendix with its own assets) and create an asset appendix for the MBR seller that includes all of the assets of its affiliates with MBR authority. That asset appendix would be placed into eLibrary as part of the MBR seller's filing. For example, Company F's filing identifies two ultimate affiliate owners, Company A and Company B. The relational database would recognize that two other MBR sellers, Company C and Company D, also identify Company A as an ultimate affiliate owner (making those two companies also affiliates of Company F) and that Company E has identified Company B as an ultimate affiliate owner (making Company E another affiliate of Company F). The relational database would then be able to construct a complete asset appendix for Company F, which would reflect any and all assets reported by Companies A, B, C, D, and E, which are all affiliates of Company F. Given the proposed requirement discussed below that existing MBR sellers make a baseline informational submission including asset appendix information, we expect that whenever an MBR seller would need to submit a filing on which the Commission has to act (*e.g.,* an initial application, triennial submission, or change in status filing), all of the information necessary for the relational database to create a complete asset appendix (*i.e.,* information on affiliates' assets) would exist in the relational database.

32. We believe that this proposed approach would reduce the burden on MBR sellers given that they would no longer have to submit detailed information on all of their affiliates' assets. However, we recognize that an MBR seller's current asset appendix could include assets that are owned or controlled by an entity that does not have MBR authority, such as a generating plant owned by an affiliate that only makes sales under cost-based rates. If that MBR seller does not have a requirement to submit the information related to the affiliated generating plant into the relational database, that information could be ''lost.'' Accordingly, for purposes of completeness, we propose to require that the MBR seller include in its relational database filing any assets that are owned or controlled by an affiliate that does not have MBR authority. In that way, these assets would be included in the asset appendix that the relational database generates for the MBR seller.

33. A potential issue with this proposed approach is that the filing MBR seller would not be directly responsible for *all* the information that is included in its asset appendix; some of the information that will be used to generate the complete asset appendix will have been reported by its affiliates. We propose that a filing MBR seller incorporate by reference its affiliates' most recent relational database submittals or otherwise acknowledge that the information from its affiliates' relational database submittals will be included as part of the MBR seller's asset appendix. We anticipate that MBR sellers (and the public) will be able to access reports from the relational database's up-to-date asset information through a Commission-established interface. Thus, the filing MBR seller would have prior notice of the asset appendix the relational database would generate and would be able to note any perceived errors when making its filing.

[37] *See* Ownership NOPR, FERC Stats. & Regs. ¶ 32,713 at P 13 (citing *AES Creative Resources, LP,* 129 FERC ¶ 61,239 (2009) (distinguishing between controlling interests and passive investment interests)).

[38] If the affiliate owner has an LEI, the MBR seller should use the LEI as the unique identifier, which would take the place of a Commission-generated identifier on the published list.

[39] This proposal is specific to the relational database requirement to provide asset appendix information. This does not relieve MBR sellers from the requirements to consider and discuss affiliate assets as part of their horizontal and vertical market power analyses.

In addition, once the relational database generates and reports the MBR seller's full asset appendix to eLibrary (including information on the affiliates' assets), the MBR seller could file to amend the asset appendix posted to eLibrary if the MBR seller believes that the asset appendix generated by the relational database contains errors.[40]

34. As noted above, we believe that the approach proposed above in which an MBR seller reports only its own assets (and those of any affiliate without MBR authority) would represent an overall decrease in burden on MBR sellers. However, the Commission is also considering an alternative approach whereby MBR sellers continue to provide information on all of their affiliates' assets when submitting asset appendix information for the relational database. An advantage to this approach would be that the filer would be submitting all of the information itself and not having to rely on information submitted by its affiliates. One disadvantage to this approach is that, to the extent more than one MBR seller submits information about an asset, the more recently submitted data would overwrite the earlier-submitted data in the relational database such that the database would reflect only the most recently filed information. Thus, if Company A submits a triennial filing and reports that it sold a 150 MW generating plant (Plant 1), it would delete that plant from its asset appendix. The following day, if Company B, an affiliate of Company A, submits a triennial filing and is unaware of the sale of Plant 1 by Company A, and it includes Plant 1 in the asset appendix, because the more recently added information by Company B would ''overwrite'' the deletion made by Company A, it would appear in the relational database that Company A still owns Plant 1. While this ''overwrite'' would not impact the content of MBR sellers' filings, it would be problematic for the accuracy of the database given that more recently added information may not always represent the most current or accurate information. For this reason, we propose the option detailed above whereby each MBR seller does not report to the relational database the assets owned by its affiliates with MBR authority. As noted above, the owner of the facility generally should be the best source for information regarding its own facility. We seek comment on the proposed approach as well as the alternative approach.

35. In addition to these proposed changes in the submission of asset appendix information, we propose four additional discrete changes to the information required to be reported regarding assets. First, MBR sellers currently are free to report their generation in the asset appendix on a facility-wide basis, *i.e.,* they are not required to report on a unit-specific basis. We propose instead to require that each generation unit be reported separately for purposes of the relational database and that MBR sellers report the Plant Name, Plant Code, Generator ID and Unit Code (if applicable) information from the Energy Information Agency (EIA) Form EIA–860 database.[41] The use of this Form EIA–860 information will ensure that each unit is uniquely identified, which will enable the relational database to identify when information is being provided about a generating unit that is already part of the relational database and reduce duplication of data. While there may be an initial small increase in burden associated with transitioning to reporting generation-related information on a unit-specific basis, we believe that better tracking of which MBR seller owns or controls each specific unit will improve the Commission's ability to assess sellers' market power, particularly in cases where various units at a single facility may be owned or controlled by more than one seller. This also aligns the Commission's required unit identifying information with the EIA identifying information, essentially adopting the EIA nomenclature, which should simplify regulatory requirements for the industry.

36. Second, we propose that MBR sellers be required to report in the relational database the ''Telemetered Location: Market/Balancing Authority Area'' and ''Telemetered Location: Geographic Region'' in which the unit should be considered for market power purposes when that location differs from the reported physical location.[42] Currently, the asset appendix has columns entitled ''Location: Market/Balancing Authority Area'' and ''Location: Geographic Region'' where MBR sellers are expected to provide the physical location of their generation units. These columns help the Commission match the information in the asset appendix to the MBR seller's market power analysis. However, some generation units are considered to be in a different market/balancing authority area and geographic region for market power purposes than the market/balancing authority area and geographic region in which they are physically located (*e.g.,* generation units that are pseudo-tied into a different balancing authority area). Requiring MBR sellers to report in the relational database the ''Telemetered Location: Market/Balancing Authority Area'' and ''Telemetered Location: Geographic Region'' will ensure that the Commission is able to properly match identified generation units with the markets/balancing authority areas and geographic regions in which they are studied in an MBR seller's market power analysis.

37. Third, we propose to require MBR sellers to include information on long-term firm sales (*i.e.,* those one year or longer) in their relational database submissions. This would correspond with the requirement added in Order No. 816 that MBR sellers provide information in the asset appendix regarding long-term firm purchases. This requirement to report sales in addition to purchases will help ensure that purchasers and sellers report and treat transactions in a consistent and accurate manner. To the extent that an MBR seller believes there are any unique qualities of the contract that would not otherwise be captured by the relational database, the seller is free to explain this as part of its horizontal market power discussion.

38. Finally, similar to the requirement for reporting generating units, we propose that, for unit-specific power purchase agreements, MBR sellers provide the associated Plant Code and Generator ID from the Form EIA–860 database, which will provide the unique identifier for that unit.

39. We also propose to eliminate some of the asset information requirements currently reported in the asset appendix. For example, we propose that, for purposes of the relational database, MBR sellers no longer be required to report the size (kV and length) of transmission facilities and no longer be required to identify specific transmission facilities. Instead, we propose that MBR sellers only report in the relational database whether they have transmission facilities covered by an OATT in a particular balancing authority area and region. With respect to the natural gas pipeline information currently required to be reported in the

[40] To the extent that an MBR seller believes that its affiliate has submitted incorrect data, we expect them to work together to have the correct information submitted into the relational database. We note that each MBR seller is responsible for submitting accurate, factual, and complete information to the Commission.

[41] The Form EIA–860 data is available on the Internet at *https://www.eia.gov/electricity/data/eia860/.*

[42] MBR sellers currently are required to report the market/balancing authority area and region where generation is located. We propose that such information continue to be reported for purposes of the relational database.

list of transmission assets and natural gas intrastate pipelines and gas storage facilities (transmission list) portion of the asset appendix, we propose to revise the requirements so that the MBR seller will only be required to indicate for purposes of the relational database whether they own natural gas pipelines and storage facilities, and if so, to identify in which balancing authority area and region those assets are located. We expect that these proposed changes would reduce the burden on MBR sellers associated with the transmission list of the current asset appendix.[43] We seek comments on these proposals.

3. Indicative Screen and Other MBR Information

40. As noted above, current Commission regulations at § 35.37(c)(4) require that MBR sellers submit their indicative screens in an electronic spreadsheet format. We propose to amend that regulation to require that the indicative screen information instead be submitted in XML format as specified on the Commission's Web site, which will enable the information to be included in the relational database. We anticipate that once an MBR seller submits the required screen information to the relational database through the XML filing, the database will format the indicative screens for inclusion in the record in eLibrary. In this way, the generated indicative screens will be available for public comment, as part of the MBR seller's filing, and also be available to the Commission and staff in the relational database for ease of access and analysis. MBR sellers would still be required to submit to the Commission all work papers underlying their indicative screens. Such work papers would be included as an attachment to the relevant filing. We seek comments on these proposals.

41. The proposed information to be collected from MBR sellers via the new XML format is detailed in the attached draft data dictionary. As discussed above, most of this information is already part of a market-based rate filing, but some of it is new information. The types of existing MBR information that we propose to require an MBR seller to submit in XML for inclusion in the relational database include: (i) MBR seller category status for each region in which the MBR seller has MBR authority; (ii) markets in which the MBR seller is authorized to sell ancillary services; (iii) Commission-ordered seller-specific mitigation, if any; and (iv) whether the MBR seller's MBR authority is limited to certain balancing authority areas. In addition, we propose to require MBR sellers to submit two new categories of information in XML for inclusion in the relational database: (i) The effective date of the initial grant of market-based rate authority to the MBR seller and (ii) Connected Entity Information, as explained elsewhere in this NOPR.

42. As discussed above, we propose to amend the Commission's regulations at § 35.37 to include this additional information being reported for MBR purposes and to add a new § 35.51 to include a requirement for MBR sellers to provide Connected Entity Information in the relational database. We seek comment on these proposed changes.

C. Need and Authority: Analytics and Surveillance

43. In the Connected Entity NOPR, the Commission discussed the importance to its analytics and surveillance of understanding the financial and legal connections among market participants and other entities. The Commission pointed out that screening market activity for anomalies must include understanding the circumstances surrounding a given pattern of trading, including the possible motivations for that behavior, which can sometimes be found in the legal or contractual relationships entities bear to one another. However, as the Commission also found, the few existing sources of such relationship information are inadequate because of scope, format, or timing reasons.[44] The Commission therefore believed that it was necessary to obtain such data from the market participants themselves.

44. In the instant NOPR, we propose to require the direct submission of Connected Entity Information not only from MBR sellers but also from entities that trade solely in virtuals and FTRs. The Commission has the authority under FPA section 205 to regulate the practices in which these entities engage insofar as those practices affect jurisdictional rates. Consequently, as discussed more fully below, we propose to now require that such entities submit Connected Entity Information and their LEIs within 30 days of commencing trading of virtual products or holding FTRs in Commission-jurisdictional organized markets and then provide ongoing updates to their Connected Entity Information to the Commission through the relational database.

45. The authority for obtaining Connected Entity data is found, as described in the Connected Entity NOPR, in the Commission's anti-manipulation authority under section 222 of the FPA, its investigative authority under section 307(a) of the FPA, its administrative powers under section 309 of the FPA, and its inspection and examination authority under section 301(b) of the FPA, as well as in sections 205 and 206 of the FPA.[45] Section 205 of the FPA provides that ''[a]ll rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable. . . .'' [46]

46. The U.S. Supreme Court recently concluded that sections 205(a) and 206(a) grant the Commission the authority and the duty to ensure that the practices directly affecting the rates charged by public utilities for the sale of electric energy for resale, and the transmission of electric energy in interstate commerce, are just and reasonable.[47] In the organized markets, the locational marginal price (LMP) for sales of energy, capacity, and ancillary services are established through markets administered by the RTOs and ISOs, which are public utilities. Virtual trades directly affect those LMPs, since they are submitted in the same way and at the same time as all other bids and offers in the day-ahead market, and are cleared along with other bids and offers, thus affecting the outcome of the day-ahead market.[48] In addition, market participants that hold FTRs may be incentivized to use physical or virtual transactions to directly affect LMPs in such a way as to benefit their FTR holdings.[49] All these prices must be just

[43] We note that although these proposals would reduce the level of detail currently required to be provided in the asset appendix about electric transmission and natural gas assets, they do not affect the descriptive information and representations that MBR sellers are required to provide for purposes of the vertical market power analysis under 18 CFR 35.37(d), (e).

[44] Connected Entity NOPR, FERC Stats. & Regs. ¶ 32,711 at PP 12–14.

[45] 16 U.S.C. 824d, 824e, 824v, 825(b), 825f(a), 825h.

[46] 16 U.S.C. 824d.

[47] *FERC* v. *Elec. Power Supply Ass'n,* 136 S. Ct. 760 (2016).

[48] *See Cal. Indep. Sys. Operator Corp.,* 110 FERC ¶ 61,041, at P 30 n. 21 (2005).

[49] *See* ETRACOM LLC, 155 FERC ¶ 61,284 (2016) (in which the Commission found that ETRACOM engaged in a scheme to submit virtual supply transactions in order to affect power prices and economically benefit its Congestion Revenue Rights); *see also Black Oak Energy, LLC* v. *FERC,* 725 F.3d 230, 240 (D.C. Cir. 2013) *(Black Oak)* (''Since their business interests are purely speculative, FERC explained, the virtual marketers pose a threat as potential market manipulators.'').

and reasonable under the Commission's mandate.

47. The Commission has confirmed its jurisdiction to regulate FTRs under FPA sections 205 and 206 as charges or contracts ''in connection with'' jurisdictional transmission service and ''affecting'' such service,[50] and, in Order No. 697, made note of its monitoring authority over the RTO/ISO market rules addressing virtual and FTR transactions and over the market participants engaged in those transactions.[51] Moreover, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has upheld the Commission's authority to regulate virtual traders as participants in Commission-regulated wholesale energy markets.[52] The Commission has held that virtual trades that affect the price of jurisdictional electricity fall within its jurisdiction.[53]

48. Accordingly, the Commission's authority to require the submission of Connected Entity Information is unrelated to whether a given participant in the energy markets is a public utility or not, or whether it is seeking MBR authority or not. Consequently, the Commission has the authority to impose reasonable requirements on entities that solely trade virtuals and hold FTRs as a condition of participation in those product markets. These requirements include candor and the disclosure of Connected Entity Information.

49. MBR sellers would also be subject to Connected Entity reporting. The Commission proposes that FPA section 201(f) entities, which in the main consist of municipalities and certain cooperatives (as well as their associated joint action agencies), would not be included in the reporting requirements. These entities are not subject to FPA sections 205 and 206; furthermore, due to their financial structures, they have substantially reduced incentives to commit market manipulation.[54]

D. Nature of the Connected Entity Information Submissions

50. Data proposed for submission by entities for the purpose of analytics and surveillance would be greatly streamlined from that proposed under the Connected Entity NOPR.[55] This information would be submitted both by MBR sellers (although not pursuant to the MBR program), and Virtual/FTR Participants. The proposed regulatory text pertaining to the Connected Entity Information, as well as the proposed regulatory text pertaining to revised MBR requirements, is set out at the end of this NOPR.

51. The Connected Entity Information requirements would be applicable to MBR sellers and Virtual/FTR Participants. We propose to define the term ''Virtual/FTR Participants'' as entities that buy, sell, or bid for virtual instruments or financial transmission or congestion rights or contracts, or hold such rights or contracts in organized wholesale electric markets, not including entities defined in section 201(f) of the FPA. Organized wholesale electric markets would include ISOs and RTOs as those terms are defined in § 35.46 of the Commission's regulations. In addition, we propose to use the same definition for ''Seller'' as in the MBR context and defined in § 35.36(a)(1) of the Commission's regulations. We seek comments on these proposed definitions. The Commission is also not proposing to require entities that hold only Auction Revenue Rights to submit Connected Entity Information, but seeks comment on this aspect of the proposal.[56]

52. We still propose to use the term ''Connected Entity'' under the proposed regulations, but the categories of entities included and their definitions are reduced and narrowed from that proposed in the Connected Entity NOPR, as described below.

(a) *Ownership and control:* The proposed regulation would limit upstream, downstream, and common ownership/control relationship reporting, to affiliates, as defined in 18 CFR 35.36(a)(9), that are either: (1) Ultimate affiliate owners of the entity, as defined in 18 CFR 35.37(a)(2), (2) participants in Commission-jurisdictional organized wholesale electric markets, or (3) entities that purchase or sell financial natural gas or electric energy derivative products that settle off of the price of physical electric or natural gas energy products.

(b) *Employees:* The proposed regulation would limit reportable employees or contractors to include only traders, defined as a person who makes, or participates in, decisions and/or devises strategies for buying or selling physical or financial Commission-jurisdictional electric products or physical natural gas.

(c) *Debt:* The proposed regulation would eliminate the debt instruments and structured transactions reporting requirement proposed in the Connected Entity NOPR.

(d) *Contracts:* The proposed regulation would refine the definition in the Connected Entity NOPR to require reporting by the filing entity only of those entities that have entered into an agreement with it that ''confers control over an electric generation asset that is used in, or offered into, wholesale electric markets.'' Agreements that confer control are those that grant one of the parties the right to make trading decisions for an electric generation asset of another party or to offer an electric generation asset into the wholesale electric markets.

We seek comment on this proposed definition of Connected Entity. In particular, we seek comment on the proposed definition of ''trader'' as used in the Connected Entity definition.

53. We recognize that the agreements that would fall into the Contracts category of this proposed definition of Connected Entity are already reported to the Commission in EQR. However, for the Commission to be able to efficiently use EQR data in lieu of including the Contracts category of the Connected Entity definition, we would have to implement changes to how EQRs are filed that would allow staff to easily pair EQR data with Connected Entity Information. Therefore, as an alternative to including the Contracts category of the Connected Entity definition, we are also considering the option of requiring MBR sellers to include their LEIs in their EQR submissions, which would facilitate coordination between the two datasets. We request comment on: (1) The feasibility of this alternative approach; (2) whether this alternative approach is preferable to inclusion of the Contracts category of Connected Entity Information; and (3) the burden such a requirement would impose on MBR sellers.

54. We also propose to require MBR sellers and Virtual/FTR Participants to provide their Purchaser Seller Entity (PSE) NAESB/OATI webRegistry Entity Code(s) (PSE ID), if available, as part of their Connected Entity Information submission. The PSE ID is the entity identifier that appears in the contract/market paths field of an e-Tag. The PSE ID would assist the Commission in

[50] *See, e.g., Cal. Indep. Sys. Operator Corp.,* 89 FERC ¶ 61,153 (1999), *order on reh'g,* 94 FERC ¶ 61,343 (2001).

[51] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 921.

[52] *Black Oak,* 725 F.3d 230 at 238–41.

[53] *See, e.g., Coaltrain Energy, L.P.,* 155 FERC ¶ 61,204, at PP 247–249 (2016).

[54] *See Dairyland Power Cooperative,* 37 FPC 12 (1967) (discussing the characteristics of certain section 201(f) entities that distinguish them from privately-owned companies).

[55] For a short-hand comparison of the Connected Entity NOPR proposals and the the current NOPR proposal, *see* Attachment B: Comparison of Connected Entity NOPR Proposal and Current NOPR Proposal.

[56] Auction Revenue Rights are entitlements to FTR auction revenues that are allocated based on historical transmission usage or the funding of transmission upgrades.

pairing the information submitted pursuant to this NOPR with other datasets, such as e-Tags.[57] We are proposing that MBR sellers and Virtual/FTR Participants who have a PSE ID report that identifier as part of their Connected Entity Information submissions. However, we are not proposing that those entities that do not have a PSE ID obtain one. We seek comment on this proposal.

55. As mentioned above, certain information specified in this NOPR is sought for the purpose of determining whether MBR authority is to be granted or retained, while other information is sought for the Commission's analytics and surveillance. For that reason, the regulations pertaining to these data submissions are set out in different regulatory text sections, with the MBR-specific requirements set out in subpart H of part 35 and the regulatory text for the Connected Entity Information set out in a new subpart K of part 35. However, this NOPR proposes coordinating the deadlines for reporting the two types of data wherever possible, thereby allowing entities that must submit data under both categories (MBR and Connected Entity) to combine it in a single submission. As noted above, instructions on the specific formatting and other technical requirements for these submissions will be set out on the Commission's Web site. The Commission will hold substantial outreach meetings with members of the industry, to determine the most effective, expeditious, and cost-effective method of structuring these submissions.

E. Legal Entity Identifiers

56. In the Connected Entity NOPR, the Commission discussed its past dissatisfaction with the available methods for identifying entities that must make filings with the Commission.[58] The Commission found that the information available was often imprecise and out of date and proposed to require market participants to obtain an LEI, which is unique to the acquirer. This proposal generally was met with favor in the comments to the Connected Entity NOPR. In this NOPR, the Commission proposes requiring that all entities that must make either MBR or Connected Entity Information filings, obtain and maintain an LEI, and report it to the Commission in its XML submission for inclusion in the relational database.

F. Confidentiality and Due Diligence

57. As was the case with data to be collected under the Connected Entity NOPR, the information received under this proposal for analytics and surveillance would be treated as non-public and confidential. The Commission has long experience with maintaining the non-public status of information used for investigative purposes, and this applies equally to its analytics and surveillance program. Information submitted for MBR purposes will be made public via publication in eLibrary, and potentially through other means, such as the asset appendix interface discussed above unless confidential treatment is requested pursuant to the Commission regulations.[59] Connected Entity Information would be kept non-public unless the Commission authorized its release under the provisions of Part 1b of its regulations.[60]

58. The Commission appreciates that when extensive data must be submitted to a regulatory entity, occasionally some data may, despite an entity's best efforts to achieve accuracy, turn out to be incomplete or incorrect. In the case of such inadvertent errors, the Commission's practice is simply to require that a corrected submittal be made without sanctions of any kind. The intentional or reckless submittal of incorrect or misleading information could, however, result in the imposition of sanctions, including civil penalties, as has occurred in other contexts.[61] An entity can protect itself against such a result by applying due diligence to the retrieval and submission of the required information.

G. Filing Requirement for Existing and New Virtual/FTR Participants[62]

59. We propose to require Virtual/FTR Participants to submit an Initial Connected Entity Submission, as defined in section 35.50(b), to engage, or continue to engage, in the virtual and/or FTR markets within the organized wholesale electric markets. The Initial Connected Entity Submission would: (i) Contain the ownership, trader, and contract information set forth in the regulation regarding Connected Entity Information; and (ii) report its LEI. The Commission would not issue an order approving the Initial Connected Entity Submission. We propose that any current Virtual/FTR Participant submit the Initial Connected Entity Submission within 90 days of the publication of a Final Rule in the **Federal Register**. We further propose that, thereafter, any new Virtual/FTR Participant submit an Initial Connected Entity Submission within 30 days of commencing trading of virtual or FTR products. For new Virtual/FTR Participants that commence trading of virtual or FTR products during the initial 90-day period after publication of the Final Rule in the **Federal Register**, the 30-day timeline for submission of Connected Entity Information would begin to run after the 90 days has elapsed. To the extent an entity is both an MBR seller and a Virtual/FTR Participant, we propose that entity follow the submission deadlines and requirements applicable to MBR sellers. We request comments on this proposed submission process.

H. Baseline Submission Required of Existing MBR Sellers[63]

60. In the case of existing MBR sellers, we propose to require each MBR seller to make a baseline submission that will include both Connected Entity and MBR Information in order to establish the relational database.

61. The baseline submission would be due within 90 days of the publication of a Final Rule in the **Federal Register** and include:

(i) The Connected Entity Ownership information set forth in the regulation regarding Connected Entity Information (*i.e.,* affiliates, as defined in section 35.36(a)(9) of the Commission's regulations, that: (a) Are ultimate affiliate owners; (b) participate in organized wholesale electric markets; or (c) purchase or sell financial natural gas or electric energy derivative products that settle off the price of electric or natural gas energy products);

(ii) its LEI;

[57] *Availability of E-Tag Information to Commission Staff,* Order No. 771, 77 FR 76367 (Dec. 28, 2012), FERC Stats. & Regs. ¶ 31,339 (2012), *order on reh'g and clarification,* 142 FERC ¶ 61,181 (2013), *order on reh'g and clarification,* 153FERC ¶ 61,177 (2015).

[58] Connected Entity NOPR, FERC Stats. & Regs. ¶ 32,711 at P 24.

[59] *See* 18 CFR 388.112.

[60] 18 CFR pt. 1b. The protected nature of the collected information would not, however, prohibit the Commission from sharing it on a confidential basis, with market monitors, RTOs and ISOs. Such sharing was explicitly authorized in *Southwest Power Pool, Inc.,* 137 FERC ¶ 61,046, at P 20 (2011).

[61] *See, e.g., Berkshire Power Company LLC and Power Plant Management Services LLC,* 154 FERC ¶ 61,259, at PP 15–16 (2016); *Coaltrain Energy, L.P,* 155 FERC ¶ 61,204, at PP 274–287 (2016); *City Power Marketing, LLC and K. Stephen Tsingas,* 152 FERC ¶ 61,012, at P 216 (2015); *Constellation Energy Commodities Group, Inc.* 145 FERC ¶ 61,062, at P 5 (2013); *Gila River Power, LLC,* 141 FERC ¶ 61,136, at P 12 (2012).

[62] For a short-hand summary of the proposed submission process for both MBR sellers and Virtual/FTR Participants, s*ee* Attachment C: Proposed Submission Processes for MBR Sellers and Virtual/FTR Participants.

[63] For a short-hand summary of the proposed submission process for both MBR sellers and Virtual/FTR Participants, *see* Attachment C: Proposed Submission Processes for MBR sellers and Virtual/FTR Participants.

(iii) the MBR information as set forth in the data dictionary (*i.e.,* (a) MBR seller category status for each region in which the MBR seller has MBR authority, (b) markets in which the MBR seller is authorized ancillary services, (c) mitigation, if any, and (d) whether the MBR seller has limited the regions in which it has MBR authority);

(iv) MBR Ownership information (*i.e.,* affiliate owners that are: (a) Ultimate affiliate owners [64] and (b) affiliate owner that have a franchised service area or MBR authority or directly own or control generation; transmission intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies;

(v) Connected Entity Trader and Contracts information; and

(vi) Asset Appendix information as set forth in the data dictionary.

MBR sellers should submit current information, even if different from information included in their most recent MBR filing with the Commission.

62. This submission is intended to establish a baseline of information in the relational database, not to evaluate an MBR seller's MBR authority. Thus, the Commission would not act on the baseline filing. The information in this baseline submission would not be deemed accepted or approved by the Commission.

I. Ongoing Connected Entity Information Submission Requirements

63. Thereafter, in the case of both MBR sellers and Virtual/FTR Participants, changes in connection would be required to be submitted within 30 days of the change. We propose to define a change in connection for purposes of updating Connected Entity Information as occurring when: (i) An entity becomes a Connected Entity of a Seller or Virtual/FTR Participant; or (ii) an entity ceases to be a Connected Entity of a Seller or Virtual/FTR Participant. With regard to the Contracts category of Connected Entity relationships, we propose to include a *de minimis* threshold of 100 MW for reporting changes in connection. Thus, a change in connection related to connections that are created by an agreement would occur when a Seller or Virtual/FTR Participant enters into, terminates, or amends an agreement that results in the parties conferring control of 100 MW or more of the output of an electric generation asset. We seek comments on this proposed definition of change in connection and our proposal to include a 100 MW *de minimis* threshold for reporting changes of connection related to the Contracts category.

64. The 30-day time period for submitting changes in connection corresponds to the time period to report MBR-required changes in status, thus permitting a single combined filing. For any submissions required under this NOPR, entities subject to both MBR and Connected Entity requirements may include both the MBR and Connected Entity Information in the same format, so long as the time periods for submission applicable to each category are met.

J. Ongoing MBR Seller Filing Requirements

65. We further propose to revise our regulations to add a new § 35.51 requiring that new MBR sellers, within 30 days of the date of the issuance of the order granting MBR authority, make a submission of their: (i) Connected Entity Ownership information, as defined in § 35.49(c)(1); (ii) Trader information, as defined in § 35.49(d)(2); and (iii) Contract information, as defined in § 35.49(d)(3). Thereafter, Sellers shall make filings updating this information within 30 days of a change in connection, as defined in section 35.49(e). We also note that MBR sellers would still be required to make change in status filings pursuant to § 35.42(a), and would be required to update other information quarterly, as set forth in the proposed § 35.42(d).

66. We also propose a new § 35.42(d) to require MBR sellers to update the relational database on a quarterly basis to reflect any changes to previously-submitted information that did not trigger a change in status filing under § 35.42(a), a change in connection submission under the proposed § 35.49(e), or any other MBR-related filing such as a notice of cancellation of or revision to an MBR tariff to change an MBR seller's category status.[65] For example, updates that would be required include: (1) Retirement of a generation asset; (2) capacity rating changes to an existing generation asset; [66] (3) acquisition of a generation asset that is a reportable asset [67] but not required to be reported in a change in status filing; (4) loss of affiliation with an affiliate owner that has a franchised service area or MBR authority, or directly owns or controls generation, transmission, interstate natural gas transportation, storage or distribution facilities, physical coal supply sources, or ownership of or control over who may access transportation of coal supplies that does not trigger a change in connection submission; and (5) changes to business card information of the Seller or its affiliate owner(s) (*e.g.,* name of legal entity name, headquarters address, address of legal formation, Web site, business registry, and business registry reference number) that will be used as a way to distinguish entities with similar names and characteristics from one another. In this way, information in the relational database would be fully updated on a regular basis while avoiding duplication of other reporting requirements. To the extent that a Seller needs to make a change in status filing, change in connection submission, and/or a quarterly update, it may do so in a single filing to the extent the Commission's rules on timing of change in status filings and change in connection are met. That is, a quarterly submission could include the requisite change in status filing and/or the requisite change in connection submission so long as it is not made more than 30 days after the relevant change in status or change in connection event.

67. Maintaining the accuracy of the database is not only important to ensure the usefulness of the relational database for the Commission's analytics and surveillance program, but is also necessary to generate accurate asset appendices for inclusion in an MBR seller's MBR filings and organizational charts for use by the Commission. As described above, the relational database will generate an asset appendix for the MBR seller based on information that is provided by its affiliates. The quarterly update requirement will ensure that

[64] When information, such as ultimate affiliate owner, is required to be submitted for both MBR and analytics and surveillance purposes, it should be designated as MBR Information and will be treated as public information unless the filer specifically requests non-public treatment in accordance with 18 CFR 388.112.

[65] When making any filing that affects information captured in the relational database, including a notice of cancellation, MBR sellers would be required to include an XML file to update the relational database. *See* P [65], *infra.*

[66] The Commission's change in status regulation regarding generation-related assets is limited to cumulative net increases of 100 MW or more; thus, not all changes in generation assets create a change in status filing obligation. *See* 18 CFR 35.42(a).

[67] As the Commission clarified in Order No. 816, behind-the-meter generation and certain qualifying facilities would not be reportable assets. Order No. 816 FERC Stats. & Regs. ¶ 31,374 at PP 23, 44 (sellers are not required to include behind-the-meter generation in their asset appendices, indicative screens, or for purposes of calculating the change in status threshold; qualifying facilities that are exempt from FPA section 205 and facilities that are behind-the-meter facilities do not need to be reported in the asset appendix or indicative screens).

when an MBR seller makes a filing requiring an asset appendix, the asset appendix generated by the relational database would reflect current information on its affiliates' assets.[68] We propose that the quarterly updates be treated as informational.

68. Other than the changes identified herein, we propose that the substantive requirements for MBR-related filings (*i.e.,* initial applications for MBR authority, triennial filings, and change in status updates) remain the same as that currently in effect. However, such filings would be made as an XML filing package that includes all of the necessary attachments, as described above. Similarly, MBR sellers' notices of cancellation of, or amendments to, their MBR tariffs would include an XML file to update relevant relational database information, if any. As noted elsewhere in this NOPR, instructions on the specific formats and mechanics of such submissions will be included on the Commission's Web site.

III. Information Collection Statement

69. The collections of information contained in this proposed rule are being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). We solicit comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Respondents subject to the filing requirements of this proposed rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

70. The proposed rule will affect MBR sellers and Virtual/FTR Participants. Burden estimates are provided for each category.[69]

71. The Commission recognizes that there will be an initial implementation burden associated with providing the Commission the requested data. For example, MBR sellers and Virtual/FTR Participants will be required to obtain an LEI if they do not already have one.[70] LEI acquisition is largely administrative with some optional legal review. We estimate one hour of person-time to acquire an LEI ($42.25),[71] added to the estimated $250 cost of obtaining the LEI itself totaling $292.25 in year one. There is also an estimated $150 annual fee for maintaining the LEI, plus the associated one burden hour for an ongoing annual cost of $192.25. The LEI information may also be submitted in the FERC–920 (Electric Quarterly Report).

72. MBR sellers already submit most of the requested information to the Commission as part of their applications, notices of change in status and triennial updated market power analyses. For MBR sellers, the proposed rule enlarges the scope of information to be collected while also reducing requirements for some existing collections. In year one, we estimate that the average MBR seller will spend forty to one-hundred hours collecting and providing this additional information, with an ongoing burden in subsequent years of thirteen hours.

73. Under the proposed rule, Virtual/FTR Participants will be required to submit a subset of the information MBR sellers are required to submit. Because exclusively Virtual/FTR Participants tend to be smaller than MBR sellers and because the information collected is not as extensive, we estimate that Virtual/FTR Participants, on average, will spend twenty hours collecting and providing this information in year one, with an ongoing burden in subsequent years of eight hours.

74. Some of the ongoing, incremental costs will be incurred by MBR sellers and Virtual/FTR Participants when they are required to submit information about certain changes within thirty days of the change. Based on the current average of change in status filings submitted by MBR sellers each year, we estimate that ten percent of affected entities will submit changes on an annual basis.

75. All MBR sellers will incur the cost associated with submitting quarterly updates to information previously submitted into the relational database to the extent such changes did not trigger a change in status or change in connection submission. We estimate that during a given year, approximately half of the 2,100 MBR sellers will be required to submit the quarterly report.

The following table summarizes the estimated burden and cost changes due to the proposed rule:[72]

[68] Currently, asset appendix information is only provided as part of initial MBR applications, triennial updated market power filings, and some notice of change in status filings.

[69] The estimated hourly cost (salary plus benefits) provided in this section are based on the figures for May 2015 posted by the Bureau of Labor Statistics for the Utilities sector (available at *http://www.bls.gov/oes/current/naics2_22.htm*) and updated March 2016 for benefits information (at *http://www.bls.gov/news.release/ecec.nr0.htm*). The hourly estimates for salary plus benefits are: Legal (code 23–0000)—$128.94; Computer and mathematical (code 15–0000)—$60.54; Information systems manager (code 11–3021)—$91.63; IT security analyst (code 15–1122)—$58.00; Auditing and accounting (code 13–2011)—$53.78; Information and record clerk (referred to as administrative work in the body) (code 43–4199)—$37.69.

[70] While some other regulators already require that certain entities obtain an LEI, for the purposes of these estimates, we assume that no MBR seller or Virtual/FTR Participant already has an LEI.

[71] Using the average hourly cost of salary plus benefits provided above, the following weights were applied to estimate the average hourly cost of $42.25: ninety-five percent information and record clerk, five percent legal.

[72] Note that the Commission is also proposing decreases in certain requirements (such as providing organizational charts and a reduction in the scope of ownership information). Any associated burden decreases are not included in the table at this time because the Commission is seeking comment on these changes. However, the EQR changes we are currently seeking comment on are included in the table.

Burden Changes as proposed in NOPR in RM16-17-000										
Respondent/Incremental Burden Category	Number of Respondents (1)	Annual Number of Responses per Respondent (2)	Total Number of Responses (1)(2)=(3)	Burden hours per Response (4)	Hourly Cost per Response (5)	Total Burden Cost Per Response (4)(5) = (6)	Total Burden Hours Per Respondent (2)(4) = (7)	Total Burden Cost Per Respondent (2)(6) = (8)	Total Annual Burden Hours (1)(7) = (9)	Total Annual Burden Cost (1)(8)=(10)
FERC-919										
MBR										
LEI acquisition burden	2,100	1	2,100	1	$ 42.25	$ 42	1	$ 42	2,100	$ 88,725
First year, incremental costs associated with the collection of additional connected entity and MBR information (e.g. unit level information and NERC PSE IDs)	2,100	1	2,100	42	$ 42.25	$ 1,775	42	$ 1,775	88,200	$ 3,726,450
First year, incremental cost of formatting changes and initial filing (using method described in NOPR)										
Category 1 Sellers	1,050	1	1,050	30	$ 76.28	$ 2,288	30	$ 2,288.40	31,500	$ 2,402,820
Category 2 Sellers	1,050	1	1,050	60	$ 76.28	$ 4,577	60	$ 4,576.80	63,000	$ 4,805,640
Ongoing incremental costs associated with the collection and reporting of additional connected entity information and MBR information (e.g. unit level information)	210	1	210	8	$ 42.25	$ 338	8	$ 338	1,680	$ 70,980
Ongoing quarterly updates for MBR information (as required)	1,050	1	1,050	4	$ 42.25	$ 338	4	$ 338	4,200	$ 354,900
Sub total for MBR-Only						First year(Cat.1)	73	$ 4,105	121800	$ 6,217,995
						First year(Cat.2)	103	$ 6,394	153300	$ 8,620,815
						Ongoing	12	$ 676	5,880	$ 425,880
FTR/Virtual Only										
LEI acquisition burden	2,000	1	2,000	1	$ 42.25	$ 42	1	$ 42	2,000	$ 84,500
First year, incremental costs associated with the collection of additional surveillance information	2,000	1	2,000	16	$ 42.25	$ 676	16	$ 676	32,000	$ 1,352,000
First year Virtual/FTR submission	2,000	1	2,000	4	$ 76.28	$ 305	4	$ 305	8,000	$ 610,240
Ongoing incremental costs associated with the collection and reporting of additional connected entity information	200	1	200	8	$ 42.25	$ 338	8	$ 338	1,600	$ 67,600
Sub total for FTR/Virtual						First year	21	$ 1,023	42,000	$ 2,046,740
						Ongoing	8	$ 338	1,600	$ 67,600
Sub total for FERC-919								First year	317,100	$ 16,885,550
								Ongoing	7,480	$ 493,480
FERC-920 (EQR)										
EQR Changes										
First year implementation in Q1 for sellers [ongoing burden is negligible]	2100	1	2100	0.25	$ 42.25	$ 11	0.25	$ 11	525	$ 22,181
Sub total for EQR Changes						First year	0.25	$ 11	525	$ 22,181
						Ongoing	0	$ -	0	$ -
Total burden changes due to NOPR RM16-17-000								First year	317,625	$16,907,731
								Ongoing	7,480	$ 493,480

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76. The table above contains estimates of the number of MBR sellers and Virtual/FTR Participants. We estimate that there are 2,100 MBR sellers based on the number of MBR filings; of those approximately half are Category 1 in all regions and half are Category 2 in one or more regions. We estimate 2,000 Virtual/FTR Participants using data submitted by the RTO/ISOs in accordance with Order No. 760.

Titles: Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities; and Requirements for Sellers and Virtual/FTR Participants for Analytics and Surveillance Purposes (FERC–919), and Electric Quarterly Report (FERC–920).

Action: Proposed revisions to existing information collections.

OMB Control Nos.: 1902–0234 (FERC–919) and 1902–0255 (FERC–920).

Respondents for This Rulemaking: MBR sellers and Virtual/FTR Participants.

Frequency of Information: Initial implementation, compliance filing, and periodic updates (annually and quarterly).

77. *Necessity of Information:* The Commission's data collection requirements and processes must keep pace with market developments and technological advancements. Collecting and formatting data as discussed in this NOPR will provide the Commission with the necessary information to identify and address potential manipulative behavior, better inform Commission policies and regulations, and generate asset appendices and organizational charts, all while eliminating duplicative reporting requirements. The new process will also make the information more usable and

accessible to the Commission and its staff in the least burdensome manner possible.

78. *Internal Review:* The Commission has made a preliminary determination that the proposed revisions are necessary in light of technological advances in data collection processes. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

79. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

80. Comments concerning the information collections proposed in this NOPR, and the associated burden estimates, should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov.* Please reference FERC–919 and FERC–920 and OMB Control Nos. 1902–0234 (FERC–919) and 1902–0255 (FERC–920) in your submission.

IV. Environmental Analysis

81. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[73] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[74] The actions proposed here fall within a categorical exclusion in the Commission's regulations, *i.e.,* they involve information gathering, analysis, and dissemination.[75] Therefore, environmental analysis is unnecessary and has not been performed.

[73] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[74] Order No. 486, FERC Stats & Regs. ¶ 30,783.

[75] 18 CFR 380.4 (2015).

V. Regulatory Flexibility Act

82. The Regulatory Flexibility Act of 1980 (RFA)[76] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a rule so as to minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[77] The SBA revised its size standard for electric utilities (effective January 22, 2014) to a standard based on the number of employees, including affiliates (from a standard based on megawatt hours).[78] Under SBA's current size standards, MBR sellers likely come under one of the following categories and associated size thresholds:[79]

- Hydroelectric power generation, at 500 employees
- Fossil fuel electric power generation, at 750 employees
- Nuclear electric power generation, at 750 employees
- Other electric power generation (*e.g.,* solar, wind, geothermal, biomass, and other), at 250 employees
- Electric bulk power transmission and control, at 500 employees
- Electric power distribution, at 1,000 employees
- Wholesale Trade Agents and Brokers,[80] at 100 employees

83. Based on available data, the percentage of small firms affected by the NOPR is estimated to be at least 78 percent.[81] We recognize that the rule will impact small electric utilities, electric power distribution, electric bulk power transmission and control, and power marketers and estimate the economic impact below. The economic impact of this proposed rule is directly related to the size and complexity of the organization, that is, the more entities to which a company is related, the more generation assets it owns or controls, the more traders it employs, and the more market activities in which it participates, the more information must be reported. Therefore, it is reasonable to assume that the cost of complying for small entities will be significantly less than the cost for large ones, and the amount of information that a small entity will be required to collect, maintain, and transmit is likely to be small.

84. We estimate the cost in year one (including burden hours, plus cost of acquiring the LEI) for small companies to be $1,273–$6,644. The annual cost starting in Year 2 (including burden hours, plus cost of maintaining the LEI) is estimated to be $488–$826. According to SBA guidance, the determination of significance of impact ''should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors.'' [82] Based on the above analysis, the reporting requirements proposed in this NOPR should not have a significant economic impact on a substantial number of small entities.

[76] 5 U.S.C. 601–612.

[77] 13 CFR 121.101.

[78] SBA Final Rule on ''Small Business Size Standards: Utilities,'' 78 FR 77343 (Dec. 23, 2013).

[79] 13 CFR 121.201, Sector 22, Utilities.

[80] The NAICS category 425120 (Wholesale Electronic Markets and Agents and Brokers, within Subsector 425) covers Power Marketers.

[81] For the analysis in this NOPR, we are using a conservative number of 1000 employee threshold to conduct a comprehensive analysis.

VI. Comment Procedures

85. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due September 19, 2016. Comments must refer to Docket No. RM16–17–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

86. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

87. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

88. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

[82] U.S. Small Business Administration, *A Guide for Government Agencies How to Comply with the Regulatory Flexibility Act,* May 2012, *https://www.sba.gov/sites/default/files/advocacy/rfaguide_0512_0.pdf,* p. 18.

VII. Document Availability

89. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington DC 20426.

90. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

91. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Dated: July 21, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend part 35 chapter I, title 18, *Code of Federal Regulations,* as follows.

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Amend § 35.37 by revising paragraph (a)(2) and (c)(4)to read as follows:

§ 35.37 Market power analysis required.

(a) * * *

(2) When submitting a market power analysis, whether as part of an initial application or an update, a Seller must include a description of its ownership structure that identifies all ultimate affiliate owner(s), *i.e.,* the furthest upstream affiliate(s) in the ownership chain. A Seller must also identify all affiliate owners that have a franchised service area or market-based rate authority, and all affiliate owners that directly own or control: generation; transmission; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies. The term ''affiliate owner'' means any owner of the Seller that is an affiliate of the Seller as defined in § 35.36(a)(9). The Seller must also provide a list of assets, certain specified information regarding affiliate owners, and other required market-based rate information in an XML schema for input into a relational database prepared in conformance with the instructions posted on the Commission's Web site.

* * * * *

(c) * * *

(4) A Seller must provide its horizontal market power screens in an XML schema for input into the relational database, prepared in conformance with the instructions posted on the Commission's Web site.

* * * * *

■ 3. Amend § 35.42 by:

■ a. Revising paragraphs (a)(2)(iii) and (iv).

■ b. Adding (a)(2)(v).

■ d. Revising paragraph (c).

■ e. Adding paragraph (d).

The revisions and additions read as follows:

§ 35.42 Change in status reporting requirement.

(a) * * *

(2) * * *

(iii) Owns, operates or controls transmission facilities;

(iv) Has a franchised service area; or

(v) Is an ultimate affiliate owner, defined as the furthest upstream affiliate(s) in the ownership chain.

* * * * *

(c) Changes in status must be prepared in conformance with the instructions posted on the Commission's Web site.

(d) A Seller must report on a quarterly basis any changes to its previously-submitted relational database information. These submissions will be made for each of the four calendar quarters of each year, in accordance with the following schedule: for the period from January 1 through March 31, submit by April 30; for the period from April 1 through June 30, submit by July 31; for the period July 1 through September 30, submit by October 31; and for the period October 1 through December 31, submit by January 31. The submission must be prepared in conformance with the instructions posted on the Commission's Web site.

Appendix A to Subpart H of Part 35 [Removed]

■ 4. Remove Appendix A to Subpart H of Part 35.

Appendix B to Subpart H of Part 35 [Removed]

■ 5. Remove Appendix B to Subpart H of Part 35.

■ 6. Add subpart K to read as follows:

Subpart K—Data Collection Requirements for Sellers and Participants in Organized Wholesale Electric Markets

Sec.

35.48 Applicability.

35.49 Definitions.

35.50 Requirements for Virtual/FTR Participant.

35.51 Requirements for new Sellers.

§ 35.48 Applicability.

This subpart establishes the requirements for Sellers and Virtual/FTR Participants for the purpose of providing information to the Commission to conduct surveillance and analysis of the wholesale electric markets.

§ 35.49 Definitions.

As used in this subpart:

(a) *Virtual/FTR Participant* means an entity that buys, sells, or bids for virtual instruments or financial transmission or congestion rights or contracts, or holds such rights or contracts in organized wholesale electric markets, not including entities defined in section 201(f) of the Federal Power Act.

(b) *Seller* refers to a Seller as defined in § 35.36(a)(1).

(c) *Organized wholesale electric market* includes an independent system operator and a regional transmission organization as those terms are defined in § 35.46.

(d) *Connected Entity* is defined as follows:

(1) *Ownership.* An entity that is an affiliate of a Seller or Virtual/FTR Participant pursuant to § 35.36(a)(9), and meets one or more of the following criteria:

(i) Is an ultimate affiliate owner of the Seller or Virtual/FTR Participant, as defined in § 35.37(a)(2);

(ii) Participates in organized wholesale electric markets; or

(iii) Purchases or sells financial natural gas or electric energy derivative products that settle off the price of physical electric or natural gas energy products.

(2) *Traders.* Traders employed or engaged by the Seller or Virtual/FTR Participant. Trader means a person who makes, or participates in, decisions and/or devises strategies for buying or selling physical or financial Commission-jurisdictional electric products or physical natural gas.

(3) *Contracts.* An entity that has entered into an agreement with a Seller or Virtual/FTR Participant that confers control over an electric generation asset that is used in, or offered into, wholesale electric markets. Agreements that confer control are those that grant one of the parties the right to make trading decisions for an electric generation asset of another party or to offer an electric generation asset into the wholesale electric markets.

(e) *Change in connection* occurs when:

(1) An entity becomes a Connected Entity of a Seller or Virtual/FTR Participant as defined in § 35.49(d); or

(2) An entity ceases to be a Connected Entity of a Seller or Virtual/FTR Participant as defined in § 35.49(d). With regard to the Contracts category of Connected Entity relationships as described in § 35.49(d)(3), a change in connection occurs when a Seller or Virtual/FTR Participant enters into, terminates, or amends an agreement that results in the parties conferring control of 100 MW or more of the output of an electric generation asset.

§ 35.50 Requirements for Virtual/FTR Participant

(a) *Reporting requirement.* Virtual/FTR Participant shall acquire a Legal Entity Identifier designation, obtainable through the Global LEI System, and identify their Connected Entities to the Commission through the submission of an XML schema for input into a relational database, consistent with the instructions posted on the Commission's Web site.

(b) *Initial connected entity submission.* Virtual/FTR Participants that do not have market-based rate authority shall make an initial submission, defined herein as an initial connected entity submission, within 30 days of commencing participation in an organized wholesale electric market. The initial connected entity submission shall contain the Virtual/FTR Participant's ownership information, as defined in § 35.49(d)(1); trader information, as defined in § 35.49(d)(2); contract information, as defined in § 35.49(d)(3); and Legal Entity Identifier designation, obtainable through the Global LEI System.

(c) *Ongoing reporting requirement.* Virtual/FTR Participants shall make submissions updating their information within 30 days of a change of connection, as defined in § 35.49(e).

(d) *Communications.* Consistent with the requirements imposed on Sellers in § 35.41(b), Virtual/FTR Participants must provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers, unless the Virtual/FTR Participant exercises due diligence to prevent such occurrences.

§ 35.51 Requirements for new Sellers.

Reporting requirement. Within 30 days of the order granting initial market-based rate authority, Sellers shall provide, through the submission of an XML schema for input into a relational database consistent with the instructions posted on the Commission's Web site: Ownership information, as defined in § 35.49(d)(1); trader information, as defined in § 35.49(d)(2); and contract information, as defined in § 35.49(d)(3). Thereafter, Sellers shall make filings updating their information within 30 days of a change of connection, as defined in § 35.49(e).

BILLING CODE 6717–01–P

Note: The following attachments A through D will not appear in the Code of Federal Regulations.

Attachment A
Comparison of Ownership NOPR and Existing MBR Requirements with the Current NOPR Proposal

	OWNERSHIP NOPR AND EXISTING MBR REQUIREMENTS	CURRENT NOPR PROPOSAL
Scope/Filers	All MBR sellers.[83]	All MBR sellers
Format	Initial MBR applications, triennial updates, and changes in status filings are submitted through eFiling or eTariff. Information submitted in text (e.g., Word or .pdf) format or electronic spreadsheet. Ownership information provided in text format and in corporate organizational chart; assets of seller and affiliates provided in electronic spreadsheet format and sometimes in text format; and indicative screens provided in electronic spreadsheet format.	MBR sellers would be required to submit relevant filings through a separate filing portal into a relational database. Filings would contain data in XML format and attachments in text (e.g., Word and .pdf) and electronic spreadsheet format. MBR sellers will submit certain MBR Information including ownership, asset and indicative screen information required pursuant to 18 CFR § 35.37 to the Commission through the submission of an XML file for input into a relational database, consistent with the Commission's instructions posted on the FERC website.
MBR Ownership Information	Ownership NOPR proposed that an MBR seller be required to provide a narrative identifying ultimate affiliate owner(s), i.e., the furthest upstream affiliate(s) in the ownership chain and all affiliate owners that have a franchised service area or market-based rate authority or that directly own or control: generation; transmission; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies. The term "affiliate owner" means any owner of the MBR seller that is an affiliate of the MBR seller as defined in 18 CFR § 35.36(a)(9).	Retains Ownership NOPR proposal regarding the substance of the ownership information to be provided. Would be submitted in narrative (i.e., text) format and XML format for the relational database.
MBR Asset Information	MBR sellers required to submit asset appendices including assets owned by themselves and their affiliates in electronic spreadsheet format.	MBR sellers would submit information (including unit-specific information and long-term firm power purchases and sales) about assets they and their non-MBR seller affiliates own to the relational database in XML format.
MBR Change in Status filing	Ownership NOPR proposed to require a notice of change in status when MBR seller becomes affiliated with a new ultimate affiliate owner, defined as the furthest upstream affiliate(s) in the ownership chain to § 35.42(v).	Includes Ownership NOPR proposal to require that new ultimate affiliate owners be reported as a change in status.

[83] The term "MBR seller" includes both sellers with market-based rate authority and those filing applications for market-based rate authority.

	OWNERSHIP NOPR AND EXISTING MBR REQUIREMENTS	CURRENT NOPR PROPOSAL
Legal Entity Identifiers (LEI)	None	MBR sellers would be required to acquire an LEI and report it to the Commission.
MBR Corporate Organizational Chart	Order No. 816 requires that MBR sellers submit corporate organizational chart. The Commission has granted an extension of time for MBR sellers to comply with this requirement.	Proposes to eliminate the requirement that MBR sellers submit corporate organizational charts.
MBR Format of Indicative Screens	Order No. 816 requires that MBR sellers submit indicative screens (pivotal supplier and market share screens) in a workable electronic spreadsheet format.	MBR sellers would submit indicative screen information to the relational database using XML.

Attachment B
Comparison of Connected Entity NOPR Proposal and Current NOPR Proposal

	CONNECTED ENTITY NOPR PROPOSAL	CURRENT NOPR PROPOSAL
Scope/Filers	All RTO/ISO market participants.	All MBR sellers and Virtual/FTR Participants
Format	All RTO/ISO market participants would report their Connected Entities to the RTOs/ISOs in which they participate.	MBR sellers and Virtual/FTR Participants would be required to report their Connected Entities to the Commission through the submission of an XML file for input into a relational database, consistent with the Commission's instructions posted on the FERC website.
Connected Entity Definition: Ownership/Control	Proposed a broad definition which included: • Passive owners • Holders of non-voting stock, and • Limited partners	Proposes a more narrow definition which essentially tracks MBR affiliate definition and does not propose to include: • Passive owners • Holders of non-voting stock, or • Limited partners
Connected Entity Definition: Employees	Proposed to require reporting of: • Chief executive officer; • Chief financial officer; • Chief compliance officer; and • Traders of a market participant.	Proposes reporting of Traders of MBR sellers or Virtual/FTR Participants only.
Connected Entity Definition: Debt interests	Proposed to require reporting of certain debt interests and structured transactions.	No similar provision included. The debt category has been eliminated in this proposal.
Connected Entity Definition: Contracts	Proposed reporting of entities that have entered into certain agreements with the market participant such as: • tolling agreements, • energy management agreements, • asset management agreements, • fuel management agreements, • operating management agreements, and • energy marketing agreements.	Limits proposed reporting to only entities that have entered into an agreement with an MBR seller or Virtual/FTR Participant that confers control over an electric generation asset that is used in or offered into wholesale electric markets. An alternate proposal is to have MBR sellers submit their LEIs with their quarterly EQR submissions.
Connected Entity Change in Connection Reporting	Market participants would be required to update their RTO/ISO Connected Entity submissions within 15 days.	MBR sellers and Virtual/FTR Participants would be required to update their Connected Entity Information within 30 days of a Change in Connection.
Certification	Participation in the RTO/ISO markets would be conditioned on	No certification requirement proposed.

	CONNECTED ENTITY NOPR PROPOSAL	CURRENT NOPR PROPOSAL
	each market participant certifying, on a yearly basis, that its Connected Entities filed data is comprehensive and accurate.	
Legal Entity Identifiers (LEI)	Each reporting market participant would be required to acquire an LEI and report it to the RTOs/ISOs in which they participate.	MBR sellers and Virtual/FTR Participants each would be required to acquire an LEI and report it to the Commission.

Attachment C
Proposed Submission Processes for MBR Sellers and Virtual/FTR Participants

	MBR SELLERS			VIRTUAL/FTR PARTICIPANTS		
	Timeline	**Contents**	**Commission Response**	**Timeline**	**Contents**	**Commission Response**
Baseline Filing/Initial Connected Entity Submission	Existing sellers as defined in §35.36 file within 90 days after the effective date of the final rule	1) Connected Entity ownership information, as defined in §35.49(d)(1), 2) MBR information as set forth in the data dictionary (e.g., category status, mitigation, authorized markets, etc.), and 3) MBR Ownership Information regarding (a) ultimate affiliate owners and (b) affiliate owner(s) that have a franchised service area or MBR authority or directly own or control generation, transmission, intrastate natural gas transportation, storage or distribution facilities, physical coal supply sources or ownership of or control over who may access transportation of coal supplies. 4) Trader information, as defined in §35.49(d)(2), 5) Contract information, as defined in §35.49(d)(3), 6) Legal Entity Identifier designations, and 7) Asset Appendix Information as set forth in the data dictionary.	None	**Existing** Virtual/FTR Participants file an Initial Connected Entity Submission within 90 days of publication of the final rule in the Federal Register **New** Virtual/FTR Participants file an Initial Connected Entity Submission within 30 days of commencing participation in the organized wholesale electric markets	1) Connected Entity ownership information, as defined in §35.49(d)(1), 2) Trader information, as defined in §35.49(d)(2) 3) Contract information, as defined in §35.49(d)(3), and 4) Legal Entity Identifier designations	None. Commission staff verifies that all required information was submitted.
Change in	Sellers file notice	Narrative description of the	Commission (or	Virtual/FTR Participants	Provide updates only to	None

	MBR SELLERS			VIRTUAL/FTR PARTICIPANTS		
Connection and Change in Status Filings	of change in status within 30 days of a change in status as defined in §35.42 and update Connected Entity Information within 30 days of a change in connection as defined in § 35.49(e)	change and a relational database update when the change in status affects information submitted to the relational database. For Connected Entity Information, updates to relational database only for information that has changed.	delegated) order accepting or rejecting notice of change in status. No action on Change in Connection	file updates to their information within 30 days of a Change in Connection, as defined in § 35.49(e).	information that has changed.	
Initial Application for MBR	MBR sellers file for MBR authority prior to selling energy, capacity and ancillary services	A package of information that includes: 1) MBR Information per §35.37, MBR Ownership Information, Legal Entity Identifier designation, Asset Information, and Indicative Screen information in XML format and as set forth in the data dictionary, 2) Transmittal Letter and narrative (uploaded as an attachment) 3) Indicative Screen work papers and alternative evidence, if any (uploaded as an attachment) 4) Tariff sheets in XML format	Commission order accepting or rejecting application.	*Not Applicable*		
New MBR Seller Reporting Requirement	New sellers file within 30 days after the grant of MBR authority.	1) Connected Entity ownership information, as defined in §35.49(d),	None. Commission staff verifies that all required information was submitted.	*Not Applicable*		

	MBR SELLERS			VIRTUAL/FTR PARTICIPANTS		
Filing		2) MBR information as set forth in the data dictionary (e.g., category status, mitigation, authorized markets if self-limited, etc.), 3) Trader information, as defined in §35.49(d)(2) and 4) Contract information, as defined in §35.49(d)(3)				
Updated Market Power Analysis Triennial Filing	MBR sellers that are Category 2 as defined in §35.36, every 3 years, according to regional schedule in Appendix C to Order No. 816 or on Commission website	A package of information that includes: 1) MBR Information per §35.37 and as set forth in the data dictionary, MBR Ownership Information, Asset Information, and Indicative Screen information in XML format 2) Transmittal Letter and narrative (uploaded as an attachment) 3) Indicative Screen work papers and alternative evidence, if any (uploaded as an attachment)	Commission (or delegated) order accepting or rejecting submission.	*Not Applicable*		
Quarterly Report	MBR seller files at the end of each quarter	On a quarterly basis, MBR sellers report any changes to previously-submitted information that did not trigger a change in status or change in connection filing and update the relational database to reflect any such changes.	None	*Not Applicable*		

Attachment D
Draft Data Dictionary for FERC Website

Overview of Tables

Table Type	Table Name	Table Description
Fact tables	Filing information	Filing metadata including links to attached documents (e.g. transmittal letters)
	Natural Person	Traders as defined in the proposed in proposed section 35.49 (d)(2) and natural person affiliates as defined in section 35.36(a)(9)
	Entities	Legal entities required to report (MBR sellers and Virtual/FTR Participants) or be reported (affiliates as defined in section 35.36(a)(9) or Connected Entites as defined in proposed section 35.49)
	Generation Assets	Generation asset information (generator details from Asset Appendix)
	MBR Information (multiple small tables)	Information on entities with MBR Authorization
	Long Term PPAs	Long term PPAs as required by MBR regulations
	Contracts	Reportable contracts (as defined by the proposed section 35.49(d)(3)
	Indicative Screen PSS	Pivotal supplier indicative screen
	Indicative Screen MSS	Market share indicative screen
Linking tables	Entities to Entities	Reportable ownership or control relationships (as defined by the proposed rule or existing regulation)
	Natural Person Affiliates to Entities	Reportable ownership or control relationships where an owner or controller is a natural person (as defined by the proposed rule or existing regulation)
	Entities to Generation Assets	Reportable ownership or control relationships between entities and generation assets (as defined by the proposed rule or existing regulation)
	Seller Entities to Vertical Assets	Reportable ownership or control relationships between seller entities and transmission or inputs to electric power production (may be multiple tables)
	Entities to RTO/ISO Accounts	Mapping of entities to RTO/ISO identifiers for all filing entities and their connected entities (non-traders)
	Traders to RTO/ISO Accounts	Mapping of traders to RTO/ISO identifiers
	Entities to NAESB/OATI Purchaser Seller Entity ID	Mapping of entities to NAESB/OATI Purchaser Seller Entity identifiers
	Traders to Entities	Traders to entities mapping
	Entities to CID	CIDs associated with a given entity
Dimension Tables (Not included here)	BAAs	List of BAAs with NERC identifiers (also codes for non-NERC areas such as submarkets)
	Regions	List of FERC regions with FERC region identifiers
	BAAs to Regions	A mapping of BAAs to regions including dates to capture changes
	RTO and ISO Names	Standard RTO and ISO names
	EIA-860 Views	Tables necessary to cross-validate EIA generator information
	LEI Registry	Current LEI data tables
	CIDs	List of valid, current CIDs

Filing Information			
Column	**Description**	**Field Definition**	**Validations**
Filing ID	Unique filing ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing date	Date filing was submitted	Date	Not null
Filer LEI	LEI of the entity for whom the filing is being made; Multiple entries allowed	Character (20), Foreign Key	Must match Legal Entity Identifier in the LEI registry
Docket No. of filing	Docket No. assigned to current filing (if applicable)	Character	Must match docket
Reason for filing	Indicator for why filing is being made	Character	0- Baseline (new filing) 1- Change in status (update to ownership or asset appendix information that meets CIS requirements) 2- Update to MBR information (succession or tariff revision) 3- Triennial updated market power analysis 4- Quarterly compliance filing w/non-substantive changes (does not need to be noticed and acted on) 5- Initial Connected Entity Submission 6- Change in Connection Submission
Concur to filing	Unique filing ID of associated filing. Used to incorporate all information in associated filing by reference (if applicaple).	Integer	Nullable. If exists should match Filing ID.
Concur to MSS	Unique Market Share Screen Record ID of screen(s) to incorporate by reference (if applicaple); Multiple entries allowed	Integer	Nullable. If exists should match Market Share Screen Record ID.
Concur to PSS	Unique Pivotal Supplier Record ID of screen(s) to incorporate by reference (if applicaple); Multiple entries allowed	Integer	Nullable. If exists should match Pivotal Supplier Record ID.
Transmittal Letter/Petition	Transmittal letter document (if applicable); same as existing eTariff doc type.	Character	Same as existing eTariff doc type.

Natural Persons (Affiliates and Traders)			
Column	**Description**	**Field Definition**	**Validations**
Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
First name	First name	Character	Must match previous filings unless changes have occurred
Middle Initial	Middle initial	Character	Must match previous filings unless changes have occurred
Last name	Last name	Character	Must match previous filings unless changes have occurred
Trader Flag	Indicates person is trader	Binary	
Natural Person Affiliate Flag	Indicates person is natural person affiliate	Binary	
Contact Information	Contact information for natural person affiliates (may be multiple fields)	Character	Must match previous filings unless changes have occurred

Entity Information			
Column	**Description**	**Field Definition**	**Validations**
Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Entity ID	Public, FERC generated ID for affiliate owners with no CID or LEI	Character, Foreign Key	Check against existing Owner IDS
Entity Name	Entity name	Character	Not null, must match previous filings, must match name as registered in the formation jurisdiction
Business Card Information for entities without an LEI	For entities without an LEI, we will collect the address of the headquarters of the legal entity and the address of legal formation.	Multiple fields	Should be consistent between filings unless changes have occurred

Generation Assets

Column	Description	Field Definition	Validations
Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Plant Name	Full EIA-860 Plant Name assigned to the Plant in the EIA-860 Report	Character	Must match Plant Name found in EIA-860
EIA Plant Code	"Plant Code" assigned to the plant as found in EIA-860 reports	Character, Composite Foreign Key	Must match "Plant Code" found in EIA-860
EIA Gen ID	"Generator ID" assigned to the specific generator as found in EIA-860 reports	Character, Composite Foreign Key	Must match "Generator ID" found in EIA-860
EIA Unit Code	"Unit Code" assigned to multiple generators found in EIA-860 reports (if applicable)	Character, Composite Foreign Key	Must match "Unit Code" found in EIA-860 (if appropriate)
In-Service Date	The date the unit first came into service	Date	None
Capacity Rating: Nameplate (MW)	As defined in FERC Order Nos. 816/816-A and example on FERC.gov; should reflect the generator's capacity	Number	None
Capacity Rating: Adjusted	Result of Capacity Rating Methodology Defined in P 266 of FERC Order No. 816	Number	None
Adjusted Capacity Rating Options	Which Capacity Rating Methodology Defined in P 266 of FERC Order No. 816 was used to find the value inputted into "Capacity Rating: Adjusted" field	Character	(S)easonal 5-yr (U)nit 5-yr (E)IA (A)lternative
Methodology Used for Alternate:	Narrative description of capacity rating option as discussed in FERC Order No. 816 at P 106, if an "(A)lternative" method was used	Character	None
Location: Market/Balancing Authority Area	Identifier for the market/balancing authority area where the generator is physically located; one of the six RTO/ISOs or their designated submarkets or a NERC-defined Balancing Authority Area name; Multiple entries allowed	Character, Foreign Key	Must match a code on the list of market/BAA codes that will be maintained on FERC.gov
Location: Geographic Region	Identifier for the MBR designated region where the generator is physically located; one of the six FERC defined regions; Multiple entries allowed	Character, Foreign Key	Must match a code on the list of MBR designated region codes that will be maintained on FERC.gov
Telemetered Location: Market/Balancing Authority Area	Identifier for the market/balancing authority area that is the destination (sink) market/balancing authority area of remote generation or where a generator is pseudo-tied or committed with long term transmission rights (i.e. where this generation should be studied in an MBR filing); One of the six RTO/ISOs or their designated submarkets or a NERC-defined Balancing Authority Area name; Multiple entries allowed	Character, Foreign Key	Must match a code on the list of market/BAA codes that will be maintained on FERC.gov
Telemetered Location: Geographic Region	Identifier for the MBR designated region that is the destination (sink) region of remote generation or where a generator is pseudo-tied or committed with long term transmission rights (i.e. where this generation should be studied in an MBR filing); One of the six FERC defined regions; Multiple entries allowed	Character, Foreign Key	Must match a code on the list of MBR designated codes that will be maintained on FERC.gov
Explanatory notes and clarifications	Optional narrative description	Character	None
Publication Flag	Indicates the row information can/will be made public	Character	Privileged (M) Public (P) CEII (X)

MBR Information

MBR Authorization Information

Column	Description	Field Definition	Validations
Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Filer LEI	Legal Entity Identifier from entities table of entity making filing.	Character (20), Foreign Key	Must match LEI registry
Docket Granting MBR Authority	Docket number of order first granting the entity market-based rate authorization	Character	ERXX-XXX-XXX, or XXXFERCXX,XXXX(XXXX), not null
Date Approval Was First Effective	Date that entity's market-based rate tariff became effective. If new filing, proposed effective date.	Date	Not null
Docket of Cancellation	Docket number of order accepting the cancellation of the entity's market-based rate authorization	Date	ERXX-XXX-XXX, or XXXFERCXX,XXXX(XXXX), not null
Date cancellation was effective	Effective date of the cancellation of the entity's market-based rate tariff (if applicable). If this is a cancellation filing, proposed effective date.	Date	None

Category Status by Region

Column	Description	Field Definition	Validations
Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Filer LEI	Legal Entity Identifier from entities table of entity making filing.	Character (20), Foreign Key	Must match LEI registry
Region	Region identifier	Character, Foreign Key	Must match FERC regions
Category Status in Region	Category status in region (current regions are Northwest, Southwest, Southeast, Northeast, Central, and SPP)	Integer	Not null 0 - No Category designation 1- Category 1 2- Category 2
Publication Flag	Indicates the row information can/will be made public	Character	Privileged (M) Public (P) CEII (X)

MBR Information (Continued)

Mitigations

Column	Description	Field Definition	Validations
Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Filer LEI	Legal Entity Identifier from entities table of entity making filing.	Character (20), Foreign Key	Must match LEI registry
Mitigation BAA	Identifier for the NERC-defined BAA or FERC designated region, market/submarket studied where the entity is not allowed to transact at market-based rates (if applicable).	Character, Foreign Key	Must match FERC regions
Mitigation Region	Region identifier	Character, Foreign Key	Must match a code on the list of market/BAA codes that will be maintained on FERC.gov
Mitigation narrative	Narrative description of mitigation specifying BAAs, regions, type of mitigation, etc.	Character	None

Self-Limited MBR Authorization

Column	Description	Field Definition	Validations
Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Filer LEI	Legal Entity Identifier from entities table of entity making filing.	Character (20), Foreign Key	Must match LEI registry
Authorized in Region/BAA	Identifier for the market/balancing authority area where the entity is allowed to transact at market-based rates (if applicable).	Character, Foreign Key	Must match a code on the list of market/BAA codes that will be maintained on FERC.gov
Region or BAA type	Region or BAA	Character	Required

Ancillary Services Authorization

Column	Description	Field Definition	Validations
Record ID	Unique filing ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Filer LEI	Legal Entity Identifier from entities table of entity making filing.	Character (20), Foreign Key	Must match LEI registry
Authorized ancillary service sales region	Market where entity is authorized to sell ancillary services (RTO/ISO or Non-RTO/ISO)	Character	None

MBR Information (Continued)

Operating Reserves Authorization			
Column	**Description**	**Field Definition**	**Validations**
Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Filer LEI	Legal Entity Identifier from entities table of entity making filing.	Character (20), Foreign Key	Must match LEI registry
Operating reserves showing	Indicates whether a entity has made an additional showing that must be made to get MBR authorization for operating reserves	Binary (Y/N)	None
Market/BAAs authorized to sell operating reserves	Identifier for the NERC-Defined BAA or FERC designated submarket studied where the entity is authorized to sell operating reserves (if applicable).	Character	Must match a code on the list of market/BAA codes that will be maintained on FERC.gov

PPAs			
Column	**Description**	**Field Definition**	**Validations**
Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Source	Name of source	Character	Nullable
Source Type	Generator, Region, BAA, ISO	Character	Not null if source exists
Source Key	Unique identifier for source	Character, Composite Foreign Key	Not null if source exists
Sink	Unique identifier for sink	Character	Nullable
Sink Type	Generator, Region, BAA, ISO	Character	Not null if sink exists
Sink Key	Unique identifier for source	Character, Foreign Key	Not null if sink exists
Type of PPA	Identifies if the reporting entity is the buyer or seller of energy	Character	Not null Purchase (P) Sale (S) Other (O)
Reporting entity identifier	Legal Entity Identifier of reporting entity identifier	Character, Foreign Key	Not null
Counterparty identifier	Legal Entity Identifier of counterparty if exists	Character, Foreign Key	None
Buyer Name/Contact info	If LEI does not exist	Character	Should match entities tab
Multi-lateral contract identifier	Unique to filing identifier for multi-lateral contracts which are input on multiple rows	Character	If exists, multiple entries should exist
Signed Date	When was the contract signed	Date	Valid date, not null
Start Date	When does the agreement go into effect	Date	Valid date, not null
End Date	When does the agreement end	Date	Valid date, not null
Date of last change	Date of last change to contract	Date	Valid date
Amount	If the contract is for capacity, input the specified amount of MW. If it is an energy-only contract; convert the units into MW equivalents using the formula set forth in Order No. 816 at PP 140-144, and FN 178	Numeric	Not null
Alternative Attributing Methodology	If using a different method to attribute capacity of a contract, please explain, support, and justify the methodology as required by Order No. 816 at P 144	Character	None
Contractual Details	Narrative description of any unique qualities of this contract not captured elsewhere	Character	None
Publication Flag	Indicates the security level of this contract information (contract information submitted for MBR purposes must be public)	Character	Privileged (M) Public (P) CEII (X)

Other Contracts			
Column	**Description**	**Field Definition**	**Validations**
Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Filer LEI	Legal Entity Identifier from entities table of entity making filing or affiliated entity	Character, Foreign Key	Not null
LEI of Counterparty	If exists	Character, Composite Foreign Key	None
Counterparty Name	If LEI does not exist	Character, Composite Foreign Key	Should match entities tab
Multi-lateral contract identifier	Unique (to filing) identifier for multi-lateral contracts which are input on multiple rows	Character, Composite Foreign Key	If exists, multiple entries should exist
Signed Date	When was the contract signed	Date	Valid date, not null
Start Date	When does the agreement go into effect	Date	Valid date, not null
End Date	When does the agreement end	Date	Valid date, not null
Date of last change	Date of last change to contract	Date	Valid date
EIA code(s) of relevant assets	EIA codes of assets relevant to contract	Character	Required
Control Conferred to Filer	Indicates if the filer is controlling the asset	Character	Required

Indicative Screen for Pivotal Supplier			
Column	**Description**	**Field Definition**	**Validations**
Pivotal Supplier Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Filer LEI	Legal Entity Identifier from entities table of entity making filing.	Character (20), Foreign Key	Must match LEI registry
Filing ID of last change	Used to link tables. Filing identifier from filing info table (Foreign Key)	Character, Composite Foreign Key	Not null
New Study	Used to indicate whether the entity is providing a new study with the associated submittal	Character, Composite Foreign Key	1 - New (not based on previously accepted screens) 0 - Screens rely on screens previously accepted by the Commission
Study Year	The 12 consecutive months from December of a calendar year to November of the next calendar year	MM/YYYY-MM/YYYY	None
Study Area	Identifier for the NERC-Defined BAA or FERC designated market or submarket studied with the associated submittal	Character, Foreign Key	Must match FERC region, market, or BAA
Seller Installed Capacity Inside	Row A of the Pivotal Supplier Study Screen; Seller and Affiliate (owned, controlled or under LT contract) Installed Capacity (inside the Study Area) in MW.	Integer	Non Negative Integer
Seller Installed Capacity Remote	Row A1 of the Pivotal Supplier Study Screen; Seller and Affiliate (owned, controlled or under LT contract) Remote Capacity (outside the Study Area) in MW.	Integer	Non Negative Integer
Seller LT Purchases inside	Row B of the Pivotal Supplier Study Screen; Seller and Affiliate Long-Term Firm Purchases (inside the Study Area) in MW.	Integer	Non Negative Integer
Seller LT Purchases outside	Row B1 of the Pivotal Supplier Study Screen; Seller and Affiliate Long-Term Firm Purchases (outside the Study Area) in MW.	Integer	Non Negative Integer
Seller LT Sales in and outside	Row C of the Pivotal Supplier Study Screen; Seller and Affiliate (owned, controlled or under LT contract) Capacity providing Long-Term Firm Sales (inside and outside the Study Area) in MW.	Integer	Non Negative Integer
Seller Uncommitted Capacity Imports	Row D of the Pivotal Supplier Study Screen; Seller and Affiliate (owned, controlled or under LT Contract) Uncommitted Capacity Imports in MW.	Integer	Non Negative Integer
Non-Affiliate Installed Capacity Inside	Row E of the Pivotal Supplier Study Screen; Non-Affiliate (owned, controlled or under LT contract) Installed Capacity (inside the Study Area) in MW.	Integer	Non Negative Integer
Non-Affiliate Installed Capacity Remote	Row E1 of the Pivotal Supplier Study Screen; Non- Affiliate (owned, controlled or under LT contract) Remote Capacity (outside the Study Area) in MW.	Integer	Non Negative Integer
Non-Affiliate LT Purchases inside	Row F of the Pivotal Supplier Study Screen; Non-Affiliate Long-Term Firm Purchases (inside the Study Area) in MW.	Integer	Non Negative Integer
Non-Affiliate LT Purchases outside	Row F1 of the Pivotal Supplier Study Screen; Non-Affiliate Long-Term Firm Purchases (outside the Study Area) in MW.	Integer	Non Negative Integer
Non-Affiliate LT Sales in and outside	Row G of the Pivotal Supplier Study Screen; Non-Affiliate (owned, controlled or under LT contract) Capacity providing Long-Term Firm Sales (inside and outside the Study Area), in MW.	Integer	Non Negative Integer
Non-Affiliate Uncommitted Capacity Imports	Row H of the Pivotal Supplier Study Screen; Non-Affiliate (owned, controlled or under LT Contract) Uncommitted Capacity Imports, in MW.	Integer	Non Negative Integer

Indicative Screen for Pivotal Supplier (Continued)

Study Area Reserve Requirement	Row I of the Pivotal Supplier Study Screen; Reserve Requirement, for the Study Area, in MW.	Integer	Non Negative Integer
Seller Reserve Requirement	Row J of the Pivotal Supplier Study Screen; Amount of Reserve Requirement Attributable to Seller, in MW, if any.	Integer	Non Negative Integer
Total Uncommitted Supply	Row K of the Pivotal Supplier Study Screen; Sum of Rows A, A1, B, B1, D, E, E1, F, F1 and H minus Rows C, G, I and M of the Pivotal Supplier Screen, in MW.	Integer	Non Negative Integer
Study Area Annual Peak Load	Row L of the Pivotal Supplier Study Screen; Annual Peak Load, for the Study Area in MW.	Integer	Non Negative Integer
Average Daily Peak Load Month	Row M of the Pivotal Supplier Study Screen; Average Daily Peak Native Load in the Peak Month, for the Study Area, in MW.	Integer	Non Negative Integer
Seller Average Peak Daily Load	Row N of the Pivotal Supplier Study Screen; Amount of Average Daily Peak Native Load in Peak Month Attributable to Seller, in MW.	Integer	Non Negative Integer
Wholesale Load	Row O of the Pivotal Supplier Study Screen; Wholesale Load Proxy, in MW. Row L minus Row M.	Integer	Non Negative Integer
Net Uncommitted Supply	Row P of the Pivotal Supplier Study Screen; Row K minus Row O of the Pivotal Supplier Screen in MW.	Integer	Non Negative Integer
Seller Uncommitted Capacity	Row Q of the Pivotal Supplier Study Screen; Sum of Rows A, A1, B, B1, and D, minus Rows C, J and N of the Pivotal Supplier Screen in MW.	Integer	Non Negative Integer
Result	Unnamed row in the Pivotal Supplier Study Screen below Row Q with text stating "(Pass if Line Q < Line P) (Fail is Line Q > Line P)"	Character	"Pass" or "Fail"
Total Imports	Unnamed row in the Pivotal Supplier Study Screen; Total Imports, as filed by Seller. Sum of Row D and Row H.	Integer	Non Negative Integer
Seller Percentage SIL	Unnamed row in the Pivotal Supplier Study Screen; Seller Uncommitted Capacity Imports (Row D) divided by SIL value.	Numeric	None
Non-Affiliate Percentage SIL	Unnamed row in the Pivotal Supplier Study Screen; Non-Affiliate Uncommitted Capacity Imports (Row H) divided by SIL value.	Numeric	None
SIL Value	Unnamed row in the Pivotal Supplier Study Screen; Simultaneous Transmission Import Limit (SIL) value in MW, from Submittal 1 Puget Sound Energy, Inc. 135 ¶ FERC 61, 254 (2011) or Commission-accepted SIL value for Study Year and Study Area.	Integer	Non Negative Integer
SIL Limit Exceeded	Unnamed row in the Pivotal Supplier Study Screen below SIL value with text "Do Total Imports exceed SIL value? (is U <= V)".	Character	"Yes" or "No"

Indicative Screen for Market Share			
Column	Description	Field Definition	Validations
Market Share Screen Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Filer LEI	Legal Entity Identifier from entities table of entity making filing.	Character (20), Foreign Key	Must match LEI registry
New Study	Used to indicate whether the entity is providing a new study with the associated submittal	Character, Composite Foreign Key	0- New (not based on previously accepted screens) 1- Screens rely on screens previously accepted by the Commission
Filing ID of last change	Used to link tables. Filing identifier from filing info table (Foreign Key)	Character, Composite Foreign Key	Not null
Study Year	The 12 consecutive months from December of a calendar year to November of the next calendar year	MM/YYYY-MM/YYYY	None
Study Area	Identifier for the NERC-Defined BAA or FERC designated market or submarket studied with the associated submittal	"Study Area" from the header of the Market Share Study Screen.	Must match a code on the list of market/BAA codes that will be maintained on FERC.gov
Seller Installed Capacity Inside Winter	Row A of the Market Share Study Screen; Seller and Affiliate (owned, controlled or under LT contract) Installed Capacity (inside the Study Area) in MW. Winter Season	Integer	Non Negative Integer
Seller Installed Capacity Inside Spring	Row A of the Market Share Study Screen; Seller and Affiliate (owned, controlled or under LT contract) Installed Capacity (inside the Study Area) in MW. Spring Season	Integer	Non Negative Integer
Seller Installed Capacity Inside Summer	Row A of the Market Share Study Screen; Seller and Affiliate (owned, controlled or under LT contract) Installed Capacity (inside the Study Area) in MW. Summer Season	Integer	Non Negative Integer
Seller Installed Capacity Inside Fall	Row A of the Market Share Study Screen; Seller and Affiliate (owned, controlled or under LT contract) Installed Capacity (inside the Study Area) in MW. Fall Season	Integer	Non Negative Integer
Seller Installed Capacity Remote Winter	Row A1 of the Market Share Study Screen; Seller and Affiliate (owned, controlled or under LT contract) Remote Capacity (outside the Study Area) in MW. Winter Season	Integer	Non Negative Integer
Seller Installed Capacity Remote Spring	Row A1 of the Market Share Study Screen; Seller and Affiliate Capacity (owned, controlled or under LT contract) Remote Capacity (outside the Study Area) in MW. Spring Season	Integer	Non Negative Integer
Seller Installed Capacity Remote Summer	Row A1 of the Market Share Study Screen; Seller and Affiliate (owned, controlled or under LT contract) Remote Capacity (outside the Study Area) in MW. Summer Season	Integer	Non Negative Integer
Seller Installed Capacity Remote Fall	Row A1 of the Market Share Study Screen; Seller and Affiliate (owned, controlled or under LT contract) Remote Capacity (outside the Study Area) in MW. Fall Season	Integer	Non Negative Integer

Indicative Screen for Market Share (continued)

Seller LT Purchases inside Winter	Row B of the Market Share Study Screen; Seller and Affiliate Long-Term Firm Purchases (inside the Study Area) in MW. Winter Season	Integer	Non Negative Integer
Seller LT Purchases inside Spring	Row B of the Market Share Study Screen; Seller and Affiliate Long-Term Firm Purchases (inside the Study Area) in MW. Spring Season	Integer	Non Negative Integer
Seller LT Purchases inside Summer	Row B of the Market Share Study Screen; Seller and Affiliate Long-Term Firm Purchases (inside the Study Area) in MW. Summer Season	Integer	Non Negative Integer
Seller LT Purchases inside Fall	Row B of the Market Share Study Screen; Seller and Affiliate Long-Term Firm Purchases (inside the Study Area) in MW. Fall Season	Integer	Non Negative Integer
Seller LT Purchases outside Winter	Row B1 of the Market Share Study Screen; Seller and Affiliate Long-Term Firm Purchases (outside the Study Area) in MW. Winter Season	Integer	Non Negative Integer
Seller LT Purchases outside Spring	Row B1 of the Market Share Study Screen; Seller and Affiliate Long-Term Firm Purchases (outside the Study Area) in MW. Spring Season	Integer	Non Negative Integer
Seller LT Purchases outside Summer	Row B1 of the Market Share Study Screen; Seller and Affiliate Long-Term Firm Purchases (outside the Study Area) in MW. Summer Season	Integer	Non Negative Integer
Seller LT Purchases outside Fall	Row B1 of the Market Share Study Screen; Seller and Affiliate Long-Term Firm Purchases (outside the Study Area) in MW. Fall Season	Integer	Non Negative Integer
Seller LT Sales in and outside Winter	Row C of the Market Share Study Screen; Seller and Affiliate (owned, controlled or under LT contract) Capacity providing Long-Term Firm Sales (inside and outside the Study Area), in MW. Winter Season	Integer	Non Negative Integer
Seller LT Sales in and outside Spring	Row C of the Market Share Study Screen; Seller and Affiliate (owned, controlled or under LT contract) Capacity providing Long-Term Firm Sales (inside and outside the Study Area), in MW. Spring Season.	Integer	Non Negative Integer
Seller LT Sales in and outside Summer	Row C of the Market Share Study Screen; Seller and Affiliate (owned, controlled or under LT contract) Capacity providing Long-Term Firm Sales (inside and outside the Study Area), in MW. Summer Season.	Integer	Non Negative Integer
Seller LT Sales in and outside Fall	Row C of the Market Share Study Screen; Seller and Affiliate (owned, controlled or under LT contract) Capacity providing Long-Term Firm Sales (inside and outside the Study Area), in MW. Fall Season.	Integer	Non Negative Integer

Indicative Screen for Market Share (continued)

Seller Average Outages Winter	Row D of the Market Share Study Screen; Seller and Affiliate Capacity (owned, controlled or under LT Contract) Seasonal Average Planned Outages in MW. Winter Season.	Integer	Non Negative Integer
Seller Average Outages Spring	Row D of the Market Share Study Screen; Seller and Affiliate Capacity (owned, controlled or under LT Contract) Seasonal Average Planned Outages in MW. Spring Season.	Integer	Non Negative Integer
Seller Average Outages Summer	Row D of the Market Share Study Screen; Seller and Affiliate Capacity (owned, controlled or under LT Contract) Seasonal Average Planned Outages in MW. Summer Season.	Integer	Non Negative Integer
Seller Average Outages Fall	Row D of the Market Share Study Screen; Seller and Affiliate Capacity (owned, controlled or under LT Contract) Seasonal Average Planned Outages in MW. Fall Season.	Integer	Non Negative Integer
Seller Uncommitted Capacity Imports Winter	Row E of the Market Share Study Screen; Seller and Affiliate (owned, controlled or under LT Contract) Uncommitted Capacity Imports, in MW. Winter Season	Integer	Non Negative Integer
Seller Uncommitted Capacity Imports Spring	Row E of the Market Share Study Screen; Seller and Affiliate (owned, controlled or under LT Contract) Uncommitted Capacity Imports, in MW. Spring Season	Integer	Non Negative Integer
Seller Uncommitted Capacity Imports Summer	Row E of the Market Share Study Screen; Seller and Affiliate (owned, controlled or under LT Contract) Uncommitted Capacity Imports, in MW. Summer Season	Integer	Non Negative Integer
Seller Uncommitted Capacity Imports Fall	Row E of the Market Share Study Screen; Seller and Affiliate (owned, controlled or under LT Contract) Uncommitted Capacity Imports, in MW. Fall Season	Integer	Non Negative Integer
Study Area Average Peak Native Load Winter	Row F of the Market Share Study Screen; Average Peak Native Load, for the Study Area, in MW. Winter Season.	Integer	Non Negative Integer
Study Area Average Peak Native Load Spring	Row F of the Market Share Study Screen; Average Peak Native Load, for the Study Area, in MW. Spring Season.	Integer	Non Negative Integer
Study Area Average Peak Native Load Summer	Row F of the Market Share Study Screen; Average Peak Native Load, for the Study Area, in MW. Summer Season.	Integer	Non Negative Integer
Study Area Average Peak Native Load Fall	Row F of the Market Share Study Screen; Average Peak Native Load, for the Study Area, in MW. Fall Season.	Integer	Non Negative Integer

Indicative Screen for Market Share (continued)

Seller Average Peak Native Load Winter	Row G of the Market Share Study Screen; Amount of Average Peak Native Load Attributable to Seller, in MW, if any, in the Winter Season.	Integer	Non Negative Integer
Seller Average Peak Native Load Spring	Row G of the Market Share Study Screen; Amount of Average Peak Native Load Attributable to Seller, in MW, if any, in the Spring Season.	Integer	Non Negative Integer
Seller Average Peak Native Load Summer	Row G of the Market Share Study Screen; Amount of Average Peak Native Load Attributable to Seller, in MW, if any, in the Summer Season.	Integer	Non Negative Integer
Seller Average Peak Native Load Fall	Row G of the Market Share Study Screen; Amount of Average Peak Native Load Attributable to Seller, in MW, if any, in the Fall Season.	Integer	Non Negative Integer
Non-Affiliate Average Peak Native Load Winter	Row H of the Market Share Study Screen; Amount of Average Peak Native Load Attributable to Non-Affiliate, in MW, if any, in the Winter Season.	Integer	Non Negative Integer
Non-Affiliate Average Peak Native Load Spring	Row H of the Market Share Study Screen; Amount of Average Peak Native Load Attributable to Non-Affiliate, in MW, if any, in the Spring Season.	Integer	Non Negative Integer
Non-Affiliate Average Peak Native Load Summer	Row H of the Market Share Study Screen; Amount of Average Peak Native Load Attributable to Non-Affiliate, in MW, if any, in the Summer Season.	Integer	Non Negative Integer
Non-Affiliate Average Peak Native Load Fall	Row H of the Market Share Study Screen; Amount of Average Peak Native Load Attributable to Non-Affiliate, in MW, if any, in the Fall Season.	Integer	Non Negative Integer
Study Area Reserve Requirement Winter	Row I of the Market Share Study Screen; Reserve Requirement, for the Study Area, in MW. Winter Season.	Integer	Non Negative Integer
Study Area Reserve Requirement Spring	Row I of the Market Share Study Screen; Reserve Requirement, for the Study Area, in MW. Spring Season.	Integer	Non Negative Integer
Study Area Reserve Requirement Summer	Row I of the Market Share Study Screen; Reserve Requirement, for the Study Area, in MW. Summer Season.	Integer	Non Negative Integer
Study Area Reserve Requirement Fall	Row I of the Market Share Study Screen; Reserve Requirement, for the Study Area, in MW. Fall Season.	Integer	Non Negative Integer

Indicative Screen for Market Share (continued)

Seller Reserve Requirement Winter	Row J of the Market Share Study Screen; Amount of Reserve Requirement Attributable to Seller, in MW, if any, in the Winter Season.	Integer	Non Negative Integer
Seller Reserve Requirement Spring	Row J of the Market Share Study Screen; Amount of Reserve Requirement Attributable to Seller, in MW, if any, in the Spring Season.	Integer	Non Negative Integer
Seller Reserve Requirement Summer	Row J of the Market Share Study Screen; Amount of Reserve Requirement Attributable to Seller, in MW, if any, in the Summer Season.	Integer	Non Negative Integer
Seller Reserve Requirement Fall	Row J of the Market Share Study Screen; Amount of Reserve Requirement Attributable to Seller, in MW, if any, in the Fall Season.	Integer	Non Negative Integer
Non-Affiliate Reserve Requirement Winter	Row K of the Market Share Study Screen; Amount of Reserve Requirement Attributable to Non-Affiliate, in MW, if any, in the Winter Season.	Integer	Non Negative Integer
Non-Affiliate Reserve Requirement Spring	Row K of the Market Share Study Screen; Amount of Reserve Requirement Attributable to Non-Affiliate, in MW, if any, in the Spring Season.	Integer	Non Negative Integer
Non-Affiliate Reserve Requirement Summer	Row K of the Market Share Study Screen; Amount of Reserve Requirement Attributable to Non-Affiliate, in MW, if any, in the Summer Season.	Integer	Non Negative Integer
Non-Affiliate Reserve Requirement Fall	Row K of the Market Share Study Screen; Amount of Reserve Requirement Attributable to Non-Affiliate, in MW, if any, in the Fall Season.	Integer	Non Negative Integer
Non-Affiliate Installed Capacity Inside Winter	Row L of the Market Share Study Screen; Non-Affiliate (owned, controlled or under LT contract) Installed Capacity (inside the Study Area) in MW. Winter Season.	Integer	Non Negative Integer
Non-Affiliate Installed Capacity Inside Spring	Row L of the Market Share Study Screen; Non-Affiliate (owned, controlled or under LT contract) Installed Capacity (inside the Study Area) in MW. Spring Season.	Integer	Non Negative Integer
Non-Affiliate Installed Capacity Inside Summer	Row L of the Market Share Study Screen; Non-Affiliate (owned, controlled or under LT contract) Installed Capacity (inside the Study Area) in MW. Summer Season.	Integer	Non Negative Integer
Non-Affiliate Installed Capacity Inside Fall	Row L of the Market Share Study Screen; Non-Affiliate (owned, controlled or under LT contract) Installed Capacity (inside the Study Area) in MW. Fall Season.	Integer	Non Negative Integer

Indicative Screen for Market Share (continued)

Non-Affiliate Installed Capacity Remote Winter	Row L1 of the Market Share Study Screen; Non-Affiliate (owned, controlled or under LT contract) Remote Capacity (outside the Study Area) in MW. Winter Season.	Integer	Non Negative Integer
Non-Affiliate Installed Capacity Remote Spring	Row L1 of the Market Share Study Screen; Non-Affiliate (owned, controlled or under LT contract) Remote Capacity (outside the Study Area) in MW. Spring Season.	Integer	Non Negative Integer
Non-Affiliate Installed Capacity Remote Summer	Row L1 of the Market Share Study Screen; Non-Affiliate (owned, controlled or under LT contract) Remote Capacity (outside the Study Area) in MW. Summer Season.	Integer	Non Negative Integer
Non-Affiliate Installed Capacity Remote Fall	Row L1 of the Market Share Study Screen; Non-Affiliate (owned, controlled or under LT contract) Remote Capacity (outside the Study Area) in MW. Fall Season.	Integer	Non Negative Integer
Non-Affiliate LT Purchases inside Winter	Row M of the Market Share Study Screen; Non-Affiliate Long-Term Firm Purchases (inside the Study Area), in MW. Winter Season.	Integer	Non Negative Integer
Non-Affiliate LT Purchases inside Spring	Row M of the Market Share Study Screen; Non-Affiliate Long-Term Firm Purchases (inside the Study Area), in MW. Spring Season.	Integer	Non Negative Integer
Non-Affiliate LT Purchases inside Summer	Row M of the Market Share Study Screen; Non-Affiliate Long-Term Firm Purchases (inside the Study Area), in MW. Summer Season.	Integer	Non Negative Integer
Non-Affiliate LT Purchases inside Fall	Row M of the Market Share Study Screen; Non-Affiliate Long-Term Firm Purchases (inside the Study Area), in MW. Fall Season.	Integer	Non Negative Integer
Non-Affiliate LT Purchases outside Winter	Row M1 of the Market Share Study Screen; Non-Affiliate Long-Term Firm Purchases (outside the Study Area), in MW. Winter Season.	Integer	Non Negative Integer
Non-Affiliate LT Purchases outside Spring	Row M1 of the Market Share Study Screen; Non-Affiliate Long-Term Firm Purchases (outside the Study Area), in MW. Spring Season.	Integer	Non Negative Integer
Non-Affiliate LT Purchases outside Summer	Row M1 of the Market Share Study Screen; Non-Affiliate Long-Term Firm Purchases (outside the Study Area), in MW. Summer Season.	Integer	Non Negative Integer
Non-Affiliate LT Purchases outside Fall	Row M1 of the Market Share Study Screen; Non-Affiliate Long-Term Firm Purchases (outside the Study Area), in MW. Fall Season.	Integer	Non Negative Integer

Indicative Screen for Market Share (continued)

Non-Affiliate LT Sales in and outside Winter	Row N of the Market Share Study Screen; Non-Affiliate (owned, controlled or under LT contract) Capacity providing Long-Term Firm Sales (inside and outside the Study Area), in MW. Winter Season.	Integer	Non Negative Integer
Non-Affiliate LT Sales in and outside Spring	Row N of the Market Share Study Screen; Non-Affiliate (owned, controlled or under LT contract) Capacity providing Long-Term Firm Sales (inside and outside the Study Area), in MW. Spring Season.	Integer	Non Negative Integer
Non-Affiliate LT Sales in and outside Summer	Row N of the Market Share Study Screen; Non-Affiliate (owned, controlled or under LT contract) Capacity providing Long-Term Firm Sales (inside and outside the Study Area), in MW. Summer Season.	Integer	Non Negative Integer
Non Affiliate LT Sales in and outside Fall	Row N of the Market Share Study Screen; Non-Affiliate (owned, controlled or under LT contract) Capacity providing Long-Term Firm Sales (inside and outside the Study Area), in MW. Fall Season.	Integer	Non Negative Integer
Non-Affiliate Average Outages Winter	Row O of the Market Share Study Screen; Non-Affiliate Capacity (owned, controlled or under LT Contract) Seasonal Average Planned Outages in MW. Winter Season.	Integer	Non Negative Integer
Non-Affiliate Average Outages Spring	Row O of the Market Share Study Screen; Non Affiliate Capacity (owned, controlled or under LT Contract) Seasonal Average Planned Outages in MW. Spring Season.	Integer	Non Negative Integer
Non-Affiliate Average Outages Summer	Row O of the Market Share Study Screen; Non-Affiliate Capacity (owned, controlled or under LT Contract) Seasonal Average Planned Outages in MW. Summer Season.	Integer	Non Negative Integer
Non-Affiliate Average Outages Fall	Row O of the Market Share Study Screen; Non-Affiliate Capacity (owned, controlled or under LT Contract) Seasonal Average Planned Outages in MW. Fall Season.	Integer	Non Negative Integer
Non-Affiliate Uncommitted Capacity Imports Winter	Row P of the Market Share Study Screen; Non-Affiliate Capacity (owned, controlled or under LT Contract) Uncommitted Capacity Imports in MW. Winter Season	Integer	Non Negative Integer
Non Affiliate Uncommitted Capacity Imports Spring	Row P of the Market Share Study Screen; Non-Affiliate Capacity (owned, controlled or under LT Contract) Uncommitted Capacity Imports in MW. Spring Season	Integer	Non Negative Integer
Non-Affiliate Uncommitted Capacity Imports Summer	Row P of the Market Share Study Screen; Non-Affiliate Capacity (owned, controlled or under LT Contract) Uncommitted Capacity Imports in MW. Summer Season	Integer	Non Negative Integer
Non-Affiliate Uncommitted Capacity Imports Fall	Row P of the Market Share Study Screen; Non-Affiliate Capacity (owned, controlled or under LT Contract) Uncommitted Capacity Imports in MW. Fall Season	Integer	Non Negative Integer

Indicative Screen for Market Share (continued)

Total Competing Supply Winter	Row Q of the Market Share Study Screen; Sum of Rows L, L1, M, M1, and P minus Rows H, K, N and O of the Market Share Screen in MW. Winter Season	Integer	None
Total Competing Supply Spring	Row Q of the Market Share Study Screen; Sum of Rows L, L1, M, M1, and P minus Rows H, K, N and O of the Market Share Screen in MW. Spring Season	Integer	None
Total Competing Supply Summer	Row Q of the Market Share Study Screen; Sum of Rows L, L1, M, M1, and P minus Rows H, K, N and O of the Market Share Screen in MW. Summer Season	Integer	None
Total Competing Supply Fall	Row Q of the Market Share Study Screen; Sum of Rows L, L1, M, M1, and P minus Rows H, K, N and O of the Market Share Screen in MW. Fall Season	Integer	None
Seller Uncommitted Capacity Winter	Row R of the Market Share Study Screen; Sum of Rows A, A1, B, B1, and E, minus Rows C, D, G and J of the Market Share Screen in MW. Winter Season	Integer	None
Seller Uncommitted Capacity Spring	Row R of the Market Share Study Screen; Sum of Rows A, A1, B, B1, and E, minus Rows C, D, G and J of the Market Share Screen in MW. . Spring Season	Integer	None
Seller Uncommitted Capacity Summer	Row R of the Market Share Study Screen; Sum of Rows A, A1, B, B1, and E, minus Rows C, D, G and J of the Market Share Screen in MW. Summer Season	Integer	None
Seller Uncommitted Capacity Fall	Row R of the Market Share Study Screen; Sum of Rows A, A1, B, B1, and E, minus Rows C, D, G and J of the Market Share Screen in MW. Fall Season	Integer	None
Total Seasonal Uncommitted Capacity Winter	Row S of the Market Share Study Screen; Sum of Row Q and Row R of the Market Share Screen in MW. Winter Season	Integer	None
Total Seasonal Uncommitted Capacity Spring	Row S of the Market Share Study Screen; Sum of Row Q and Row R of the Market Share Screen in MW. Spring Season	Integer	None
Total Seasonal Uncommitted Capacity Summer	Row S of the Market Share Study Screen; Sum of Row Q and Row R of the Market Share Screen in MW. Summer Season	Integer	None
Total Seasonal Uncommitted Capacity Fall	Row S of the Market Share Study Screen; Sum of Row Q and Row R of the Market Share Screen in MW. Fall Season	Integer	None
Seller Market Share Winter	Row T of the Market Share Study Screen; Row R divided by Row S of the Market Share Screen in percentage. Winter Season	Integer	None
Seller Market Share Spring	Row T of the Market Share Study Screen; Row R divided by Row S of the Market Share Screen in percentage. Spring Season	Integer	None
Seller Market Share Summer	Row T of the Market Share Study Screen; Row R divided by Row S of the Market Share Screen in percentage. Summer Season	Integer	None
Seller Market Share Fall	Row T of the Market Share Study Screen; Row R divided by Row S of the Market Share Screen in percentage. Fall Season	Integer	None

Indicative Screen for Market Share (continued)

Total Imports Winter	Row U of the Market Share Study Screen; Total Uncommitted Capacity Imports in MW, as filed by Seller. Sum of Row E and Row P. Winter Season	Integer	None
Total Imports Spring	Row U of the Market Share Study Screen; Total Uncommitted Capacity Imports in MW, as filed by Seller. Sum of Row E and Row P. Spring Season	Integer	None
Total Imports Summer	Row U of the Market Share Study Screen; Total Uncommitted Capacity Imports in MW, as filed by Seller. Sum of Row E and Row P. Summer Season	Integer	None
Total Imports Fall	Row U of the Market Share Study Screen; Total Uncommitted Capacity Imports in MW, as filed by Seller. Sum of Row E and Row P. Fall Season	Integer	None
SIL Value Winter	Row V of the Market Share Study Screen; Simultaneous Transmission Import Limit (SIL) value in MW, from Submittal 1 Puget Sound Energy, Inc. 135 ¶ FERC 61, 254 (2011) or Commission-accepted SIL value for Study Year and Study Area. Winter Season	Integer	None
SIL Value Spring	Row V of the Market Share Study Screen; Simultaneous Transmission Import Limit (SIL) value in MW, from Submittal 1 Puget Sound Energy, Inc. 135 ¶ FERC 61, 254 (2011) or Commission-accepted SIL value for Study Year and Study Area. Spring Season	Integer	None
SIL Value Summer	Row V of the Market Share Study Screen; Simultaneous Transmission Import Limit (SIL) value in MW, from Submittal 1 Puget Sound Energy, Inc. 135 ¶ FERC 61, 254 (2011) or Commission-accepted SIL value for Study Year and Study Area. Summer Season.	Integer	None
SIL Value Fall	Row V of the Market Share Study Screen; Simultaneous Transmission Import Limit (SIL) value in MW, from Submittal 1 Puget Sound Energy, Inc. 135 ¶ FERC 61, 254 (2011) or Commission-accepted SIL value for Study Year and Study Area. Fall Season.	Integer	None
SIL Limit Exceeded Winter	Unnamed row in the Market Share Study Screen below SIL value with text "Do Total Imports exceed SIL value? (is U <= V)" Winter Season.	"Yes" or "No"	Character
SIL Limit Exceeded Spring	Unnamed row in the Market Share Study Screen below SIL value with text "Do Total Imports exceed SIL value? (is U <= V)" Spring Season.	"Yes" or "No"	Character
SIL Limit Exceeded Summer	Unnamed row in the Market Share Study Screen below SIL value with text "Do Total Imports exceed SIL value? (is U <= V)" Summer Season.	"Yes" or "No"	Character
SIL Limit Exceeded Fall	Unnamed row in the Market Share Study Screen below SIL value with text "Do Total Imports exceed SIL value? (is U <= V)" Fall Season.	"Yes" or "No"	Character

Entities to Entities

Column	Description	Field Definition	Validations
Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Owner/Controller ID	LEI, CID, or Entity ID	Character, Foreign Key	Foreign Key
Owner/Controller ID Type	'LEI', 'CID', or 'Entity ID'	Character	
Ownee/Controlee ID	LEI, CID, or Entity ID	Character, Composite Foreign Key	Foreign Key
Ownee/Controlee ID Type	'LEI', 'CID', or 'Entity ID'	Character	
Ownership flag	Flag indicating filer owns all/part of entity	Binary (Y/N)	Binary
Ownership percentage	Percentage of ownership	Integer	1-100 or null if entity just controls
Ownership start date	Date ownership started	Date	Valid date or null if entity does not own
Ownership end date	Date ownership ended	Date	Valid date or null if entity does not own
Control flag	Flag indicating filer controls entity	Binary (Y/N)	
Control start date	Date control started for either the filing entity or controlling entity	Date	Valid date or null if entity does not control
Control end date	Date control ended for either the filing entity or controlling entity	Date	Valid date or null if entity does not control
Ownership/control Notes	Narrative description if necessary	Character	None
Ownership type	Ownership type, multiple types allowed	Integer	0- Ultimate affiliate owner 1- Affiliate owner that has a franchised service area 2- Affiliate owner that has MBR authority 3- Affiliate owner that directly owns or controls generation 4- Affiliate owner that directly owns or controls transmission; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies.
Publication Flag	Indicates the row information can/will be made public	Character	Privileged (M) Public (P) CEII (X)

Natural Person Affiliates to Entities			
Column	**Description**	**Field Definition**	**Validations**
Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Owner Name	Name	Character, Foreign Key	Foreign Key
Owner Contact information	Contact information (multiple columns)	Character, Foreign Key	None
Ownee/Controlee ID	LEI, CID, or Entity ID	Character, Foreign Key	Foreign Key
Ownee/Controlee ID Type	'LEI', 'CID', or 'Entity ID'	Character	None
Ownership flag	Flag indicating filer owns all/part of entity	Binary (Y/N)	Binary
Ownership percentage	Percentage of ownership	Integer	1-100 or null if entity just controls
Ownership start date	Date ownership started	Date	Valid date or null if entity does not own
Ownership end date	Date ownership ended	Date	Valid date or null if entity does not own
Control flag	Flag indicating filer controls entity	Binary (Y/N)	Binary
Control start date	Date control started for either the filing entity or controlling entity	Date	Valid date or null if entity does not control
Control end date	Date control ended for either the filing entity or controlling entity	Mapping of entities to ISO identifiers for filing entity and downstream affiliates where appropriate	Valid date or null if entity does not control
Ownership/control Notes	Narrative description if necessary	Character	None
Ownership type	Ownership type, multiple types allowed	Integer	0- Ultimate affiliate owner 1- Affiliate owner that has a franchised service area 2- Affiliate owner that has MBR authority 3- Affiliate owner that directly owns or controls generation 4- Affiliate owner that directly owns or controls transmission; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies.
Publication Flag	Indicates the row information can/will be made public	Character	Privileged (M) Public (P) CEII (X)

Entities to Generation Assets

Column	Description	Field Definition	Validations
Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Filer LEI	Legal Entity Identifier from entities table of entity making filing.	Character (20), Foreign Key	Must match LEI registry
EIA Plant Code of affiliated generation	"Plant Code" assigned to the plant as found in EIA-860 reports	Character, Composite Foreign Key	Must match "Plant Code" found in EIA-860
EIA Gen ID of affiliated generation	"Generator ID" assigned to the specific generator as found in EIA-860 reports	Character, Composite Foreign Key	Must match "Generator ID" found in EIA-860
EIA Unit Code of affiliated generation	"Unit Code" assigned to multiple generators found in EIA-860 reports (if applicable)	Character, Composite Foreign Key	Must match "Unit Code" found in EIA-860 (if appropriate)
Ownership flag	Flag indicating filer owns all/part of generator	Binary (Y/N)	Binary
Ownership percentage	Percentage of ownership	Integer	0-100 or null if entity just controls
Ownership start date	Date ownership started	Date	Valid date or null if entity does not own
Ownership end date	Date ownership ended	Date	Valid Date
Control flag	Flag indicating filer controls generator (can be combined with ownership)	Binary (Y/N)	Binary
Controlling entity	Name of controlling entity if not controlled by filer	Character	Should be consistent across filings
Controlling entity LEI	LEI of controlling entity	Character (20), Foreign Key	Can be null
Control start date	Date control started for either the filing entity or controlling entity	Date	Valid date
Control end date	Date control ended for either the filing entity or controlling entity	Date	Valid Date

Vertical Assets

Column	Description	Field Definition	Validations
Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
LEI	Legal Entity Identifier from entities table of entity making filing.	Character (20), Foreign Key	Must match LEI registry
Asset Type	Intrastate pipeline, gas storage, gas distribution, or other input.	Character	Must be in the list
Asset Region/BAA	One of the six RTO/ISOs or their designated submarkets or a NERC-defined Balancing Authority Area name. Multiple entries allowed.	Character, Foreign Key	Must be a FERC region or match a code on the list of market/BAA codes that will be maintained on FERC.gov
Asset Region Type	Region or BAA	Character	Region or BAA
Explanatory notes and clarifications	Optional narrative description	Character	None

Entities to RTO/ISO Accounts

Column	Description	Field Definition	Validations
Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Filer LEI	Legal Entity Identifier from entities table of entity making filing.	Character (20), Foreign Key	Must match LEI registry
RTO/ISO	RTO/ISO identifier	Character, Composite Foreign Key	Must match standard RTO/ISO identifiers
RTO/ISO Account ID	Account identifier for RTO/ISOs (use multiple rows for multiple accounts)	Character, Composite Foreign Key	Foreign Key to RTO/ISO
RTO/ISO Account Start Date	Date filing entity started using the RTO/ISO account	Date	Valid date
RTO/ISO Account End Date	Date filing entity stopped using the RTO/ISO account	Date	Valid date

Traders to RTO/ISO Accounts

Column	Description	Field Definition	Validations
Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Filer LEI	Legal Entity Identifier from entities table of entity making filing.	Character (20), Foreign Key	Must match LEI registry
Trader Name	Trader name (may be multiple fields)	Character, Composite Foreign Key	Must match person from People table
RTO/ISO	RTO/ISO identifier	Character, Composite Foreign Key	Must match standard RTO/ISO identifiers
RTO/ISO Account ID	Account identifier for RTO/ISOs (use multiple rows for multiple accounts)	Character, Composite Foreign Key	Foreign Key to RTO/ISO
RTO/ISO Account Start Date	Date trader started using the RTO/ISO account	Date	Valid date
RTO/ISO Account End Date	Date trader stopped using the RTO/ISO account	Date	Valid date

Traders to Entities

Column	Description	Field Definition	Validations
Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Filer LEI	Legal Entity Identifier from entities table of entity making filing.	Character (20), Foreign Key	Must match LEI registry
Trader Name	Trader name (may be multiple fields)	Character, Composite Foreign Key	Must match person from People table
Trader Title	Title (use multiple rows for traders with multiple positions)	Character	Consistent between filings for same person in the same position

Entities to Associated CIDs

Column	Description	Field Definition	Validations
Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Filer LEI	Legal Entity Identifier from entities table of filing entity.	Character (20), Foreign Key	Must match LEI registry
Associated CIDs	CIDs associated with filer	Character, Composite Foreign Key	Must match an extant CID

Entities to NAESB/OATI Purchaser Seller Entity ID

Column	Description	Field Definition	Validations
Record ID	Unique record ID generated by the database	Primary Key, Auto-incrementing integer	Primary Key (not null, unique)
Filing ID	Unique filing ID generated by the database	Integer, Foreign Key	Foreign Key
Filer LEI	Legal Entity Identifier from entities table of entity making filing.	Character (20), Foreign Key	Must match LEI registry
NAESB/OATI Purchaser Seller Entity ID	NAESB/OATI Purchaser-Seller Entity (PSE) identifier (e-Tag)	Character, Composite Foreign Key	Foreign Key to RTO/ISO
NAESB/OATI PSE Start Date	Date filing entity started using the NAESB/OATI PSE ID	Date	Valid date
NAESB/OATI PSE End Date	Date filing entity stopped using the NAESB/OATI PSE ID	Date	Valid date

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H.R. 2607/P.L. 114–200
To designate the facility of the United States Postal Service located at 7802 37th Avenue in Jackson Heights, New York, as the ''Jeanne and Jules Manford Post Office Building''. (July 29, 2016; 130 Stat. 781)

H.R. 3700/P.L. 114–201
Housing Opportunity Through Modernization Act of 2016 (July 29, 2016; 130 Stat. 782)

H.R. 3931/P.L. 114–202
To designate the facility of the United States Postal Service located at 620 Central Avenue Suite 1A in Hot Springs National Park, Arkansas, as the ''Chief Petty Officer Adam Brown United States Post Office''. (July 29, 2016; 130 Stat. 816)

H.R. 3953/P.L. 114–203
To designate the facility of the United States Postal Service located at 4122 Madison Street, Elfers, Florida, as the ''Private First Class Felton Roger Fussell Memorial Post Office''. (July 29, 2016; 130 Stat. 817)

H.R. 4010/P.L. 114–204
To designate the facility of the United States Postal Service located at 522 North Central Avenue in Phoenix, Arizona, as the ''Ed Pastor Post Office''. (July 29, 2016; 130 Stat. 818)

H.R. 4425/P.L. 114–205
To designate the facility of the United States Postal Service located at 110 East Powerhouse Road in Collegeville, Minnesota, as the ''Eugene J. McCarthy Post Office''. (July 29, 2016; 130 Stat. 819)

H.R. 4747/P.L. 114–206
To designate the facility of the United States Postal Service located at 6691 Church Street in Riverdale, Georgia, as the ''Major Gregory E. Barney Post Office Building''. (July 29, 2016; 130 Stat. 820)

H.R. 4761/P.L. 114–207
To designate the facility of the United States Postal Service located at 61 South Baldwin Avenue in Sierra Madre, California, as the ''Louis Van Iersel Post Office''. (July 29, 2016; 130 Stat. 821)

H.R. 4777/P.L. 114–208
To designate the facility of the United States Postal Service located at 1301 Alabama Avenue in Selma, Alabama as the ''Amelia Boynton Robinson Post Office Building''. (July 29, 2016; 130 Stat. 822)

H.R. 4877/P.L. 114–209
To designate the facility of the United States Postal Service located at 3130 Grants Lake Boulevard in Sugar Land, Texas, as the ''LCpl Garrett W. Gamble, USMC Post Office Building''. (July 29, 2016; 130 Stat. 823)

H.R. 4904/P.L. 114–210
Making Electronic Government Accountable By Yielding Tangible Efficiencies Act of 2016 (July 29, 2016; 130 Stat. 824)

H.R. 4925/P.L. 114–211
To designate the facility of the United States Postal Servie located at 229 West Main Cross Street, in Findlay, Ohio, as the ''Michael Garver Oxley Memorial Post Office Building''. (July 29, 2016; 130 Stat. 826)

H.R. 4975/P.L. 114–212
To designate the facility of the United States Postal Service located at 5720 South 142nd Street in Omaha, Nebraska, as the ''Petty Officer 1st Class Caleb A. Nelson Post Office Building''. (July 29, 2016; 130 Stat. 827)

H.R. 4987/P.L. 114–213
To designate the facility of the United States Postal Service located at 3957 2nd Avenue in Laurel Hill, Florida, as the ''Sergeant First Class William 'Kelly' Lacey Post Office''. (July 29, 2016; 130 Stat. 828)

H.R. 5028/P.L. 114–214
To designate the facility of the United States Postal Service located at 10721 E Jefferson Ave in Detroit, Michigan, as the ''Mary E. McCoy Post Office Building''. (July 29, 2016; 130 Stat. 829)

H.R. 5722/P.L. 114–215
John F. Kennedy Centennial Commission Act (July 29, 2016; 130 Stat. 830)

S. 764/P.L. 114–216
To reauthorize and amend the National Sea Grant College Program Act, and for other purposes. (July 29, 2016; 130 Stat. 834)

S. 2893/P.L. 114–217
Library of Congress Sound Recording and Film Preservation Programs Reauthorization Act of 2016 (July 29, 2016; 130 Stat. 840)

S. 3055/P.L. 114–218
Department of Veterans Affairs Dental Insurance Reauthorization Act of 2016 (July 29, 2016; 130 Stat. 842)

S. 3207/P.L. 114–219
To authorize the National Library Service for the Blind and Physically Handicapped to provide playback equipment in all formats. (July 29, 2016; 130 Stat. 845)

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