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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AM40

Access to Federal Employees Health Benefits (FEHB) for Employees of Certain Indian Tribal Employers

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This final rule makes Federal employee health insurance accessible to employees of certain Indian tribal entities. Section 409 of the Indian Health Care Improvement Act (codified at 25 U.S.C. 1647b) authorizes Indian tribes, tribal organizations, and urban Indian organizations that carry out certain programs to purchase coverage, rights, and benefits under the Federal Employees Health Benefits (FEHB) Program for their employees. Tribal employers and tribal employees will be responsible for the full cost of benefits, plus an administrative fee.

DATES: The final rule is effective February 27, 2017.

FOR FURTHER INFORMATION CONTACT: Padma Shah, Senior Policy Analyst at (202) 606-0004.

SUPPLEMENTARY INFORMATION:

The Office of Personnel Management (OPM) is issuing a final rule to extend coverage, rights, and benefits under the Federal Employees Health Benefits (FEHB) Program to certain employees of certain Indian tribal employers.

Section 10221 of the Patient Protection and Affordable Care Act (Pub. L. 111-148) incorporated, amended, and enacted the entire text of S. 1790 as reported on December 16, 2009 by the Senate Committee on Indian Affairs. Bill S. 1790 revised and extended the Indian Health Care Improvement Act (IHCIA), including

adding a new section 409. Under IHCIA section 409, an Indian tribe or tribal organization carrying out programs under the Indian Self-Determination and Education Assistance Act (ISDEAA), or an urban Indian organization carrying out programs under title V of IHCIA, is entitled to purchase coverage, rights, and benefits under the FEHB Program for their employees.

In 2011 and 2012, OPM consulted with tribal groups to develop sub-regulatory guidance¹ relating to IHCIA section 409. Tribal employers began purchasing FEHB coverage, rights, and benefits for their employees on March 22, 2012, with an insurance coverage effective date of May 1, 2012.

On August 31, 2016, OPM issued a Notice of Proposed Rulemaking (NPRM) (81 FR 59907) codifying previously issued guidance to adopt the FEHB Program, as set forth in 5 U.S.C. chapter 89 and its implementing regulations, for employees of certain tribal employers with slight variations to meet the needs of the tribal population (the Tribal FEHB Program). OPM proposed to amend title 5 of the Code of Federal Regulations (CFR) part 890 to add new subpart N, setting forth the conditions for coverage, rights, and benefits under the FEHB Program for employees of certain Indian tribal employers. The proposed rule had a 60 day comment period during which OPM received 2 comments. This final rule adopts subpart N, as proposed, with one clarification as noted below.

Responses to Comments on the Proposed Rule

OPM received comments from two tribal employers that have elected to participate in the FEHB Program.

One commenter expressed concern about the lack of consultation with a specific tribal entity, on the same basis as Indian tribes under Executive Order No. 13175, prior to the publication of the NPRM.

OPM has engaged in regular and meaningful consultation and collaboration with all tribal officials, including a representative from this specific tribal entity during the tribal consultative process in 2011 and 2012.

¹ Available at <https://www.opm.gov/healthcare-insurance/tribal-employers/reference-materials/>.

OPM published a series of policy papers² regarding the implementation of the Tribal FEHB Program. Tribes, tribal organizations, and urban Indian organizations were given an opportunity to provide feedback on these papers at outreach events and tribal conferences and meetings. Written feedback was also accepted.

A Tribal Technical Workgroup³ was established to support the implementation of the Tribal FEHB Program and was composed of tribal human resource representatives and OPM operational and policy staff. The primary purpose of the workgroup was to ensure system requirements for enrollment processing were completed according to the needs of tribal employers.

OPM representatives have attended more than 20 tribal conferences and meetings to provide information and consultation about the Tribal FEHB Program since its inception. In addition, OPM has hosted training sessions for interested tribes and tribal organizations on numerous occasions.

Tribal Benefits Administration Letters (TBAL) are released and distributed to participating tribal employers regularly, just as they are for Federal agencies. Questions following the release of a TBAL are directed to OPM's dedicated Tribal Desk. The Tribal Desk is available during regular business hours and questions are answered by OPM staff who administer the program. OPM has created direct lines of communication and fostered collaboration between tribal employers and OPM employees.

When important program changes occur, OPM issues Dear Tribal Leader Letters (DTLL) to notify tribes, tribal organizations and urban Indian organizations. An example was the DTLL⁴ issued describing the revision of the original "all-or-nothing" policy. The original policy had required a tribal employer to enroll all of their billing units. Due to concerns raised by tribal employers, OPM amended that policy to allow tribal employers to select which of their billing units will receive FEHB

² Available at <https://www.opm.gov/healthcare-insurance/tribal-employers/hr-personnel/outreach-documents/outreach-documents-archive/>.

³ Available at <https://www.opm.gov/healthcare-insurance/tribal-employers/hr-personnel/#url=Work-Group>.

⁴ Available at <https://www.opm.gov/healthcare-insurance/tribal-employers/hr-personnel/outreach-documents/tribal-leader-letter-2014.pdf>.

and which will not. As a result, interest in FEHB enrollment has increased.

OPM views its ongoing engagement with tribal employers, participating in the FEHB Program, as a form of consultation. OPM also considers the public comment period for the NPRM as an important consultation period. Upon publication of the NPRM, OPM sent an email message to all Tribal Benefits Officers alerting them of the publication of the proposed rule and the process for submitting formal comments. A DTLL will also be issued in tandem with the publication of this final rule. OPM will continue to provide assistance to tribal employers even after the final rule is in effect.

OPM also believes that steady enrollment increases in the Tribal FEHB Program, with an average of about 25 percent per year since the first year, is another indicator suggesting that tribal employers and employees are satisfied with current policies, now codified in this final rule.

A second commenter was generally pleased with the proposed rule, but made two recommendations. First, the commenter recommended that OPM reconsider the limitation at § 890.1407(a) prohibiting tribal employers from accessing FEHB if the tribal employer contributes toward an alternative employer-sponsored health insurance plan (e.g., tribal self-insured coverage) for tribal employees within the billing unit(s) for which the employer seeks to purchase coverage, with the exception of a collectively bargained alternative plan. The commenter noted that, in certain instances, there may be limitations in FEHB plans related to network adequacy, cultural competency, contracting issues, or other health reasons. In order to keep tribal employees' plan options and participation rules aligned with those of Federal employees and maintain the stability of the FEHB risk pool, we decline to adopt the commenter's first recommendation.

A second recommendation by the commenter was a suggestion that OPM waive FEHB co-payments for tribal employees when they are served by health programs operated by the Indian Health Service (IHS), Indian tribes, tribal organizations, and urban Indian organizations (as those terms are defined in § 1603 of the IHClA). The commenter also requested OPM require FEHB plans pay the cost of co-payments if a tribal employee is furnished an item or service directly by the IHS, an Indian tribe, tribal organization, or urban Indian organization. To support its recommendations, the commenter

references § 1402(d) of the Patient Protection and Affordable Care Act. However, this provision relates to individual coverage in the health insurance exchanges and not employer-sponsored insurance such as FEHB. Therefore, the regulatory text has not been changed.

Changes From the Proposed Rule

OPM is clarifying that different portions of a tribal employer's payment are credited in different ways. One portion of a tribal employer's payment consists of the premium payment, *i.e.*, the sum of the tribal employer's share of premium plus the tribal employees' share of premium due for the enrollment, in the aggregate, of the tribal employer's tribal employees. A second portion of the tribal employer's payment consists of the administrative fee. OPM clarifies that only the premium payment is deposited to the Employees Health Benefits Fund. Accordingly, OPM has revised §§ 890.1403, 890.1410(f), and 890.1413(d) and (e).

OPM is also revising § 890.1407 to express existing policy more clearly: A tribal employer may neither contribute towards, nor offer, an alternative employer-sponsored health insurance plan for tribal employees within the billing unit(s) for which the employer seeks to purchase FEHB coverage, with the exception of a collectively bargained alternative plan.

OPM is also making a technical correction to § 890.1404 by moving language appearing previously in subparagraph (e)(2) to new paragraph (f).

Finally, OPM is correcting a typographical error at § 890.1411(c) by changing the term "following" to "follows."

Provisions of the Final Rule

This final rule establishes how FEHB enrollment under the Tribal FEHB Program will be administered, including eligibility, tribal employer and tribal employee contribution to premiums, the process by which tribal employers will access the program, the process by which tribal employees will elect coverage, and circumstances for termination and cancellation of enrollment. Where practicable, this regulation provides for the administration of benefits by and for tribal employers and tribal employees in the same manner as these benefits are administered by and for Federal agencies and Federal employees. There may be some instances for which there is no established procedure in place for the Federal Government, such as the procedure and timeline by which tribal

employers certify entitlement to purchase FEHB. When there are no established procedures in place, OPM has established a procedure.

Definitions

Section 890.1402 defines several terms used in the new subpart N of part 890. This section also includes a series of deemed references. Defining these terms and identifying deemed references are necessary to make clear how OPM will modify and apply existing regulations to govern tribal employers' purchase of FEHB for tribal employees.

This final rule refers to tribes, tribal organizations, and urban Indian organizations that are entitled to access insurance under IHClA section 409 as "tribal employers." Moreover, because the term "employee" as used in 5 U.S.C. chapter 89 is a statutorily defined term, OPM refers to a tribal employer's employees who are eligible to enroll in FEHB as "tribal employees."⁵

The new subpart N refers to and incorporates many other subparts of part 890 that govern how the FEHB Program functions. The deemed references make it clear that references to statutory terms such as "employee" and other terms used throughout part 890 will be deemed references to "tribal employee" and other terms, as appropriate, in context, to govern tribal employers' purchase of FEHB for its tribal employees.

Scope of Entitlement for Tribal Employers

Entitlement to offer FEHB coverage, rights, and benefits will be available to any tribe, tribal organization, or urban Indian organization carrying out at least one of the programs under the ISDEAA or title V of the IHClA as specified in section 409 of the IHClA. The terms "tribe," "tribal organization," and "urban Indian organization" are defined in the IHClA. Those definitions, set forth below, are incorporated by reference in the regulatory text at

⁵ The Department of Labor has advised that a tribal employer entitled under IHClA section 409 to purchase coverage, rights, and benefits under the FEHB Program for its employees does not "establish or maintain" an employee welfare benefit plan subject to title I of the Employee Retirement Income Security Act (ERISA) as a result of such a purchase in a manner consistent with the FEHB statute and this final rule. The Department of Labor has also advised that the enrollment of tribal employees in FEHB coverage pursuant to such a purchase does not affect the status of the FEHB as a governmental plan for purposes of the exemption from Title I of ERISA at 29 U.S.C. 1003(b)(1). In addition, the Department of the Treasury and the Internal Revenue Service have advised that such enrollment of tribal employees in FEHB coverage does not affect the status of the FEHB as a governmental plan within the meaning of 26 U.S.C. 9832(d)(2).

§ 890.1402, which defines the term “tribal employer.” The term “tribal employer” is used to refer to any of these entities that fulfill the requirements to be entitled to purchase FEHB for its employees.

A *tribe* is any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C.A. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. 25 U.S.C. 1603(14).

A *tribal organization* is the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: That in any case in which a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant. 25 U.S.C. 1603(26), incorporating by reference 25 U.S.C. 450b(l) (definition of “tribal organization”).

An *urban Indian organization* is a non-profit corporate body situated in an urban center, governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in section 1653(a) of this title. 25 U.S.C. 1603(29).

For purposes of this regulation, tribes and tribal organizations carrying out at least one program under the ISDEAA, and urban Indian organizations carrying out at least one program under title V of the IHClA, are entitled to purchase FEHB for their employees. If the tribal employer ceases to carry out one of these programs, entitlement to purchase FEHB ceases at the end of the calendar year in which the tribal employer ceased to carry out one of those programs.

If OPM determines that a tribal employer is not entitled to purchase FEHB, the tribal employer may appeal that decision to OPM. OPM retains sole authority for deciding entitlement.

Eligible Tribal Employees

OPM has defined the term “tribal employee” in § 890.1402 broadly to mean a common law employee of a tribal employer. This section incorporates the regulatory standard under the Federal employment tax regulations (which, for this purpose, includes Federal Insurance Contributions Act tax and Federal income tax withholding) that generally provide that an individual is a common law employee if the tribal employer has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. This determination is based on all the facts and circumstances. The section then indicates that this determination is to be guided by a list of 20 factors⁶ developed by the Internal Revenue Service (IRS), or any future guidance the IRS releases related to the common law employee relationship for Federal employment tax purposes. Because OPM expects tribal employers to treat tribal employees consistently for purposes of Federal employment taxation and access to Federal insurance, the tribal employer’s determination of common law employee status for purposes of eligibility for FEHB must be consistent with any determination of common law employee status made by the tribal employer for Federal employment tax purposes.

OPM recognizes that there may be cases in which a tribal employer has determined that a worker is not a common law employee for purposes of establishing a Federal employment tax obligation, and the tribal employer meets all the requirements for relief from Federal employment taxes under § 530 of the Revenue Act of 1978 with respect to such worker. Under these circumstances, as long as the tribal employer continues to meet the requirements for such relief, OPM will defer to the tribal employer’s reasonable determination that its worker is not a common law employee for purposes of eligibility to enroll in FEHB.

OPM recognizes that there may be very limited cases in which a tribal employer has determined that a worker is a common law employee but has also determined that no Federal employment taxes are due with respect to the worker. Under these circumstances, OPM will

defer to the tribal employer’s reasonable determination that the worker is a common law employee for purposes of eligibility to enroll in FEHB.

Each tribal employer entitled to access Federal insurance will be able to offer FEHB coverage, rights, and benefits to all of its tribal employees, not just those carrying out functions under the ISDEAA or IHClA title V programs. OPM has determined that tribal employees (who, by definition, are common law employees) engaged in governmental or commercial operations, such as casino or hospitality operations, will be eligible to enroll in FEHB if it is purchased by their tribal employer. As discussed below, individuals who retire from employment with a tribal employer lose their status as tribal employees upon retirement and their enrollment will terminate.

A tribal employer carrying out programs under the ISDEAA or title V of the IHClA may purchase FEHB for employees of one or more billing units carrying out programs or activities under their contract. Once a tribal employer has enrolled at least one billing unit carrying out programs or activities under ISDEAA or IHClA, the tribal employer may enroll one or more billing units that are not carrying out programs or activities under ISDEAA or IHClA. Section 890.1405 establishes that all eligible full-time and part-time tribal employees of each participating billing unit of a tribal employer must be offered the opportunity to enroll in FEHB. Intermittent, seasonal, and temporary tribal employees will be treated similarly to intermittent, seasonal and temporary Federal employees. However, under § 890.102(k), the tribal employer may choose not to extend coverage to certain intermittent, seasonal, and temporary employees if written notification is provided to the Director of OPM.

Tribal employers may not segment tribal employee populations by offering a different set of health benefits to different groups of tribal employees within a single billing unit. An exception to this rule is if tribal employees within a billing unit are offered alternative coverage as part of a collective bargaining agreement.

Coverage of Family Members

As described in § 890.1405(e), family members of tribal employees will be eligible for coverage in FEHB under substantially the same terms as family members of Federal employees. One exception is that former spouses of tribal employees may not enroll in FEHB under the Civil Service Retirement Spouse Equity Act. This is

⁶ See Rev. Rul. 87–41, 1987–1 C.B. 296 and reference in Joint Committee on Taxation report JCX–26–07 “Present Law and Background Relating to Worker Classification for Federal Tax Purposes,” dated May 7, 2007 <http://www.irs.gov/pub/irs-utl/x-26-07.pdf>.

because Spouse Equity coverage is linked to the former spouse's entitlement to a portion of a Federal employee's annuity. Another exception is that if the tribal employee dies while employed, a surviving spouse cannot continue FEHB enrollment or enroll in his or her own right, unless the surviving spouse is also FEHB-eligible through his or her employment. This is because continuing FEHB eligibility for surviving spouses of Federal employees is linked to a survivor annuity.

Section 890.1406 states that correction of enrollment errors will take place according to the same terms as for Federal employees. Requirements for tribal employees' appeals of eligibility and enrollment decisions are described in § 890.1415.

Tribal Employer and Tribal Employee Contributions and Administrative Fee

Section 890.1403 explains that a tribal employer is entitled to purchase FEHB if premium payments are currently deposited in the Employees Health Benefits Fund, as required by the authorizing statute, and if it timely pays administrative fees. This section provides that a premium payment will be considered "currently deposited" if it is received by the Employees Health Benefits Fund before, during, or within fourteen days after the end of the calendar month covered by the premium payment. Likewise, an administrative fee will be considered "timely paid" if it is received before, during, or within fourteen days after the end of the calendar month covered by the administrative fee.

Section 890.1413 describes how payments will work for tribal employers participating in FEHB. Tribal employer and tribal employee contributions for FEHB will be handled similarly for tribal employees as for Federal employees, with the tribal employer responsible for contributing a share of premium that is at least equivalent to the share of premium that the Federal Government contributes for Federal employees. The percentage contribution requirements are described in 5 U.S.C. 8906. The FEHB contributions for part-time tribal employees working between 16 and 32 hours per week may be prorated in accordance with the terms applicable to part-time Federal employees. FEHB enrollment for tribal employees on unpaid leave may be continued in a manner similar to Federal employees on unpaid leave under § 890.502(b), as long as the full premium is paid.

The tribal employer's FEHB contribution percentage must equal or exceed the contribution that the Federal

Government would make each month for a Federal employee for the same plan. Tribal employers may elect to pay a greater tribal employer contribution, but may not pay a lesser amount than the Federal Government contribution for each plan. There is no cap on the percentage of premium that a tribal employer may contribute. The tribal employer may vary the contribution by type of enrollment (self only, self plus one, self and family) but must treat tribal employees in a uniform manner. As an example, a tribal employer could contribute 100 percent for all tribal employees in self only or self plus one enrollments and 90 percent for all tribal employees in self and family enrollments. Tribal employers may not vary the tribal employer contribution in order to encourage or discourage enrollment in any particular plan or plan option. Tribal employers may choose to vary the contribution amounts for each billing unit, provided each billing unit meets the requirements set forth above.

In addition, the tribal employer is required to pay an administrative fee, in an amount set by OPM each year, for each tribal employee's enrollment on a monthly basis. This fee covers the costs of a paymaster to perform the collection and remittance functions that is performed for Federal employees by Federal payroll offices. The paymaster is the entity designated by OPM as responsible for receiving FEHB premiums from the tribal employer, forwarding premiums to the Employees Health Benefits Fund, and maintaining enrollment records for all participating tribal employers. Tribal employers may not charge this fee to tribal employees. The total aggregate amount for tribal employees' and tribal employer's share of the premium, and the administrative fee must be available for receipt by the paymaster on an agreed upon date set in the agreement with the tribal employer.

Tribal Employers' Entitlement and Election to Purchase FEHB

Section 890.1404 establishes a process by which tribal employers may demonstrate entitlement and elect to purchase FEHB for their tribal employees. The tribal employer must notify OPM by email or telephone of the intention to purchase FEHB. Through an agreement described in § 890.1404(b), OPM will confirm the following:

- (1) The tribal employer's contact information;
- (2) The date that FEHB coverage will begin;
- (3) The approximate number of tribal employees eligible to enroll;

(4) The tribal employer's agreement not to make available to FEHB-eligible tribal employees alternate tribal employer-sponsored health insurance coverage concurrent with FEHB;

(5) The tribal employer is entitled to participate in FEHB by carrying out at least one program under ISDEAA or title V of IHClA;

(6) The tribal employer's acknowledgement that participation in FEHB makes the tribal employer subject to Federal Government audit with respect to such participation and to OPM authority to direct the administration of the program;

(7) The tribal employer's agreement to establish or identify an independent dispute resolution panel to adjudicate appeals of determinations made by a tribal employer regarding an individual's status as a tribal employee;

(8) The tribal employer's agreement to supply necessary enrollment information, payment of the tribal employer and tribal employee share of premium and payment of an administrative fee to the paymaster;

(9) The tribal employer's agreement to notify OPM in the event that the tribal employer is no longer carrying out at least one program under the ISDEAA or title V of IHClA; and

(10) The tribal employer's agreement to abide by other terms and conditions of participation.

Section 890.1404(c) allows a tribal employer to elect to purchase FEHB at any time. The election to purchase FEHB will commit the tribal employer to purchase FEHB at least through the remainder of the calendar year in which the election is made. Elections will be automatically renewable year to year unless revoked by the tribal employer or terminated by OPM. Section 890.1404(d) allows a tribal employer to revoke its election to purchase FEHB with 60 days' notice to OPM. If a tribal employer revokes an election to purchase FEHB, that tribal employer may only re-elect to purchase FEHB during the first annual open enrollment season that occurs at least twelve months after the election is revoked. If the tribal employer revokes an election to participate a second time, the tribal employer may only re-elect to purchase FEHB during the first open season that falls at least twenty-four months after the second revocation. Section 890.1404(e) states that OPM maintains final authority to determine entitlement of a tribal employer to purchase FEHB. Section 890.1404(f) states that if a tribe, tribal organization or urban Indian organization believes it has been improperly denied the entitlement to

purchase FEHB, it may appeal the denial to OPM.

A tribal employer that begins to carry out a program under ISDEAA or title V of IHCA after this rule is effective may notify OPM of its intention to purchase benefits after the entitlement is established. Section 890.1407 states that a tribal employer electing to purchase FEHB for its employees may not concurrently make contributions toward, or offer, an alternative employer-sponsored health insurance plan for tribal employees within the billing unit(s) for which the employer seeks to purchase FEHB coverage, with the exception of a collectively bargained alternative plan. A stand-alone dental, vision, or disability plan is not considered alternative health insurance. A tribal employee may have other comprehensive health care insurance coverage, as long as it is not provided by or purchased through the tribal employer.

Interaction With Other FEHB Coverage

Section 890.1405(f) establishes that eligibility to enroll in FEHB does not cause any tribal employee to be identified or characterized as a Federal employee, nor does it convey any additional rights or privileges of Federal employment. There may be circumstances in which a tribal employee is also an FEHB-eligible Federal employee. In such a case, the tribal employee may participate in FEHB through either employer. A tribal employee who is also a Federal employee cannot enroll in FEHB through both employers. FEHB enrollments may be transferred between Federal employing offices and tribal employers in a similar manner as transfer of enrollments between Federal agencies.

Initial Tribal Employee Enrollment Period, Open Season, and QLEs

Section 890.1405 describes tribal employee eligibility for enrollment in FEHB. Tribal employees will be able to enroll in FEHB after an agreement between the tribal employer and OPM is signed. The effective date of coverage will be decided by the tribal employer and OPM. A third party paymaster will handle payroll functions including remitting tribal employer and tribal employee contributions to FEHB premiums.

The enrollment process for tribal employees into FEHB is described in § 890.1407. Tribal employers must establish an initial enrollment opportunity for tribal employees. After that initial enrollment opportunity, for plan years during which a tribal

employer's election to offer FEHB is in place, the FEHB enrollment period for tribal employees will be the same as for Federal employees—up to 60 days after becoming a new tribal employee or changing to an eligible position, during the annual open season, or 31 days before and up to 60 days after experiencing a qualifying life event. The effective date of enrollment for tribal employees will be the same as for Federal employees under parts 890 or 892, depending on premium conversion status. Upon enrollment in the FEHB Program, tribal employees will choose among the same nationwide and local FEHB plans that are available to Federal employees.

Section 890.1408 describes the circumstances under which a tribal employee may change enrollment type, plan, or option. These changes are allowed and will take effect under the same circumstances as for Federal employees. Changes may be restricted if the tribal employer has a premium conversion plan in effect (pre-tax treatment of premiums) and the tribal employee has elected premium conversion.

Cancellation of Coverage, Decreases in Enrollment

Section 890.1409 establishes that a tribal employee may cancel his or her FEHB coverage or decrease his or her enrollment only under the same circumstances as a Federal employee. If the tribal employee has elected premium conversion, this cancellation or change is restricted.

Termination of Enrollment

Section 890.1410 establishes that FEHB enrollment will terminate when employment with the tribal employer ends due to resignation, dismissal, or retirement, or when the tribal employer discontinues its purchase of FEHB. Termination of enrollment does not refer to a voluntary cancellation by the tribal employee during a period of continued employment. Upon termination of enrollment, the tribal employee will receive a 31-day temporary extension of coverage without premium contribution from the tribal employee or tribal employer and will have an opportunity to convert to an individual policy. Tribal employees whose FEHB enrollment terminates due to separation from tribal employment (unless the separation is for gross misconduct) are also eligible for temporary continuation of FEHB coverage (TCC), described at 5 U.S.C. 8905a and 5 CFR part 890, subpart K.

If an FEHB enrollment is terminated due to the death of the tribal employee,

the tribal employee's spouse and covered children are entitled to a 31-day temporary extension of coverage and opportunity to convert to an individual policy. Covered children, if any, may elect TCC and may cover the tribal employee's surviving spouse as a member of family.

Termination Due to Non-Payment of Premiums

Section 890.1410(f) establishes that insufficient payment from the tribal employer to the paymaster can result in termination of enrollment for all of the tribal employer's tribal employees affected by the paymaster's failure to obtain current deposit. In such a case, FEHB enrollment for all affected tribal employees will be terminated according to a process determined by OPM. The FEHB enrollment of all tribal employees affected by the paymaster's failure to obtain current deposit will be terminated effective as of midnight on the last day of the month for which premium payment was received. These tribal employees will be entitled to a 31-day temporary extension of coverage without additional premium contribution and the opportunity to convert to an individual policy. In the event that a tribal employer elects to purchase FEHB and does not pay premiums for the first month in which payment is due, no 31-day temporary extension of coverage or opportunity to convert to an individual policy will be provided. Termination of enrollment due to non-payment of premiums in either case will not result in an opportunity to enroll in TCC since current tribal employees do not meet the conditions for TCC enrollment. Tribal employers will have full responsibility for communicating notice of termination of enrollment, and accompanying rights and obligations, to their tribal employees. Any outstanding premium due for coverage in arrears will be treated as a debt owed solely by the tribal employer.

Temporary Continuation of Coverage

Tribal employees and certain family members whose FEHB coverage terminates under certain circumstances can elect to purchase temporary continuation of coverage (TCC) for up to 18 or 36 months. Section 890.1411 establishes the criteria for TCC participation for tribal employees and their family members. In general, tribal employees who are enrolled in FEHB and separate from tribal employment, except for reasons of gross misconduct, may elect to purchase TCC. Certain formerly covered family members, including children or stepchildren who

no longer meet the requirements of a covered family member, and former spouses, may elect TCC. The surviving spouse of a deceased enrollee who was enrolled in FEHB is not eligible to elect TCC, but may be covered by the TCC enrollment of an eligible child. The administrative fee is the same as would apply to a former Federal employee enrolled in TCC. The administrative fee described in § 890.1413(e) would not apply to a TCC enrollment of a tribal employee or family member.

Non-Pay Status, Insufficient Pay, or Change to Ineligible Position

Section 890.1412 establishes that a tribal employee in non-pay status or with insufficient pay to cover the premium costs may continue FEHB enrollment for up to 365 days. Tribal employees in non-pay status due to unformed service are entitled to continue FEHB enrollment for up to 24 months. After termination, the tribal employee and covered family members are entitled to a 31-day temporary extension of coverage without premium contribution, and conversion to an individual policy.

Section 890.1412 also establishes that a temporary tribal employee who has insufficient pay to cover the employee share of FEHB premiums may choose a less expensive plan. If the tribal employee does not or cannot move to a less expensive plan, the FEHB enrollment will be terminated and the enrollee is entitled to a 31-day temporary extension of coverage without premium contribution and may convert to an individual policy.

If a tribal employee moves from an FEHB-eligible to a FEHB ineligible position, the FEHB enrollment can continue if there has not been a break in service of more than 3 days. If there has been a break in service of longer than 3 days, FEHB enrollment will terminate at midnight of the last day of the pay period in which the employment status changed. Such a tribal employee will be entitled to a 31-day temporary extension of coverage without premium contribution and may convert to an individual policy.

Responsibilities of the Tribal Employer

Section 890.1414 describes the responsibilities of the tribal employer. These include premium payment, eligibility determinations, enrollment, establishment of appeals process, communications regarding FEHB, and notification requirements.

Eligibility and Enrollment Decisions and Appeal Rights

Section 890.1415 requires that a tribal employer establish or identify an independent panel to resolve disputes about eligibility of individuals for FEHB enrollment. This panel must be authorized to adjudicate such disputes and enforce eligibility and enrollment determinations. The tribal employer must inform tribal employees of this avenue for dispute resolution. Decisions of the independent panel must be written, a record of evidence considered by the panel must be retained and available for OPM review, and the panel decisions remain subject to final OPM authority.

Filing Claims for Payment or Service; Court Review of Disputed Claims

Section 890.1416 describes the procedures for: (1) Filing claims for payment or service; and (2) invoking the provisions for court review of disputed claims. Both situations will follow the established procedures for Federal employees.

No Continuation of FEHB Enrollment Into Retirement From Employment With a Tribal Employer

Section 890.1417 states that an FEHB enrollment cannot be continued into retirement from employment with a tribal employer. This is a statutory requirement as the law entitles tribal employers to purchase FEHB for employees, but it does not extend that entitlement to permit tribal employers to purchase FEHB for retirees.

A Federal annuitant may continue FEHB into retirement and any enrollment in, or coverage as a family member under FEHB during employment with a tribal employer will count toward the “5-year rule.” The “5-year rule” generally requires 5 years of pre-retirement FEHB enrollment or coverage as a family member in order to continue FEHB into retirement. Section 890.1417 further states that a Federal annuitant who has continued FEHB into retirement and who begins post-retirement employment with a tribal employer that has elected to purchase FEHB may transfer the FEHB enrollment with his or her Federal retirement system to an enrollment with the tribal employer in a similar manner as that used for Federal annuitants re-employed by Federal agencies.

No Continuation of FEHB Enrollment for Compensationers Past 365 Days

Section 890.1418 establishes that tribal employees who are not also Federal employees, but are receiving worker’s compensation benefits in leave

without pay status for more than 365 days under programs run by the U.S. Department of Labor, may not be enrolled in FEHB.

Regulatory Impact Analysis

OPM has examined the impact of this final rule as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity), and based on that analysis, it has determined that it is an economically significant rule. A regulatory impact analysis must be prepared for economically significant rules.

Need for Regulatory Action

Section 10221 of the Patient Protection and Affordable Care Act incorporated and enacted S. 1790, the Indian Health Care Improvement Reauthorization and Extension Act of 2009, resulting in the addition of section 409 to the IHCA. Section 409 allows tribes, tribal organizations and urban Indian organizations carrying out specific programs under Federal law to purchase the rights and benefits of the FEHB Program for their employees. As the administrator of the FEHB, OPM has extended eligibility to entitled tribal employees within the meaning of section 409. Federal regulations are necessary to protect the interests of all stakeholders, memorialize processes and procedures, and provide transparency.

Regulatory Baseline

The costs, benefits and transfers assessed in remaining portions of this regulatory impact analysis reflect existing FEHB coverage of tribal employees. This analysis is consistent with the guidance provided in OMB Circular A–4.

Benefits of Coverage

Health insurance coverage improves access to health care services, including preventive services, improves clinical outcomes, financial security, and decreases uncompensated care.⁷ Although section 409 extends FEHB to

⁷ See Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, Exchange Standards for Employers (CMS–9989–FWP) and Standards Related to Reinsurance, Risk Corridors and Risk Adjustment (CMS–9975–F) for a more detailed description of the benefits of health insurance.

employees of tribes, tribal organizations, and urban Indian organizations regardless of their status as tribal members, the authorizing legislation for this regulation falls under 25 U.S.C. Chapter 18, which clearly outlines congressional intent to “maintain and improve the health of the Indians” and identifies providing “the resources, processes, and structure that will enable Indian tribes and tribal members to obtain the quantity and quality of health care services and opportunities that will eradicate the health disparities between Indians and the general population of the United States” as a major national goal of the United States (§ 1601). Thus, the following section discusses the benefits of extending health insurance to tribal members, rather than to tribal employees in general.

While the exact benefits of health insurance are difficult to quantify, evidence supports that American Indians and Alaska Natives could benefit more from health insurance than the average population. According to a 2013 Kaiser Family Foundation report, American Indians and Alaska Natives were more likely than other nonelderly adult Americans to report being in fair or poor health, being overweight or obese, having diabetes and cardiovascular disease, and experiencing frequent mental distress.⁸ They had limited access to employer-sponsored coverage because more were unemployed or in low-wage jobs that did not offer health benefits. Almost a third of them were uninsured. More than 90 percent had incomes below 400 percent and 60 percent had incomes below 138 percent of the Federal poverty level. The infant mortality rate was 150 percent higher for Native American infants than white infants, and the suicide rate for Native Americans was two and a half times the national rate.⁹

IHS, which provides services through a network of hospitals, clinics, and health stations to about 2.2 million American Indians and Alaska Natives, has historically been underfunded. Access to services varies significantly by location and funds are insufficient to meet health care needs. According to the Federal Disparity Index, in 2010 the IHS funds covered less than 60 percent of those needed to pay for coverage

⁸ Kaiser Family Foundation, “Health Coverage and Care for American Indians and Alaska Natives”, October 2013.

⁹ Then Senator Barack Obama, Indian Health Care Improvement Act Amendments of 2007 Floor Speech, U.S. Senate, January 2008.

equivalent to that of Federal employees.¹⁰

Health services not available through direct care must be purchased through the Purchased/Referred Care (PRC) (formerly Contract Health Services) ¹¹ program. Some estimates indicate that the PRC program has lost at least \$778 million due to unfunded medical inflation and population growth between 1992 and 2008.¹² This has resulted in allocating of health care services using the PRC medical priority system, in which many patients cannot receive care unless they are in a priority status. In FY 2007, this under-funding resulted in a backlog of over 300,000 health services that were not provided because there was not enough funding. Unfortunately, the denied/deferred services report understates the need of PRC resources due to data limitations and the fact that many tribes no longer report deferred or denied services because of the expense involved in tracking.

The sources referenced above illustrate the health disparities specific to the Native American population. Expanding healthcare access to this group not only addresses this disparity and generates benefits to the individual, but also generates societal benefits in the form of decreased healthcare costs for chronic illnesses, increased employee productivity, and a healthier population that are the result of expanding access to healthcare to any group.

Costs of Coverage

In the following section, costs associated with this rule are analyzed for the following groups:

¹⁰ The Federal Employees Health Plan Disparity Index (hereinafter “FDI”) is an index comparing IHS funding to the cost of providing medical insurance for American Indian/Alaska Native (AI/AN) users in a mainstream health insurance plan such as that offered under the Federal Employees Health Benefits Program (FEHBP). The FDI uses actuarial methods that control for age, sex, and health status to price health benefits for Indian people using the FEHBP, which is then used to make per capita health expenditure comparisons. See http://www.nihb.org/docs/07112013/FY%202015%20IHS%20budget%20full%20report_FINAL.pdf for 2010 information.

¹¹ This program was renamed in The Consolidated Appropriations Act of 2014 to the Purchased/Referred Care program. Discussion in this regulatory impact analysis provides pre-statutory examples covering 1992–2008 and cites the 2009 budget request. Although there is currently still major unmet need, funding for this program has increased from \$579 million in FY 2008 to \$914 million in FY 2016. See the FY17 Congressional Budget Justification at <https://www.ihs.gov/budgetformulation/includes/themes/newihstheme/documents/FY2017CongressionalJustification.pdf> for more up to date information.

¹² “The FY 2009 IHS Budget: Analysis and Recommendations,” p. 22, March 17, 2008, available at: www.npaihb.org.

1. Tribal employers;
2. Tribal employees;
3. The Tribal Insurance Processing System (TIPS—the system used by the current paymaster);
4. OPM; and
5. FEHB carriers.

Most of the costs described below either result in a direct benefit to the individual or are transfers from one group to another. For example, costs incurred by tribal employees (premiums, deductibles, copays, etc.) result in individual benefits in the form of improved health outcomes. Costs incurred by tribal employers to cover premiums are a benefit to tribal employees. OPM has determined that the total dollar amounts do meet the threshold for this to be considered an economically significant rule.

OPM analyzed actual fiscal year 2015 enrollment data for the over 16,000 tribal employees then enrolled in the FEHB Program and found the annual cost of enrollment to be \$168.5 million. This includes both premiums and the administrative fee added to each tribal FEHB enrollment. The administrative fee covers the costs of program administration for the paymaster.¹³ A per member per month (cost per month for each covered individual) cost of approximately \$413 was calculated.¹⁴

Premiums in the FEHB Program have increased between 3–6 percent each year for the last 5 years, below increases in the commercial market. As enrollment increases, total spending on premium costs will increase. However, the administrative fee will most likely decrease as administrative costs are spread among a growing number of enrollments.

Costs for Tribal Employers

To cover the cost of program administration, this final rule includes an administrative fee assessed on a per contract basis, paid by the tribal employer.¹⁵ OPM has contracted with a paymaster to develop and maintain TIPS, an online portal for the input of enrollment data and transmission to carriers.

For fiscal year 2015, the administrative fee was \$15.15 per

¹³ This number does not include OPM’s administrative costs to operate this program.

¹⁴ The number of enrollments was multiplied by a family factor to estimate total covered lives including family members. The family factor is calculated for the FEHB Program as a whole, not based on actual tribal enrollment. The total annual cost was then divided by the total number of covered lives, the result of this was divided by 12 to estimate the cost per member per month.

¹⁵ This is analogous with Federal agencies that cover the cost of program administration without an additional fee to employees.

contract; for fiscal year 2016 it is \$12. This fee is adjusted to align with actual programmatic costs. As enrollment increases, this cost will go down as the costs of maintaining TIPS will be spread among more enrollments.

The cost of coverage for each tribal employer depends upon the number of enrollees covered, the health plans selected by those enrollees, and the portion of the premium paid by the employer.

For fiscal year 2015, the largest number of employees enrolled for one tribal employer was just under 4,000 and the smallest tribal employers have just one employee enrolled.¹⁶ The majority of participating tribal employers had fewer than 150 employees enrolled, with a program-wide median of 71 enrolled employees.

The average cost per enrollment in the program, including the administrative fee, is estimated at approximately \$10,172.¹⁷

Tribal employers are required by this rule to contribute to the premium for tribal employees at least the same as the Federal government does for its employees and may contribute more, up to 100 percent of the premium costs.

The Federal government contribution is statutorily defined as the lesser of 72 percent of the weighted average of all premiums or 75 percent of the plan premium.¹⁸ This averages out to approximately 70 percent paid by the employer, program-wide.

Based on averages for fiscal year 2015, a tribal employer may pay from just over \$7,000 to over \$40 million, depending on the number of tribal employees covered and percentage of premium contributed by the tribal employer. Of course, actual costs will vary based on plan selection.

Tribal employers assess the cost of participating and recognize that participation in the FEHB Program is a business decision made by the employers themselves. It often is a decision made by comparing the cost of other forms of health coverage and coverage through the FEHB Program. For those tribes that choose to participate it can be assumed that the benefits outweigh the costs of participation.

Costs for Tribal Employees

Costs for tribal employees depend upon the plan selected, enrollment type,

and the percentage of premium contributed by the tribal employer. Based on FY15 data, the average cost for an annual enrollment is approximately \$10,035¹⁹ with an average annual employee contribution of approximately \$3,011. The actual tribal employee contribution varies based on the tribal employer contribution towards the premium.

Other costs such as co-payments, deductibles, and coinsurance are also the responsibility of the tribal employee, to the extent that such cost sharing is not otherwise prohibited by Federal law. These costs differ based on plan selection and utilization. Individual enrollment in the FEHB Program is voluntary so it can be assumed that the benefits to the individual of enrolling in tribal employer-sponsored coverage outweigh the costs of enrollment.

Administration of TIPS

Annual costs for administering TIPS, incurred by the paymaster, are described in the chart below. These costs are covered by the administrative fee paid by tribal employers.

Dates	Costs
May 2012 (launch date) through Sept 30, 2012	\$1,096,932.00
2013 Fiscal year	1,677,293.68
2014 Fiscal year	1,653,397.93
2015 Fiscal year	1,815,660.00

Costs for OPM

Implementation of the Tribal FEHB Program began in fiscal year 2011. In addition to policy development and tribal consultation costs, OPM contracted with a paymaster to develop an electronic enrollment portal for tribal employers. Development of TIPS cost approximately \$3.9 million. OPM received approximately \$3 million in funds from the Department of Health and Human Services' (HHS) Health Insurance Reform Implementation Fund and covered the remaining costs from funds appropriated to OPM.

OPM continues to incur costs associated with managing the Tribal FEHB Program. These costs are not covered by the administrative fee included in each tribal enrollment. See the chart below for Full Time Equivalent (FTE) in FY2012 through FY2015.

Fiscal Year	FTE
FY2012	5.3
FY2013	3.5
FY2014	2.3
FY2015	1.8

FEHB Carriers

The impact on carriers is relatively small, as tribal enrollments are a very small percentage of the over 4 million FEHB enrollments. Premiums cover claims costs, administrative costs, plus a small profit known as the service charge.

Conclusion

While this rule meets the thresholds in Executive Orders 12866 and 13563 to be deemed an economically significant rule, many of the associated costs constitute transfers among involved parties. Under the provisions of this rule, participation in the FEHB Program is voluntary for both tribal employers

and tribal employees. This, in conjunction with the relationship between costs incurred and the benefits of offering coverage, indicates that the benefits of this rule outweigh the costs.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they establish a voluntary program for certain Indian tribal employers.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or Tribal governments.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees,

¹⁶ Based on September 2015 enrollment.

¹⁷ Total annual cost (including administrative fee) divided by number of enrollees (using September 2015 data).

¹⁸ 5 U.S.C. 8906.

¹⁹ Does not include the Administrative Fee, which is covered by tribal employers.

Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Beth F. Cobert,
Acting Director.

For the reasons set forth in the preamble, OPM amends 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for Part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f), 11232(e), 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061; Pub. L. 111–148, as amended by Pub. L. 111–152.

■ 2. Add subpart N to read as follows:

Subpart N—Federal Employees Health Benefits For Employees of Certain Indian Tribal Employers

- Sec.
- 890.1401 Purpose.
- 890.1402 Definitions and deemed references.
- 890.1403 Tribal employer purchase of FEHB requires current deposit of payment and timely payment of administrative fee.
- 890.1404 Tribal employer election and agreement to purchase FEHB.
- 890.1405 Tribal employees eligible for enrollment.
- 890.1406 Correction of enrollment errors.
- 890.1407 Enrollment process; effective dates.
- 890.1408 Change in enrollment type, plan, or option.
- 890.1409 Cancellation of coverage or decreases in enrollment.
- 890.1410 Termination of enrollment and 31-day temporary extension of coverage; and conversion to individual policy.
- 890.1411 Temporary Continuation of Coverage (TCC).
- 890.1412 Non-pay status, insufficient pay, or change to ineligible position.
- 890.1413 Premiums and administrative fee.
- 890.1414 Responsibilities of the tribal employer.
- 890.1415 Reconsideration of enrollment and eligibility decisions and appeal rights.
- 890.1416 Filing claims for payment or service and court review.

- 890.1417 No continuation of FEHB enrollment into retirement from employment with a tribal employer.
- 890.1418 No continuation of FEHB enrollment in compensation status past 365 days.

Subpart N—Federal Employees Health Benefits For Employees of Certain Indian Tribal Employers

§ 890.1401 Purpose.

This subpart sets forth the conditions for coverage, rights, and benefits under Chapter 89 of title 5, United States Code, according to the provisions of 25 U.S.C. 1647b.

§ 890.1402 Definitions and deemed references.

(a) In this subpart—
Billing unit is a subdivision of the tribal employer's workforce that aligns tribal employees for purposes of administering FEHB enrollment and collection of payment. A billing unit may be either governmental or commercial or a combination of both. So long as a tribal employer purchases FEHB for at least one billing unit that is carrying out at least one program under ISDEAA or IHICIA, the tribal employer may purchase FEHB for other billing units without regard to its programs.

Pay period is the interval of time for which a paycheck is issued by the tribal employer for work performed by the tribal employee.

Paymaster is the entity designated by OPM as responsible for receiving FEHB premiums from the tribal employer, forwarding premiums to the Employees Health Benefits Fund, and maintaining enrollment records for all participating tribal employers.

Payment is the sum of the tribal employer's share of premium plus the tribal employees' share of premium plus any administrative fees or costs required under this subpart, due for the enrollment, in the aggregate, of the tribal employer's tribal employees.

Tribal employee is a full-time or part-time common law employee of a tribal employer. An individual is a common law employee if, based on all the facts and circumstances, the tribal employer has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. This determination is based on all facts and circumstances and shall be guided by the factors described by the Internal Revenue Service in Rev. Rul. 87–41, 1987–1 C.B. 296 and referenced in Joint Committee on Taxation report JCX–26–07 *Present Law and Background*

Relating to Worker Classification for Federal Tax Purposes, dated May 7, 2007, and the determination shall be consistent with the tribal employer's determination of common law employee status for Federal employment tax purposes, if any. For purposes of this subpart, tribal employees do not include retirees or annuitants of a tribal employer, volunteers of a tribal employer, or others who are not common law employees of a tribal employer. Categories of excluded tribal employees are described at § 890.1405(b). FEHB benefits available to tribal employees are set forth in this subpart and to the extent there exists any ambiguity or inconsistency between this subpart and other subparts of part 890, the terms of this subpart will govern FEHB benefits available to tribal employees.

Tribal employer is an Indian tribe or tribal organization (as those terms are defined in 25 U.S.C. Chapter 18, "Indian Health Care") carrying out at least one program under the Indian Self-Determination and Education Assistance Act or an urban Indian organization (as that term is defined in 25 U.S.C. Chapter 18, "Indian Health Care") carrying out at least one program under the title V of the Indian Health Care Improvement Act, provided that the tribe, tribal organization, or urban Indian organization certifies entitlement to purchase FEHB according to the process described in Subpart N. FEHB benefits that tribal employers are entitled to purchase for their tribal employees are set forth in this subpart and to the extent there exists any ambiguity or inconsistency between this subpart and other subparts of part 890, the terms of this subpart will govern FEHB benefits available for purchase by tribal employers.

(b) In this subpart, wherever reference is made to other subparts of part 890—

(1) A reference to employee is deemed a reference to tribal employee;

(2) A reference to employer is deemed a reference to tribal employer;

(3) A reference to enrollee is deemed a reference to a tribal employee in whose name the enrollment is carried;

(4) A reference to employing agency, employing office, or agency is deemed a reference to tribal employer, and/or if the reference involves the subject of a paymaster function, the paymaster, as appropriate;

(5) A reference to United States, Federal Government, or Government in the capacity of an employer is deemed a reference to tribal employer;

(6) A reference to Federal Service or Government Service is deemed a

reference to employment with a tribal employer;

(7) A reference to annuitant, survivor annuitant, or an individual with entitlement to an annuity is deemed inapplicable in the context of this subpart; and

(8) A reference incorporated into this subpart that does not otherwise apply to tribal employees and tribal employers shall have no meaning and is deemed inapplicable in the context of this subpart.

§ 890.1403 Tribal employer purchase of FEHB requires current deposit of premium payment and timely payment of administrative fee.

(a) A tribal employer shall be entitled to purchase coverage, rights, and benefits for its tribal employees under Chapter 89 of title 5, United States Code, if premium payment for the coverage, rights, and benefits for the period of employment with such tribal employer is currently deposited in the Employees Health Benefits Fund, and if the administrative fee is timely paid to the paymaster.

(b) Premium payment will be considered currently deposited if received by the Employees Health Benefits Fund before, during, or within fourteen days after the end of the month covered by the premium payment.

(c) Administrative fee will be considered timely paid if received by the paymaster before, during, or within fourteen days after the end of the month covered by the administrative fee.

(d) Purchase of FEHB coverage by a tribal employer confers all the rights and benefits of FEHB as set forth in Subpart N to the tribal employer and tribal employee.

§ 890.1404 Tribal employer election and agreement to purchase FEHB.

(a) A tribal employer that intends to purchase FEHB for its tribal employees shall notify OPM by email or telephone.

(1) A tribal employer must purchase FEHB for at least one billing unit carrying out programs or activities under the tribal employer's ISDEAA or IHCA contract.

(2) For so long as a tribal employer continues to purchase FEHB for at least one billing unit carrying out programs or activities under a tribal employer's ISDEAA or IHCA contract, the tribal employer may purchase FEHB for one or more billing units without regard to whether they are carrying out programs or activities under the tribal employer's ISDEAA or IHCA contract.

(b) A tribal employer must enter into an agreement with OPM to purchase FEHB. This agreement will include—

(1) The name, job title, and contact information of the individual responsible for health insurance coverage decisions for the tribal employer;

(2) The date on which the tribal employer will begin to purchase FEHB coverage;

(3) The approximate number of tribal employees who will be eligible to enroll;

(4) A certification that the eligible tribal employees within the enrolling billing unit will not have alternate tribal employer-sponsored health insurance coverage available concurrent with FEHB;

(5) A certification and documentation demonstrating that the tribal employer is entitled to purchase FEHB as either: An Indian tribe or tribal organization carrying out at least one program under the Indian Self-Determination and Education Assistance Act; or an urban Indian organization carrying out at least one program under title V of the Indian Health Care Improvement Act;

(6) Agreement by the tribal employer that its purchase of FEHB makes the tribal employer responsible for administering the program in accordance with this subpart, subject to Federal Government audit with respect to such purchase and administration, and subject to OPM authority to direct the administration of the program, including but not limited to the correction of errors;

(7) Agreement that the tribal employer will establish or identify an independent dispute resolution panel to adjudicate appeals of determinations made by a tribal employer regarding an individual's status as a tribal employee eligible to enroll in FEHB, eligibility of family members, and eligibility to change enrollment. This panel must have authority to enforce eligibility decisions;

(8) A certification that the tribal employer will supply necessary enrollment information and payment to the paymaster;

(9) Agreement to provide notice to OPM in the event that the tribal employer is no longer carrying out at least one program under the ISDEAA or title V of IHCA; and

(10) Other terms and conditions as appropriate.

(c) A tribal employer may make an initial election to purchase FEHB at any time. A tribal employer purchasing FEHB shall commit to purchase FEHB for at least the remainder of the calendar year in which the agreement is signed. Elections will be automatically renewable year to year unless revoked

by the tribal employer or terminated by OPM.

(d) If a tribal employer revokes the initial election, OPM must be given 60 days notice. The tribal employer may not re-elect to purchase FEHB until the first annual open season that falls at least twelve months after the revocation. If the tribal employer revokes an election to participate a second time, the tribal employer may not re-elect to purchase FEHB until the first open season that falls at least twenty-four months after the second revocation.

(e) OPM maintains final authority, in consultation with the United States Department of the Interior and the United States Department of Health and Human Services, to determine whether a tribal employer is entitled to purchase FEHB as either—

(1) An Indian tribe or tribal organization carrying out at least one program under the Indian Self-Determination and Education Assistance Act; or

(2) An urban Indian organization carrying out at least one program under title V of the Indian Health Care Improvement Act.

(f) If a tribe, tribal organization or urban Indian organization believes it has been improperly denied the entitlement to purchase FEHB, it may appeal the denial to OPM. The appeal will be given an independent level of review within OPM and the decision on review will be final.

§ 890.1405 Tribal employees eligible for enrollment.

(a) A tribal employee who is a full-time or part-time common law employee of a tribal employer is eligible to enroll in FEHB if that tribal employer has elected to purchase FEHB coverage for the tribal employees of that tribal employer's billing unit, except that a tribal employee described in paragraph (b) of this section is not eligible to enroll in FEHB.

(b) Status as a tribal employee under § 890.1402(a) for purposes of eligibility to enroll in FEHB is initially made based on a reasonable determination by the tribal employer. OPM maintains final authority to correct errors regarding FEHB enrollment as set forth at § 890.1406.

(c) Retirees, annuitants, volunteers, compensationers under Federal worker's disability programs past 365 days, and others who are not common law employees of the tribal employer are not eligible to enroll under this subpart.

(d) The following tribal employees are not eligible to enroll in FEHB—

(1) A tribal employee whose employment is limited to one year or less and who has not completed one year of continuous employment, including any break in service of 5 days or less;

(2) A tribal employee who is expected to work less than 6 months in one year;

(3) An intermittent tribal employee—a non-full-time tribal employee without a prearranged regular tour of duty;

(4) A beneficiary or patient employee in a Government or tribal hospital or home; and

(5) A tribal employee paid on a piecework basis, except one whose work schedule provides for full-time service or part-time service with a regular tour of duty.

(e) Notwithstanding paragraphs (d)(1), (2), and (3) of this section a tribal employee working on a temporary appointment, a tribal employee working on a seasonal schedule of less than 6 months in a year, or a tribal employee working on an intermittent schedule, for whom the tribal employer expects the total hours in pay status (including overtime hours) plus qualifying leave without pay hours to be at least 130 hours per calendar month, is eligible to enroll in FEHB according to terms described in § 890.102(j) unless the tribal employer provides written notification to the Director as described in § 890.102(k).

(f) The tribal employer initially determines eligibility of a tribal employee to enroll in FEHB, eligibility of family members, and eligibility of tribal employee to change enrollment. The tribal employer's initial decision may be appealed pursuant to § 890.1415.

(g) A tribal employee who is eligible and enrolls in FEHB under this subpart will have the option of enrolling in any FEHB open fee-for-service plan or health maintenance organization (HMO), consumer driven health plan (CDHP), or high deductible health plan (HDHP) available to Federal employees in the same geographic location as the tribal employee. The tribal employee will have the same choice of self only, self plus one, or self and family enrollment as is available to Federal employees.

(h) Family members of tribal employees will be covered by FEHB according to terms described at § 890.302. Children of tribal employees, whether married or not married, and whether or not dependent, are covered under a self and family enrollment or a self plus one enrollment (if the child is the designated covered family member) up to the age of 26. Former spouses of tribal employees are not former spouses

as described at 5 U.S.C. 8901(10) and are not eligible to elect coverage under subpart H.

(i) Eligibility for FEHB under this subpart does not identify an individual as a Federal employee for any purpose, nor does it convey any additional rights or privileges of Federal employment.

§ 890.1406 Correction of enrollment errors.

Correction of errors regarding FEHB enrollment for tribal employees takes place according to the terms described in § 890.103.

§ 890.1407 Enrollment process; effective dates.

(a) *FEHB election for tribal employers.* Tribal employers may purchase FEHB coverage for their tribal employees after an agreement is accepted by OPM. Tribal employers will not be permitted to access FEHB if the tribal employer contributes toward, or offers, an alternative employer-sponsored health insurance plan for tribal employees within the billing unit(s) for which the employer seeks to purchase FEHB coverage, with the exception of a collectively bargained alternative plan. A stand-alone dental, vision, or disability plan is not considered alternative health insurance.

(b) Opportunities for tribal employees to enroll—

(1) Upon electing to purchase FEHB, a tribal employer will establish an initial enrollment opportunity for tribal employees. A tribal employee's enrollment upon an initial enrollment opportunity becomes effective as prescribed by OPM.

(2) After the initial enrollment opportunity, described in § 890.1407(b)(1), tribal employees are subject to the same initial enrollment period, belated enrollment rules, enrollment by proxy, and open season as Federal employees, as described at § 890.301(a), (b), (c), and (f).

(3) A tribal employee who enrolls after the initial enrollment opportunity and who does not elect premium conversion through his or her tribal employer's premium conversion plan, if one is available, will be subject to the enrollment and qualifying life event rules described at § 890.301 and effective dates described at § 890.301(b) and (f).

(4) A tribal employee who enrolls after the initial enrollment opportunity and who elects premium conversion through his or her tribal employer's premium conversion plan, if one is available, will be subject to the enrollment rules, qualifying life event rules and effective dates described at §§ 892.207, 892.208 and 892.210 of this

chapter (together with § 890.301 as referenced therein).

§ 890.1408 Change in enrollment type, plan, or option.

(a) A tribal employee enrolled under this subpart may increase or decrease his or her enrollment, or may change enrollment from one plan or option to another, as described in § 890.301 (for tribal employees who did not elect premium conversion) or part 892 of this chapter (for tribal employees who did elect premium conversion).

(b) A change in enrollment type, plan, or option under this section becomes effective as described in § 890.301 (for tribal employees who did not elect premium conversion) or part 892 of this chapter (for tribal employees who did elect premium conversion).

§ 890.1409 Cancellation of coverage or decreases in enrollment.

(a) A tribal employee enrolled under this subpart may cancel enrollment as described at § 890.304(d) or decrease his or her enrollment as described at § 890.301. A tribal employee who does not participate in premium conversion may cancel his or her enrollment or decrease his or her enrollment at any time by request to the tribal employer, unless there is a legally binding court or administrative order requiring coverage of a child as described at § 890.301(g)(3). A tribal employee who participates in premium conversion may cancel his or her enrollment as provided by § 892.209 or decrease his or her enrollment as provided by § 892.208 of this chapter only during open season or because of and consistent with a qualifying life event.

(b) A cancellation of enrollment becomes effective as described at § 890.304(d). A decrease in enrollment becomes effective as described in § 890.301(e)(2).

(c) A tribal employee who cancels his or her enrollment under this section or decreases his or her enrollment may reenroll or increase his or her enrollment only during open season or because of and consistent with a qualifying life event.

§ 890.1410 Termination of enrollment and 31-day temporary extension of coverage; and conversion to individual policy.

(a) Tribal Employee Separation—

(1) Enrollment of a tribal employee under this subpart terminates due to separation from employment with the tribal employer for reasons of resignation, dismissal, or retirement. Termination of enrollment is effective at midnight of the last day of the pay period in which the tribal employee separates from employment.

(2) A former tribal employee who is separated under this subpart due to resignation, dismissal, or retirement and covered family members are entitled to a 31-day temporary extension of coverage without premium contribution and may convert to an individual policy as described at § 890.401.

(b) Death of tribal employee—

(1) Enrollment of a tribal employee terminates at midnight of the last day of the pay period in which the tribal employee dies.

(2) If, at the time of death, the deceased tribal employee was enrolled in self and family FEHB coverage:

(i) The surviving spouse is entitled to a 31-day temporary extension of coverage without premium contribution and may convert to an individual policy as described at § 890.401;

(ii) The covered children of the deceased tribal employee are entitled to a 31-day temporary extension of coverage without premium contribution and may convert to an individual policy as described at § 890.401.

(3) If, at the time of death, the deceased tribal employee was enrolled in self plus one FEHB coverage, only the designated covered family member is entitled to a 31-day temporary extension of coverage without premium contribution and may convert to an individual policy as described at § 890.401.

(c) Termination of family member coverage—

(1) Coverage of a family member of a tribal employee who was covered under this subpart terminates, subject to the 31-day temporary extension of coverage, for conversion, at midnight of the earlier of the following dates:

(i) The day on which he or she ceases to be a family member; or

(ii) The day the tribal employee's enrollment terminates, unless the family member is entitled to continued coverage under the enrollment of another.

(2) Family members who lose coverage under this subsection are entitled to a 31-day temporary extension of coverage without premium contribution and may convert to an individual policy as described at § 890.401.

(d) Tribal employer loses entitlement to purchase FEHB—

(1) Coverage of a tribal employee and family members under this subpart, except TCC that is already elected and in effect, terminates at midnight of the last day of the calendar year in which a tribal employer is no longer entitled to purchase FEHB. FEHB can terminate earlier at the request of the tribal employer.

(2) Following the termination described in § 890.1410(d)(1), enrolled tribal employees and covered family members are entitled to a 31-day temporary extension of coverage without premium contribution and may convert to an individual policy as described at § 890.401.

(e) Tribal employer revokes election to purchase FEHB—

(1) If a tribal employer voluntarily revokes its election to purchase FEHB, tribal employees will be entitled to a 31-day temporary extension of coverage and may convert to an individual policy as described at § 890.401. In such a case, the FEHB enrollment terminates effective the first day for which premium payment is not received and the 31-day temporary extension of coverage, for conversion begins immediately thereafter.

(2) [Reserved]

(f) Failure to currently deposit premium payment—

(1) If premium payment is not currently deposited in the Employees Health Benefits Fund, the tribal employer's entitlement to purchase FEHB can be terminated, and all enrollments affected by the paymaster's failure to obtain current deposit of premium payment will be terminated, for non-payment.

(2) Enrollments of all of the tribal employer's tribal employees affected by the paymaster's failure to obtain current deposit of premium payment will be terminated effective midnight of the last day of the month for which payment was received.

(3) In the case of termination of enrollment due to non-payment, affected tribal employees will be entitled to a 31-day temporary extension of coverage without premium contribution and may convert to an individual policy as described at § 890.401. The 31-day extension of coverage begins immediately upon termination of enrollment.

(4) In the event that a tribal employer elects to purchase FEHB for its tribal employees but does not currently deposit premium payment in the first month that it is due, the enrollment of tribal employees affected by the paymaster's failure to obtain current deposit of premium payment will be terminated effective midnight of the last day of the month for which premium payment was not currently deposited. Tribal employees affected by the paymaster's failure to obtain current deposit of premium payment will not be entitled to a 31-day temporary extension of coverage and may not convert to an individual policy as described at § 890.401.

(5) Any outstanding premium due for coverage in arrears will be treated as a debt owed solely by the tribal employer.

§ 890.1411 Temporary Continuation of Coverage (TCC).

(a) For purposes of this subpart, temporary continuation of coverage (TCC) is described by 5 U.S.C. 8905a and subpart K of this part. The administrative fee for TCC for tribal employees is the same as for Federal employees, with no specific tribal administrative fee as described in § 890.1413(e).

(b) A former tribal employee who is separated under this subpart due to resignation, dismissal, or retirement may elect TCC, unless the separation is due to gross misconduct as defined in § 890.1102.

(c) Eligibility for TCC for tribal employees follows procedures provided in § 890.1103 of subpart K of this part, except that former spouses of tribal employees are not eligible for TCC.

§ 890.1412 Non-pay status, insufficient pay, or change to ineligible position.

(a) *Non-pay status for 365 days.* Enrollment of a tribal employee and coverage of family members may continue for up to 365 days during which the tribal employee is in a non-pay status (as described at § 890.303(e)(1)) under terms described at § 890.502(b). Enrollment terminates at midnight of the last day of the pay period which includes the 365th consecutive day of nonpay status or the last day of leave under the Family and Medical Leave Act, whichever is later. The tribal employee and covered family members are entitled to a 31-day temporary extension of coverage without premium contribution and may convert to an individual policy as described at § 890.401.

(b) *Insufficient pay.* If the pay of a non-temporary tribal employee who is enrolled in FEHB is insufficient to pay for the tribal employee's share of premiums, the tribal employer must follow the procedure described at § 890.502(b). If the enrollment is terminated due to insufficient pay, the tribal employee and covered family members are entitled to a 31-day temporary extension of coverage without premium contribution and may convert to an individual policy as described at § 890.401.

(c) *Insufficient pay for temporary tribal employees.* If the pay of a temporary tribal employee who meets eligibility requirements described at 5 U.S.C. 8906a is insufficient to pay the tribal employee's share of premiums as described at § 890.304(a)(2), and the

tribal employee does not or cannot elect a plan at a cost to him or her not in excess of the pay, the tribal employee's enrollment must be terminated as described at § 890.304(a)(2). The tribal employee and covered family members are entitled to a 31-day temporary extension of coverage without premium contribution and may convert to an individual policy as described at § 890.401.

(d) *Change to ineligible position.* A tribal employee who moves from an FEHB eligible to a non-FEHB-eligible position at a tribal employer will be eligible to continue FEHB enrollment as described in § 890.303(b).

(e) Non-pay status due to Uniformed Service—

(1) Enrollment of a tribal employee and coverage of family members terminates at midnight of the earliest of the dates described at § 890.304(a)(1)(vi) through (viii). The tribal employee and covered family members are entitled to a 31-day temporary extension of coverage without premium contribution and may convert to an individual policy as described at § 890.401.

(2) Enrollment is reinstated on the date the tribal employee is restored to duty in an eligible position with the tribal employer upon return from Uniformed Service, pursuant to applicable law, provided that the tribal employer continues to purchase FEHB for its tribal employees in the affected tribal employee's billing unit on that date.

§ 890.1413 Premiums and administrative fee.

(a) Premium contributions and withholdings described at §§ 890.501 and 890.502 must be paid by the tribal employer and the tribal employee, except that the term OPM as used in § 890.502(c) is deemed to be a reference to the paymaster, as appropriate, for purposes of this subpart. There is no Government contribution as that term is used in 5 U.S.C. 8906.

(b) *Contribution requirements.* (1) A tribal employer must contribute at least the monthly equivalent of the minimum Government contribution for a specific FEHB plan as described in 5 U.S.C. 8906;

(2) There is no cap on the percentage of premium that a tribal employer may contribute, as long as the contribution and withholding arrangement is not designed to encourage or discourage enrollment in any particular plan or plan option;

(3) A tribal employer may vary the contribution amount by type of FEHB enrollment (self only, self plus one, self and family), providing it is done in a

uniform manner and meets the requirements described in § 890.1413(b)(1) and (2); and

(4) A tribal employer may vary the contribution amount by billing unit, providing each billing unit meets the requirements described in § 890.1413(b)(1) through (3).

(c) A tribal employer may, but is not required to, prorate the tribal employer and tribal employee share of premium attributable to enrollment of its part-time tribal employees working between 16 and 32 hours per week by prorating shares in proportion to the percentage of time that a tribal employee in a comparable full time position is regularly scheduled to work.

(d) Tribal employee and tribal employer contributions to premiums under this subpart will be aggregated by the tribal employer. The tribal employee and tribal employer contributions must be available for receipt by the paymaster on an agreed upon date. The paymaster will receive the premium contributions together with the fee described at paragraph (e) of this section and will deposit only the premium payment into the Employees Health Benefits Fund described in 5 U.S.C. 8909.

(e) A fee determined annually by OPM will be charged in addition to premium for each enrollment of a tribal employee. The fee may be used for other purposes as determined by OPM. The fee must be paid entirely by the tribal employer as part of the payment to purchase FEHB for tribal employees, and must be available for collection by the paymaster, together with the aggregate tribal employee and tribal employer contributions.

§ 890.1414 Responsibilities of the tribal employer.

(a) The tribal employer pays premiums for tribal employees enrolled under this subpart pursuant to §§ 890.1403 and 890.1413.

(b) The tribal employer must determine the eligibility of individuals who attempt to enroll for coverage under this subpart and enroll those it finds eligible.

(c) The tribal employer must determine whether eligible tribal employees have eligible family member(s) and allow coverage under a self plus one or self and family enrollment as described in § 890.302 for those it finds eligible.

(d) The tribal employer must establish or identify an independent dispute resolution panel for reconsideration of enrollment and eligibility decisions as described in § 890.1415.

(e) The tribal employer has the following notification responsibilities. The tribal employer must—

(1) Notify OPM and tribal employees in writing of intent to revoke election to purchase FEHB at least 60 days before such revocation described at § 890.1404(d);

(2) Promptly notify tribal employees and OPM if there is a change in the tribal employer's entitlement to purchase FEHB described at § 890.1410(d);

(3) Promptly notify affected tribal employees of termination of enrollment due to non-payment, the 31-day temporary extension of coverage and its ending date described at § 890.1410(f)(2) through (3); and

(4) Promptly notify affected tribal employees of termination of enrollment due to non-payment described at § 890.1410(f)(4).

§ 890.1415 Reconsideration of enrollment and eligibility decisions and appeal rights.

(a) The tribal employer shall establish or identify an independent dispute resolution panel to adjudicate appeals of determinations made by a tribal employer denying an individual's status as a tribal employee eligible to enroll in FEHB or denying a change in the type of enrollment (*i.e.*: to or from self only coverage) under this subpart. Such panel shall be authorized to enforce enrollment and eligibility decisions. The tribal employer shall notify affected individuals of this panel and its functions.

(b) Under procedures set forth by the tribal employer, an individual may file a written request to the independent dispute resolution panel to reconsider an initial decision of the tribal employer under this subpart. A reconsideration decision made by the panel must be issued to the individual in writing and must fully state the findings and reasons for the findings. The panel may consider information from the tribal employer, the individual, or another source. The panel must retain a file of its documentation until December 31 of the 3rd year after the year in which the decision was made, and must provide the file to OPM upon request.

(c) If the panel determines that the individual is ineligible to enroll in FEHB as a tribal employee or to change enrollment, the individual may request that OPM reconsider the denial. Such a request must be made in writing and any decision by OPM will be binding on the tribal employer.

(d) OPM may request a panel decision file during the retention period described at paragraph (b) of this section. Panel decisions remain subject

to final OPM authority to correct errors, as set forth in § 890.1406.

§ 890.1416 Filing claims for payment or service and court review.

(a) Tribal employees may file claims for payment or service as described at § 890.105.

(b) Tribal employees may invoke the provisions for court review described at § 890.107(b) through (d).

§ 890.1417 No continuation of FEHB enrollment into retirement from employment with a tribal employer.

(a) An FEHB enrollment cannot be continued into retirement from employment with a tribal employer.

(b) A Federal annuitant may continue FEHB enrollment into retirement from Federal service if the requirements of 5 U.S.C. 8905(b) for carrying FEHB coverage into retirement are satisfied through enrollment, or coverage as a family member, either through a Federal employing office or a tribal employer, or any combination thereof.

(c) A Federal annuitant who is employed after retirement by a tribal employer in an FEHB eligible position may participate in FEHB through the tribal employer. In such a case, the Federal annuitant's retirement system will transfer the FEHB enrollment to the tribal employer, in a similar manner as for a Federal annuitant who is employed by a Federal agency after retirement.

(d) A tribal employee who becomes a survivor annuitant as described in § 890.303(d)(2) is entitled to reinstatement of health benefits coverage as a Federal employee would under the same circumstances.

§ 890.1418 No continuation of FEHB enrollment in compensator status past 365 days.

A tribal employee who is not also a Federal employee who becomes eligible for one of the Department of Labor's disability compensation programs may not continue FEHB coverage in leave without pay status past 365 days.

[FR Doc. 2016-31195 Filed 12-27-16; 8:45 am]

BILLING CODE 6325-63-P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20 and 50

[NRC-2009-0279 and NRC-2014-0044]

RIN 3150-AJ29 and RIN 3150-AJ38

Rulemaking Activities Being Discontinued by the NRC

AGENCY: Nuclear Regulatory Commission.

ACTION: Rulemaking activities; discontinuation.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is discontinuing the rulemaking activities associated with potential changes to its radiation protection and reactor effluents regulations. The purpose of this action is to inform members of the public that these rulemaking activities are being discontinued and to provide a brief discussion of the NRC's decision to discontinue them. These rulemaking activities will no longer be reported in the NRC's portion of the Unified Agenda of Regulatory and Deregulatory Actions (the Unified Agenda).

DATES: Effective December 28, 2016, the rulemaking activities discussed in this document are discontinued.

ADDRESSES: Please refer to Docket IDs NRC-2009-0279 and NRC-2014-0044 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket IDs NRC-2009-0279 and NRC-2014-0044. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Carolyn Lauron, Office of New Reactors, telephone: 301-415-2736, email: Carolyn.Lauron@nrc.gov; or Cindy Flannery, Office of Nuclear Material

Safety and Safeguards, telephone: 301-415-0223, email: Cindy.Flannery@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

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- V. Conclusion

I. Background

In SECY-16-0009, "Recommendations Resulting from the Integrated Prioritization and Re-Baselining of Agency Activities," dated January 31, 2016 (ADAMS Accession No. ML16028A208), the NRC staff requested Commission approval to implement recommendations on work to be shed, de-prioritized, or performed with fewer resources. Two of the items listed to be shed (*i.e.*, discontinued) were the rulemakings that would have amended the radiation protection regulations in part 20 of title 10 of the *Code of Federal Regulations* (10 CFR), and the reactor effluents regulations in 10 CFR part 50, appendix I. In the Staff Requirements Memorandum (SRM) for SECY-16-0009, dated April 13, 2016 (ADAMS Accession No. ML16104A158), the Commission approved discontinuing the two rulemaking activities and directed the NRC staff to publish a **Federal Register** notice to inform the public that the rulemakings are being discontinued.

A discussion of the NRC's decision to discontinue these two rulemaking activities is provided in Sections III and IV of this document.

II. Process for Discontinuing Rulemaking Activities

When the NRC staff identifies a rulemaking activity that can be discontinued, the NRC staff requests approval from the Commission to discontinue it. The Commission provides its decision in an SRM. If the Commission approves discontinuing the rulemaking activity, the NRC staff will inform the public of the Commission's decision.

A rulemaking activity may be discontinued at any stage in the rulemaking process. For a rulemaking activity that has received public comments, the NRC staff will consider those comments before discontinuing the rulemaking activity; however, the NRC staff will not provide individual comment responses.

After Commission approval to discontinue a rulemaking activity, the NRC staff will update the next edition of the Unified Agenda to indicate that the rulemaking is discontinued. The rulemaking activity will appear in the completed actions section of that edition of the Unified Agenda but will not appear in future editions.

III. Radiation Protection (RIN 3150-AJ29; NRC-2009-0279)

The NRC staff provided an analysis of the potential need to update the radiation protection regulation in SECY-08-0197, "Options to Revise Radiation Protection Regulations and Guidance with Respect to the 2007 Recommendations of the International Commission on Radiological Protection," dated December 18, 2008 (ADAMS Accession No. ML091310193), to the Commission. SECY-08-0197 presented the regulatory options of more closely aligning the NRC's radiation protection regulatory framework (primarily set forth in 10 CFR part 20) with the 2007 recommendations of the International Commission on Radiological Protection (ICRP) contained in ICRP Publication 103. In the SRM for SECY-08-0197, dated April 2, 2009 (ADAMS Accession No. ML090920103), the Commission approved the NRC staff's recommendation to begin engagement with stakeholders and interested parties to initiate development of the technical basis¹ for a possible revision of the NRC's radiation protection regulations, as appropriate and where scientifically justified, to achieve greater alignment with the recommendations in ICRP Publication 103.

After extensive stakeholder engagement, the NRC staff determined that an additional evaluation of the substantive policy issues was needed. This additional policy evaluation was provided as SECY-12-0064, "Recommendations for Policy and Technical Direction to Revise Radiation Protection Regulations and Guidance," dated April 25, 2012 (ADAMS Accession No. ML121020108). The paper summarized the NRC staff's interactions with stakeholders as directed by the SRM for SECY-08-0197,

and provided recommendations for potential revisions to the NRC's radiation protection regulations.

In the SRM for SECY-12-0064, dated December 17, 2012 (ADAMS Accession No. ML12352A133), the Commission approved in part and disapproved in part the NRC staff's recommendations. Specifically, the Commission approved the NRC staff's development of a draft regulatory basis for a revision to 10 CFR part 20 to align with the most recent methodology and terminology for dose assessment in ICRP Publication 103, including consideration of any conforming changes to all NRC regulations. The Commission directed the NRC staff to develop improvements in the NRC's guidance for those segments of the regulated community that would benefit from more effective implementation of the As Low As is Reasonably Achievable (ALARA) strategies and programs to comply with regulatory requirements. The Commission also directed the NRC staff to continue discussions with stakeholders regarding dose limits for the lens of the eye and the embryo/fetus.

In addition, the Commission directed the NRC staff to continue discussions with stakeholders on alternative approaches to deal with individual protection at or near the current dose limit. Finally, the Commission directed the NRC staff to improve reporting of occupational exposure by the NRC and Agreement State licensees to the NRC's Radiation Exposure Information Reporting System database. In the SRM for SECY-12-0064, the Commission disapproved the NRC staff's recommendations to develop a draft regulatory basis to reduce the occupational total effective dose equivalent from 5 rem (50 mSv) per year to 2 rem (20 mSv) per year. The Commission also disapproved the elimination of traditional or "English" dose units to measure radiation exposure from the NRC's regulations. Rather, the Commission directed the continuation of the use of both traditional and International System (SI) units in the NRC's regulations.

In response to the Commission's direction in the SRM for SECY-12-0064, the NRC staff published an advance notice of proposed rulemaking (ANPR) in the *Federal Register* (79 FR 43284; July 25, 2014), to obtain input from members of the public and other stakeholders on the development of a regulatory basis that would support potential changes to the NRC's current radiation protection regulations. The ANPR stated that the NRC's goal was to achieve greater alignment between the NRC's radiation protection regulations

and the recommendations contained in ICRP Publication 103, primarily with respect to the recommendations concerning dose assessment methodology and terminology.

The NRC received over 90 individual comment letters and almost 3,000 form letters on the 10 CFR part 20 ANPR. Although some comments supported a potential revision of the NRC's regulations to align more closely with ICRP Publication 103 methodology and terminology for dose assessment, the majority of comments did not support revising the 10 CFR part 20 regulations. The major reasons given for not revising the NRC's regulations were the following: (1) The NRC's current regulations remain protective of both occupational workers and members of the public; (2) the ICRP Publication 103 recommendations propose measures that go beyond what is needed to provide adequate protection and are unlikely to yield a substantial increase in safety that is justified in light of its cost; (3) the industry's current operating procedures and practices protect both occupational workers and members of the public and go beyond the applicable regulatory requirements; (4) amending the applicable regulations would place significant resource burdens on licensees resulting in costly modifications to existing facilities that would result in little, if any, improvement in occupational or public radiological safety; (5) the cumulative effect of regulation (CER) resulting from the changes described in the ANPR for 10 CFR part 20, in conjunction with the prospective U.S. Department of Environmental Protection Agency's (EPA) changes to 40 CFR part 190 and to 10 CFR part 50, appendix I, will place substantial resource burdens on licensees, while yielding little or no additional protection of occupational workers or the public; and (6) the NRC actions are premature without the publication of the peer approved implementation documents for the ICRP Publication 103 recommendations.

While some commenters supported the changes described in the ANPR to more closely align with the ICRP Publication 103 methodology and terminology, these commenters also acknowledged that consideration should be given to the resource burden associated with implementation. Some commenters supported the incorporation of the ICRP Publication 103 dose methodology in the form of revisions to include the weighting factors for eight organs, which are the colon, stomach, bladder, liver, esophagus, skin, brain, and salivary glands, but did not support changes to

¹ The terms "technical basis" and "regulatory basis," as used in this document, are synonymous. The NRC's Management Directive (MD) 6.3, "The Rulemaking Process" (<http://www.nrc.gov/docs/ML1320/ML13205A400.pdf>), explains that a regulatory basis is a detailed analysis, prepared by the NRC staff, describing why a regulation should be promulgated, amended, or repealed, and the scientific, technical, policy, and legal rationale for that potential regulatory action. If approved by the Commission, the regulatory basis will be used by the NRC staff in its development of a proposed rule.

the current NRC dose terminology. On the other hand, one commenter indicated that terminology should be adopted in order to be consistent with the terminology used by the U.S. Department of Energy, as revised in 2007, but use of the updated methodology should be delayed until the updated dose coefficients are published by ICRP. Finally, one commenter supported revision of 10 CFR part 20 to align more closely with ICRP Publication 103 methodology and terminology, but acknowledged that the realignment may result in little, if any, improvement in occupational or public safety.

As explained in SECY-16-0009, the additional resource expenditure in this area did not result in a recommendation for a revised rule. The current NRC regulatory framework continues to provide adequate protection of the health and safety of workers, the public, and the environment. In addition, a majority of the comments submitted and meeting feedback from stakeholders did not support the proposed changes. Therefore, the NRC staff believes that there is minimal adverse impact on the NRC's mission, principles, or values by discontinuing this rulemaking. In the SRM for SECY-16-0009, the Commission approved the NRC staff's recommendation to discontinue this rulemaking.

IV. Reactor Effluents (RIN 3150-AJ38; NRC-2014-0044)

The NRC published an ANPR in the **Federal Register** (80 FR 25237; May 4, 2015), to obtain input from members of the public and other stakeholders on the development of a regulatory basis for a potential revision to 10 CFR part 50, appendix I, the NRC's regulations for licensees of light water cooled reactors to meet the ALARA standard with respect to radioactive effluents from such reactor sites. The publication of the 10 CFR part 50, appendix I, ANPR was also in response to the Commission's direction in the SRM for SECY-12-0064, which stated that the NRC staff should, along with the development of the draft regulatory basis for the 10 CFR part 20 regulations, engage in a parallel effort to develop a draft regulatory basis for aligning the 10 CFR part 50, appendix I, design objectives with the most recent terminology and dose-related methodology published in ICRP Publication 103. In the ANPR, the NRC staff identified specific questions and issues with respect to a possible revision of 10 CFR part 50, appendix I, and related guidance. The NRC staff planned to consider public and other

stakeholder input on these questions and issues to develop the regulatory basis.

The NRC received 20 comment letters on the 10 CFR part 50, appendix I, ANPR. The comments, in addition to feedback from the August 24, 2015, NRC public meeting held in Rockville, MD, included the following: (1) The potential revisions will result in intangible benefits such as transparency in the regulatory process, consistent terminology and methodology, and comparison of technologies and operations across international borders and environmental media; (2) implementation of the potential revisions will result in a resource burden; (3) the potential revisions are unlikely to be cost-beneficial with little to no incremental improvement in the health and safety of occupational workers, the public, or the environment; (4) in lieu of the potential revisions, limited changes in the NRC guidance to address changes in methodology and terminology would require fewer licensee resources; and (5) should the NRC proceed with rulemaking, consideration of on-going work on the accuracy of the effluent doses to members of the public could further inform the proposed rulemaking.

Overall, the commenters recognized a need to update the NRC's regulations based on the advances in science and technology; however, the implementation costs would be a significant burden to the industry that would not be justified by improvements in public and occupational protection. In addition, some commenters provided additional options for the NRC to consider, should it continue with rulemaking, including limited scope updates to existing NRC guidance.

As explained in SECY-16-0009, the staff recommended that this rulemaking activity be discontinued because during the development of the regulatory basis for the proposed rule change, the staff determined that the regulations do not require changes at this time. Therefore, based on this determination and consideration of the comments received, the NRC staff believes that there is minimal adverse impact on the NRC's mission, principles, or values by discontinuing this rulemaking. In the SRM for SECY-16-0009, the Commission approved the NRC staff's recommendation to discontinue this rulemaking.

V. Conclusion

The NRC is no longer pursuing the revisions to regulations in 10 CFR part 20 and 10 CFR part 50, appendix I, for the reasons discussed in this document.

In the next edition of the Unified Agenda, the NRC will update the entry for these rulemaking activities and reference this document to indicate that they are no longer being pursued. These rulemaking activities will appear in the completed actions section of that edition of the Unified Agenda but will not appear in future editions. If the NRC decides to pursue similar or related rulemaking activities in the future, it will inform the public through new rulemaking entries in the Unified Agenda.

Dated at Rockville, Maryland, this 14th day of December 2016.

For the Nuclear Regulatory Commission.

Michael R. Johnson,

Acting Executive Director for Operations.

[FR Doc. 2016-31372 Filed 12-27-16; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064-AE52

Rules of Practice and Procedure

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is adjusting the maximum amount of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action is required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Adjustment Act). The FDIC is also amending its rules of practice and procedure to correct a technical error from the previous inflation-adjustment rulemaking.

DATES: This rule is effective on January 15, 2017.

FOR FURTHER INFORMATION CONTACT: Seth P. Rosebrock, Supervisory Counsel, Legal Division (202) 898-6609, or Graham N. Rehrig, Senior Attorney, Legal Division (202) 898-3829.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The Final Rule changes the maximum limit for CMPs according to inflation as mandated by Congress in the 2015 Adjustment Act.¹ The intended effect of annually adjusting maximum civil money penalties in accordance with changes in the Consumer Price Index is

¹ Public Law 114-74, sec. 701, 129 Stat. 584.

to minimize any distortion in the real value of those maximums due to inflation, thereby promoting a more consistent deterrent effect in the structure of CMPs. The Final Rule also amends the FDIC's rules of practice and procedure under 12 CFR part 308 to remove a technical error found at 12 CFR 308.132(c).

II. Background

The FDIC assesses CMPs under section 8(i) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1818, and a variety of other statutes.² Congress established maximum penalties that could be assessed under these statutes. In many cases, these statutes contain multiple penalty tiers, permitting the assessment of penalties at various levels depending upon the severity of the misconduct at issue.³

In 1990, Congress determined that the assessment of CMPs plays "an important role in deterring violations and furthering the policy goals embodied in such laws and regulations" and concluded that "the impact of many civil monetary penalties has been and is diminished due to the effect of inflation."⁴ Consequently, Congress required federal agencies with authority to impose CMPs to periodically adjust by rulemaking the maximum CMPs which these agencies were authorized to impose in order to "maintain the deterrent effect of civil monetary penalties and promote compliance with the law."⁵ Under the 1990 Adjustment Act, the FDIC adjusted its CMP amounts every four years.⁶

In 2015, Congress revised the process by which federal agencies adjust applicable CMPs for inflation.⁷ Under the 2015 Adjustment Act, the FDIC is required to (1) adjust the CMP levels with an initial catch-up adjustment through an interim final rulemaking and (2) make subsequent annual adjustments for inflation.⁸ The initial and

subsequent adjustments apply to all CMPs covered by the 2015 Adjustment Act.⁹ The FDIC published its interim final rulemaking—containing the initial catch-up adjustments—on June 29, 2016.¹⁰ The 2015 Adjustment Act requires subsequent annual adjustments to be made by January 15 of each year.¹¹

Although the 2015 Adjustment Act increases the maximum penalty that may be assessed under each applicable statute, the FDIC possesses discretion to impose CMP amounts below the maximum level in accordance with the severity of the misconduct at issue. When making a determination as to the appropriate level of any given penalty, the FDIC is guided by statutory factors set forth in section 8(i)(2)(G) of the FDIA, 12 U.S.C. 1818(i)(2)(G), and those factors identified in the *Interagency Policy Statement Regarding the Assessment of CMPs by the Federal Financial Institutions Regulatory Agencies*.¹² Such factors include, but are not limited to, the gravity and duration of the misconduct, and the intent related to the misconduct.

While the 2015 Adjustment Act required the FDIC to initially adjust its maximum CMP amounts through an interim final rulemaking, for subsequent adjustments, the FDIC "shall adjust [CMPs] and shall make the adjustment notwithstanding section 553 of title 5, United States Code" (the Administrative Procedure Act).¹³ The FDIC, therefore, is not obligated to publish the subsequent adjustments through notice-and-comment rulemaking, and the FDIC

is publishing the adjustments through a final rule.

Moreover, the FDIC is correcting a technical error found at 12 CFR 308.132(c). During the last CMP-adjustment process, the FDIC sought to revise 12 CFR 308.132(c) to articulate the FDIC Board's authority to assess CMPs. The FDIC also intended to transfer the substance of current 12 CFR 308.132(c)(2) through 12 CFR 308.132(c)(3)(xvii) to current 12 CFR 308.132(d), and to remove the now-duplicative language of 12 CFR 308.132(c)(2) through 12 CFR 308.132(c)(3)(xvii). The Final Rule amends 12 CFR 308.132(c) accordingly by removing 12 CFR 308.132(c)(2) through 12 CFR 308.132(c)(3)(xvii) and retitling current 12 CFR 308.132(c)(1).

The FDIC believes that all of these changes are technical and ministerial in character, and therefore, the FDIC is not soliciting public comment on the changes.

III. Description and Expected Effects of the Final Rule

The Final Rule modifies the maximum limit for CMPs according to inflation as mandated by Congress in the 2015 Adjustment Act. The 2015 Adjustment Act directs federal agencies to follow guidance issued by the Office of Management and Budget (OMB) on December 16, 2016 (OMB Guidance), when calculating new maximum penalty levels.¹⁴ The adjustments are to be based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U)¹⁵ for October 2015 and the October 2016 CPI-U.

Summary of the FDIC's Calculations

In keeping with the OMB Guidance, the FDIC multiplied each of its CMP amounts by the relevant inflation factor.¹⁶ After applying the multiplier, the FDIC rounded each penalty level to the nearest dollar. In making these calculations, the FDIC consulted with staff from the Office of the Comptroller of the Currency, the Board of Governors for the Federal Reserve System, the National Credit Union Administration,

² See, e.g., 12 U.S.C. 1972(2)(F) (authorizing the FDIC to impose CMPs for violations of the Bank Holding Company Act of 1970 related to prohibited tying arrangements); 15 U.S.C. 78u-2 (authorizing the FDIC to impose CMPs for violations of certain provisions of the Securities Exchange Act of 1934); 42 U.S.C. 4012a(f) (authorizing the FDIC to impose CMPs for pattern or practice violations of the Flood Disaster Protection Act).

³ For example, Section 8(i)(2) of the FDIA, 12 U.S.C. 1818(i)(2), provides for three tiers of CMPs, with the size of such CMPs increasing with the gravity of the misconduct.

⁴ Section 2 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Adjustment Act), Public Law 101-410, 104 Stat. 890 (amended 2015) (codified as amended at 28 U.S.C. 2461 note).

⁵ *Id.*

⁶ See, e.g., 77 FR 74573 (Dec. 17, 2012).

⁷ See Public Law 114-74, sec. 701, 129 Stat. 584.

⁸ See *id.* at sec. 701(b).

⁹ See Public Law 101-410, sec. 3(2), 104 Stat. 890 (amended 2015) (codified as amended at 28 U.S.C. 2461 note).

¹⁰ 81 FR 42235. Although the FDIC was not obligated to solicit comments for the interim final rule, the FDIC asked for comments from the public and received one comment. See https://www.fdic.gov/regulations/laws/federal/2016/2016_rules_of_practice_and_procedure_3064%E2%80%9380%93AE43.html. The comment noted that the FDIC interim final rule was issued according to a statutory mandate, but expressed disappointment that the FDIC "did not promulgate [its] interim final CMP rules pursuant to the normal administrative process, whereby interested stakeholders among the public have an opportunity to comment on a 'Proposed Rule' before it is finalized." *Id.* The commenter made no specific request that the final rule be amended or changed, however, but requested that the FDIC exercise its "discretion to impose CMP amounts below the maximum level in accordance with the severity of the misconduct at issue." *Id.* As noted above, the FDIC followed an explicit statutory mandate in creating the interim final rule. Moreover, the FDIC intends to continue to exercise its discretion—in accordance with statutory requirements—in imposing appropriate CMP amounts. See 12 U.S.C. 1818(i)(2)(G).

¹¹ Public Law 114-74, sec. 701(b), 129 Stat. 584.

¹² 63 FR 30227 (June 3, 1998).

¹³ Public Law 114-74, sec. 701(b), 129 Stat. 584 (emphasis added).

¹⁴ See OMB, Implementation of the 2017 Annual Adjustment Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M-17-11 (Dec. 16, 2016), available at https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf (noting that the applicable 2017 CMP-adjustment multiplier is 1.01636).

¹⁵ The CPI-U is compiled by the Bureau of Statistics of the Department of Labor.

¹⁶ Under the 1990 Adjustment Act, adjustments have been made only to CMPs that are for specific dollar amounts or maximums. CMPs that are assessed based upon a fixed percentage of an institution's total assets are not subject to adjustment.

and the Bureau of Consumer Financial Protection to ensure that the FDIC's calculations and adjustments are consistent with those being proposed by other federal financial regulators for the same statutes.

The Adjusted CMP Amounts

The following chart displays the adjusted CMP amounts for each CMP identified in 12 CFR part 308.¹⁷ The following chart reflects the maximum

CMP amounts that may be assessed after January 15, 2017—the effective date of the 2017 annual adjustment—including assessments whose associated violations occurred on or after November 2, 2015.¹⁸

MAXIMUM CIVIL MONEY PENALTY AMOUNTS

U.S. Code citation	Current maximum CMP (through January 14, 2017)	Adjusted maximum CMP (beginning January 15, 2017)
12 U.S.C. 1464(v)		
Tier One CMP	\$3,787	\$3,849
Tier Two CMP	37,872	38,492
Tier Three CMP	1,893,610	1,924,589
12 U.S.C. 1467(d)	9,468	9,623
12 U.S.C. 1817(a)		
Tier One CMP	3,787	3,849
Tier Two CMP	37,872	38,492
Tier Three CMP	1,893,610	1,924,589
12 U.S.C. 1817(c)		
Tier One CMP	3,462	3,519
Tier Two CMP	34,620	35,186
Tier Three CMP	1,730,990	1,759,309
12 U.S.C. 1818(i)(2)		
Tier One CMP	9,468	9,623
Tier Two CMP	47,340	48,114
Tier Three CMP	1,893,610	1,924,589
12 U.S.C. 1820(e)(4)	8,655	8,797
12 U.S.C. 1820(k)(6)	311,470	316,566
12 U.S.C. 1828(a)(3)	118	120
12 U.S.C. 1828(h)		
For assessments < 10,000	118	120
12 U.S.C. 1829b(j)	19,787	20,111
12 U.S.C. 1832(c)	2,750	2,795
12 U.S.C. 1884	275	279
12 U.S.C. 1972(2)(F)		
Tier One CMP	9,468	9,623
Tier Two CMP	47,340	48,114
Tier Three CMP	1,893,610	1,924,589
12 U.S.C. 3909(d)	2,355	2,394
15 U.S.C. 78u-2		
Tier One CMP (individuals)	8,908	9,054
Tier One CMP (others)	89,078	90,535
Tier Two CMP (individuals)	89,078	90,535
Tier Two CMP (others)	445,390	452,677
Tier Three CMP (individuals)	178,156	181,071
Tier Three penalty (others)	890,780	905,353
15 U.S.C. 1639e(k)		
First violation	10,875	11,053
Subsequent violations	21,749	22,105
31 U.S.C. 3802	10,781	10,957
42 U.S.C. 4012a(f)	2,056	2,090

CFR citation	Current maximum amount (through January 14, 2017)	New maximum amount (beginning January 15, 2017)
12 CFR 308.132(c)—Late or Misleading Reports of Condition and Income (Call Reports)		
First Offense		
25 million or more assets		
1 to 15 days late	\$519	\$527
16 or more days late	1,039	1,056
Less than 25 million assets		
1 to 15 days late	173	176
16 or more days late	346	352

¹⁷ As noted previously, the FDIC retains discretion to impose CMPs in amounts below the referenced maximums.

¹⁸ See OMB Guidance at 4.

CFR citation	Current maximum amount (through January 14, 2017)	New maximum amount (beginning January 15, 2017)
Subsequent Offenses		
25 million or more assets		
1 to 15 days late	865	879
16 or more days late	1,731	1,759

The Expected Effects of the CMP Adjustments

The CMP Adjustments are expected to more precisely adjust CMP maximums relative to inflation. These adjustments are expected to minimize any year-to-year distortions in the real value of the CMP maximums. These adjustments will promote a more consistent deterrent effect in the structure of CMPs. As previously noted, the FDIC retains discretion to impose CMP amounts below the maximum level. The actual number and size of CMPs assessed in the future will depend on the propensity and severity of the violations committed by banks and institution-affiliated parties, as well as the particular statute that is at issue. Such future violations cannot be reliably forecast. It is expected that the FDIC will continue to exercise its discretion to impose CMPs that are appropriate to their severity.

The 2015 Adjustment Act will likely result in a minimal increase in administrative costs for the FDIC in order to establish new inflation-adjusted maximum CMPs each year. Because these calculations are relatively simple, the number of labor hours necessary to perform this task is likely to be insignificant relative to total enforcement labor hours for the Corporation.

IV. Alternatives Considered

The 2015 Adjustment Act mandates the frequency of the inflation adjustment and the measure of inflation to be used in making these adjustments. This statute also provides that the FDIC is not required to proceed through notice-and-comment rulemaking under the Administrative Procedure Act in making annual CMP adjustments. Therefore, the FDIC has not considered alternatives to the CMP Adjustments.

V. Request for Comment

The 2015 Adjustment Act requires the FDIC to adjust its maximum CMP amounts “notwithstanding section 553 of title 5, United States Code,”¹⁹ and

provides the specific adjustments to be made. Moreover, the CMP Adjustments and the revisions to the CFR are ministerial and technical; therefore, the FDIC is not required to complete a notice-and-comment rulemaking process prior to making the adjustments.

VI. Regulatory Analysis

Riegle Community Development and Regulatory Improvement Act

Section 302 of the Riegle Community Development and Regulatory Improvement Act²⁰ generally requires that regulations prescribed by federal banking agencies which impose additional reporting, disclosures, or other new requirements on insured depository institutions take effect on the first day of a calendar quarter unless the regulation is required to take effect on another date pursuant to another act of Congress or the agency determines for good cause that the regulation should become effective on an earlier date.

This Final Rule does not impose any new or additional reporting, disclosures, or other requirements on insured depository institutions. Therefore, the Final Rule is not subject to the requirements of this statute.

Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act²¹ (RFA) is required only when an agency must publish a general notice of proposed rulemaking. As noted above, the FDIC determined that publication of a notice of proposed rulemaking is not necessary for the Final Rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, the FDIC considered the likely impact of Final Rule on small entities. From 2011 through 2015, on average, only 1.6 percent of FDIC-supervised institutions were ordered to pay a CMP each year. Accordingly, the FDIC believes that the Final Rule will not have a significant impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

The OMB has determined that the Final Rule is not a “major rule” within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA).²² As required by SBREFA, the FDIC will submit the Final Rule and other appropriate reports to Congress and the Government Accountability Office for review.

The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999: Assessment of Federal Regulations and Policies on Families

The FDIC determined that the Final Rule will not affect family wellbeing within the meaning of section 654 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.²³

Paperwork Reduction Act

The Final Rule does not create any new, or revise any existing, collections of information under section 3504(h) of the Paperwork Reduction Act of 1980.²⁴ Consequently, no information collection request will be submitted to the OMB for review.

Plain Language Act

Section 722 of the Gramm-Leach-Bliley Act requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000.²⁵ Accordingly, the FDIC has attempted to write the Final Rule in clear and comprehensible language.

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Banks, Banking, Claims, Crime, Equal access to justice, Ex parte communications, Hearing procedure, Lawyers, Penalties, State nonmember banks.

²² 5 U.S.C. 801 *et seq.*
²³ Public Law 105-277, 112 Stat. 2681 (1998).
²⁴ 44 U.S.C. 3501 *et seq.*
²⁵ Public Law 106-102, 113 Stat. 1338 (Nov. 12, 1999).

¹⁹ Public Law 114-74, sec. 701(b), 129 Stat. 584.

²⁰ 12 U.S.C. 4802.
²¹ 5 U.S.C. 603.

For the reasons set forth in the preamble, the FDIC amends 12 CFR part 308 as follows:

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1464, 1467(d), 1467a, 1468, 1815(e), 1817, 1818, 1819, 1820, 1828, 1829, 1829(b), 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717, 5412(b)(2)(C), 5414(b)(3); 15 U.S.C. 78(h) and (i), 78o(c)(4), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Pub. L. 104–134, sec. 31001(s), 110 Stat. 1321; Pub. L. 109–351, 120 Stat. 1966; Pub. L. 111–203, 124 Stat. 1376; Pub. L. 114–74, sec. 701, 129 Stat. 584.

■ 2. Revise § 308.116(b)(4) to read as follows:

§ 308.116 Assessment of penalties.

* * * * *

(b) * * *

(4) *Adjustment of civil money penalties by the rate of inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.* After January 15, 2017, for violations that occurred on or after November 2, 2015:

(i) Any person who has engaged in a violation as set forth in paragraph (b)(1) of this section shall forfeit and pay a civil money penalty of not more than \$9,623 for each day the violation continued.

(ii) Any person who has engaged in a violation, unsafe or unsound practice or breach of fiduciary duty, as set forth in paragraph (b)(2) of this section, shall forfeit and pay a civil money penalty of not more than \$48,114 for each day such violation, practice or breach continued.

(iii) Any person who has knowingly engaged in a violation, unsafe or unsound practice or breach of fiduciary duty, as set forth in paragraph (b)(3) of this section, shall forfeit and pay a civil money penalty not to exceed:

(A) In the case of a person other than a depository institution—\$1,924,589 per day for each day the violation, practice or breach continued; or

(B) In the case of a depository institution—an amount not to exceed the lesser of \$1,924,589 or one percent of the total assets of such institution for each day the violation, practice or breach continued.

* * * * *

■ 3. Revise § 308.132(c) and (d) to read as follows:

§ 308.132 Assessment of penalties.

* * * * *

(c) *Authority of the Board of Directors.* The Board of Directors or its designee may assess civil money penalties under section 8(i) of the FDIA (12 U.S.C. 1818(i)), and § 308.1(e) of the Uniform Rules (this part).

(d) *Maximum civil money penalty amounts.* Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, after January 15, 2017, for violations that occurred on or after November 2, 2015, the Board of Directors or its designee may assess civil money penalties in the maximum amounts as follows:

(1) *Civil money penalties assessed pursuant to 12 U.S.C. 1464(v) for late filing or the submission of false or misleading certified statements by State savings associations.* Pursuant to section 5(v) of the Home Owners’ Loan Act (12 U.S.C. 1464(v)), the Board of Directors or its designee may assess civil money penalties as follows:

(i) *Late filing—Tier One penalties.* In cases in which an institution fails to make or publish its Report of Condition and Income (Call Report) within the appropriate time periods, a civil money penalty of not more than \$3,849 per day may be assessed where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the late filing occurred unintentionally and as a result of such error; or the institution inadvertently transmitted a Call Report that is minimally late. For penalties assessed after January 15, 2017, for violations of this paragraph (d)(3)(i) that occurred on or after November 2, 2015, the following maximum Tier One penalty amounts contained in paragraphs (d)(1)(i)(A) and (B) of this section shall apply for each day that the violation continues.

(A) *First offense.* Generally, in such cases, the amount assessed shall be \$527 per day for each of the first 15 days for which the failure continues, and \$1,056 per day for each subsequent day the failure continues, beginning on the sixteenth day. For institutions with less than \$25,000,000 in assets, the amount assessed shall be the greater of \$176 per day or 1/1000th of the institution’s total assets (1/10th of a basis point) for each of the first 15 days for which the failure continues, and \$352 or 1/500th of the institution’s total assets, 1/5 of a basis point) for each subsequent day the failure continues, beginning on the sixteenth day.

(B) *Subsequent offense.* Where the institution has been delinquent in making or publishing its Call Report within the preceding five quarters, the amount assessed for the most current

failure shall generally be \$879 per day for each of the first 15 days for which the failure continues, and \$1,759 per day for each subsequent day the failure continues, beginning on the sixteenth day. For institutions with less than \$25,000,000 in assets, those amounts, respectively, shall be 1/500th of the bank’s total assets and 1/250th of the institution’s total assets.

(C) *Lengthy or repeated violations.* The amounts set forth in this paragraph (d)(1)(i) will be assessed on a case by case basis where the amount of time of the institution’s delinquency is lengthy or the institution has been delinquent repeatedly in making or publishing its Call Reports.

(D) *Waiver.* Absent extraordinary circumstances outside the control of the institution, penalties assessed for late filing shall not be waived.

(ii) *Late-filing—Tier Two penalties.* Where an institution fails to make or publish its Call Report within the appropriate time period, the Board of Directors or its designee may assess a civil money penalty of not more than \$38,492 per day for each day the failure continues.

(iii) *False or misleading reports or information—(A) Tier One penalties.* In cases in which an institution submits or publishes any false or misleading Call Report or information, the Board of Directors or its designee may assess a civil money penalty of not more than \$3,849 per day for each day the information is not corrected, where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the violation occurred unintentionally and as a result of such error; or the institution inadvertently transmits a Call Report or information that is false or misleading.

(B) *Tier Two penalties.* Where an institution submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than \$38,492 per day for each day the information is not corrected.

(C) *Tier Three penalties.* Where an institution knowingly or with reckless disregard for the accuracy of any Call Report or information submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than the lesser of \$1,924,589 or 1 percent of the institution’s total assets per day for each day the information is not corrected.

(iv) *Mitigating factors.* The amounts set forth in this paragraph (d)(1) may be

reduced based upon the factors set forth in paragraph (b) of this section.

(2) *Civil money penalties assessed pursuant to 12 U.S.C. 1467(d) for refusal by an affiliate of a State savings association to allow examination or to provide required information during an examination.* Pursuant to section 9(d) of the Home Owners' Loan Act (12 U.S.C. 1467(d)), civil money penalties may be assessed against any State savings association if an affiliate of such an institution refuses to permit a duly-appointed examiner to conduct an examination or refuses to provide information during the course of an examination as set forth 12 U.S.C. 1467(d), in an amount not to exceed \$9,623 for each day the refusal continues.

(3) *Civil money penalties assessed pursuant to 12 U.S.C. 1817(a) for late filings or the submission of false or misleading reports of condition.* Pursuant to section 7(a) of the FDIA (12 U.S.C. 1817(a)), the Board of Directors or its designee may assess civil money penalties as follows:

(i) *Late filing—Tier One penalties.* In cases in which an institution fails to make or publish its Report of Condition and Income (Call Report) within the appropriate time periods, a civil money penalty of not more than \$3,849 per day may be assessed where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the late filing occurred unintentionally and as a result of such error; or the institution inadvertently transmitted a Call Report that is minimally late. For penalties assessed after January 15, 2017, for violations of this paragraph (d)(3)(i) that occurred on or after November 2, 2015, the following maximum Tier One penalty amounts contained in paragraphs (d)(3)(i)(A) and (B) of this section shall apply for each day that the violation continues.

(A) *First offense.* Generally, in such cases, the amount assessed shall be \$527 per day for each of the first 15 days for which the failure continues, and \$1,056 per day for each subsequent day the failure continues, beginning on the sixteenth day. For institutions with less than \$25,000,000 in assets, the amount assessed shall be the greater of \$176 per day or 1/1000th of the institution's total assets (1/10th of a basis point) for each of the first 15 days for which the failure continues, and \$352 or 1/500th of the institution's total assets, (1/5 of a basis point) for each subsequent day the failure continues, beginning on the sixteenth day.

(B) *Subsequent offense.* Where the institution has been delinquent in making or publishing its Call Report

within the preceding five quarters, the amount assessed for the most current failure shall generally be \$879 per day for each of the first 15 days for which the failure continues, and \$1,759 per day for each subsequent day the failure continues, beginning on the sixteenth day. For institutions with less than \$25,000,000 in assets, those amounts, respectively, shall be 1/500th of the bank's total assets and 1/250th of the institution's total assets.

(C) *Lengthy or repeated violations.* The amounts set forth in this paragraph (d)(3)(i) will be assessed on a case by case basis where the amount of time of the institution's delinquency is lengthy or the institution has been delinquent repeatedly in making or publishing its Call Reports.

(D) *Waiver.* Absent extraordinary circumstances outside the control of the institution, penalties assessed for late filing shall not be waived.

(ii) *Late-filing—Tier Two penalties.* Where an institution fails to make or publish its Call Report within the appropriate time period, the Board of Directors or its designee may assess a civil money penalty of not more than \$38,492 per day for each day the failure continues.

(iii) *False or misleading reports or information—(A) Tier One penalties.* In cases in which an institution submits or publishes any false or misleading Call Report or information, the Board of Directors or its designee may assess a civil money penalty of not more than \$3,849 per day for each day the information is not corrected, where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the violation occurred unintentionally and as a result of such error; or the institution inadvertently transmits a Call Report or information that is false or misleading.

(B) *Tier Two penalties.* Where an institution submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than \$38,492 per day for each day the information is not corrected.

(C) *Tier Three penalties.* Where an institution knowingly or with reckless disregard for the accuracy of any Call Report or information submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than the lesser of \$1,924,589 or 1 percent of the institution's total assets per day for each day the information is not corrected.

(iv) *Mitigating factors.* The amounts set forth in this paragraph (d)(3) may be reduced based upon the factors set forth in paragraph (b) of this section.

(4) *Civil money penalties assessed pursuant to 12 U.S.C. 1817(c) for late filing or the submission of false or misleading certified statements.* Tier One civil money penalties may be assessed pursuant to section 7(c)(4)(A) of the FDIA (12 U.S.C. 1817(c)(4)(A)) in an amount not to exceed \$3,519 for each day during which the failure to file continues or the false or misleading information is not corrected. Tier Two civil money penalties may be assessed pursuant to section 7(c)(4)(B) of the FDIA (12 U.S.C. 1817(c)(4)(B)) in an amount not to exceed \$35,186 for each day during which the failure to file continues or the false or misleading information is not corrected. Tier Three civil money penalties may be assessed pursuant to section 7(c)(4)(C) in an amount not to exceed the lesser of \$1,759,309 or 1 percent of the total assets of the institution for each day during which the failure to file continues or the false or misleading information is not corrected.

(5) *Civil money penalties assessed pursuant to section 8(i)(2) of the FDIA.* Tier One civil money penalties may be assessed pursuant to section 8(i)(2)(A) of the FDIA (12 U.S.C. 1818(i)(2)(A)) in an amount not to exceed \$9,623 for each day during which the violation continues. Tier Two civil money penalties may be assessed pursuant to section 8(i)(2)(B) of the FDIA (12 U.S.C. 1818(i)(2)(B)) in an amount not to exceed \$48,114 for each day during which the violation, practice or breach continues. Tier Three civil money penalties may be assessed pursuant to section 8(i)(2)(C) (12 U.S.C. 1818(i)(2)(C)) in an amount not to exceed, in the case of any person other than an insured depository institution \$1,924,589 or, in the case of any insured depository institution, an amount not to exceed the lesser of \$1,924,589 or 1 percent of the total assets of such institution for each day during which the violation, practice, or breach continues.

(i) Pursuant to 7(j)(16) of the FDIA (12 U.S.C. 1817(j)(16)), a civil money penalty may be assessed for violations of change in control of insured depository institution provisions pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)) in the amounts set forth in this paragraph (d)(5).

(ii) Pursuant to the International Banking Act of 1978 (IBA) (12 U.S.C. 3108(b)), civil money penalties may be assessed for failure to comply with the requirements of the IBA pursuant to

section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)), in the amounts set forth in this paragraph (d)(5).

(iii) Pursuant to section 1120(b) of the Financial Institutions Recovery, Reform, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3349(b)), where a financial institution seeks, obtains, or gives any other thing of value in exchange for the performance of an appraisal by a person that the institution knows is not a state certified or licensed appraiser in connection with a federally related transaction, a civil money penalty may be assessed pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)) in the amounts set forth in this paragraph (d)(5).

(iv) Pursuant to the Community Development Banking and Financial Institution Act (Community Development Banking Act) (12 U.S.C. 4717(b)) a civil money penalty may be assessed for violations of the Community Development Banking Act pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)), in the amount set forth in this paragraph (d)(5).

(v) Civil money penalties may be assessed pursuant to section 8(i)(2) of the FDIA in the amounts set forth in this paragraph (d)(5) for violations of various consumer laws, including, but not limited to, the Home Mortgage Disclosure Act (12 U.S.C. 2804 *et seq.* and 12 CFR 203.6), the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*), the Truth in Savings Act (12 U.S.C. 4301 *et seq.*), the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*), the Truth in Lending Act (15 U.S.C. 1601 *et seq.*), the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*), the Electronic Funds Transfer Act (15 U.S.C. 1693 *et seq.*) and the Fair Housing Act (42 U.S.C. 3601 *et seq.*).

(6) *Civil money penalties assessed pursuant to 12 U.S.C. 1820(e) for refusal to allow examination or to provide required information during an examination.* Pursuant to section 10(e)(4) of the FDIA (12 U.S.C. 1820(e)(4)), civil money penalties may be assessed against any affiliate of an insured depository institution that refuses to permit a duly-appointed examiner to conduct an examination or to provide information during the course of an examination as set forth in section 20(b) of the FDIA (12 U.S.C. 1820(b)), in an amount not to exceed \$8,797 for each day the refusal continues.

(7) *Civil money penalties assessed pursuant to 12 U.S.C. 1820(k) for violation of one-year restriction on*

Federal examiners of financial institutions. Pursuant to section 10(k) of the FDIA (12 U.S.C. 1820(k)), the Board of Directors or its designee may assess a civil money penalty of up to \$316,566 against any covered former Federal examiner of a financial institution who, in violation of section 10(k) of the FDIA (12 U.S.C. 1820(k)) and within the one-year period following termination of government service as an employee, serves as an officer, director, or consultant of a financial or depository institution, a holding company, or of any other entity listed in section 10(k) of the FDIA (12 U.S.C. 1820(k)), without the written waiver or permission by the appropriate Federal banking agency or authority under section 10(k)(5) of the FDIA (12 U.S.C. 1820(k)(5)).

(8) *Civil money penalties assessed pursuant to 12 U.S.C. 1828(a) for incorrect display of insurance logo.* Pursuant to section 18(a)(3) of the FDIA (12 U.S.C. 1828(a)(3)), civil money penalties may be assessed against an insured depository institution that fails to correctly display its insurance logo pursuant to that section, in an amount not to exceed \$120 for each day the violation continues.

(9) *Civil money penalties assessed pursuant to 12 U.S.C. 1828(h) for failure to timely pay assessment—(i) In general.* Subject to paragraph (d)(9)(iii) of this section, any insured depository institution that fails or refuses to pay any assessment shall be subject to a penalty in an amount of not more than 1 percent of the amount of the assessment due for each day that such violation continues.

(ii) *Exception in case of dispute.* Paragraph (d)(9)(i) of this section shall not apply if—

(A) The failure to pay an assessment is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment; and

(B) The insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(iii) *Special rule for small assessment amounts.* If the amount of the assessment that an insured depository institution fails or refuses to pay is less than \$10,000 at the time of such failure or refusal, the amount of any penalty to which such institution is subject under paragraph (d)(9)(i) of this section shall not exceed \$120 for each day that such violation continues.

(iv) *Authority to modify or remit penalty.* The Corporation, in the sole discretion of the Corporation, may compromise, modify, or remit any penalty that the Corporation may assess

or has already assessed under paragraph (d)(9)(i) of this section upon a finding that good cause prevented the timely payment of an assessment.

(10) *Civil money penalties assessed pursuant to 12 U.S.C. 1829b(j) for recordkeeping violations.* Pursuant to section 19b(j) of the FDIA (12 U.S.C. 1829b(j)), civil money penalties may be assessed against an insured depository institution and any director, officer or employee thereof who willfully or through gross negligence violates or causes a violation of the recordkeeping requirements of that section or its implementing regulations in an amount not to exceed \$20,111 per violation.

(11) *Civil money penalties pursuant to 12 U.S.C. 1832(c) for violation of provisions regarding interest-bearing demand deposit accounts.* Pursuant to 12 U.S.C. 1832(c), any depository institution that violates the prohibition regarding interest-bearing demand deposit accounts shall be subject to a fine of \$2,795 per violation.

(12) *Civil penalties for violations of security measure requirements under 12 U.S.C. 1884.* Pursuant to 12 U.S.C. 1884, an institution that violates a rule establishing minimum security requirements as set forth in 12 U.S.C. 1882, shall be subject to a civil penalty not to exceed \$279 for each day of the violation.

(13) *Civil money penalties assessed pursuant to 12 U.S.C. 1972(2)(F) for prohibited tying arrangements.* Pursuant to the Bank Holding Company Act of 1970, Tier One civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(i) in an amount not to exceed \$9,623 for each day during which the violation continues. Tier Two civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(ii) in an amount not to exceed \$48,114 for each day during which the violation, practice or breach continues. Tier Three civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(iii) in an amount not to exceed, in the case of any person other than an insured depository institution \$1,924,589 for each day during which the violation, practice, or breach continues or, in the case of any insured depository institution, an amount not to exceed the lesser of \$1,924,589 or 1 percent of the total assets of such institution for each day during which the violation, practice, or breach continues.

(14) *Civil money penalties assessed pursuant to 12 U.S.C. 3909(d).* Pursuant to the International Lending Supervision Act (ILSA) (12 U.S.C. 3909(d)), civil money penalties may be assessed against any institution or any officer, director, employee, agent or

other person participating in the conduct of the affairs of such institution is an amount not to exceed \$2,394 for each day a violation of the ILSA or any rule, regulation or order issued pursuant to ILSA continues.

(15) *Civil money penalties assessed for violations of 15 U.S.C. 78u-2.* Pursuant to section 21B of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78u-2), civil money penalties may be assessed for violations of certain provisions of the Exchange Act, where such penalties are in the public interest. Tier One civil money penalties may be assessed pursuant to 15 U.S.C. 78u-2(b)(1) in an amount not to exceed \$9,054 for a natural person or \$90,535 for any other person for violations set forth in 15 U.S.C. 78u-2(a). Tier Two civil money penalties may be assessed pursuant to 15 U.S.C. 78u-2(b)(2) in an amount not to exceed—for each violation set forth in 15 U.S.C. 78u-2(a)—\$90,535 for a natural person or \$452,677 for any other person if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. Tier Three civil money penalties may be assessed pursuant to 15 U.S.C. 78u-2(b)(3) for each violation set forth in 15 U.S.C. 78u-2(a), in an amount not to exceed \$181,071 for a natural person or \$905,353 for any other person, if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and such act or omission directly or indirectly resulted in substantial losses, or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

(16) *Civil money penalties assessed pursuant to 15 U.S.C. 1639e(k) for appraisal independence violations.* Pursuant to section 1472(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Appraisal Independence Rule) (15 U.S.C. 1639e(k)), civil money penalties may be assessed for an initial violation of the Appraisal Independence Rule in an amount not to exceed \$11,053 for each day during which the violation continues and, for subsequent violations, \$22,105 for each day during which the violation continues.

(17) *Civil money penalties assessed for false claims and statements pursuant to 31 U.S.C. 3802.* Pursuant to the Program Fraud Civil Remedies Act (31 U.S.C. 3802), civil money penalties of not more than \$10,957 per claim or statement may be assessed for violations involving false claims and statements.

(18) *Civil money penalties assessed for violations of 42 U.S.C. 4012a(f).*

Pursuant to the Flood Disaster Protection Act (FDPA) (42 U.S.C. 4012a(f)), civil money penalties may be assessed against any regulated lending institution that engages in a pattern or practice of violations of the FDPA in an amount not to exceed \$2,090 per violation.

Dated at Washington, DC, this 21st day of December, 2016.

By order of the Board of Directors.
Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016-31240 Filed 12-27-16; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245-AG67

Small Business Investment Companies: Passive Business Expansion and Technical Clarifications

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is revising the regulations for the Small Business Investment Company (SBIC) program to expand permitted investments in passive businesses and provide further clarification with regard to investments in such businesses. SBICs are generally prohibited from investing in passive businesses under the Small Business Investment Act of 1958, as amended (Act). SBIC program regulations provide for two exceptions that allow an SBIC to structure an investment utilizing a passive small business as a pass-through. The first exception provides conditions under which an SBIC may structure an investment through up to two levels of passive entities to make an investment in a non-passive business that is a subsidiary of the passive business directly financed by the SBIC. The second exception, prior to this final rule, enabled a partnership SBIC, with SBA's prior approval, to provide financing to a small business through a passive, wholly-owned C corporation (commonly known as a blocker corporation), but only if a direct financing would cause the SBIC's investors to incur Unrelated Business Taxable Income (UBTI). This final rule clarifies several aspects of the first exception and in the second exception eliminates the prior approval requirement and expands the purposes for which a blocker corporation may be

formed. The final rule also adds new reporting and other requirements for passive investments to help protect SBA's financial interests and ensure adequate oversight and makes minor technical amendments. Finally, this rule makes a conforming change to the regulations regarding the amount of leverage available to SBICs under common control. This change is necessary for consistency with the Consolidated Appropriations Act, 2016, which increased the maximum amount of such leverage to \$350 million.

DATES: This rule is effective January 27, 2017.

FOR FURTHER INFORMATION CONTACT: Theresa Jamerson, Office of Investment and Innovation, (202) 205-7563 or sbic@mba.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

The SBIC Program is an SBA financing program authorized under Title III of the Small Business Investment Act of 1958, 15 U.S.C. 681 *et seq.* Congress created the Small Business Investment Company (SBIC) program to “stimulate and supplement the flow of private equity capital and long-term loan funds, which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply” 15 U.S.C. 661. Congress intended that the program “be carried out in such manner as to insure the maximum participation of private financing sources.” *Id.* In accordance with that policy, SBA does not invest directly in small businesses. Rather, through the SBIC Program, SBA licenses and provides debenture leverage (Leverage) to SBICs. SBICs are privately-owned and professionally managed for-profit investment funds that make loans to, and investments in, qualified small businesses using a combination of privately raised capital and Leverage guaranteed by SBA. SBA will guarantee the repayment of debentures issued by an SBIC based on the amount of qualifying private capital raised by an SBIC up to a maximum amount of \$150 million in Leverage.

SBICs are generally prohibited from investing in passive businesses under the Small Business Investment Act of 1958. Prior to this final rule, the SBIC program regulations provided for the following two exceptions that allowed an SBIC to structure an investment utilizing a passive small business as a pass-through:

A. “*Holding company exception*”—§ 107.720(b)(2): This exception provides

conditions under which an SBIC may structure an investment through up to two levels of passive entities to make an investment in a non-passive business that is a subsidiary of the passive business directly financed by the SBIC. The regulation defines a subsidiary company as one in which the financed passive business directly or indirectly owns at least 50% of the outstanding voting securities. As an example, this exception allows an SBIC to finance ABC Holdings 1, a passive small business, with the proceeds flowing through ABC Holdings 2, another passive small business, and then to ABC Manufacturing, a non-passive small business in which ABC Holdings 1 owns directly or indirectly at least 50% of the outstanding voting securities.

B. “*Blocker corporation exception*”—§ 107.720(b)(3): This exception enables a partnership SBIC, with SBA’s prior approval, to provide financing to a small business through a passive, wholly-owned C corporation, but only if a direct financing would cause one or more of the SBIC’s investors to incur Unrelated Business Taxable Income (UBTI). A passive C corporation formed under the second exception is commonly known as a blocker corporation.

On October 5, 2015, SBA published a proposed rule (80 FR 60077) to further expand the permitted use of passive businesses, provide clarification with regard to investments in such businesses, and make minor technical clarifications. SBA received three comments on the proposed rule, not including one comment that generally questioned the fairness of the Act as a whole and did not provide any specific comments on the rule. The three comments pertinent to the rule are addressed in Section II.

Section II also discusses a conforming regulatory change to implement Section 521 of the Consolidated Appropriations Act, 2016 which increased the maximum leverage available to two or more SBICs under common control from \$225 million to \$350 million.

II. Section-By-Section Analysis

A. Passive Business Rules

Section 107.720—Small Businesses That May Be Ineligible for Financing

1. *Changes to Holding Company Exception* § 107.720(b)(2): SBA proposed revisions to § 107.720(b)(2) to explicitly permit an SBIC to form and finance a passive business that will either pass the proceeds through to or use the proceeds to acquire all or part of a non-passive business. These changes were intended to codify SBA’s

existing interpretation of the regulations.

SBA received 2 comments on § 107.720(b)(2) indicating that the proposed changes would be more effective if the passive business directly financed was not required to own at least 50 percent of the underlying active business. Commenters suggested that SBICs be allowed to structure investments using passive investment vehicles “irrespective of the number of parent entities involved so long as the parent entities in question directly or indirectly own or control at least 50 percent of the voting or economic interests of the active business.” SBA received similar comments as part of the rulemaking process when it last proposed expanding the permitted use of passive businesses. SBA reconsidered these previous suggestions in developing this current rule; however, in light of the additional protections added in this final rule (see the discussion of § 107.720(b)(4) in paragraph II.A.3 of this preamble), neither set of comments was adopted. Although the new § 107.720(b)(4) should help address some of SBA’s credit concerns, SBA believes that controlling ownership provisions are needed to facilitate access to information and records needed to effectively monitor these transactions and to aid in the recovery of assets in the event of a default. SBA also continues to maintain its position that effective monitoring of transactions with unlimited levels of passive companies would require resources well beyond those available to the Agency. Proposed § 107.720(b)(2) is adopted without change.

2. *Changes to Blocker Corporation Exception*—§ 107.720(b)(3): The proposed rule also included the following changes to § 107.720(b)(3):

a. Removing the requirement to obtain SBA’s prior approval to form a blocker corporation;

b. Permitting an SBIC to form a blocker corporation to enable any foreign investors to avoid effectively connected income (ECI) under the Internal Revenue Code;

c. Permitting a blocker corporation to provide financing to a second passive small business that passes the proceeds through to a non-passive small business in which it owns at least 50 percent of the outstanding voting securities (effectively permitting an investment structured with two levels of passive companies, one of which is the blocker corporation); and

d. Removing outdated language indicating that an SBIC’s ownership of a blocker corporation formed under

§ 107.720(b)(3) will not constitute a violation of § 107.865(a). This provision was rendered unnecessary by a rule change in 2002 (67 FR 64789) that revised § 107.865(a) to permit an SBIC to exercise control over a small business for up to seven years without SBA approval.

SBA received comments on proposed § 107.720(b)(3) as discussed below:

a. Regulated Investment Company (RIC) Exception. All 3 commenters asked that the regulations provide an additional exception for SBICs that are wholly owned subsidiaries of Business Development Companies (BDCs). A BDC typically elects to be taxed as a RIC pursuant to Subchapter M of the Internal Revenue Code of 1986. In general, a RIC is not subject to U.S. federal income taxes on income and gains that it distributes to stockholders, provided that it satisfies certain minimum distribution requirements. To qualify as a RIC, a BDC must satisfy certain source of income and asset-diversification tests; among other things, a RIC must generally derive at least 90% of its gross income for each taxable year from certain types of investment. In particular, the commenters explained that equity interests in pass-through tax entities generate operating income that, if received or deemed received directly by a BDC, could disqualify the BDC from maintaining RIC status, and therefore, such interests must often be held through a blocker corporation. The commenters requested that § 107.720(b)(3) be revised to permit an SBIC to form a blocker corporation to avoid adverse tax consequences to an investor that has elected to be taxed as a RIC. This final rule adopts the suggestion.

b. Blocker Entity Form of Organization. SBA also received two comments suggesting that non-corporate forms of organization should be permitted for blocker entities. The commenters explained that these structures are often “more streamlined in terms of corporate formalities than a C corporation” and suggested the regulations allow “any entity that elects to be taxed as a corporation for Federal income tax purposes.” SBA considered this suggestion to be overly broad, but partially adopted this suggestion in the final rule by allowing a blocker entity to be structured as an LLC that elects to be taxed as a corporation.

c. Two Level Holding Company Financing. Two commenters indicated that § 107.720(b)(3) should allow SBICs to structure a financing with a blocker entity and then two levels of passive holding companies as defined in § 107.720(b)(2). The commenters stated

that the proposed rule puts an SBIC that requires a blocker entity to accommodate its investors at a disadvantage compared to other SBICs that do not require a blocker entity, since the blocker entity can only finance a single passive business entity that in turn makes an investment into an active business. For example, an SBIC with a foreign investor would not be able to participate in a financing that is structured as a two-level passive business financing under 107.720(b)(2), if they also needed a separate passive business to serve as a blocker entity in order to avoid effectively connected income. However, SBA believes that one of the other passive businesses permitted under § 107.720(b)(2) could possibly be used as a blocker. The commenters' suggestion would effectively permit up to three levels of passive businesses between the SBIC and the operating business. SBA did not adopt this suggestion because additional levels of passive businesses impose a burden on SBA as regulator and increase the Agency's credit risk. SBA believes that two levels of passive businesses under either exception should provide SBICs with sufficient flexibility to operate successfully.

d. SBA did not receive any comments on the proposed change to § 107.720(b)(3) regarding the removal of outdated language. This rule adopts the change as proposed.

3. *Additional Passive Business Guidance—§ 107.720(b)(4)*: The proposed rule identified SBA's concerns with regard to passive investments, including making sure the financing dollars go to the eligible non-passive small business, fees being charged at each passive business level, and SBA's ability to access passive business financial records, especially in the case of a defaulting SBIC. To address these concerns, SBA proposed making the the following changes in new § 107.720(b)(4), which would apply to any eligible passive investment made under § 107.720(b)(2) or (b)(3):

a. "Substantially All" Definition. Clarifying the meaning of "substantially all" in § 107.720(b)(2) and (b)(3) to mean 99 percent of the financing proceeds after deduction of actual application fees, closing fees, and expense reimbursements, which may not exceed those permitted under § 107.860.

b. Fee Requirements. Requiring fees charged by an SBIC or its Associate under §§ 107.860 and 107.900 to not exceed those permitted if the SBIC had directly financed the eligible Small Business and requiring any such fees received by an SBIC's Associate to be

paid to the SBIC in cash within 30 days of receipt.

c. "Portfolio Concern" Clarification. Clarifying that both passive and non-passive businesses included in a financing are "Portfolio Concerns" and therefore subject to record keeping and reporting obligations with respect to any "Portfolio Concern," defined in § 107.50 as "a Small Business Assisted by a Licensee."

SBA received 3 comments on proposed § 107.720(b)(4) as discussed below:

a. "Substantially All" Definition. Commenters suggested that the definition of "substantially all" be lowered to 95 percent of the proceeds instead of 99% of the proceeds because they were concerned that the 99 percent threshold "may be too limiting and pose issues in deal structuring." SBA did not adopt this comment. The definition already excludes allowable fees and expense reimbursements permitted under §§ 107.860 and 107.900, and SBA believes that a 95 percent threshold could result in excessive expenses being charged in the passive businesses that is diverted from the intended operating business. Although this percentage may seem inconsequential, 4% of a \$20 million financing represents \$800,000 that could be diverted from the operating business.

b. Fee Requirements. Two commenters suggested removing the requirement that fees received by an Associate must be paid over in cash to the SBIC. They noted that SBIC program policy guidance known as TechNote 7a, which provides guidelines concerning allowable management expenses for leveraged SBICs (see www.sba.gov/sbicpolicy), already requires that 100% of fees collected under § 107.860 or § 107.900 must benefit the SBIC, either by being paid directly to the SBIC or (if paid to an Associate) through a corresponding reduction in the management fee paid by the SBIC, typically called a "management fee offset." Commenters also indicated that management fee offsets have tax advantages relative to other approaches. Although SBA recognizes that management fee offsets can provide tax advantages, SBA did not adopt this suggestion because of the difficulty in monitoring investments utilizing passive businesses and identifying fees associated with each passive business in addition to those paid by the operating business.

c. "Portfolio Concern" Clarification. Two commenters indicated that the clarification of Portfolio Concern should be revised to apply only "for the purposes of this part 107.720" to avoid

any unintended effects arising from the use of the term "Portfolio Concern" in other sections of the regulations. The commenters indicated that this adjustment would still allow SBA to retain the necessary information rights contemplated by the proposed rule. A search for the term "Portfolio Concern" within the regulations identified the following instances.

- § 107.50 defines "Portfolio Concern" as "a Small Business Assisted by a Licensee."

- §§ 107.600–107.660 describe record keeping and information requirements, including those for a Portfolio Concern.

- § 107.730 discusses conflicts of interest with regards to Portfolio Concerns.

- § 107.760 discusses how a change in size or activity affect the Licensee with regards to a Portfolio Concern.

- § 107.850 discusses restrictions on redemption of Equity Securities of a Portfolio Concern.

SBA believes that all of the requirements in these sections are applicable to passive business financings. Therefore, this suggestion was not adopted.

4. *Section 107.610 Required certifications for Loans and Investments*. The proposed rule also added a certification requirement to § 107.610 to require an SBIC that finances a business under § 107.720(b)(3) to certify as to the qualifying basis for such financing. The certification replaces the requirement for SBA prior approval of the formation and financing of a blocker corporation.

Although SBA received no comments on proposed § 107.610, because SBA adopted the suggestion to allow SBICs that are BDC subsidiaries to form blocker entities in order to maintain the BDC's RIC status under § 107.720 (b)(3), the language in the final rule adds compliance with this tax election as a permissible basis for a passive business formed under § 107.720(b)(3).

B. Technical Changes

SBA also proposed the following technical changes to the regulations.

1. *Section 107.50 Definition of terms*. Changing "Associates's" to "Associate's".

2. *Section 107.210 Minimum capital requirements for Licensees*. Modifying paragraph (a) of § 107.210 to allow both Leverageable Capital and Regulatory Capital to fall below the stated minimums if the reductions are performed in accordance with an SBA-approved wind-up plan per § 107.590(c), to conform with SBA's current oversight practices.

3. *Section 107.503 Licensee's adoption of an approved valuation*

policy. Changing the last sentence of § 107.503(a) to indicate that valuation guidelines for SBICs may be obtained from the SBIC program's public Web site, www.sba.gov/inv.

4. *Section 107.630 Requirement for Licensees to file financial statements with SBA (Form 468)*. Removing current § 107.630(d), which provides a mailing address for submission of SBA Form 468, and re-designating paragraph (e) as paragraph (d). These instructions are no longer necessary because SBICs submit this information electronically using the SBA's web-based application.

5. *Section 107.1100 Types of Leverage and application procedures*. Correcting the misspelling of "Yu" to "You" and removing paragraph (c) which identifies where to send Leverage applications. This paragraph is unnecessary because the application forms provide these instructions.

None of the comments SBA received in response to the proposed rule were related to these technical changes. The final rule incorporates these changes as proposed.

C. Increase to Maximum Leverage to SBICs Under Common Control

Section 521 of the Consolidated Appropriations Act, 2016, Public Law 114–113, 129 Stat. 2242, (December 22, 2015) amended section 303(b)(2) of the Small Business Investment Act of 1958 to increase the maximum amount of Leverage available to two or more SBICs under Common Control from \$225 million to \$350 million. SBA defines Common Control to mean a condition where two or more persons, either through ownership, management, contract, or otherwise, are under the control of one group or person. Under 13 CFR 107.50, SBA presumes that two or more SBICs are under Common Control if, among other things, they have common officers, directors, or general partners. Currently, 13 CFR 107.1150(b) limits two or more SBICs under Common Control to the maximum aggregate amount of outstanding Leverage of \$225 million, which amount is subject to further limitations under SBA's credit policies. Solely as a conforming change, this rule increases the maximum amount set forth in the regulation from \$225 million to \$350 million. This statutory change was not addressed previously because it had not yet been enacted when the rule was proposed. Now that it has, the technical change is necessary to avoid public confusion and ensure consistency between the regulations and the current law.

Compliance With Executive Orders 12866, 12988, 13132, and 13563, 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 has determined that this rule is not a "significant" regulatory action under Executive Order 12866. This is also not a "major" rule under the Congressional Review Act, 5 U.S.C. 801, *et seq.*

Executive Order 12988

This action meets applicable standards set forth in section 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 presumptive effect.

Executive Order 13132

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

Executive Order 13563

This final rule was developed in response to comments received on previously proposed amendments to these regulations on investments in passive businesses. See 78 FR 77377 (December 23, 2013). SBA received one set of comments on that rule that suggested changes to further liberalize permitted financings to passive businesses under Sec. 107.720(b). In response to the comment, SBA indicated in the final rule (79 FR 62819) that it would further consider the suggested changes in a future rulemaking. As part of that reconsideration, SBA discussed the comments with industry representatives and solicited additional comments in the proposed rule published in October 2015 at 80 FR 60077. This final rule reflects the input received from those public outreach efforts.

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

SBA has determined that this rule would impose additional reporting and recordkeeping requirements under the Paperwork Reduction Act. In particular, this rule implements changes to the Portfolio Financing Report, SBA Form 1031 (OMB Control Number 3245–0078), to clarify information to be

reported in Parts A, B, and C of the form. The changes, described in detail below, also include designating current Part D as Part F and adding new Parts D and E.

The title, description of respondents, description of the information collection and the changes to it are discussed below with an estimate of the revised annual burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Portfolio Financing Report, SBA Form 1031 (OMB Control Number 3245–0078).

Summary: SBA Form 1031 is a currently approved information collection. SBA regulations, specifically § 107.640, require all SBICs to submit a Portfolio Financing Report using SBA Form 1031 for each financing that an SBIC provides to a Small Business Concern within 30 days after closing an investment. SBA uses the information provided on Form 1031 to evaluate SBIC compliance with regulatory requirements. The form is also SBA's primary source of information for compiling statistics on the SBIC program as a provider of capital to small businesses. The proposed rule (80 FR 60077) invited the public to provide comments on the following changes to SBA Form 1031:

(1) *Clarifying the SBIC should report the non-passive Small Business Concern information in the Form 1031*. SBA has noted that SBICs sometimes report data on the passive Small Business Concern rather than the non-passive Small Business Concern when reporting financing information. SBA has clarified that the SBIC should report data on the non-passive Small Business Concern when reporting information on financings using passive businesses in the Form 1031 Part A—the Small Business Concern; Part B—the pre-financing data; and Part C—the financing information, with the exception of the financing dollars in Question 29. The amount of financing dollars provided by the SBIC should be the total amount of such financing, regardless of whether the dollars were provided directly or indirectly to the non-passive business concern. Example: The SBIC provides \$5 million in equity to ABC Holding Corporation, which passes \$4.98 million to the non-passive business, Acme Manufacturing LLC. In addition, the SBIC provides \$5 million in debt directly to Acme Manufacturing LLC. The SBIC would report information on Acme Manufacturing LLC in Parts A, B, and C. However, the

total financing dollars would be reported as \$5 million in equity and \$5 million in debt for a total of \$10 million in total financing dollars.

(2) *Identifying financings using one or more passive businesses.* SBA has added a question on whether the financing utilizes one or more passive businesses as part of the financing, to help SBA identify these financings.

(3) *Adding information on passive business financings to aid in regulatory compliance monitoring.* SBA has also added a requirement for SBICs to upload a file in Portable Document Format (PDF) that contains the following information, which SBA will use to help assess whether the financing meets regulatory compliance:

(a) *Qualifying exception:* Identification of the passive business exception under which the financing is made (*i.e.*, § 107.720(b)(2) Exception for pass-through of proceeds to subsidiary, or § 107.720(b)(3) Exception for certain Partnership Licensees). If the SBIC indicates that the financing is made under § 107.720(b)(3), it would also indicate the qualifying basis for the financing (*i.e.*, financing would cause an investor in the fund to incur unrelated business taxable income or effectively connected income or to receive non-qualifying income for a regulated investment company).

(b) *Passive Business Entities:* Identification of the name and employer ID number for each passive business entity used within the financing. This is needed so that SBA can identify all Portfolio Concerns involved in the financing.

(c) *Financing Structure Description:* A description of the financing structure, including the flow of the money between the SBIC and the non-passive Small Business Concern that receives the proceeds (including amounts and types of securities between each entity), and the ownership from the SBIC through each entity to the non-passive Small Business Concern. This information will help SBA assess that the Small Business Concern receives "substantially all" the financing dollars and the ownership percentages are in compliance with the regulations. This will also help SBA with SBICs transferred to the Office of Liquidation to identify the structure of the financing and aid in recovery of SBA leverage.

(4) *Impact Fund Policy Initiative:* Finally, a new Part D, consisting of two questions concerning whether the investment is a fund-identified impact investment or SBA-identified impact investment has been added to the Form. This change provides a vehicle for SBICs licensed to participate in SBA's

Impact Investment Fund (Impact SBICs to more clearly report whether they are reporting on an SBA-identified impact investment or a Fund-identified impact investment. The Impact Investment Fund was launched in April 2011 as part of President Obama's Start-Up America Initiative. See, [[https://www.sba.gov/about-sba/sba-initiatives/startup-america/about-startup-america.](https://www.sba.gov/about-sba/sba-initiatives/startup-america/about-startup-america)] The initiative was amended in September 2014 to allow Impact SBICs to invest in self-identified impact investments. [https://www.sba.gov/sites/default/files/articles/SBA%20Impact%20Investment%20Fund%20Policy%20-%20September%202014_1.pdf or <https://www.sba.gov/content/new-2014-expanding-sbas-impact-fund>] While Impact SBICs, like all SBICs use Form 1031 to report on their financings, SBA has determined that it would be beneficial to Impact SBICs if SBA Form 1031 were to include questions specifically targeted towards impact investments.

SBA did not receive any comments on the changes; therefore, they are adopted as proposed.

Description of Respondents and Burden: There are approximately 299 licensed SBICs. All of these SBICs are required to submit SBA Form 1031 for each financing. The current estimated number of responses (*i.e.*, number of financings) is 2,021 based on a recent three year period (FY 2012 through 2014). The current estimate indicates that it takes approximately 12 minutes to complete the form, for a total annual burden of 404 hours.

Neither the number of respondents nor the number of responses per year is expected to be affected by this rule. However, SBA estimates a slight increase in the burden hour as a result of the additional reporting in new Parts D (Impact Investments) and Part E (Passive Business).

Impact Fund Reporting. This reporting is expected to have minimal impact. The estimated eight SBICs making impact investments would complete new Part D an estimated total 56 times annually. At an estimated 2 minutes per response, this additional reporting would add 2 hours to the annual burden for Form 1031.

Passive Business Reporting. SBA believes that the SBIC should be able to provide the passive business information since it should be readily available as part of the financing. SBA estimates that providing the information will take on average an additional 30 minutes for those financings utilizing passive businesses, with no incremental burden for those financings that do not use a passive business. SBA estimates

that about 12% of the annual responses relate to passive businesses financings (based on financing data in 2014). Based on the number of SBICs reporting such financings the total estimated annual hour burden resulting from new Part E reporting would be 122.

Therefore the total estimated annual hour burden for all SBICs submitting SBA Form 1031s in a year would be 528 hours.

The current cost estimate for completing SBA Form 1031 uses a rate of \$35 per hour for an accounting manager to fill out the form. Using that same rate, the cost per form would change from \$7 per form to \$9.14 per form. However, SBA has increased its estimate of an hourly rate for an accounting manager to \$43 per hour (estimated using www1.salary.com/Accounting-Manager-hourly-wages.html in July 2015), which rate results in a new cost per form of \$11.23 for an aggregate cost of \$22,704 for the 2,021 estimated responses.

This final rule also identifies information that an SBIC must maintain in its files to support the required changes. SBA believes that the SBICs should already be maintaining this information since a passive business by definition is a Portfolio Concern and the SBIC should be maintaining all documents needed to support each financing. The rule makes this expectation explicit. Furthermore, currently, an SBIC must maintain this information for it to effectively monitor and evaluate an investment that uses a passive business to finance a non-passive business. Therefore, SBA does not believe this recordkeeping requirement increases the burden.

The rule also requires a certification under § 107.610 when the SBIC makes a financing using the exemption in § 107.720(b)(3). This includes maintaining records supporting the certification. Since this regulation effectively replaces the requirement for SBICs to seek prior SBA approval and maintain these records, SBA does not believe this change will increase the burden.

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 businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an Initial Regulatory Flexibility Act (IRFA) analysis which describes whether the impact of the rule will have a significant

economic impact on a substantial number of small entities. However, Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This rule would affect all SBICs, of which there are currently close to 300. SBA estimates that approximately 75 percent of these SBICs are small entities. Therefore, SBA has determined that this rule would have an impact on a substantial number of small entities. However, SBA has determined that the economic impact on entities affected by the rule would not be significant. As discussed under the Paperwork Reduction Act section, SBICs would need to provide descriptions of the transactions in the Form 1031, which based on the estimate would cost each SBIC approximately \$28 per year. The changes in the passive business regulation provide SBICs with additional flexibility to employ transaction structures commonly used by private equity or venture capital funds that are not SBICs.

SBA asserts that the economic impact of the rule, if any, would be minimal and beneficial to small SBICs. Accordingly, the Administrator of the SBA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, the Small Business Administration amends 13 CFR part 107 as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

■ 1. The authority citation for part 107 is revised to read as follows:

Authority: 15 U.S.C. 681, 683, 687(c), 687b, 687d, 687g, 687m.

§ 107.50 [Amended]

■ 2. Amend § 107.50 by removing from the definition of “Lending Institution” the term “Associates’s” and adding in its place the term “Associate’s”.

■ 3. Amend § 107.210 by revising paragraph (a) introductory text to read as follows:

§ 107.210 Minimum capital requirements for Licensees.

(a) *Companies licensed on or after October 1, 1996.* A company licensed on

or after October 1, 1996, must have Leverageable Capital of at least \$2,500,000 and must meet the applicable minimum Regulatory Capital requirement in this paragraph (a), unless lower Leverageable Capital and Regulatory Capital amounts are approved by SBA as part of a Wind-Up Plan in accordance with § 107.590(c):

* * * * *

■ 4. Amend § 107.503 by revising the last sentence of paragraph (a) to read as follows:

§ 107.503 Licensee’s adoption of an approved valuation policy.

(a) * * * These guidelines may be obtained from SBA’s SBIC Web site at *www.sba.gov/inv*.

* * * * *

■ 5. Amend § 107.610 by adding paragraph (g) to read as follows:

§ 107.610 Required certifications for Loans and Investments.

* * * * *

(g) For each passive business financed under § 107.720(b)(3), a certification by you, dated as of the closing date of the Financing, as to the basis for the qualification of the Financing under § 107.720(b)(3) and identifying one or more limited partners for which a direct Financing would cause those investors:

(1) To incur “unrelated business taxable income” under section 511 of the Internal Revenue Code (26 U.S.C. 511);

(2) To incur “effectively connected income” to foreign investors under sections 871 and 882 of the Internal Revenue Code (26 U.S.C. 871 and 882); or

(3) For an investor that has elected to be taxed as a regulated investment company, to receive or be deemed to receive gross income that does not qualify under Section 851(b)(2) of the Internal Revenue Code (26 U.S.C. 851(b)(2)).

§ 107.630 [Amended]

■ 6. Amend § 107.630 by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

■ 7. Amend § 107.720 by revising paragraphs (b)(2) and (3) and adding paragraph (b)(4) to read as follows:

§ 107.720 Small Businesses that may be ineligible for financing.

* * * * *

(b) * * *

(2) *Exception for pass-through of proceeds to subsidiary.* You may provide Financing directly to a passive business, including a passive business that you have formed, if it is a Small Business and it passes substantially all

the proceeds through to (or uses substantially all the proceeds to acquire) one or more subsidiary companies, each of which is an eligible Small Business that is not passive. For the purpose of this paragraph (b)(2), “subsidiary company” means a company in which the financed passive business either:

(i) Directly owns, or will own as a result of the Financing, at least 50 percent of the outstanding voting securities; or

(ii) Indirectly owns, or will own as a result of the Financing, at least 50 percent of the outstanding voting securities (by directly owning the outstanding voting securities of another passive Small Business that is the direct owner of the outstanding voting securities of the subsidiary company).

(3) *Exception for certain Partnership Licensees.* If you are a Partnership Licensee, you may form one or more blocker entities in accordance with this paragraph (b)(3). For the purposes of this paragraph, a “blocker entity” means a corporation or a limited liability company that elects to be taxed as a corporation for Federal income tax purposes. The sole purpose of a blocker entity must be to provide Financing to one or more eligible, unincorporated Small Businesses. You may form such blocker entities only if a direct Financing to such Small Businesses would cause any of your investors to incur “unrelated business taxable income” under section 511 of the Internal Revenue Code (26 U.S.C. 511); incur “effectively connected income” to foreign investors under sections 871 and 882 of the Internal Revenue Code (26 U.S.C. 871 and 882); or (for an investor that has elected to be taxed as a regulated investment company) receive or be deemed to receive gross income that does not qualify under section 851(b)(2) of the Internal Revenue Code (26 U.S.C. 851(b)(2)). Your ownership and investment of funds in such blocker entities will not constitute a violation of § 107.730(a). For each passive business financed under this section 107.720(b)(3), you must provide a certification to SBA as required under § 107.610(g). A blocker entity formed under this paragraph may provide Financing:

(i) Directly to one or more eligible non-passive Small Businesses; or

(ii) Directly to a passive Small Business that passes substantially all the proceeds directly to (or uses substantially all the proceeds to acquire) one or more eligible non-passive Small Businesses in which the passive Small Business directly owns, or will own as a result of the Financing, at least 50% of the outstanding voting securities.

(4) *Additional conditions for permitted passive business financings.* Financings permitted under paragraphs (b)(2) or (b)(3) of this section must meet all of the following conditions:

(i) For the purposes of this paragraph (b), “substantially all” means at least ninety-nine percent of the Financing proceeds after deduction of actual application fees, closing fees, and expense reimbursements, which may not exceed those permitted by § 107.860.

(ii) If you and/or your Associate charge fees permitted by § 107.860 and/or § 107.900, the total amount of such fees charged to all passive and non-passive businesses that are part of the same Financing may not exceed the fees that would have been permitted if the Financing had been provided directly to a non-passive Small Business. Any such fees received by your Associate must be paid to you in cash within 30 days of the receipt of such fees.

(iii) For the purposes of this part 107, each passive and non-passive business included in the Financing is a Portfolio Concern. The terms of the financing must provide SBA with access to Portfolio Concern information in compliance with this part 107, including without limitation §§ 107.600 and 107.620.

* * * * *

§ 107.1100 [Amended]

■ 8. Amend § 107.1100 by removing the term “Yu” in the second to the last sentence of paragraph (b) and adding in its place “You”, and by removing paragraph (c).

§ 107.1150 [Amended]

■ 9. Amend § 107.1150 by removing the term “\$225 million” in the first sentence of paragraph (b) and adding in its place “\$350 million”.

Dated: December 20, 2016.

Maria Contreras-Sweet,
Administrator.

[FR Doc. 2016-31291 Filed 12-27-16; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2016-9537; Directorate Identifier 2016-SW-075-AD; Amendment 39-18759; AD 2016-24-51]

RIN 2120-AA64

Airworthiness Directives; Sikorsky Aircraft Corporation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are publishing a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S-92A helicopters, which was sent previously to all known U.S. owners and operators of these helicopters. This AD requires inspecting certain bearings. This AD is prompted by a report of a failed bearing. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 12, 2017 to all persons except those persons to whom it was made immediately effective by Emergency AD 2016-24-51, issued on November 16, 2016, which contains the requirements of this AD.

We must receive comments on this AD by February 27, 2017.

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

Federal eRulemaking Docket: Go to <http://www.regulations.gov>. Follow the online instructions for sending your comments electronically.

- *Fax:* 202-493-2251.

- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to the “Mail” address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-9537; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone

800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this final rule, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1-800-Winged-S or 203-416-4299; email: wcs_cust_service_eng.gr-sik@lmco.com. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N-321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Blaine Williams, Aerospace Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238-7161; email blaine.williams@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

On November 16, 2016, we issued Emergency AD 2016-24-51 to correct an unsafe condition on Sikorsky Model S-92A helicopters with a TR pitch change shaft (TRPCS) assembly part number (P/N) 92358-06303-041 or P/N 92358-06303-042. Emergency AD 2016-24-51 was sent previously to all known U.S. owners and operators of these helicopters. Emergency AD 2016-24-51 requires removing TRPCS assemblies

with less than 5 hours time-in-service (TIS) since new or overhaul from service. Emergency AD 2016–24–51 also requires, for TRPCS assemblies with between 5 and 80 hours TIS since new or overhaul, borescope inspecting the TRPCS bearings and inspecting the angular contact bearing to determine whether there is free rotation, purged grease with metal particles, nicks or dents, or a cut, tear, or distortion on the bearing seal. If the bearings do not pass these inspections, Emergency AD 2016–24–51 requires replacing the TRPCS assembly.

Emergency AD 2016–24–51 was prompted by a report of an operator losing TR control while in a hover. A preliminary investigation determined that binding in the TRPCS assembly double row angular contact bearing (bearing) resulted in reduced TR control. The investigation also found signs of excessive heat, which is an indicator of a binding bearing. Because binding will result in bearing failure rapidly, we limited Emergency AD 2016–24–51 to TRPCS assemblies with less than 80 hours time-in-service (TIS). The actions in Emergency AD 2016–24–51 are intended to detect a binding bearing and prevent loss of TR control and possible loss of control of the helicopter.

FAA's Determination

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

Related Service Information

We reviewed Sikorsky Alert Service Bulletin 92–64–009, Basic Issue, dated November 2, 2016 (ASB 92–64–009). ASB 92–64–009 describes procedures for inspecting the TRPCS and bearing assemblies for damaged bearings and seals, purged grease with any metallic particles from the bearings, radial play in the bearings, and correct installation of the white Teflon seals, snap rings, and cotter pin.

AD Requirements

For helicopters with a TRPCS assembly P/N 92358–06303–041 or P/N 92358–06303–042 with less than 80 hours TIS installed, this AD requires:

- Removing from service TRPCS assemblies with less than 5 hours TIS since new or overhaul;
- For TRPCS assemblies with 5 or more hours TIS since new or overhaul, borescope inspecting the TRPCS bearing for damaged, incorrectly installed, or missing seals and inspecting the angular

contact bearing for free rotation, purged grease with metallic particles, and damaged seals. If the TRPCS assembly has less than 10 hours TIS, performing a ground operation until the TRPCS assembly accumulates 10 hours TIS before performing the inspection on the angular contact bearing; and

- Replacing the TRPCS assembly if there is a missing, damaged, or incorrectly installed seal, snap ring, or cotter pin or if the bearing does not rotate freely, or if there is any purged grease with metallic particles.

This AD does not apply to helicopters with a TRPCS assembly manufactured or overhauled on or after November 3, 2016.

Differences Between This AD and the Service Information

ASB 92–64–009 requires operators to contact Sikorsky if there are any discrepancies, and this AD does not. ASB 92–64–009 allows 20 hours TIS to perform the visual bearing inspection if the borescope inspection has already been performed, while this AD allows 20 hours TIS for TRPCS assemblies with 15 or more hours TIS.

Costs of Compliance

We estimate that this AD will affect 80 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. At an average labor rate of \$85 per hour, borescope and visually inspecting the TRPCS assembly will require 16 work-hours, for a cost per helicopter of \$1,360 and a cost of \$108,800 for the U.S. fleet. If required, replacing a TRPCS assembly will require 16 work-hours and required parts will cost \$4,000, for a cost per helicopter of \$5,360.

According to Sikorsky's service information, 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 by Sikorsky. Accordingly, we have included all costs in our cost estimate.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments prior to adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we found and continue to find that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because the previously described unsafe condition can result in loss of TR control and certain actions must be

accomplished before further flight or within 20 hours TIS, a very short interval for these helicopters.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comments before issuing this AD were impracticable and contrary to public interest and good cause existed to make the AD effective immediately by Emergency AD 2016–24–51, issued on November 16, 2016, to all known U.S. owners and operators of these helicopters. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–24–51 Sikorsky Aircraft Corporation:
Amendment 39–18759; Docket No. FAA–2016–9537; Directorate Identifier 2016–SW–075–AD.

(a) Applicability

This AD applies to Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters, certificated in any category, with a tail rotor pitch change shaft (TRPCS) assembly part number (P/N) 92358–06303–041 or P/N 92358–06303–042 with less than 80 hours time-in-service (TIS) installed, except those TRPCS assemblies manufactured or overhauled on or after November 3, 2016.

(b) Unsafe Condition

This Emergency AD defines the unsafe condition as a binding TRPCS bearing. This condition could result in loss of tail rotor (TR) control and possible loss of control of the helicopter.

(c) Effective Date

This AD is effective January 12, 2017 to all persons except those persons to whom it was made immediately effective by Emergency AD 2016–24–51, issued on November 16, 2016, which contains the requirements of this AD.

(d) Compliance

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

(e) Required Actions

(1) For TRPCS assemblies with less than 5 hours TIS since new or overhaul, before further flight, remove the TRPCS assembly from service.

(2) For TRPCS assemblies with between 5 and 15 hours TIS since new or overhaul, before further flight, and for TRPCS

assemblies with more than 15 hours TIS, within 20 hours TIS or before reaching 80 hours TIS, whichever occurs first:

(i) Borescope inspect the TRPCS assembly as follows, unless done within the previous 15 hours TIS.

(A) On the TR side of the TRPCS bearing, remove the plug from the end of the TRPCS, insert the borescope into the TRPCS, and determine whether the white Teflon seal and snap ring are installed. If the white Teflon seal or snap ring is missing, or if there is a rip, tear, or heat damage on the seal or if there is no gap in the snap ring, before further flight replace the TRPCS assembly.

(B) On the TR servo side of the TRPCS bearing, insert the borescope through the oil filler cap hole and determine whether the white Teflon seal, snap ring, and cotter pin are installed. If the white Teflon seal, snap ring, or cotter pin is missing, if there is a rip, tear, or heat damage on the seal, or if there is no gap in the snap ring, before further flight replace the TRPCS assembly.

(ii) If the TRPCS assembly has less than 10 hours TIS, perform ground operation with the rotor turning at 105% (N_r) until the TRPCS assembly has accumulated 10 hours TIS, cycling the TR control pedals at least 10 times per hour.

(iii) Remove the TRPCS and inspect the SB2310 angular contact bearing for free rotation, purged grease with metal particles, a nick or a dent, and any cut, tear, or distortion on the bearing seal. If the bearing does not rotate freely; the bearing sounds rough or chatters; there is any purged grease with metal particles; a nick or dent; or if there is a cut, tear, or distortion in the bearing seal, before further flight, replace the TRPCS assembly.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Blaine Williams, Aerospace Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238–7161; email blaine.williams@faa.gov.

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

(g) Additional Information

Sikorsky Alert Service Bulletin 92–64–009, Basic Issue, dated November 2, 2016, which is not incorporated by reference, contains additional information about the subject of this final rule. For service information identified in this final rule, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800–Winged–S or 203–416–4299; email: wcs_cust_service_eng_grsik@lmco.com. You may review this service information at the FAA, Office of the

Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6720 Tail Rotor Control System.

Issued in Fort Worth, Texas, on December 9, 2016.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–30282 Filed 12–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9159; Airspace Docket No. 13–AAL–7]

Establishment of Class E Airspace, Healy, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Healy River Airport, Healy, AK, to support the development of Area Navigation (RNAV) Global Positioning System (GPS) Instrument Flight Rules (IFR) operations under standard instrument approach and departure procedures at the airport, and for the safety and management of controlled airspace within the National Airspace System. **DATES:** Effective 0901 UTC, March 2, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at http://www.faa.gov/air_traffic/publications/. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591; telephone: 202–267–8783. The Order is also available for inspection 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/code_of_federal_regulations/ibr_locations.html.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203-4511.

SUPPLEMENTARY INFORMATION:

Authority for this Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Healy River Airport, Healy, AK.

History

On October 14, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace extending upward from 700 feet above the surface at Healy River Airport, Healy, AK. (81 FR 71017) Docket FAA-2016-9159. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received from Greysen Harlow supporting the proposal.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface within a 3.5-mile radius of Healy River Airport, with segments extending from the 3.5-mile radius to 11.5 miles northwest of the airport, and 10.5 miles south of the airport. This airspace is established to accommodate new RNAV Global Positioning System standard instrument approach and departure procedures developed for IFR operations the airport.

Regulatory Notices and Analyses

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5-6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6005: Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Healy, AK [New]

Healy River Airport, Alaska
(Lat. 63°52'03" N., long. 148°58'08" W.)

That airspace extending upward from 700 feet above the surface within a 3.5-mile radius of Healy River Airport, and that airspace 2 miles either side of the 333° bearing from the airport extending from the 3.5 mile radius to 11.5 miles northwest of the airport, and that airspace 0.6 miles west and 2.5 miles east of the 169° bearing from the airport extending from the 3.5 mile radius to 10.5 miles south of the airport.

Issued in Seattle, Washington, on December 12, 2016.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016-30648 Filed 12-27-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2016-7043; Airspace Docket No. 16-ANM-6]

Amendment of Class E Airspace, Blue Mesa, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E en route domestic airspace extending upward from 1,200 feet above the surface near the Blue Mesa VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME), Blue Mesa, CO. The FAA has transitioned to a more accurate method of measuring, publishing, and charting airspace areas that has revealed some small areas of

uncharted uncontrolled airspace. The FAA found modification of these areas of uncontrolled airspace necessary to ensure the safety of Instrument Flight Rules (IFR) operations and the efficient use of navigable airspace, including point-to-point off-airway clearances, and aircraft vectoring services.

DATES: Effective 0901 UTC, March 2, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at http://www.faa.gov/air_traffic/publications/. For further information, you can contact the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg Ground Floor Rm W12-140, Washington, DC 20590; Telephone: 1-800-647-5527, or 202-366-9826. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202-741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203-4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at the Blue Mesa VOR/DME, Blue Mesa, CO.

History

On August 8, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace extending upward from 1,200 feet above the surface at Blue Mesa, CO (81 FR 52369) Docket FAA-2016-7043. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6006 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E En route domestic airspace extending upward from 1,200 feet above the surface in the vicinity of the Blue Mesa VOR/DME, Blue Mesa, CO. One small airspace area northwest, near Montrose, CO, and one small airspace area southeast, near Trinidad, CO, are added for the safety and management of IFR operations, specifically point-to-point, en route operations outside of the established airway structure, and Air Traffic Control vectoring services.

Class E airspace designations are published in paragraph 6006 of FAA Order 7400.11A, dated August, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5-6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6006: En Route Domestic Airspace Areas.

* * * * *

ANM CO E6 Blue Mesa, CO [Amended]

Blue Mesa VOR/DME, CO
(Lat. 38°27'08" N., long. 107°02'23" W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 35°39'30" N., long. 107°25'27" W.; to lat. 36°14'38" N., long. 107°40'25" W.; to lat. 37°16'00" N., long. 108°22'00" W.; to lat. 37°58'51" N., long.

108°22'29" W.; to lat. 39°01'00" N., long. 107°47'00" W.; to lat. 39°07'40" N., long. 107°13'47" W.; to lat. 39°11'48" N., long. 106°29'16" W.; to lat. 39°40'23" N., long. 103°29'02" W.; to lat. 36°59'57" N., long. 104°18'04" W.; to lat. 36°17'00" N., long. 104°14'00" W.; to lat. 36°12'53" N., long. 104°56'21" W.; to lat. 36°13'34" N., long. 105°54'42" W.; thence to the point of beginning.

Issued in Seattle, Washington, on December 12, 2016.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016-30651 Filed 12-27-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2014-1068; Airspace Docket No. 14-AWP-12]

Amendment of Class E Airspace, Kahului, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace designated as an extension to a Class C surface area, and modifies Class E airspace extending upward from 700 feet above the surface at Kahului Airport, Kahului, HI. Due to changes to the available instrument flight procedures since the last airspace review and advances in Global Positioning System (GPS) mapping accuracy, modifications are necessary to ensure the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, March 2, 2017, The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at http://www.faa.gov/air_traffic/publications/. For further information, you can contact the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg Ground Floor, Rm W12-140, Washington, DC 20590; Telephone: 1-800-647-5527, or 202-366-9826. The Order is also available for inspection at the National Archives and Records

Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202-741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203-4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Kahului Airport, Kahului, HI.

History

On August 12, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify Class E airspace at Kahului Airport, Kahului, HI (81 FR 53342) Docket No. FAA-2014-1068. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6003 and 6005, respectively, of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this

document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying the Kahului Airport, Kahului, HI, Class E airspace area designated as an extension to a Class C surface area, to include that area within 3 miles each side of the airport 203° bearing extending from the airport 5-mile radius to 7 miles southwest of the airport, and removing the extension to the northeast as it is no longer required.

This action also modifies the Class E airspace area extending upward from 700 feet above the surface by slightly expanding that airspace within 3.6 miles each side of the 038° bearing from the airport extending from the 5-mile radius to 11.7 miles northeast of the airport. This modification is necessary to contain IFR arrival operations descending below 1,500 feet above the surface, and IFR departure operations below 1,200 feet above the surface. Also, the Maui VORTAC navigation aid is removed from the legal descriptions in the Class E airspace areas noted above. Changes to the available instrument flight procedures, advances in GPS mapping accuracy, and a reliance on precise geographic coordinates to define airport and airspace reference points have made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

Class E airspace designations are published in paragraphs 6003, and 6005, respectively, of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that only affects air traffic

procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

- 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6003: Class E Airspace Areas Designated as an Extension to a Class C Surface Area.

* * * * *

AWP HI E3 Kahului, HI [Modified]

Kahului Airport, HI
(Lat. 20°53'55" N., long. 156°25'50" W.)

That airspace extending upward from the surface within 3 miles each side of the Kahului Airport 203° bearing extending from the 5-mile radius of the airport to 7 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Pacific Chart Supplement.

Paragraph 6005: Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AWP HI E5 Kahului, HI [Modified]

Kahului Airport, HI
(Lat. 20°53'55" N., long. 156°25'50" W.)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Kahului Airport, and within 3.6 miles each side of the airport 038° bearing extending from the 5-mile radius of the airport to 11.7 miles northeast of the airport, and within 2 miles each side of the airport 065° bearing extending from the 5-mile radius of the airport to 10 miles northeast of the airport, and within 3 miles each side of the airport 203° bearing extending from the 5-mile radius of the airport to 10.3 miles southwest of the airport, and within the area bounded by the airport 318° bearing clockwise to the airport 013° bearing extending from the 5-mile radius of the airport to 8.5-miles northeast of the airport.

Issued in Seattle, Washington, on December 12, 2016.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–30655 Filed 12–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9119; Airspace Docket No. 16–ANM–15]

Amendment of Class E Airspace; Cedar City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends the legal descriptions for Class E surface airspace and Class E airspace upward from 700 feet above the surface to correct the airport name for Cedar City Regional Airport (formerly Cedar City Municipal Airport), Cedar City, UT, and amends the airport reference point (ARP) geographic coordinates to coincide with the FAA's aeronautical database. This action also changes the name of the VHF Omnidirectional Range Distance Measuring Equipment (VOR/DME) noted in the Class E surface area airspace legal description to the Enoch VOR/DME (formerly Cedar City VOR/DME). These changes do not affect the charted boundaries or operating requirements of the airspace.

DATES: Effective 0901 UTC, March 2, 2017. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order

7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at http://www.faa.gov/air_traffic/publications/. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection 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/code_of_federal_regulations/ibr_locations.html.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT:

Robert LaPlante, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4566.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace descriptions at Cedar City Regional Airport, Cedar City, UT.

History

The FAA identified that Cedar City Regional Airport and the geographic coordinates of the airport's ARP listed in the Class E airspace legal descriptions above are not coincidental with the FAA's aeronautical database. Also, in accordance with FAA policy, the FAA has changed the Cedar City VOR/DME name to the Enoch VOR/DME, to avoid any potential confusion resulting from an off-airport navigation aid with the same name as the associated airport.

Class E airspace designations are published in paragraph 6002 and 6005,

respectively, of FAA Order 7400.11A dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR part 71.1. FAA Order 7400.11A is publicly available as listed in the ADDRESSES section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends the legal descriptions for Class E surface area airspace and Class E airspace upward from 700 feet above the surface to correct the airport name to Cedar City Regional Airport, Cedar City, UT, (formerly Cedar City Municipal Airport), and geographic coordinates from (lat. 37°42'06" N., long. 113°05'53" W.) to (lat. 37°42'03" N., long. 113°05'56" W.) to coincide with the FAA's aeronautical database. This action also corrects the navigation aid noted in the Class E surface area airspace legal description from the Cedar City VOR/DME to the Enoch VOR/DME. This is an administrative change and does not affect the boundaries, altitudes, or operating requirements of the airspace, therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

Regulatory Notices and Analyses

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, effective September 15, 2016, is amended as follows:

Paragraph 6002. Class E Airspace Designated as Surface Areas.

* * * * *

ANM UT E2 Cedar City, UT [Modified]

Cedar City Regional Airport, UT (Lat. 37°42'03" N., long. 113°05'56" W.) Enoch VOR/DME (Lat. 37°47'14" N., long. 113°04'06" W.) Meggi LOM (Lat. 37°47'28" N., long. 113°01'17" W.)

Within a 4.2-mile radius of Cedar City Regional Airport, and within 1.8 miles each side of the Enoch VOR/DME 195° radial extending from the 4.2-mile radius to the VOR/DME, and within 1.8 miles each side of Meggi LOM 214° bearing extending from the 4.2-mile radius to the LOM.

Paragraph 6005. Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ANM UT E5 Cedar City, UT [Modified]

Cedar City Regional Airport, UT (Lat. 37°42'03" N., long. 113°05'56" W.)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 38°03'00" N., long. 113°13'30" W.; to lat. 38°05'30" N., long. 112°58'30" W.; to lat. 37°58'30" N., long. 112°45'30" W.; to lat. 37°45'00" N., long. 112°56'45" W.; to lat. 37°47'30" N., long. 113°15'00" W.; thence to point of beginning. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 38°00'00" N., long. 113°45'30" W.; to lat. 38°19'00" N., long. 112°51'30" W.; to lat. 37°58'32" N., long. 112°38'00" W.; to lat. 37°37'00" N., long. 112°53'30" W.; to lat. 37°38'15" N., long. 113°22'18" W.; thence to point of origin; and excluding that airspace within Federal airways; the Midford, UT, and St. George, UT, Class E airspace areas.

Issued in Seattle, Washington, on December 14, 2016.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–30649 Filed 12–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 6

[Docket No. 161220999–6999–01]

RIN 0605–AA47

Civil Monetary Penalty Adjustments for Inflation

AGENCY: Office of the Chief Financial Officer and Assistant Secretary for Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule is being issued to adjust for inflation each civil monetary penalty (CMP) provided by law within the jurisdiction of the United States Department of Commerce (Department of Commerce). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, requires the head of each agency to adjust for inflation its CMP levels in effect as of November 2, 2015, under a revised methodology that was effective for 2016 which provided for initial catch up adjustments for inflation in 2016, and under a revised methodology for each year thereafter. The initial catch up adjustments for inflation to the Department of Commerce's CMPs were published in the **Federal Register** on June 7, 2016 and became effective July 7, 2016, and, as required, did not exceed 150 percent of the amount of the

CMP on the date of enactment of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (November 2, 2015). The revised methodology for agencies for 2017 and each year thereafter provides for the improvement of the effectiveness of CMPs and to maintain their deterrent effect. Effective 2017, agencies' annual adjustments for inflation to CMPs shall take effect not later than January 15. The Department of Commerce's 2017 adjustments for inflation to CMPs apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations. The Department of Commerce's 2017 adjustments for inflation to CMPs apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new CMP level.

DATES: This rule is effective January 15, 2017.

FOR FURTHER INFORMATION CONTACT:

Stephen Kunze, Deputy Chief Financial Officer and Director for Financial Management, Office of Financial Management, at (202) 482-1207, Department of Commerce, 1401 Constitution Avenue NW., Room D200, Washington, DC 20230. The Department of Commerce's Civil Monetary Penalty Adjustments for Inflation are available for downloading from the Department of Commerce, Office of Financial Management's Web site at the following address: http://www.osec.doc.gov/ofm/OFM_Publications.html.

SUPPLEMENTARY INFORMATION:

Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134), provided for agencies' adjustments for inflation to CMPs to ensure that CMPs continue to maintain their deterrent value and that CMPs due to the Federal Government were properly accounted for and collected. On October 24, 1996, November 1, 2000, December 14, 2004, December 11, 2008, and December 7, 2012, the Department of Commerce published in the **Federal Register** a schedule of CMPs adjusted for inflation as required by law.

A CMP is defined as any penalty, fine, or other sanction that:

1. Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and,
2. Is assessed or enforced by an agency pursuant to Federal law; and,

3. Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114-74) further amended the Federal Civil Penalties Inflation Adjustment Act of 2015 to improve the effectiveness of CMPs and to maintain their deterrent effect. This amendment requires agencies to: (1) Adjust the CMP levels in effect as of November 2, 2015, with initial catch up adjustments for inflation through a final rulemaking that shall take effect no later than August 1, 2016; and (2) make subsequent annual adjustments for inflation to CMPs that shall take effect not later than January 15.

The Department of Commerce's initial catch up adjustments for inflation to CMPs were published in the **Federal Register** on June 7, 2016, and the new CMP levels became effective July 7, 2016.

The Department of Commerce's 2017 adjustments for inflation to CMPs apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations. These 2017 adjustments for inflation to CMPs apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new CMP level.

This regulation adjusts for inflation CMPs that are provided by law within the jurisdiction of the Department of Commerce. The actual CMP assessed for a particular violation is dependent upon a variety of factors. For example, the National Oceanic and Atmospheric Administration's (NOAA) Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Policy), a compilation of NOAA internal guidelines that are used when assessing CMPs for violations for most of the statutes NOAA enforces, will be interpreted in a manner consistent with this regulation to maintain the deterrent effect of the CMPs. The CMP ranges in the Penalty Policy are intended to aid enforcement attorneys in determining the appropriate CMP to assess for a particular violation. The Penalty Policy is maintained and made available to the public on NOAA's Office of the General Counsel, Enforcement Section Web site at: <http://www.gc.noaa.gov/enforce-office3.html>.

The Department of Commerce's 2017 adjustments for inflation to CMPs set forth in this regulation were determined pursuant to the revised methodology prescribed by the Federal Civil Penalties Inflation Adjustment Act Improvements

Act of 2015, which requires the maximum CMP, or the minimum and maximum CMP, as applicable, to be increased by the cost-of-living adjustment. The term "cost-of-living adjustment" is defined by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. For the 2017 adjustments for inflation to CMPs, the cost-of-living adjustment is the percentage for each CMP by which the Consumer Price Index for the month of October 2016 exceeds the Consumer Price Index for the month of October 2015.

Classification

Pursuant to 5 U.S.C. 553(b)B, there is good cause to issue this rule without prior public notice or opportunity for public comment because it would be impracticable and unnecessary. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)) requires agencies, effective 2017, to make annual adjustments for inflation to CMPs notwithstanding section 553 of title 5, United States Code. Additionally, the methodology used, effective 2017, for adjusting CMPs for inflation is given by statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The Department of Commerce is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs. Accordingly, prior public notice and an opportunity for public comment are not required for this rule.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Analysis

E.O. 12866, Regulatory Review

This rule is not a significant regulatory action as that term is defined in Executive Order 12866.

Regulatory Flexibility Act

Because notice of proposed rulemaking and opportunity for comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility act (5 U.S.C. 601, *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

List of Subjects in 15 CFR Part 6

Law enforcement, Civil monetary penalties.

Dated: December 21, 2016.

Stephen Kunze,

Deputy Chief Financial Officer and Director for Financial Management, Department of Commerce.

Authority and Issuance

■ For the reasons stated in the preamble, the Department of Commerce revises 15 CFR part 6 to read as follows:

PART 6—CIVIL MONETARY PENALTY ADJUSTMENTS FOR INFLATION

Sec.

6.1 Definitions.

6.2 Purpose and scope.

6.3 2017 Adjustments for inflation to civil monetary penalties.

6.4 Effective date of 2017 adjustments for inflation to civil monetary penalties.

6.5 Subsequent annual adjustments for inflation to civil monetary penalties.

Authority: Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–134, 110 Stat. 1321 (31 U.S.C. 3701 note); Sec. 701 of Pub. L. 114–74, 129 Stat. 599 (28 U.S.C. 1 note; 28 U.S.C. 2461 note).

§ 6.1 Definitions.

(a) The *Department of Commerce* means the United States Department of Commerce.

(b) *Civil Monetary Penalty* means any penalty, fine, or other sanction that:

(1) Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and

(2) Is assessed or enforced by an agency pursuant to Federal law; and

(3) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

§ 6.2 Purpose and scope.

The purpose of this part is to make adjustments for inflation to civil monetary penalties, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114–74), of each civil monetary penalty provided by law within the jurisdiction of the United States Department of Commerce (Department of Commerce).

§ 6.3 Adjustments for inflation to civil monetary penalties.

The civil monetary penalties provided by law within the jurisdiction of the Department of Commerce, as set forth in

paragraphs (a) through (f) of this section, are hereby adjusted for inflation in 2017 in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, from the amounts of such civil monetary penalties that were in effect as of July 7, 2016, to the amounts of such civil monetary penalties, as thus adjusted. The year stated in parenthesis represents the year that the civil monetary penalty was last set by law or adjusted by law (excluding adjustments for inflation).

(a) *United States Department of Commerce.* (1) 31 U.S.C. 3802(a)(1), Program Fraud Civil Remedies Act of 1986 (1986), violation, maximum from \$10,781 to \$10,957.

(2) 31 U.S.C. 3802(a)(2), Program Fraud Civil Remedies Act of 1986 (1986), violation, maximum from \$10,781 to \$10,957.

(3) 31 U.S.C. 3729(a)(1)(G), False Claims Act (1986); violation, minimum from \$10,781 to \$10,957; maximum from \$21,563 to \$21,916.

(b) *Bureau of Industry and Security.* (1) 15 U.S.C. 5408(b)(1), Fastener Quality Act (1990), violation, maximum from \$44,539 to \$45,268.

(2) 22 U.S.C. 6761(a)(1)(A), Chemical Weapons Convention Implementation Act (1998), violation, maximum from \$36,256 to \$36,849.

(3) 22 U.S.C. 6761(a)(l)(B), Chemical Weapons Convention Implementation Act (1998), violation, maximum from \$7,251 to \$7,370.

(4) 50 U.S.C. 1705(b), International Emergency Economic Powers Act (2007), violation, maximum from \$284,582 to \$289,238.

(5) 22 U.S.C. 8142(a), United States Additional Protocol Implementation Act (2006), violation, maximum from \$29,464 to \$29,946.

(c) *Census Bureau.* (1) 13 U.S.C. 304, Collection of Foreign Trade Statistics (2002), each day's delinquency of a violation; total of not to exceed maximum violation, from \$1,312 to \$1,333; maximum per violation, from \$13,118 to \$13,333.

(2) 13 U.S.C. 305(b), Collection of Foreign Trade Statistics (2002), violation, maximum from \$13,118 to \$13,333.

(d) *Economics and Statistics Administration.* (1) 22 U.S.C. 3105(a), International Investment and Trade in Services Act (1990); failure to furnish information, minimum from \$4,454 to \$4,527; maximum from \$44,539 to \$45,268.

(e) *International Trade Administration.* (1) 19 U.S.C. 81s, Foreign Trade Zone (1934), violation, maximum from \$2,750 to \$2,795.

(2) 19 U.S.C. 1677f(f)(4), U.S.-Canada FTA Protective Order (1988), violation, maximum from \$197,869 to \$201,106.

(f) *National Oceanic and Atmospheric Administration.* (1) 51 U.S.C. 60123(a), Land Remote Sensing Policy Act of 2010 (2010), violation, maximum from \$10,874 to \$11,052.

(2) 51 U.S.C. 60148(c), Land Remote Sensing Policy Act of 2010 (2010), violation, maximum from \$10,874 to \$11,052.

(3) 16 U.S.C. 773f(a), Northern Pacific Halibut Act of 1982 (2007), violation, maximum from \$227,666 to \$231,391.

(4) 16 U.S.C. 783, Sponge Act (1914), violation, maximum from \$1,625 to \$1,652.

(5) 16 U.S.C. 957(d), (e), and (f), Tuna Conventions Act of 1950 (1962):

(i) Violation of 16 U.S.C. 957(a), maximum from \$81,250 to \$82,579.

(ii) Subsequent violation of 16 U.S.C. 957(a), maximum from \$175,000 to \$177,863.

(iii) Violation of 16 U.S.C. 957(b), maximum from \$2,750 to \$2,795.

(iv) Subsequent violation of 16 U.S.C. 957(b), maximum from \$16,250 to \$16,516.

(v) Violation of 16 U.S.C. 957(c), maximum from \$350,000 to \$355,726.

(6) 16 U.S.C. 957(i), Tuna Conventions Act of 1950,¹ violation, maximum from \$178,156 to \$181,071.

(7) 16 U.S.C. 959, Tuna Conventions Act of 1950,² violation, maximum from \$178,156 to \$181,071.

(8) 16 U.S.C. 971f(a), Atlantic Tunas Convention Act of 1975,³ violation, maximum from \$178,156 to \$181,071.

(9) 16 U.S.C. 973f(a), South Pacific Tuna Act of 1988 (1988), violation, maximum from \$494,672 to \$502,765.

(10) 16 U.S.C. 1174(b), Fur Seal Act Amendments of 1983 (1983), violation, maximum from \$23,548 to \$23,933.

(11) 16 U.S.C. 1375(a)(1), Marine Mammal Protection Act of 1972 (1972), violation, maximum from \$27,500 to \$27,950.

(12) 16 U.S.C. 1385(e), Dolphin Protection Consumer Information Act,⁴ violation, maximum from \$178,156 to \$181,071.

(13) 16 U.S.C. 1437(d)(1), National Marine Sanctuaries Act (1992), violation, maximum from \$167,728 to \$170,472.

(14) 16 U.S.C. 1540(a)(1), Endangered Species Act of 1973:

¹ This National Oceanic and Atmospheric Administration maximum civil monetary penalty, as prescribed by law, is the maximum civil penalty per 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act civil monetary penalty (item (15)).

² See footnote 1.

³ See footnote 1.

⁴ See footnote 1.

(i) Violation as specified (1988), maximum from \$49,467 to \$50,276.

(ii) Violation as specified (1988), maximum from \$23,744 to \$24,132.

(iii) Otherwise violation (1978), maximum from \$1,625 to \$1,652.

(15) 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act (1990), violation, maximum from \$178,156 to \$181,071.

(16) 16 U.S.C. 2437(a), Antarctic Marine Living Resources Convention Act of 1984,⁵ violation, maximum from \$178,156 to \$181,071.

(17) 16 U.S.C. 2465(a), Antarctic Protection Act of 1990,⁶ violation, maximum from \$178,156 to \$181,071.

(18) 16 U.S.C. 3373(a), Lacey Act Amendments of 1981 (1981):

(i) 16 U.S.C. 3373(a)(1), violation, maximum from \$25,464 to \$25,881.

(ii) 16 U.S.C. 3373(a)(2), violation, maximum from \$637 to \$647.

(19) 16 U.S.C. 3606(b)(1), Atlantic Salmon Convention Act of 1982,⁷ violation, maximum from \$178,156 to \$181,071.

(20) 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985,⁸ violation, maximum from \$178,156 to \$181,071.

(21) 16 U.S.C. 4016(b)(1)(B), Fish and Seafood Promotion Act of 1986 (1986); violation, minimum from \$1,078 to \$1,096; maximum from \$10,781 to \$10,957.

(22) 16 U.S.C. 5010, North Pacific Anadromous Stocks Act of 1992,⁹ violation, maximum from \$178,156 to \$181,071.

(23) 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative Management Act,¹⁰ violation, maximum from \$178,156 to \$181,071.

(24) 16 U.S.C. 5154(c)(1), Atlantic Striped Bass Conservation Act,¹¹ violation, maximum from \$178,156 to \$181,071.

(25) 16 U.S.C. 5507(a), High Seas Fishing Compliance Act of 1995 (1995), violation, maximum from \$154,742 to \$157,274.

(26) 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995,¹² violation, maximum from \$178,156 to \$181,071.

(27) 16 U.S.C. 6905(c), Western and Central Pacific Fisheries Convention Implementation Act,¹³ violation, maximum from \$178,156 to \$181,071.

(28) 16 U.S.C. 7009(c) and (d), Pacific Whiting Act of 2006,¹⁴ violation, maximum from \$178,156 to \$181,071.

(29) 22 U.S.C. 1978(e), Fishermen's Protective Act of 1967 (1971):

(i) Violation, maximum from \$27,500 to \$27,950.

(ii) Subsequent violation, maximum from \$81,250 to \$82,579.

(30) 30 U.S.C. 1462(a), Deep Seabed Hard Mineral Resources Act (1980), violation, maximum, from \$70,117 to \$71,264.

(31) 42 U.S.C. 9152(c), Ocean Thermal Energy Conversion Act of 1980 (1980), violation, maximum from \$70,117 to \$71,264.

(32) 16 U.S.C. 1827a, Billfish Conservation Act of 2012,¹⁵ violation, maximum from \$178,156 to \$181,071.

(33) 16 U.S.C. 7407(b)(1), Port State Measures Agreement Act of 2015,¹⁶ violation, maximum from \$178,156 to \$181,071.

(34) 16 U.S.C. 1826g(f), High Seas Driftnet Fishing Moratorium Protection Act,¹⁷ violation, maximum from \$178,156 to \$181,071.

§ 6.4 Effective date of adjustments for inflation to civil monetary penalties.

The Department of Commerce's 2017 adjustments for inflation made by § 6.3, of the civil monetary penalties there specified, are effective on January 15, 2017, and said civil monetary penalties, as thus adjusted by the adjustments for inflation made by § 6.3, apply only to those civil monetary penalties, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new civil monetary penalty level, and before the effective date of any future adjustments for inflation to civil monetary penalties thereto made subsequent to January 15, 2017 as provided in § 6.5.

§ 6.5 Subsequent annual adjustments for inflation to civil monetary penalties.

The Secretary of Commerce or his or her designee by regulation shall make subsequent adjustments for inflation to the Department of Commerce's civil monetary penalties annually, which shall take effect not later than January 15, notwithstanding section 553 of title 5, United States Code.

[FR Doc. 2016-31292 Filed 12-27-16; 8:45 am]

BILLING CODE 3510-DP-P

¹⁴ See footnote 1.

¹⁵ See footnote 1.

¹⁶ See footnote 1.

¹⁷ See footnote 1.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 300 and 679

[Docket No. 151001910-6999-02]

RIN 0648-BF42

Fisheries of the Exclusive Economic Zone Off Alaska; Allow the Use of Longline Pot Gear in the Gulf of Alaska Sablefish Individual Fishing Quota Fishery; Amendment 101

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 101 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) for the sablefish individual fishing quota (IFQ) fisheries in the Gulf of Alaska (GOA). This final rule authorizes the use of longline pot gear in the GOA sablefish IFQ fishery. In addition, this final rule establishes management measures to minimize potential conflicts between hook-and-line and longline pot gear used in the sablefish IFQ fisheries in the GOA. This final rule also includes regulations developed under the Northern Pacific Halibut Act of 1982 (Halibut Act) to authorize harvest of halibut IFQ caught incidentally in longline pot gear used in the GOA sablefish IFQ fishery. This final rule is necessary to improve efficiency and provide economic benefits for the sablefish IFQ fleet and minimize potential fishery interactions with whales and seabirds. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Halibut Act, the GOA FMP, and other applicable laws.

DATES: Effective January 27, 2017.

ADDRESSES: Electronic copies of Amendment 101 and the Environmental Assessment (EA)/Regulatory Impact Review (RIR) prepared for this action (collectively the "Analysis"), and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available from www.regulations.gov or from the NMFS Alaska Region Web site at alaskafisheries.noaa.gov.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may

⁵ See footnote 1.

⁶ See footnote 1.

⁷ See footnote 1.

⁸ See footnote 1.

⁹ See footnote 1.

¹⁰ See footnote 1.

¹¹ See footnote 1.

¹² See footnote 1.

¹³ See footnote 1.

be submitted by mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; by email to OIRA_Submission@omb.eop.gov; or by fax to 202-395-5806.

FOR FURTHER INFORMATION CONTACT: Rachel Baker, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages U.S. groundfish fisheries of the GOA under the GOA FMP. The North Pacific Fishery Management Council (Council) prepared, and the Secretary of Commerce (Secretary) approved, the GOA FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the GOA FMP appear at 50 CFR parts 600 and 679. Sablefish (*Anoplopoma fimbria*) is managed as a groundfish species under the GOA FMP.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations at 50 CFR part 300, subpart E, established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773-773k. The IPHC regulations are subject to acceptance by the Secretary of State with concurrence from the Secretary. After acceptance by the Secretary of State and the Secretary, NMFS publishes the annual management measures in the **Federal Register** pursuant to 50 CFR 300.62. The final rule implementing the 2016 annual management measures published March 16, 2016 (81 FR 14000). The Halibut Act, at section 773c(c), also authorizes the Council to develop halibut fishery regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations.

The IFQ Program was implemented in 1995 (58 FR 59375, November 9, 1993). Under the IFQ Program, access to the non-trawl sablefish and halibut fisheries is limited to those persons holding quota share. The IFQ Program allocates sablefish and halibut harvesting privileges among U.S. fishermen. NMFS manages the IFQ Program pursuant to regulations at 50 CFR part 679 and 50 CFR part 300 under the authority of section 773c of the Halibut Act and section 303(b) of the Magnuson-Stevens Act. The proposed rule to implement Amendment 101 (81 FR 55408, August

19, 2016) and Sections 3.1 and 4.5 of the Analysis (see **ADDRESSES**) provide additional information on the IFQ Program and the GOA sablefish IFQ fishery.

The Council recommended Amendment 101 to amend provisions of the GOA FMP applicable to the sablefish IFQ fishery. The Council also recommended implementing regulations applicable to the sablefish IFQ fisheries. FMP amendments and regulations developed by the Council may be implemented by NMFS only after approval by the Secretary. This final rule also includes regulations developed by the Council under the Halibut Act to authorize harvest of halibut IFQ caught incidentally in longline pot gear used in the GOA sablefish IFQ fishery. Halibut fishery regulations developed by the Council may be implemented by NMFS only after approval of the Secretary in consultation with the United States Coast Guard.

NMFS published a Notice of Availability for Amendment 101 in the **Federal Register** on August 8, 2016 (81 FR 52394), with comments through October 7, 2016. The Secretary approved Amendment 101 on November 4, 2016, after accounting for information, views, and comment from interested persons, and determining that Amendment 101 is consistent with the GOA FMP, the Magnuson-Stevens Act, and other applicable law. NMFS published a proposed rule to implement Amendment 101 for the sablefish IFQ fisheries and regulations to authorize harvest of halibut IFQ caught in longline pot gear used in the GOA sablefish IFQ fishery on August 19, 2016 (81 FR 55408), with comments invited through September 19, 2016. NMFS received 15 comment letters containing 29 unique substantive comments on the FMP amendment and proposed rule. NMFS summarizes and responds to these comments in the *Comments and Responses* section of this preamble.

A detailed review of the provisions of Amendment 101, the proposed regulations to implement Amendment 101 and to authorize harvest of halibut IFQ caught in longline pot gear used in the GOA sablefish IFQ fishery, and the rationale for these regulations is provided in the preamble to the proposed rule (81 FR 55408, August 19, 2016) and is briefly summarized in this final rule preamble.

Amendment 101 and this final rule apply to the sablefish IFQ fisheries in the GOA. The IFQ fisheries are prosecuted in accordance with catch limits established by regulatory area. The regulatory areas for the sablefish IFQ fishery in the GOA are the

Southeast Outside District of the GOA (SEO), West Yakutat District of the GOA (WY), Central GOA (CGOA), and Western GOA (WGOA). The sablefish regulatory areas are defined and shown in Figure 14 to part 679. This preamble refers to these areas collectively as sablefish areas.

This final rule implements provisions that affect halibut IFQ fisheries in the GOA. The halibut regulatory areas (halibut areas) are defined by the IPHC, described in Section 6 of the annual management measures (81 FR 14000, March 16, 2016), and shown in Figure 15 to part 679. The halibut areas in the GOA include Areas 2C, 3A, 3B, and part of Area 4A. All of these areas except Area 4A are completely contained in the GOA. The portion of Area 4A in waters south of the Aleutian Islands, west of Area 3B and east of 170° W. longitude, is included in the WGOA sablefish area. This area includes the western part of the WGOA sablefish area and a small strip along the eastern border (east of 170° W. longitude) of the Aleutian Islands sablefish area in the Bering Sea and Aleutian Islands Management Area (BSAI). This final rule applies to the harvest of halibut IFQ when a vessel operator is using longline pot gear to fish sablefish IFQ in all areas of the GOA. For additional information on the sablefish and halibut areas in the GOA see the proposed rule (81 FR 55408, August 19, 2016) and Figure 1 and Figure 11 in the Analysis.

This final rule revises regulations to add longline pot gear as a new authorized gear for catcher vessels and catcher/processors participating in the GOA sablefish IFQ fishery. Prior to this final rule, § 679.2 authorized vessels in the GOA sablefish IFQ fishery to use only longline gear (*e.g.*, hook-and-line gear). Longline pot gear is pot gear with a stationary, buoyed, and anchored line with two or more pots attached. Longline pot gear is often deployed as a series of many pots attached together in a “string” of gear. For additional information on longline gear and longline pot gear, see the definition of Authorized Fishing Gear in § 679.2. For information on the history of gear use in the sablefish fishery in the GOA, see the proposed rule (81 FR 55408, August 19, 2016) and Section 2.1.1 of the Analysis.

Need for Amendment 101 and This Final Rule

Beginning in 2009, the Council and NMFS received reports from sablefish IFQ fishermen that depredation was adversely impacting the sablefish IFQ fleet in the GOA. The reports indicated that whales were removing or damaging sablefish caught on hook-and-line gear

(deprecation) before the gear was retrieved. Depredation has been observed on sablefish longline surveys. Sperm whale depredation is most common in the SEO, WY, and CGOA sablefish areas and killer whale depredation is most common in the WGOA and BSAI. Section 3.4.1.1 of the Analysis provides the most recent information on depredation in the sablefish IFQ fishery, and Figure 17 in the Analysis shows a map of observed depredation on sablefish longline surveys.

Participants in the GOA sablefish IFQ fishery told the Council and NMFS that authorizing longline pot gear in the GOA sablefish IFQ fishery would reduce the adverse impacts of depredation for those vessel operators who choose to switch from hook-and-line gear. Depredation negatively impacts the sablefish IFQ fleet through reduced catch rates and increased operating costs. Depredation also has negative consequences for whales through increased risk of vessel strike, gear entanglement, and altered foraging strategies. Longline pot gear prevents depredation because whales cannot remove or damage sablefish enclosed in a pot. The Council and NMFS determined that interactions with whales throughout the GOA could affect the ability of sablefish IFQ permit holders to harvest sablefish by reducing catch per unit of effort and decreasing fishing costs. Section 1.2 of the Analysis provides additional information on the Council's development and recommendation of Amendment 101 and this final rule.

The following sections describe: (1) The sablefish IFQ fishery provisions implemented with Amendment 101 and this final rule, (2) the changes from proposed to final rule, and (3) NMFS' response to comments.

GOA Sablefish IFQ Fishery Provisions Implemented With Amendment 101 and This Final Rule

The objective of Amendment 101 and this final rule is to improve efficiency in harvesting sablefish IFQ and reduce adverse economic impacts on harvesters that occur from depredation. Amendment 101 and this final rule will also mitigate impacts on sablefish IFQ harvesters using hook-and-line gear by minimizing the potential for interactions between hook-and-line gear and longline pot gear. Finally, Amendment 101 and this final rule will reduce whale and seabird interactions with fishing gear in the GOA sablefish IFQ fishery.

This final rule implements regulations for the sablefish IFQ fisheries in the

GOA and regulations to authorize harvest of halibut IFQ caught incidentally in longline pot gear used in the GOA sablefish IFQ fishery.

This final rule revises regulations at 50 CFR parts 300 and 679 to (1) authorize longline pot gear in the GOA sablefish IFQ fishery, (2) minimize the potential for gear conflicts and fishing grounds preemption, and (3) require retention of halibut IFQ caught in longline pot gear used in the GOA sablefish IFQ fishery. This final rule also includes additional regulatory revisions to facilitate the administration, monitoring, and enforcement of these provisions. This section describes the changes to current regulations implemented by this final rule.

Authorize Longline Pot Gear

This final rule revises §§ 300.61, 679.2, 679.24, and 679.42 to authorize longline pot gear for use in the GOA sablefish IFQ fishery. Additionally, this final rule revises the definition of "Fixed gear" under the definition of "Authorized fishing gear" at § 679.2(4)(i) to include longline pot gear as an authorized gear in the GOA sablefish IFQ fishery and as an authorized gear for halibut IFQ harvested in halibut areas in the GOA. Fixed gear is a general term that describes the multiple gear types allowed to fish sablefish IFQ and halibut IFQ under the IFQ Program and is referred to throughout 50 CFR part 679. This final rule adds § 679.42(b)(1)(i) to further clarify that trawl gear is not authorized for use in the sablefish and halibut IFQ fisheries in the GOA and the BSAI. This final rule also adds § 679.42(b)(1)(ii) to clarify that pot-and-line gear is not authorized for use in the GOA sablefish IFQ fishery. Pot-and-line gear is pot gear with a stationary, buoyed line with a single pot attached.

This final rule revises the definition of "Fishing" at § 300.61 to specify that the use of longline pot gear in any halibut area in the GOA to harvest halibut IFQ will be subject to halibut regulations at part 300. This final rule also revises the definition of "IFQ halibut" at § 300.61 to specify that halibut IFQ may be harvested with longline pot gear while commercial fishing in any halibut area in the GOA. As described in the *Require Retention of Halibut IFQ Caught in Longline Pot Gear Used in the GOA Sablefish IFQ Fishery* section below, this final rule also adds § 679.42(l)(6) to require a vessel operator using longline pot gear in the GOA sablefish IFQ fishery to retain legal size (32 inches or greater) halibut caught incidentally if any IFQ permit holder on

board has sufficient halibut IFQ pounds for the retained halibut for that halibut area.

This final rule revises Table 15 to part 679 to specify that authorized gear for sablefish IFQ harvested from any GOA reporting area includes longline pot gear in addition to all longline gear (*i.e.*, hook-and-line, jig, troll, and handline). This final rule also revises the table to specify that authorized gear for halibut harvest in the GOA is fishing gear composed of lines with hooks attached and longline pot gear.

Minimize Potential Gear Conflicts and Grounds Preemption

This final rule adds provisions at § 679.42(l) to minimize the potential for gear conflicts and grounds preemption and to create general requirements for using longline pot gear in the GOA sablefish IFQ fishery.

This final rule establishes pot limits in each GOA sablefish area at § 679.42(l)(5) and requirements for vessel operators to request pot tags from NMFS at § 679.42(l)(3). Under this final rule, a vessel operator must annually request pot tags from NMFS by submitting a complete IFQ Sablefish Longline Pot Gear: Vessel Registration and Request for Pot Gear Tags form, which will be available on the NMFS Alaska Region Web site at <https://alaskafisheries.noaa.gov/>. NMFS will issue the number of requested tags up to the pot limit authorized at § 679.42(l)(5)(ii) in a sablefish area. The vessel owner requesting pot tags must specify the vessel to which NMFS will assign the pot tags. Pot tags must be assigned to only one vessel each year. A valid pot tag that is assigned to the vessel must be attached to each pot on board the vessel before the vessel departs port to fish in the GOA sablefish IFQ fishery.

This final rule adds specific requirements for longline pot gear deployment and retrieval in the GOA sablefish IFQ fishery. This final rule implements § 679.24(a)(3) to require a vessel operator to mark each end of a set of longline pot gear with a cluster of four or more marker buoys, including one hard buoy marked with the capital letters "LP," a flag mounted on a pole, and a radar reflector. This requirement is in addition to current requirements at § 679.24(a)(1) and (2) for all hook-and-line, longline pot, and pot-and-line marker buoys to be marked with the vessel's Federal Fisheries Permit (FFP) number or Alaska Department of Fish and Game (ADF&G) vessel registration number.

Under this final rule, a vessel operator may deploy longline pot gear in the

GOA sablefish IFQ fishery only during the sablefish fishing period specified in § 679.23(g)(1). NMFS annually establishes the sablefish fishing period to correspond with the halibut fishing period established by the IPHC. Prior to this final rule, regulations at § 679.23(g)(2) authorized an IFQ permit holder to retain sablefish outside of the established fishing period if the permit holder had unused IFQ for the specified sablefish area. This final rule revises § 679.23(g)(2) to specify that IFQ permit holders using longline pot gear in the GOA are not authorized to retain sablefish outside of the established fishing period even if the IFQ permit holder has unused IFQ.

This final rule adds § 679.42(l)(5)(iii) to establish gear retrieval requirements for longline pot gear in each GOA sablefish area. This final rule requires a vessel operator using longline pot gear to redeploy longline pot gear within a certain amount of time after being deployed, or to remove the gear from the fishing grounds when making a sablefish landing.

This final rule allows multiple vessels to use the same longline pot gear during one fishing season but prevents use of the same longline pot gear simultaneously. To prevent use of the same longline pot gear simultaneously, this final rule adds § 679.42(l)(5)(iv) to require a vessel operator to: (1) Remove longline pot gear assigned to the vessel and deployed to fish sablefish IFQ from the fishing grounds, (2) return the gear to port, and (3) remove the pot tags that are assigned to that vessel from each pot before the gear may be used on another vessel. The operator of the second vessel is required to attach pot tags assigned to his or her vessel to each pot before deploying the gear to fish for GOA sablefish IFQ. This final rule requires that only one set of the appropriate vessel-specific pot tags may be attached to the pots at any time.

Require Retention of Halibut IFQ Caught in Longline Pot Gear Used in the GOA Sablefish IFQ Fishery

This final rule revises the definition of “IFQ halibut” in § 679.2 to specify

that halibut IFQ may be harvested with longline pot gear while commercial fishing in any halibut area in the GOA. Additionally, this rule adds § 679.42(l)(6) to require a vessel operator using longline pot gear in the GOA sablefish IFQ fishery to retain legal size halibut caught incidentally if any IFQ permit holder on board has sufficient halibut IFQ pounds for the retained halibut for that halibut area. Additionally, this final rule revises § 679.7(a)(13) to specify the requirements for handling and release of halibut that apply to vessels using longline pot gear in the GOA sablefish IFQ fishery.

Recordkeeping and Reporting

This final rule adds § 679.42(l)(7) to require a vessel operator using longline pot gear in the GOA sablefish IFQ fishery to comply with logbook reporting requirements at § 679.5(c) and vessel monitoring system (VMS) requirements at § 679.42(k).

The following table describes the revisions to § 679.5.

TABLE 1—DESCRIPTION OF REVISIONS TO § 679.5

Paragraph in § 679.5	Revision
(a)(4)(i)	Require the operator of a vessel less than 60 feet (18.3 m) length overall (LOA) using longline pot gear in the GOA sablefish IFQ fishery to complete a logbook.
(c)(1)(vi)(B)	Clarify table footnote.
(c)(2)(iii)(A)	Add missing word.
(c)(3)(i)(B)	Revise paragraphs (1) and (2) and add paragraphs (3) through (5) to specify logbook reporting requirements for vessels in the GOA and BSAI.
(c)(3)(ii)(A) and (B)	Clarify tables describing current logbook reporting requirements.
(c)(3)(iv)(A)(2) and (B)(2)	Require the operator of a vessel using longline pot gear to record specific information in a Daily Fishing Logbook or Daily Cumulative Production Logbook each day the vessel is active in the GOA sablefish IFQ fishery.
(c)(3)(v)(G)	<ul style="list-style-type: none"> Require the operator of a vessel using longline pot gear in the GOA or the BSAI fishery to record the length of a longline pot set, the size of the pot, and spacing of pots. Clarify logbook reporting requirements for gear information for all vessels using longline and pot gear.
(l)(1)(iii)	Add paragraphs (H) and (I) to require the operator of a vessel using longline pot gear in the GOA sablefish IFQ fishery to record in the Prior Notice of Landing the gear type used, number of pots set, number of pots lost, and number of pots left on the fishing grounds still fishing in addition to the other information required under current regulations.

Monitoring and Enforcement

This final rule revises § 679.7(a)(6) to prohibit deployment of longline pot gear in the GOA outside of the sablefish fishing period. Additionally, this final rule revises § 679.7(a)(6)(i) to clarify that vessels in the halibut IFQ fishery are subject to gear deployment requirements specified by the IPHC in the annual management measures pursuant to § 300.62.

This final rule prohibits a vessel operator in the GOA from using longline pot gear to harvest sablefish IFQ or halibut IFQ in the GOA sablefish areas without having an operating VMS on board the vessel. Additionally, this final rule revises § 679.42(k)(2)(ii) to require

a vessel operator using longline pot gear to fish sablefish IFQ in the GOA to contact NMFS to confirm that VMS transmissions are being received from the vessel. The vessel operator is required to receive a VMS confirmation number from NMFS before fishing in the sablefish IFQ fishery.

Other Revisions

This final rule revises § 679.20(a)(4) to replace an incorrect reference to the sablefish total allowable catch (TAC) allocation to hook-and-line gear with the correct reference to fixed gear, as defined at § 679.2, which includes hook-and-line and longline pot gear. This final rule does not change the percent of

the TAC allocated to the sablefish IFQ fishery in the GOA. NMFS will continue to allocate 95 percent of the sablefish TAC in the Eastern GOA sablefish area, which includes the SEO and WY, to vessels using fixed gear, and allocate 80 percent of the sablefish TACs in each of the CGOA and WGOA sablefish areas to vessels using fixed gear.

This final rule revises § 679.42(b)(2) to specify that an operator of a vessel using hook-and-line gear to harvest sablefish IFQ, halibut IFQ, or halibut Community Development Quota (CDQ) must comply with seabird avoidance measures set forth in § 679.24(e). This final rule clarifies that vessel operators using longline pot gear in the GOA sablefish

IFQ fishery are not required to comply with seabird avoidance measures under this final rule.

This final rule revises § 679.51(a), which contains requirements for vessels in the partial coverage category of the North Pacific Groundfish and Halibut Observer Program. This final rule removes a specific reference to hook-and-line gear for vessels fishing for halibut. This revision is needed because this final rule authorizes the retention of halibut IFQ by vessels using longline pot gear in the GOA. It is not necessary to specify authorized gear for halibut IFQ in § 679.51(a) because § 679.50(a)(3) currently states that, for purposes of subpart E, when the term halibut is used it refers to both halibut IFQ and halibut CDQ, and the authorized gear for halibut is specified in § 679.2.

Changes From Proposed to Final Rule

NMFS made four changes to this final rule. The first change is in response to comments received on the proposed rule. NMFS added § 679.42(l)(5)(i)(C) to specify that the gear retrieval requirements in § 679.42(l)(5)(iii) and (iv) apply to all longline pot gear that is assigned to a vessel and deployed to fish sablefish IFQ and to all other fishing equipment attached to longline pot gear that is deployed in the water by the vessel to fish sablefish IFQ. This final rule also specifies that “all other fishing equipment attached to longline pot gear” includes, but is not limited to, equipment used to mark longline pot gear as required in this final rule at § 679.24(a)(3). This change is described in more detail in the response to Comment 23 in the *Comments and Responses* section below.

The second change clarifies the definition of *Authorized Fishing Gear* at § 679.2(4)(iv) to specify that this final rule authorizes a person using longline pot gear to retain halibut in the GOA if the vessel operator is fishing for IFQ sablefish in accordance with the provisions established at § 679.42(l) for the use of longline pot gear. These provisions establish area-specific pot limits and gear retrieval requirements in addition to requirements for using pot tags and marking longline pot gear on the fishing grounds. This change clarifies that authorization of longline pot gear for halibut is limited to longline pot gear used in the GOA sablefish IFQ fishery in accordance with § 679.42(l) and does not apply to other groundfish fisheries in the GOA.

The third change clarifies § 679.42(l)(6)(i)(A) to specify that a vessel operator using longline pot gear in the GOA sablefish IFQ fishery must retain legal size halibut if the halibut is

caught in the GOA sablefish IFQ fishery in accordance with the provisions established at § 679.42(l) for the use of longline pot gear and an IFQ permit holder on board the vessel has unused halibut IFQ for the appropriate regulatory area and vessel category. As described for the second change to this final rule in the previous paragraph, this change clarifies that the requirement to retain halibut caught in longline pot gear used in the GOA sablefish IFQ fishery in accordance with § 679.42(l) is limited to the GOA sablefish IFQ fishery and does not apply to other groundfish fisheries in the GOA.

The fourth change replaces “and” with “or” in § 679.7(f)(18)(i) in this final rule. This change clarifies that it is prohibited for a vessel operator to deploy, conduct fishing with, retrieve, or retain IFQ sablefish or IFQ halibut from longline pot gear in the GOA either in excess of the pot limits specified in § 679.42(l)(5)(ii) or without a pot tag attached to each pot in accordance with § 679.42(l)(4). The proposed rule incorrectly specified that a vessel operator would be in violation of § 679.7(f)(18) only if he or she deployed, conducted fishing with, or retrieved longline pot gear in the GOA in excess of the pot limits specified and without a pot tag attached to each pot. Changing “and” to “or” in § 679.7(f)(18)(i) in this final rule is necessary to implement the Council’s and NMFS’ intent that vessel operators are required to comply with both the pot limit and pot tag requirements, and that failure to comply with either of these requirements would be a violation of the regulations.

Comments and Responses

NMFS received 15 comment letters containing 29 specific comments, which are summarized and responded to below. The commenters consisted of individuals, sablefish IFQ fishery participants and industry groups representing fishermen using hook-and-line gear in the GOA, and an environmental organization.

Comment 1: I do not support this action because sablefish is being overharvested and this is having negative impacts on marine mammals. NMFS should ban all fishing in this area and cut the sablefish quota to zero.

Response: NMFS disagrees. Sablefish is not subject to overfishing, is not overfished, and TACs are set in a precautionary manner. The current harvest specifications process and authorities for in-season management prevent overfishing and provide for the GOA sablefish IFQ fishery to achieve optimum yield on a continuing basis. As described in the proposed rule and

Section 3.1.1.2 of the Analysis, under Amendment 101 and this final rule, harvest of sablefish IFQ will be authorized only during the sablefish fishing period specified at § 679.23(g)(1) and established by the Council and NMFS through the annual harvest specifications (81 FR 14740, March 18, 2016). Amendment 101 and this final rule do not change conservation and management of the GOA sablefish fishery.

Section 3.4 of the Analysis describes that the current GOA groundfish fisheries, which includes the sablefish IFQ fishery, do not have an adverse impact on marine mammals. The Council and NMFS considered the impacts of Amendment 101 and this final rule on marine mammals and determined that they do not have an effect on marine mammals beyond those already expected from the GOA groundfish fisheries (see the response to Comment 2).

Comment 2: NMFS should prepare an environmental impact statement (EIS) for Amendment 101 because of its potential effect on humpback whales and North Pacific right whales. The draft EA is inadequate because it fails to analyze potential impacts of sablefish pot gear in the GOA on marine mammals that are listed as endangered under the Endangered Species Act (ESA), specifically humpback whales (*Megaptera novaeangliae*) and North Pacific right whales (*Eubalaena japonica*).

Response: NMFS prepared a draft EA to determine whether the environmental impact of the proposed action was significant. Section 3.4 of the draft EA discussed the impact of the proposed action on marine mammals. In response to this comment, NMFS has revised this section of the EA to provide additional information on North Pacific right whales and humpback whales. Based on the analysis in the final EA, NMFS continues to conclude that Amendment 101 and this final rule will not have a significant impact on the human environment, including humpback whales and North Pacific right whales. Therefore, NMFS is not required to prepare an EIS under the requirements of the National Environmental Policy Act.

Comment 3: There is evidence of pot fishing gear entangling Atlantic right whales and humpback whales. NMFS should consider using entanglement information from other fisheries outside of Alaska as a proxy for potential impacts of the proposed action on North Pacific right whales.

Response: Section 3.4 of the EA presents information on observations of

marine mammal entanglements in Alaska. NMFS considered entanglement information from similar fisheries using pot gear in the GOA and Bering Sea as these fisheries are likely more analogous to the GOA sablefish IFQ longline pot gear fishery than fisheries in other regions where potential interactions between fisheries and marine mammal species may differ from interactions in Alaska. Species distribution and abundance information from the GOA provides more informative indications as to the probability of fishery interactions with marine mammals than data from other regions or oceans. While fishery interactions and entanglements of right whales are known to occur in the North Atlantic, no North Pacific right whale interactions are known to have occurred in the North Pacific fisheries despite considerable fishing effort. Therefore, NMFS disagrees that the North Atlantic data are a more reasonable proxy than the best available data on fishery interactions with North Pacific right whales in the North Pacific fisheries.

Comment 4: NMFS must consult under section 7 of the ESA and publish a biological opinion including an incidental take statement for ESA-listed species likely to interact with longline pot gear in the GOA sablefish fishery. The commenter states that due to the absence of a biological opinion on the effect of the proposed action on ESA-listed species, the draft EA does not provide the public with a complete documentation of the environmental impacts associated with this action. The commenter states that NMFS should reopen the public comment period if this consultation, or any other ongoing analysis that may affect NMFS' decision-making process, adds critical new information to the record.

Response: NMFS revised Section 3.4 of the EA to summarize information on ESA section 7 consultations (consultations) that have been conducted to assess the effects of the GOA groundfish fisheries on ESA-listed species. Although the EA describes these consultations, the results of these consultations have been publicly available on the NMFS Alaska Region Web site at:

www.alaskafisheries.noaa.gov. Amendment 101 and this final rule do not modify the GOA groundfish fisheries in a manner that will cause effects on listed species or designated critical habitat that have not been considered in previous consultations. Based on the information in section 3.4.1.2 of the analysis, the overall likelihood of entanglement of listed marine mammals in longline pot gear is

no greater than the likelihood of listed marine mammal entanglement in the hook-and-line gear currently used in the sablefish IFQ fishery.

The summary of information available in Section 3.4 of the EA does not affect NMFS' decision-making process or add critical new information to the record that would require NMFS to publish a new proposed rule or extend the public comment period.

Comment 5: NMFS should analyze whether a negligible impact determination (NID) is appropriate for the GOA sablefish IFQ longline pot gear fishery under the Marine Mammal Protection Act (MMPA) because of its similarity to the sablefish pot fishery along the west coast of the United States (California, Oregon, and Washington).

Response: NMFS publishes an annual List of Fisheries (LOF) in which all commercial fisheries in the United States are categorized according to the level of serious injury and mortality to marine mammals relative to the health of each marine mammal stock. Category I fisheries are considered to have the greatest impact on a marine mammal stock's health, Category II fisheries have some impact on a marine mammal stock's health, and Category III fisheries have the least impact. These categories are used to make management decisions, as needed, to monitor and adjust fisheries' impacts on marine mammal populations. Under MMPA section 118, participants in Category I through III commercial fisheries are granted an exemption from the MMPA prohibition on incidental takes of marine mammal not listed as threatened or endangered under the ESA. NMFS will include the GOA sablefish IFQ longline pot gear fishery in the 2018 LOF analysis to place this fishery in the appropriate LOF category. In the meantime, once this final rule becomes effective, the new GOA sablefish IFQ logline pot gear fishery will be automatically considered a Category II fishery, as directed by regulation (50 CFR 229.2).

Permits authorizing the incidental take of ESA-listed species in U.S. commercial fisheries may be granted under MMPA section 101(a)(5)(E). One criterion required to issue such permits is a NID. A NID is issued if NMFS determines that all commercial fisheries identified in the annual LOF, collectively, have a negligible impact on any ESA-listed marine mammal stock for which a take permit is proposed to be issued. A negligible impact is defined (50 CFR 216.103) as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the

species or stock through effects on annual rates of recruitment or survival.

NMFS issued a NID for fishery impacts on marine mammals in Alaska on June 23, 2016, and NMFS issued permits under the authority of section 101(a)(5)(E) of the MMPA for the incidental taking of ESA-listed species effective for a three-year period (June 23, 2016, 81 FR 40870). Because the new GOA sablefish IFQ longline pot gear fishery has not yet commenced, information is not available to make a NID on the impacts of this fishery on ESA-listed marine mammals in Alaska. The use of the U.S. west coast sablefish pot fishery as a surrogate for the GOA sablefish IFQ longline pot gear fishery in a NID, as suggested by the comment, would be inappropriate due to differences in geography, fishery operations, and marine mammal species distribution. Information on marine mammal interactions with the new GOA sablefish IFQ longline pot gear fishery will be incorporated and considered when NMFS begins analysis during the review of the current NID applicable to Alaskan fisheries.

Comment 6: The commenter urges NMFS to set aside areas in the GOA where pot gear is prohibited in order to protect the North Pacific right whale from entanglement. The commenter states that the North Pacific right whale population is estimated to be very low, and that any serious injury or mortality would have population level effects. The commenter urged NMFS to close North Pacific right whale critical habitat in the GOA to minimize the extent of fishing gear interactions.

Response: As summarized in Section 3.4 of the EA, NMFS has concluded that this action is not likely to affect the North Pacific right whale or its designated critical habitat in a manner or to an extent not already considered in prior ESA section 7 consultations on the GOA groundfish fisheries. In 2006, NMFS determined that the GOA groundfish fisheries are not likely to adversely affect right whales. NMFS reaffirmed this determination when critical habitat was designated for the North Pacific right whale in 2008. There are no recorded instances of North Pacific right whale entanglements with hook-and-line gear or longline pot gear in the Alaska groundfish fishery. Section 3.4.1.2 of the EA analyzes the potential overlap of the sablefish fishery with areas of known North Pacific right whale observations and critical habitat. The analysis found that the sablefish fishery occurs at depths much deeper than designated North Pacific right whale critical habitat, so neither the hook-and-line gear nor the longline pot

gear sablefish fishery is likely to adversely affect North Pacific right whales or the designated critical habitat. Based on this analysis, NMFS concludes that there is likely to be no overlap between GOA sablefish longline pot gear and North Pacific right whale critical habitat. The commenter's proposal to close North Pacific right whale critical habitat to longline pot gear in the GOA sablefish IFQ fishery to protect North Pacific right whales from entanglement is not supported by the available data.

Comment 7: The use of pot gear in the GOA sablefish fishery is likely to entangle humpback whales based on comparisons to the sablefish pot fisheries operating off the west coast of the U.S. and in the BSAI. The EA must consider entanglement of humpback whales in the analysis of cumulative impacts. The use of sablefish pot gear in the GOA is likely to increase entanglements for the Hawaii, Mexico, and western North Pacific humpback whale ESA-listed distinct population segments and moderately reduce population size or growth rate.

Response: NMFS revised Section 3.4 of the EA to describe the anticipated effects of longline pot gear in the GOA sablefish IFQ fishery, including entanglement of marine mammals, in response to this comment. The analysis shows there were no documented marine mammal interactions in the Bering Sea IFQ sablefish longline pot fishery or the BSAI Pacific cod longline pot fishery from 2008 through 2012. Based on this best available data for longline pot gear in the BSAI sablefish IFQ pot fishery and in other existing longline pot fisheries in the GOA, NMFS determines that the longline pot gear that may be deployed under the final rule in lieu of hook-and-line gear is not likely to increase the risk of entanglements of humpback whales relative to status quo. Based on the information in the analysis, NMFS determined that the GOA groundfish fisheries are not likely to have population-level effects on humpback whales.

Comment 8: The biological opinions prepared for the west coast sablefish pot fishery include terms and conditions to mitigate potential entanglement with whales that should be required by NMFS for the GOA sablefish pot fishery. These terms and conditions include electronic monitoring and logbook reporting requirements to report lost gear, a database to track fishery effort, analysis on the magnitude of lost pot gear and factors that may influence loss, and analysis of gear deployment and

overlap with large whale migrations of aggregations.

Response: Many of the monitoring requirements and analyses referenced by the commenter in the biological opinions assessing the west coast sablefish pot fishery are addressed through existing regulations, or are required under this final rule. This final rule also includes additional monitoring provisions.

This final rule requires the use of logbooks to record data on pot gear deployment and loss at § 679.5(c). Specifically, a vessel operator using longline pot gear in the GOA must record the length of a longline pot set, the size of the pot, the spacing of pots, number of pots set, number of pots lost, and number of pots left on the fishing grounds still fishing, in addition to the other information required under current regulations. Additionally, this final rule at § 679.42(k) requires a vessel operator to use a VMS while using longline pot gear to fish for sablefish in the GOA. VMS monitors the location and movement of commercial fishing vessels in Federal fisheries off Alaska. Further, a vessel operator using longline pot gear in the GOA is subject to observer coverage under the North Pacific Groundfish and Halibut Observer Program.

NMFS has developed analytical tools and databases to analyze all fishery data that NMFS collects, including the new data collected under this final rule. NMFS is able to assess the amount of catch, effort, and areas where longline pot gear is deployed in the GOA sablefish IFQ fishery with existing analytic methods. NMFS will have the fishery data necessary to compare longline pot gear deployment with available information on areas of large whale migrations. The Council and NMFS are currently analyzing the use of electronic monitoring for pot gear. Under a separate analytical and regulatory process, the Council and NMFS may consider the use of electronic monitoring for vessels using longline pot gear in the GOA sablefish IFQ fishery.

Comment 9: Measures to protect Atlantic right whales from entanglement by pot gear have been recommended by the Marine Mammal Commission, and those should be considered by NMFS for the GOA sablefish pot fishery. These measures include gear marking requirements, and closing areas likely to be used by Atlantic right whales. NMFS also should consider the applicability of mitigation measures suggested in the Atlantic Large Whale Take Reduction Plan to the GOA sablefish pot fishery.

Response: This final rule implements additional gear marking requirements for vessels using longline pot gear in the GOA sablefish IFQ fishery. Under this final rule at § 679.24(a), each vessel operator must attach a cluster of four or more marker buoys, a flag mounted on a pole, and a radar reflector to each end of a longline pot set. This final rule requires vessel operators to add the initials "LP" for "Longline Pot" to one hard buoy in the buoy cluster in addition to the FFP number of the vessel deploying the gear, or the ADF&G vessel registration number. This will distinguish buoys for hook-and-line gear from buoys for longline pot gear. As stated in the response to Comment 6, closing areas to the use of longline pot gear in the GOA sablefish IFQ fishery is unnecessary. Section 3.4 of the EA summarizes the history of ESA section 7 consultations conducted for GOA groundfish fisheries. Based on these conclusions, additional management measures such as those described by the Atlantic Large Whale Take Reduction Plan do not appear to be applicable or warranted. However, if information becomes available that indicates whales are interacting with this fishery, NMFS will take appropriate measures pursuant to the MMPA and, for listed whales, the ESA.

Comment 10: NMFS should prohibit the use of hook-and-line gear in the sablefish fishery in favor of longline pot gear. NMFS should not allow fishermen to continue to use the gear just because they have made economic investments in using that harvesting method. NMFS must achieve maximum sustainable yield from the sablefish fishery with the greatest harvesting efficiency and lowest impact to the environment, and hook-and-line gear does not achieve this due to current levels of depredation and interactions with whales and seabirds. Furthermore, hook-and-line gear is inefficient from a fuel and manpower perspective because it requires constantly retrieving the lines. Longline pot gear allows pots to soak on the fishing grounds and provides for more efficient catch of fish because smaller fish can swim out of the pot and whales cannot get to the sablefish inside the pots. More efficient harvest benefits the end consumer because they can purchase fish at lower cost.

Response: Amendment 101 and this final rule are intended to balance multiple objectives: Improve harvesting efficiency and reduce adverse economic impacts from depredation to harvesters in the sablefish IFQ fishery, mitigate impacts on sablefish IFQ fishermen using hook-and-line gear by minimizing the potential for interactions between

hook-and-line gear and longline pot gear, and reduce sablefish IFQ fishery whale and seabird interactions with fishing gear. Amendment 101 and this final rule balance these objectives consistent with the requirements of the Magnuson-Stevens Act.

Amendment 101 and this final rule are consistent with National Standard 1 of the Magnuson-Stevens Act, which requires conservation and management measures to prevent overfishing while achieving optimum yield on a continuing basis (section 301(a) of the Magnuson-Stevens Act). Optimum yield is based on maximum sustainable yield, reduced as appropriate for social and economic factors for the relevant fishery (81 FR 71858, October 18, 2016). The Council and NMFS achieve optimum yield in the GOA sablefish IFQ fishery by establishing annual catch limits at sustainable levels and establishing management measures for the fishery that meet a number of social and economic goals, including maintaining a diverse fleet of fishing vessels and a broad distribution of economic benefits to fishermen, processors, and communities that participate in the fishery (see Sections 3.1 and 4.5 of the Analysis). As described in the response to Comment 1, Amendment 101 and this final rule do not change the current process for establishing annual catch limits or the management measures that have been established to meet specific social and economic goals for the GOA sablefish IFQ fishery.

As described in the response to Comment 1, the proposed rule, and Sections 3.4 and 3.5 of the Analysis, the Council and NMFS have determined that the current GOA sablefish IFQ fishery prosecuted with hook-and-line gear does not adversely affect whales and seabirds. Amendment 101 and this final rule do not change the management measures established for the hook-and-line sablefish IFQ fishery in the GOA that are intended to reduce fishery interactions with whales and seabirds.

The proposed rule and Section 2.1.1 of the Analysis describe that sablefish can be caught efficiently with hook-and-line and pot gear. In recommending Amendment 101 and this final rule, the Council and NMFS recognized that hook-and-line gear will continue to be an effective harvesting method for many vessels in the sablefish IFQ fishery. Authorizing fishermen to use longline pot or hook-and-line gear in the GOA sablefish IFQ fishery provides each vessel operator with the choice to determine which type of gear is appropriate for their operation and gives them the flexibility to determine the

most cost effective method for harvesting sablefish IFQ. The proposed rule and Section 4.9.2 of the Analysis describe that the costs of converting to longline pot gear can be substantial, and some vessels in the sablefish IFQ fishery will not be able to convert because of vessel length or other factors.

Amendment 101 and this final rule balance the needs of sablefish IFQ fishery participants by providing vessel operators with the opportunity to use longline pot gear if it would benefit their harvesting operation by reducing interactions with whales.

NMFS acknowledges that while the costs of harvesting operations could impact the price that consumers pay for sablefish in the market, fishing gear is just one cost component for a harvesting operation. NMFS does not have information indicating the sablefish harvested with longline pot gear will result in reduced consumer prices relative to sablefish caught with hook-and-line gear.

Comment 11: NMFS received comments that provided general support for Amendment 101, but noted specific concerns about the proposed rule. One commenter supported the authorization of longline pot gear in the GOA sablefish IFQ fishery to improve efficiency in harvesting sablefish, reduce adverse economic impacts on harvesters that occur from depredation, and reduce fishery interactions with whales. The commenter stated that a large number of vessels in the sablefish IFQ fleet will not be able to use the gear because the economic cost of converting to pots is uncertain and potentially substantial. The commenter stated that vessels that are 50 feet LOA or less generally cannot use longline pot gear because they cannot safely carry, deploy, and retrieve pots. The commenter expressed concern that the introduction of longline pot gear could result in gear conflicts and grounds preemption and disadvantage vessels that continue to use hook-and-line gear by reducing the amount of available fishing grounds and increasing the costs of harvesting sablefish IFQ for these vessels.

One commenter acknowledged that the use of longline pot gear likely would reduce depredation, but opposed the reintroduction of longline pot gear to the GOA sablefish fishing grounds, particularly in the SEO and WY. The commenter stated that the potential negative impacts of introducing longline pot gear on vessel operators that continue to use hook-and-line gear would outweigh the benefits because the proposed rule did not contain adequate measures to mitigate the

negative impacts of introducing longline pot gear to the GOA sablefish IFQ fishery.

Response: NMFS acknowledges the general support for Amendment 101. As described in the response to Comment 10, Amendment 101 and this final rule are intended to balance multiple objectives: Improve harvesting efficiency and reduce adverse economic impacts from depredation to harvesters in the sablefish IFQ fishery, mitigate impacts on sablefish IFQ fishermen using hook-and-line gear by minimizing the potential for interactions between hook-and-line gear and longline pot gear, and reduce sablefish IFQ fishery whale and seabird interactions with fishing gear.

The proposed rule (81 FR 55408, August 19, 2016) and the Analysis (see **ADDRESSES**) describe that the Council and NMFS considered the impacts of this action on vessels that continue to use hook-and-line gear. Although it is not possible to know how many sablefish fishermen will choose to use longline pot gear instead of hook-and-line gear in the GOA, the Council and NMFS considered information in the Analysis and public testimony to determine that the likelihood of gear conflicts and grounds preemption under Amendment 101 and this final rule is low.

Section 4.10 of the Analysis indicates that the Council recognized that pot gear had previously been permitted in the GOA sablefish fishery but was prohibited in 1985 by Amendment 14 to the GOA FMP (50 FR 43193, October 24, 1985). During deliberation on Amendment 101 and this final rule, the Council noted that its decision to prohibit pot gear in Amendment 14 was based on fishery data and scientific information on depredation that is not reflective of the present fishery. Reports and observations of depredation of hook-and-line gear have increased since 1985 (see Section 3.4 of the Analysis), and the fishery has been managed under the Halibut and Sablefish IFQ Program since 1995. The existing management program for the fishery provides substantially more flexibility on when and where to harvest sablefish and allows for coordination and cooperation within the fleet. In addition, all fishermen have an economic incentive to avoid gear conflicts on the fishing grounds because these conflicts can result in costs through lost gear and lost fishing time (see Section 4.10 of the Analysis).

In spite of these factors mitigating the potential for gear conflicts, the Council and NMFS received public testimony noting the potential negative impacts of

authorizing longline pot gear on vessels that continue to use hook-and-line gear. As a result, the Council recommended and NMFS included area-specific management measures in this final rule to address these concerns. These management measures are discussed in detail in the proposed rule, and in Sections 4.9.3, 4.9.4, and 4.9.5 of the Analysis. These area-specific management measures were developed with input from the Sablefish Gear Committee that included participants in the sablefish IFQ fishery. Input from the Sablefish Gear Committee, the Council's advisory bodies, public testimony, and the Analysis were used to develop the area-specific management measures implemented in this final rule to meet the Council's objective to provide an opportunity for fishermen to use longline pot gear while minimizing the potential for negative impacts on vessels that use hook-and-line gear.

The proposed rule and Section 4.9.2 of the Analysis describe that it is highly likely that a portion of the existing GOA sablefish IFQ fleet will continue to use hook-and-line gear, due to cost constraints, vessel size constraints, or both. NMFS agrees with the commenters that the costs of reconfiguration likely will be prohibitive for many vessel operators and this outcome is supported by the proposed rule and Section 4.9.8.1 of the Analysis. The proposed rule and the Analysis also describe the feasibility of converting to longline pot gear with respect to vessel size. Section 4.9.8.1 of the Analysis notes that based on information from other groundfish pot fisheries, vessels less than 50 feet LOA may be less likely to use longline pot gear in the GOA sablefish IFQ fishery than larger vessels. After considering this information, the Council determined and NMFS agrees that the number of vessels that convert to longline pot gear is likely to be small in comparison to those that will continue using hook-and-line gear, which will reduce the potential for gear conflicts and grounds preemption under Amendment 101 and this final rule.

The proposed rule and Section 4.10 of the Analysis describe that in recommending Amendment 101 and this final rule the Council expressed its intent to monitor the use of longline pot gear in the GOA sablefish IFQ fishery to determine if Amendment 101 and this final rule are meeting its objectives. The Council requested that NMFS provide an annual report on the use of longline pot gear in the GOA sablefish IFQ fishery following implementation of this final rule. The Council also indicated that it will conduct a review of the effects of authorizing longline pot gear

three years following implementation of this final rule. The Council stated that the intent of the review is to evaluate the impacts of this action on sablefish harvesting, depredation, and vessels that continue to harvest sablefish with hook-and-line gear. During deliberation on Amendment 101 and this final rule, the Council specifically noted that its three-year review will evaluate whether the use of longline pot gear has impacted fishing community participation in the fishery or prices of sablefish quota share that might adversely affect new entrants or small-scale operators looking to grow their business. This review will provide the Council and NMFS the opportunity to assess potential gear conflicts under this final rule. Nothing in Amendment 101 or this final rule would preclude the Council and NMFS from considering action to further reduce gear conflicts through a subsequent action if the review indicates that such action is necessary.

Comment 12: We think there is substantial risk for conflicts between longline pot and hook-and-line gear under Amendment 101 and the proposed rule. There is widespread evidence of past gear conflicts based on previous Council actions to prohibit longline pot gear as described in the proposed rule preamble. Although these conflicts occurred before the IFQ Program was implemented, they also occurred when the sablefish season was open throughout the spring and summer in the early 1980s.

The foreign fishing fleets (active prior to the 1980s) lost or abandoned a substantial amount of pot gear in the SEO many years ago and despite continued efforts by the fishing fleet to remove it from the fishing grounds, the lost and abandoned pot gear continues to preempt grounds off Sitka. Longline gear set near these lost pots still on occasion drift to tangle with the lost pots. Attempts to retrieve gear tangled with these pots are dangerous, with tremendous strain on the boat trying to haul the gear, and the end result is more lost gear and lost fish.

Letters submitted to the Pacific Fishery Management Council provide evidence of present gear conflicts, safety issues, and grounds preemption driven by the entrance of three boats using longline pot gear in what has historically been hook-and-line grounds. This issue is clearly important because the Council's Sablefish Gear Committee spent most of its time talking about gear conflicts and how to minimize anticipated conflicts.

Response: The Council and NMFS carefully considered the impacts of gear

conflicts and grounds preemption when developing Amendment 101 and this final rule, including input from the Council's Sablefish Gear Committee, its advisory bodies, and public testimony. Section 2.1.1 of the Analysis and the final rule to implement Amendment 14 to the GOA FMP (50 FR 43193, October 24, 1985) describe the issues summarized in the comment. As described in the response to Comment 11, the Council and NMFS believe that management under the IFQ Program has substantially changed the likelihood of gear conflicts, grounds preemption, and safety issues overall in the sablefish IFQ fishery, and particularly related to the introduction of longline pot gear.

The proposed rule and Section 5.1 of the Analysis describe that the Council and NMFS carefully considered the impacts of Amendment 101 and this final rule on the safety of human life at sea, consistent with National Standard 10 of the Magnuson-Stevens Act. The impacts of Amendment 101 and this final rule on safety are also considered in Section 4 of the Analysis. While some participants in the hook-and-line fleet raised safety concerns to the Council and NMFS related to carrying longline pot gear on small vessels, the use of longline pot gear will be voluntary, not mandatory, under this final rule. Section 2.4 of the Analysis describes that the Council and NMFS considered the impacts of this action on safety in developing the requirements for vessels to use longline pot gear instead of pot-and-line gear at § 679.2 and the gear retrieval requirements at § 679.42(l)(5)(iii).

The response to Comment 11 details the management measures included in this final rule to minimize the potential for gear conflicts and grounds preemption. This final rule limits the amount of longline pot gear that may be deployed to limit potential gear conflicts on an area-specific basis, and defines the maximum amount of time that longline pot gear may be left on the fishing grounds in the WY, CGOA and WGOA. This final rule requires vessels fishing in the SEO to remove their longline pot gear from the fishing grounds when making a delivery. In developing that recommendation for the SEO, the Council noted that SEO sablefish fishing grounds are limited relative to other areas, and allowing longline pot gear to be left on the grounds when a vessel leaves the fishing grounds to make a delivery may create safety hazards by increasing the likelihood of gear conflict relative to other areas in the GOA.

In addition, the Council recommended and NMFS is

implementing gear marking requirements in this final rule at § 679.24(a)(3) to make longline pot gear more visible on the fishing grounds to further minimize the potential for gear conflicts and grounds preemption, which promotes safety for all vessels.

The Council recommended and this final rule implements gear deployment and retrieval requirements that balance the objectives of Amendment 101 and this final rule.

Comment 13: We believe the Council and NMFS should not allow the use of longline pot gear throughout the GOA throughout the entire year. The Analysis repeatedly states that the impacts of allowing pots into the sablefish fishery are poorly understood. We request that the proposed rule be amended to prohibit the use of longline pot gear in the SEO and WY during April and again between August 15 and September 15 to provide two months of the year in which hook-and-line fishermen could harvest sablefish without the potential for gear conflicts or grounds preemption.

Response: NMFS did not change this final rule in response to this comment. This final rule authorizes longline pot gear at any time during the GOA sablefish IFQ season authorized by § 679.23(g). The Council and NMFS considered and rejected a prohibition on the use of longline pot gear in the SEO during specific months of the year as part of this action. As described in Section 2.4 of the Analysis, it is likely that the prohibition will have an undetermined impact on some sablefish IFQ fishermen using longline pot or hook-and-line gear that was not considered in the development of Amendment 101 or the proposed rule. Therefore, NMFS did not change this final rule in response to this comment.

Comment 14: We believe conservation arguments relative to whale predation have been exaggerated and our significant experience with sperm whale interactions with the sablefish fishery informs our conclusions. We think that proponents of Amendment 101 have overstated the negative impacts of depredation on the sablefish survey and on catch accounting in the sablefish fishery. The sablefish stock is neither overfished nor subject to overfishing. Studies on loss to sperm whale depredation in the commercial hook-and-line fisheries in Alaska is estimated at 2.2 percent of total groundfish catch based on visual evidence of torn or partial fish, which is likely a low estimate, but is still the best available information.

The Analysis identifies a number of unknown potential impacts on the use

of longline pot gear on both the sablefish survey (conflicts between the survey and pots have occurred in the past) and potential impacts on the sablefish stock of increased harvest with pots. The Analysis notes that sablefish length and possibly age composition information would be needed for harvests in pot gear before the stock assessment authors could evaluate the potential effects of introducing pot gear on the sablefish stock and stock assessment. These unknowns argue for a cautious, phased-in and experimental approach to allowing this new gear type.

Response: NMFS disagrees. The Council and NMFS considered the information in Section 4.8.1 of the Analysis and public testimony to determine that depredation is negatively impacting harvesting efficiency for some vessel operators. The Council determined and NMFS agrees that allowing vessel operators to voluntarily use longline pot gear could address the negative impacts described in the Analysis and in public testimony.

The Analysis describes that killer whale interactions are most common in the BSAI and the WGOA, while sperm whale interactions are most common in the CGOA, WY, and SEO. Section 3.4.1.1 of the Analysis provides best available information on depredation in this fishery. While depredation events are difficult to observe, fishery participants have testified to the Council that depredation continues to be a major cost to the sablefish IFQ fishery, and appears to be occurring more frequently. Industry groups have tested gear modifications to limit the impact of depredation on hook-and-line gear catch per unit effort, and reported those efforts to the Sablefish Gear Committee and the Council. Nevertheless, depredation continues to result in lost sablefish catch, increased fishing time as vessel operators wait for whales to leave the area before hauling gear, or increased time and fuel to relocate to avoid whales. Section 4.7 of the Analysis includes a summary of efforts to mitigate depredation in Alaska and elsewhere.

NMFS agrees with the commenter that the sablefish stock is not overfished and is not subject to overfishing. The Council and NMFS considered the impacts of Amendment 101 and this final rule on the sablefish stock. The proposed rule and Section 3.1.1.2 of the Analysis describe that Amendment 101 and this final rule are not expected to have significant impacts on the sablefish stock. The Analysis describes that although some benefit likely will occur because unaccounted fishing mortality due to depredation will be reduced as

sablefish IFQ fishermen voluntarily switch from hook-and-line longline gear to longline pot gear, the potential impact of reduced depredation may be difficult to measure given overall trends in sablefish recruitment.

Section 3.1.1.2 of the Analysis notes that the sablefish stock assessment authors considered the impacts of the introduction of longline pot gear on the sablefish stock assessment. The stock assessment authors considered whether the fish size selectivity of longline pot gear would be different from hook-and-line gear using information from the BSAI, where pot gear has been authorized in the sablefish IFQ fishery since 2008 (73 FR 28733, May 19, 2008). Some evidence exists to suggest a difference in the length frequency of sablefish caught with pot gear compared to hook-and-line gear, with hook-and-line gear producing slightly larger sablefish on average (see Figure 6 in Section 3.1.1.2 of the Analysis). However, the Analysis concludes that this difference in sizes was observed at the BSAI area-wide level and the size differences likely can be attributed to differences in sablefish sizes among sub-areas of the BSAI. The Analysis also notes that longline pot and hook-and-line gear are set at similar depths in the BSAI and the sex ratio of the catch is comparable for both gears. After considering this information, the sablefish stock assessment authors determined that the difference in lengths selected by longline pot and hook-and-line gear is not significant enough to affect population recruitment. Overall, existing evidence does not suggest that the introduction of longline gear pot under Amendment 101 and this final rule will impact the annual sablefish stock assessment.

NMFS notes that this final rule does not change observer coverage requirements for vessels fishing in the sablefish IFQ fisheries (§§ 679.50 through 679.55). Therefore, NMFS will collect information on length and age composition for sablefish caught in longline pot gear in the GOA sablefish IFQ fishery, and this information will be used in the annual assessment to determine that status of the sablefish stock.

Comment 15: The proposed rule cites reduced catch per unit effort as a result of depredation. We note that the catch per unit effort is currently more than twice as high in the SEO as it is in the WGOA, which indicates that depredation may not be negatively impacting catch per unit effort in some areas, and authorizing longline pot gear may not be necessary in those areas.

Response: NMFS agrees that it is not possible to determine if Amendment 101 and this final rule will increase sablefish catch per unit effort for those vessels that use longline pot gear relative to vessels that use hook-and-line gear. Section 4.9.2 of the Analysis describes that the relative benefit of using longline pot gear fishing as opposed to hook-and-line gear is either unclear or is conditional on factors that cannot be forecasted in the Analysis because longline pot gear has been prohibited in the fishery for many years. Those external factors include the local biomass distribution of sablefish in the future, changes in future product markets, and the future behavior of marine mammals, particularly depredating whales. Based on available information, the Analysis does not definitively state whether fishing with longline pot gear will generate a higher sablefish catch per unit effort in the GOA. The Analysis also notes that catch per unit effort is likely to differ across GOA management areas.

The Council received public testimony from sablefish fishermen in all areas of the GOA indicating that depredation had reduced catch per unit effort and increased costs for their fishing operations. The Council determined and NMFS agrees that Amendment 101 and this final rule will improve harvesting efficiency and reduce adverse economic impacts from depredation to harvesters in all GOA sablefish areas (see Section 4.10 of the Analysis).

Comment 16: The proposed rule states that groundfish bycatch and the incidental catch of seabirds may be reduced by authorizing the use of longline pot gear. The SEO sablefish hook-and-line fleet has collaborated since 2009 to reduce rockfish bycatch, and we are expanding bycatch avoidance to include other species. Bycatch in the sablefish hook-and-line fishery is primarily grenadiers and sharks, which are not target fisheries and are harvested in amounts well below the biological limits established for these species. Longline pot gear can also result in bycatch of some species, and NMFS should evaluate the potential bycatch of octopus by vessels using longline pot gear in the sablefish fishery.

Although pots are likely to reduce seabird takes, hook-and-line fisheries in the GOA typically account for only 10 percent to 20 percent of overall incidental catch of seabirds in the BSAI and GOA groundfish fisheries. The incidental catch of seabirds has been reduced significantly by the use of

streamer lines in the hook-and-line fishery.

Response: NMFS agrees with the commenter that the sablefish IFQ fleet has taken positive steps to reduce rockfish bycatch and interactions with seabirds. As described in the response to Comment 14, Amendment 101 and this final rule do not change the observer coverage requirements for GOA sablefish IFQ fishery participants. NMFS collects information on bycatch and seabird interactions through the North Pacific Observer Program and will continue to do so for vessels participating in the GOA sablefish fishery, including vessels in the longline pot fishery, following implementation of this final rule.

Comment 17: We believe that Amendment 101 and the proposed rule are inconsistent with National Standard 8 because they fail to provide for the sustained participation of fishery dependent communities. The Council and NMFS must preserve the historic hook-and-line gear, small boat nature of the GOA sablefish fleet in general and in the SEO in particular. Because relatively more IFQ is fished by small boats in the SEO and WY relative to the CGOA and WGOA, it is clear that the introduction of pots in these areas will reduce the fishing grounds available to these small boats using hook-and-line gear and therefore reduce the number of hook-and-line vessels that can participate in the fishery. Eliminating small vessels from this historically important fishery will negatively impact communities in the SEO and WY. The geographic, social, and economic characteristics of the SEO sablefish fishery demand different considerations for the SEO and WY, and we urge NMFS to provide for the sustained participation of these fishery dependent communities by rejecting Amendment 101 and the proposed rule.

Response: NMFS has determined that Amendment 101 and this final rule are consistent with National Standard 8. As described in the response to Comment 11, the Council developed this action based on input from its Sablefish Gear Committee, its advisory bodies, public testimony, and the Analysis. Amendment 101 and this final rule balance the needs of sablefish fishermen who want to use longline pot gear and those who will continue to use hook-and-line gear.

Section 5.1 of the Analysis describes that the Council's objectives for this action implicitly recognize the importance of the sablefish fishery to GOA fishing communities and their residents. Amendment 101 and this final rule could reduce depredation and

interactions, reduce bycatch of some species, reduce incidental catch of seabirds, and improve the long-term management of the resource by providing another harvesting option that likely will increase harvesting efficiency. Amendment 101 and this final rule are structured in a manner that does not inherently disadvantage fishery participants who choose not to switch from hook-and-line to longline pot gear. This final rule implements area-specific pot limits, gear redeployment and removal requirements, gear marking, and recordkeeping reporting requirements intended to minimize the potential for gear conflicts and grounds preemption.

Section 4.9.8 of the Analysis describes the impacts of Amendment 101 and this final rule on individual harvesters and fishing communities. The Analysis did not identify adverse impacts on individual harvesters or fishing communities because it does not anticipate a significant shift in the communities to which sablefish products are delivered, or from which sablefish vessels depart. The Analysis notes that Amendment 101 and this final rule will not alter the IFQ Program management measures that are designed to maintain a diverse fleet to benefit individual fishermen and communities that participate in the GOA sablefish IFQ fishery. These measures include area-specific quota share and IFQ, different quota share and IFQ allocations for vessel size categories, quota share use caps, and vessel IFQ caps.

Comment 18: The proposed rule and Analysis do not discuss how this action may displace crew or change the current composition of the fleet. The Council and NMFS have always placed a high priority on maintaining the benefits of the IFQ fisheries for small fishing communities. The current trend of quota share-holders hiring a master to harvest their IFQ provides more revenues for quota share-holders, but does not benefit other participants in the fishery such as hired skippers and crew members because more of the fishery revenues are going to quota share-holders. Amendment 101 will make this worse by allowing the hired master practice to continue and delay new entry into the fishery.

Response: This final rule does not change current regulations at § 679.42(c) that require the holder of sablefish catcher vessel quota share to be on board the vessel when their sablefish IFQ is harvested unless the quota share holder is eligible to hire a master or lease the IFQ under limited exceptions to the owner on board requirement.

Section 4.9.8.1 of the Analysis describes the potential for fleet consolidation following implementation of Amendment 101 and this final rule. The Analysis describes that if longline pot gear becomes the dominant gear in the sablefish IFQ fishery, it is possible that depredation would be concentrated on vessels that continue to use hook-and-line gear. This increased concentration could increase costs for these participants and, in the extreme, reduce profitability from fishing with hook-and-line gear. If profitability is substantially reduced, some operators that are unable to convert to longline pot gear might choose to sell their sablefish quota share, which could lead to consolidation in the fleet. However, as described in Section 4.9.2 of the Analysis and in the response to Comment 11, it is unlikely that a substantial number of vessel operators will switch to longline pot gear for economic or operational reasons. This makes it unlikely that Amendment 101 will cause fleet consolidation in the GOA sablefish IFQ fishery.

Comment 19: Most small boats will not be able to convert to longline pot gear. Any sperm whales present while gear is being hauled will concentrate effort on those vessels that continue to use hook-and-line gear, with no overall reduction in depredation. Since a reduction in depredation is the primary goal of this action and the least likely to be achieved in the SEO where the majority of the boats are small, NMFS must balance this low chance of success against the high likelihood of gear conflicts and grounds preemption associated with allowing pots.

Response: Section 4.11 of the Analysis notes that fishery participants who are not able to fish longline pot gear on their vessels—due to either economic or operational constraints—would not experience the benefits of reduced depredation from Amendment 101 and this final rule. The Analysis notes it is possible that these fishery participants could experience greater rates of depredation as the sablefish hooked on hook-and-line gear becomes concentrated on fewer vessels in a given area. Therefore, the Analysis describes that this action could result in some distributional impacts in the fishery. The Analysis notes that these potential impacts could affect smaller vessels in the sablefish IFQ fleet, though some large vessels may also find it difficult to convert to pot gear.

Section 4.9.8.1 of the Analysis describes that the Council received public testimony expressing concern that increased concentration of depredation onto remaining hook-and-

line gear and fleet consolidation were more likely in the SEO area due to the more constrained fishing grounds. The Council and NMFS determined that these outcomes were unlikely based on the estimated cost for converting a vessel to use longline pot gear (see Section 4.9.2 of the Analysis). As described in the response to Comment 11, the majority of fishermen in the SEO are not likely to switch to longline pot gear and would continue to use hook-and-line gear in the sablefish IFQ fishery.

As described in the response to Comment 11, it is not possible to determine how many vessels will use longline pot gear, but the existing economic and operations constraints of converting to longline pot gear make it likely that a limited number of vessels will convert under this action. Based on this information, the Council determined and NMFS agrees that the impacts on vessels that continue to use hook-and-line gear likely will be limited. Nevertheless, this final rule includes a number of provisions to mitigate the potential negative impacts on sablefish IFQ fishery participants that continue to use hook-and-line gear.

Comment 20: Four commenters recommended revisions to the proposed pot limits at § 679.42(l)(5)(ii). The commenters indicated that these revisions were necessary to minimize the potential negative impacts on fishery participants that continue to use hook-and-line gear. The commenters recommended that NMFS implement a limit of 120 pots in the CGOA and WGOA, instead of the proposed limit of 300 pots for these areas. The commenters suggested that allowing a vessel to deploy up to 300 pots was not equitable because it would disadvantage vessels that use hook-and-line gear by allowing a vessel using longline pot gear to have a larger “footprint,” or the amount of gear deployed on the sablefish fishing grounds, than vessels using hook-and-line gear.

Response: NMFS did not change this final rule in response to this comment. In the development of Amendment 101 and this final rule, the Council and NMFS considered a range of options for pot limits, including the specific requirements recommended by the commenters (see Sections 4.9.3 and 4.9.4 of the Analysis). The Council recommended, and NMFS is implementing, the pot limits at § 679.42(l)(5)(ii) and gear retrieval requirements at § 679.42(l)(5)(iii) after reviewing the Analysis and receiving input from the Sablefish Gear Committee, the Council’s advisory bodies, and public testimony. The

Council and NMFS also considered that current regulations do not limit the amount of hook-and-line gear that may be used by a vessel in the sablefish IFQ fishery.

As described in the response to Comment 11, the Council and NMFS reviewed this information and determined that the likelihood of gear conflicts and grounds preemption is low under Amendment 101 and this final rule. However, the Council and NMFS recognize that the likelihood of gear conflicts and grounds preemption is not possible to determine with certainty. Several stakeholders requested that the Council recommend specific measures to address this uncertainty and further minimize the likelihood of gear conflicts and grounds preemption. This final rule implements the measures recommended by the Council.

The proposed rule and Section 4.9.3 of the Analysis describe that the Council recommended area-specific pot limits to account for the physical nature of the sablefish fishing grounds and the composition of the IFQ sablefish fleet in each sablefish area. The Council also considered public testimony on the number of pots that vessels in the GOA could feasibly deploy in the sablefish IFQ fishery.

Section 4.9.3 of the Analysis shows that the Council considered options for pot limits that ranged from 60 to 400 pots for each sablefish area. Considering area-specific pot limits allowed the Council to develop pot limits that are appropriate for the make-up of the fleet and the physical nature of the fishing grounds in each sablefish area. The Council determined that smaller pot limits are appropriate in the SEO and WY because the fishing grounds are spatially concentrated and the potential for grounds preemption may be greater. The Council also determined that smaller pot limits are appropriate for the SEO because the local fleet has a historically participating component of small, short-range vessels lacking the capacity to deploy and retrieve longline pots or pack a large hold of sablefish for an extended period. The proposed rule and Section 4.9.8.1 of the Analysis show that approximately 30 percent of sablefish IFQ fishermen in the SEO use vessels 50 feet (15.2 m) or less LOA.

The Council determined and NMFS agrees that larger pot limits are appropriate in the CGOA and WGOA because Section 4.5.4.3 of the Analysis and public testimony indicated there are relatively more options for productive fishing grounds in the CGOA and WGOA than in the SEO and WY. In addition, Section 4.5.2 of the Analysis shows that the average size of vessels

participating in the CGOA and WGOA is larger and these vessels can deploy more pots than vessels used in the SEO and WY. The Council received public testimony that a pot limit of 300 in the CGOA and WGOA would allow vessel operators in these areas to deploy enough pots to efficiently harvest sablefish IFQ while maintaining an overall limit on the number of pots that can be deployed by one vessel.

In recommending pot limits for each GOA sablefish area, the Council and NMFS balanced the objectives to minimize the potential for gear conflicts and grounds preemption and improve harvesting efficiency of sablefish IFQ by authorizing longline pot gear. Section 4.9.3 of the Analysis describes that limiting the number of pots a vessel can use reduces operational efficiency if the limit is lower than what a vessel operator deems optimal for his or her vessel. A pot limit that is too low might increase variable fishing costs such as fuel and time. If the limit is too low, there may be little or no incentive for vessel owners to purchase new longline pot gear and invest in vessel reconfigurations. The Council and NMFS used the best available information to determine that the pot limits implemented by this final rule achieve the objectives of this action.

Comment 21: Five commenters recommended revisions to the proposed gear retrieval requirements at § 679.42(l)(5)(iii). The commenters indicated that these revisions were necessary to minimize the potential negative impacts on fishery participants that continue to use hook-and-line gear. The commenters did not support the requirements at § 679.42(l)(5)(iii)(C) and (D) for vessel operators using longline pot gear to redeploy or remove their longline pot gear within five days after deployment in the WY and within seven days after deployment in the CGOA and WGOA. These commenters recommend that NMFS extend the requirement for vessels in the SEO at § 679.42(l)(5)(iii)(A) to remove longline pot gear when leaving the fishing grounds to make a landing in the WY, CGOA, and WGOA. The commenters were concerned that allowing the gear to stay on the fishing grounds between landings in the WY, CGOA, and WGOA would preempt fishing grounds for use by vessels using hook-and-line gear and could result in lost gear due to inclement weather. In addition, one commenter was concerned that the proposed gear retrieval requirements for the WY, CGOA, and WGOA would allow multiple vessel operators to share longline pot gear and preempt fishing grounds for long periods.

Response: NMFS did not change this final rule in response to this comment. The proposed rule and Section 4.10 of the Analysis describe that the Council considered the Analysis and public testimony when recommending the gear retrieval requirements for the WY, CGOA, and WGOA. The Council and NMFS determined that the fishing grounds are less constrained in the WY, CGOA, and WGOA relative to the SEO due to fewer IFQ holders, larger fishing grounds, or both. Therefore, the Council and NMFS determined that it was not necessary to require fishermen using longline pot gear in these areas to remove their gear from the fishing grounds when making a landing. The Council and NMFS based this decision on testimony from operators in these areas indicating that fishing vessels were much further from port in these areas relative to the SEO and requiring a vessel to return to and retrieve its gear by a certain day could, in some circumstances, force vessels to operate in unsafe or unfavorable conditions. Aside from weather, limiting the amount of time that gear may be deployed (soak time) could reduce a vessel operator's ability to fish an optimal gear rotation if the vessel's longline pot gear is spaced out over a large geographical area, or if the vessel operator determines that a particularly long soak time yields larger fish in that area. Based on this public testimony and the pot soak times in the BSAI sablefish fishery presented in Section 4.8.2 of the Analysis, the Council determined that requiring vessel operators to tend their gear within a maximum period would meet its objective to minimize the potential for longline pot gear to be left unattended on the fishing grounds for an extended period of time in these areas.

This final rule implements regulations at § 679.42(l)(5)(iv) applicable to vessel operators who want to share longline pot gear during the fishing season to help reduce operating costs. To minimize the potential for grounds preemption by multiple vessels using the same longline pot gear, this final rule allows multiple vessels to use the same longline pot gear during one fishing season but prohibits use of the same longline pot gear simultaneously. In order for more than one vessel to use the same longline pot gear, this final rule requires a vessel operator to remove longline pot gear from the fishing grounds, return the gear to port, and remove the pot tags assigned to the vessel before pot tags assigned to another vessel are attached to the pots

and used on that vessel in the GOA sablefish IFQ fishery.

The Council and NMFS determined that vessel operators using longline pot gear have an incentive to reduce the likelihood of gear conflicts, or lost gear because fishing gear is expensive to purchase and replace (see Section 4.8.2 of the Analysis). This final rule establishes specific gear retrieval requirements to provide an additional incentive for operators using longline pot gear to closely monitor the amount of time their gear is left on the grounds and further minimize potential for gear conflicts or grounds preemption. The Council recommended and NMFS is implementing these provisions to balance the objectives of this action to improve harvesting efficiency and reduce depredation with the further objective to minimize potential negative impacts on fishermen that continue to use hook-and-line gear.

Comment 22: The proposed requirement for vessel operators to leave longline pot gear on the fishing grounds for no more than five days in the WY and CGOA and seven days in the WGOA will be difficult to enforce.

Response: The proposed rule and Sections 4.9.3.2, 4.9.4.1, 4.9.5.1, and 4.9.6.1 of the Analysis describe enforcement considerations for provisions of this final rule that are intended to minimize gear conflicts and grounds preemption. The Council considered the methods that would be used to enforce the restrictions on use of longline pot gear in the GOA sablefish IFQ fishery and advice from its Enforcement Committee.

This final rule implements three additional recordkeeping and reporting requirements to monitor and enforce provisions that are intended to minimize gear conflicts and grounds preemption. First, § 679.5(c)(3)(B) requires all vessel operators using longline pot gear in the GOA sablefish IFQ fishery to report specific information in logbooks about fishing gear used and catch for all sablefish IFQ fishing trips. Second, § 679.42(k)(2) requires all vessel operators using longline pot gear in the GOA sablefish IFQ fishery to have an operating VMS while fishing for sablefish IFQ. Third, this final rule adds additional Prior Notice of Landing (PNOL) reporting requirements at § 679.5(l)(1)(iii) for vessel operators using longline pot gear in the GOA sablefish IFQ fishery. These tools will provide NMFS with information on vessel activity during the sablefish fishing season. The Council and NMFS determined that these requirements will provide sufficient monitoring and enforcement

information to meet the Council's objectives for this action.

Comment 23: NMFS should revise the final rule to clarify that vessels using longline pot gear in the SEO must remove all longline pots in addition to anchors, buoys, buoy line, flags, and any other gear from the fishing grounds when they leave the grounds to make a delivery. As proposed, the rule only requires vessels using longline pot gear to remove pots from the grounds, allowing other components of a pot longline string to remain in the water and preempt fishing grounds.

Response: NMFS revised this final rule to address this comment. This final rule adds § 679.42(l)(5)(i)(C) to specify that the gear retrieval and removal requirements in § 679.42 (l)(5)(iii) and (iv) apply to all longline pot gear that is assigned to a vessel and deployed to fish IFQ sablefish and to all other fishing equipment attached to longline pot gear that is deployed by the vessel to fish IFQ sablefish in the GOA. This final rule also specifies that all other fishing equipment attached to longline pot gear includes, but is not limited to, equipment used to mark longline pot gear as required in this final rule at § 679.24(a)(3).

Although the Council and NMFS determined that the potential for grounds preemption is low under this final rule (see response to Comment 11), NMFS agrees with the commenter that the gear retrieval and removal requirements in the proposed rule applied to "longline pot" gear. Section 679.2 defines longline pot as "a stationary, buoyed, and anchored line with two or more pots attached." This definition does not include buoys, flags, or radar reflectors that must be used to mark longline pot gear in this final rule (§ 679.24(a)(3)) or other equipment that vessel operators may use to mark their gear. Although it is unlikely that vessel operators will remove only pots and leave other equipment to preempt fishing grounds as suggested by the commenter, NMFS agrees that the intent of this final rule is to require vessel operators using longline gear to retrieve or remove all fishing gear from the fishing grounds to minimize the potential for gear conflicts and grounds preemption. This revision to this final rule clarifies that the gear retrieval and removal requirements apply to all pots and associated equipment deployed by a vessel using longline pot gear in all sablefish areas of the GOA.

Comment 24: Allowing longline pot gear to stay on the fishing grounds between landings is not consistent with the intent of the owner onboard requirement of the IFQ Program. Section

679.42(c) requires most holders of sablefish catcher vessel IFQ to be on board the vessel on which their IFQ is harvested and present during the landing. Authorizing longline pot gear to stay on the fishing grounds while a vessel makes a landing in the WY, CGOA, or WGOA would be inconsistent with current operations of hook-and-line vessels and could allow vessel operators to set gear while the IFQ permit holder is not on board the vessel.

Under the proposed rule, a vessel operator in the WY, CGOA, or WGOA could deploy pots on the fishing grounds, leave the fishing grounds to pick up an IFQ permit holder in port, and then retrieve the pot gear and collect the sablefish while the IFQ permit holder is on board the vessel. Hook-and-line gear is not generally left on the fishing grounds unattended, so the proposed rule would allow a longline pot gear vessel to operate differently than a hook-and-line vessel.

Response: This final rule is consistent with the IFQ permit holder on board requirements at § 679.42(c). This final rule does not change the requirement for an IFQ permit holder to be aboard the vessel at all times during the fishing trip while his or her IFQ is harvested and to be present during the landing. This final rule does not change the definition of "fishing trip" at § 679.2 for purposes of the IFQ Program, which is the period beginning when a vessel operator commences harvesting IFQ species and ending when the vessel operator lands any species. Therefore, all IFQ permit holders subject to the permit holder on board requirements must be on board the vessel during the entire fishing trip whether the vessel is using longline pot or hook-and-line gear.

Comment 25: Longline pot gear should not have a larger footprint than hook-and-line gear. We recommend revising the rule to require that a longline pot set be no more than 9 miles from end to end. This would allow each vessel to have an average of three sets of longline gear that would be from 2.5 to 3 miles in length and would limit the length of a set of longline pot gear to correspond to the footprint of a hook-and-line set.

Response: NMFS did not change this final rule in response to this comment. The pot limits implemented by this final rule limit the amount of longline pot gear that a fishing vessel can use in the GOA sablefish IFQ fishery (see the response to Comment 20). The Council and NMFS determined that additional limits on the amount of longline pot gear that could be deployed are not necessary to meet the objectives of this final rule.

Section 4.9.3 of the Analysis describes that the pot limits specified in § 679.42(l)(5)(ii) limit the amount of longline pot gear that each vessel may deploy, which limits the footprint of that vessel on the fishing grounds. The Analysis describes that the Sablefish Gear Committee estimated that a vessel deploying from 180 to 300 longline pots would cover grounds similar to a hook-and-line set in the sablefish fishery, or approximately 10 to 12 miles. The Analysis also notes that current regulations do not limit the amount of hook-and-line gear that a vessel fishing IFQ sablefish may deploy. Based on information in the Analysis, the Council and NMFS determined that it is possible that the footprint of longline pot gear used by some vessels could be greater than the footprint of hook-and-line gear used by other vessels under this final rule. The Analysis describes that the Sablefish Gear Committee reviewed available information on the likely length of longline pot gear sets on the fishing grounds and considered whether gear specifications in addition to pot limits were necessary to minimize the potential for gear conflicts and grounds preemption. The Sablefish Gear Committee, Council, and NMFS considered the potential impacts of additional gear specifications on operations and monitoring and enforcement, and determined that additional gear specifications were not necessary to meet the objectives of this action. In addition, additional gear specifications could unnecessarily constrain individual fishing operations and reduce harvesting efficiency.

Comment 26: We do not support the proposed gear marking requirements because each vessel operator should be able to use the gear marking equipment that best meets the specifications of their operation. The proposed requirement to mark gear with buoys, a flag, and radar detector on each end of a longline pot set creates a large amount of surface area and makes it more likely that the wind or waves could catch the marking equipment and move the gear from the deployed location. This increases the likelihood of lost gear on the fishing grounds. In some areas, vessels using hook-and-line gear do not mark their gear with flagpoles or radar reflectors due to the known gear loss that results from a combination of wind and tide. While we believe that each vessel operator should have the discretion to determine what gear marking equipment is appropriate for their vessel, it is important that any vessel on the fishing grounds can differentiate between a hook-and-line

and longline pot gear set. We recommend revising the rule to require that the end of a longline pot set be marked with one yellow hard buoy a minimum of 13 inches in diameter and marked with an "LP" and the vessel name.

Response: NMFS did not change this final rule in response to this comment. This final rule maintains current regulations at § 679.24(a) that require all vessel operators using hook-and-line and pot gear (including longline pot gear) to mark buoys carried on board or used by the vessel to be marked with the vessel's Federal fisheries permit number or ADF&G vessel registration number. This regulation also specifies that the markings must be a specified size, shall be visible above the water line, and shall be maintained so the markings are clearly visible.

This final rule implements the following additional gear marking requirements: Each vessel operator using longline pot gear in the GOA sablefish IFQ fishery must attach a cluster of four or more marker buoys, a flag mounted on a pole, and a radar reflector to each end of a longline pot set.

The Council received recommendations from the Sablefish Gear Committee, its advisory bodies, and public testimony to develop the gear marking requirements implemented by this final rule. The Council and NMFS considered a broad suite of gear marking options during the development of Amendment 101 and this final rule. Section 4.9.5 of the Analysis describes the options considered, and Section 4.10 describes the anticipated impacts of the additional gear marking requirements implemented by this final rule.

The Council received public testimony that the marking requirements implemented by this final rule would enhance the visibility of the ends of a longline pot gear set to other vessels that are on the fishing grounds. As described in Section 4.9.5 of the Analysis, public testimony indicated that the gear marking equipment required by this final rule is commonly used by vessel operators that deploy pot gear in fisheries in Alaska and requiring the use of this equipment would not impose a substantial cost on vessel operators using longline pot gear in the GOA sablefish IFQ fishery. Section 4.9.5 of the Analysis describes public testimony indicating that using buoy clusters could be a viable method to keep surface gear from being submerged during strong tides and would minimize the potential for longline pot gear to move a substantial distance from its

deployed location. The testimony indicated that buoy clusters add buoyancy to surface gear by putting additional buoys on the main anchor line. The Analysis also describes that requiring a vessel operator to use a flag mounted on a pole and a radar reflector to mark each end of a longline pot gear set would enhance the visibility of the location of the gear and minimize the potential for gear conflicts. This was supported by public testimony from vessel operators who indicated they planned to use longline pots in the GOA sablefish IFQ fishery.

As described in the response to Comment 11, the Council intends to review the use of longline pot gear in the GOA sablefish IFQ fishery three years after the implementation of this final rule. NMFS anticipates that if the gear marking requirements in this final rule impose substantial costs on vessel operators or could be revised to better meet the Council's objectives, the Council will consider potential changes to the gear marking requirements in the future.

Comment 27: Vessels using longline pot gear should be equipped with a 25 watt, Class A Automatic Identification System (AIS) to enable other boats to identify and communicate with the vessel about the location of their deployed longline pot gear.

Response: Section 4.9.5 of the Analysis describes that the Council and NMFS considered an option to require both ends of a longline pot set in the GOA sablefish IFQ fishery to be marked with buoys, flagpoles, and a transponder that is compatible with a location and identification system such as AIS. Gear transponders could allow a fishery participant to view the location of deployed gear in order to avoid setting gear in the same area. Additional information on the AIS technology, application, approximate cost, and relevant regulations are described in Appendix 2 of the Analysis.

Section 4.9.4 of the Analysis describes the key challenges involved in requiring the use of AIS as a buoy transponder. The challenges include limited operational time due to limited battery capacity, potentially inadequate seaworthiness, and the requirement for regulatory approval by the United States Coast Guard and international oversight bodies. The Analysis notes that implementing a longline pot gear tracking system using technology such as AIS or a scannable pot tag to locate longline pot gear on the fishing grounds is beyond the scope of available NMFS resources in the Alaska Region. In addition, anecdotal reports suggest that AIS or other scannable systems may not

be effective in all weather and sea conditions (e.g., signals can be blocked or greatly attenuated in high seas). Section 4.9.4.1 of the Analysis concludes that given that these factors and that the total costs of fitting longline pot gear can be substantial, gear tracking systems, including AIS, are not appropriate at this time.

The Analysis describes that the Council did not adopt the option to require AIS transponders in this final rule due to the current challenges related to using AIS transponders in the GOA sablefish IFQ fishery and stakeholder willingness to pursue a voluntary program to report longline pot gear locations (see the response to Comment 29). The Council intends to review the use of longline pot gear three years following implementation of this final rule. This review will provide an opportunity for the Council and NMFS to evaluate whether additional gear marking requirements may be necessary for longline pot gear in the future.

Comment 28: The proposed rule incorrectly claims on page 55416 (81 FR 55408, August 19, 2016) that "most vessel operators in the GOA sablefish IFQ fishery are currently required to complete logbooks." This is incorrect because vessels less than 60 feet in length are exempt from logbook reporting requirements and the median vessel length in the sablefish IFQ fleet is less than 60 feet. The proposed rule discriminates against vessels that choose to use pot gear because it would require vessels less than 60 feet LOA to complete a logbook. The proposed rule would require all vessels using longline pot gear in the GOA sablefish IFQ fishery to complete a logbook. The rule should be revised to require all vessels in the sablefish IFQ fishery to complete a logbook for consistency with the requirements for the halibut IFQ fishery. The same vessel operators that are declining to complete a logbook for sablefish are completing logbooks for their halibut fishing. Recordkeeping and reporting requirements cannot be inequitably applied to one gear type over another. All users have an obligation to supply information on their catch of this public resource to the stock assessment scientists.

Response: NMFS did not change this final rule in response to this comment. NMFS agrees with the commenter that the statement on page 55416 (81 FR 55408, August 19, 2016) of the proposed rule preamble is incorrect. Notwithstanding that it is a misstatement, as explained below, the misstatement does not require revisions to this final rule.

The statement on page 55416 of the proposed rule preamble should have stated that most vessel operators in the GOA sablefish IFQ fishery currently complete logbooks. The commenter is correct that most vessels in the sablefish IFQ fleet are less than 60 feet (18.3m) LOA, and these vessels are not required to complete a logbook (§ 679.5(a)(4)(i)). In 2015, 85 percent of the vessels participating in the BSAI and GOA sablefish IFQ fishery were less than 60 feet LOA. While these vessels are not required to complete a logbook for sablefish fishing, Section 4.9.3.2 of the Analysis notes that many vessel operators voluntarily complete and submit logbooks. Logbook participation increased sharply in 2004 in all areas primarily because the IPHC collects, edits, and enters logbooks electronically. In 2015, 68 percent of the 252 vessels less than 60 feet LOA in the sablefish IFQ fishery submitted logbooks.

The Council and NMFS determined that this final rule should include a requirement for all vessels using longline pot gear in the GOA sablefish IFQ fishery to complete a logbook. The proposed rule and Section 4.9 of the Analysis describe that NMFS uses logbooks to collect detailed information from vessel operators participating in the IFQ fisheries. The proposed rule and Analysis also describe that NMFS will use logbooks as one tool to monitor and enforce the management measures in this final rule intended to minimize the potential for gear conflicts and grounds preemption, such as the gear redeployment and removal requirements.

This final rule adds a requirement at § 679.5(c)(3)(i)(B) for an operator of a vessel using longline pot gear in the GOA sablefish IFQ fishery to report in a Daily Fishing Logbook (for catcher vessels) or Daily Cumulative Production Logbook (for catcher/processors) the number of pots and location of longline pot sets deployed on a fishing trip. This final rule removes the exemption from the logbook submission requirements for the operator of a vessel less than 60 feet LOA using longline pot gear in the GOA sablefish IFQ fishery. While this is a new regulatory requirement for these vessels, Section 4.9.3.2 of the Analysis explains that many operators of vessels less than 60 feet (18.3 m) in the sablefish IFQ fishery voluntarily complete and submit logbooks. Therefore, the Council and NMFS anticipate this additional reporting requirement will not negatively impact operators of vessels less than 60 feet (18.3 m) that choose to use longline pot gear.

Comment 29: We suggest that the coordinates of lost pots reported to NMFS are posted and available for the public to access. This will allow vessel operators using hook-and-line gear to avoid setting gear on lost pots and losing gear in those areas.

Response: Section 4.9.4.1 of the Analysis describes that the Council and NMFS considered and rejected a requirement for vessel operators to report the coordinates of lost longline pot gear to NMFS in an electronic form for release to the public. The Council and NMFS did not adopt this option for two reasons. First, the coordinates of lost longline pot gear pots are confidential under section 402(b) of the Magnuson-Stevens Act and potentially other laws, as well. Second, NMFS cannot enforce a requirement to report the loss of longline pot gear because it is not possible to verify that fishing gear is lost.

Section 4.9.4 of the Analysis describes a proposal for a voluntary pot gear reporting program for vessels that use longline pot gear in the GOA sablefish IFQ fishery. GOA sablefish IFQ fishery participants who advocated before the Council for the ability to use longline pot gear presented the proposal to assure the Council of their ability and willingness to report the location of longline pot gear on the fishing grounds, in as close to real-time as is practicable, and without placing additional cost burdens on the hook-and-line fleet. These proponents presented a voluntary measure in the form of a written agreement that would set out expectations of, and best practices by, those who opt to use longline pot gear.

While the Council did not recommend the formalization of a voluntary pot gear reporting program in its recommendation of Amendment 101 and this final rule, Section 4.10 of the Analysis describes that the Council encouraged fishery participants to work cooperatively to develop electronic reporting protocols for reporting the location of pots being fished and/or pots left on the fishing grounds, as well as any other methods that may enhance the GOA sablefish IFQ longline pot fishery. The Council determined and NMFS agrees that the expressed willingness of fishermen who intend to use longline pot gear to work beyond the gear specifications and gear retrieval requirements specified in this final rule, combined with the Council's commitment to review the use of longline pot gear three years after implementation of this final rule, will minimize the potential for gear conflicts and grounds preemption.

This final rule requires vessel operators using longline pot gear to report the number of lost pots to NMFS in the vessel's PNOL submitted prior to landing. In addition, if a vessel operator loses pots and intends to replace those pots to harvest IFQ sablefish, they must request replacement pot tags from NMFS consistent with the requirements at § 679.42(l)(3)(iii). The vessel owner will be required to provide NMFS with the pot tag numbers that were lost and describe the circumstances under which the pot tags were lost.

Classification

The Administrator, Alaska Region, NMFS, determined that this rule is necessary for the conservation and management of the GOA sablefish IFQ fishery and that it is consistent with the Magnuson-Stevens Act, the Halibut Act, and other applicable law.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

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 final regulatory flexibility analysis, 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. The preamble to the proposed rule (81 FR 55408, August 19, 2016) and the preamble to this final rule serve as the small entity compliance guide for this action.

Final Regulatory Flexibility Analysis

Section 604 of the Regulatory Flexibility Act (RFA) requires an agency to prepare a final regulatory flexibility analysis (FRFA) after being required by that section or any other law to publish a general notice of proposed rulemaking and when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code. The following paragraphs constitute the FRFA for this action.

This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) (see ADDRESSES) and the summary of the IRFA in the proposed rule (81 FR 55408, August 19, 2016), a summary of the significant issues raised by the public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The FRFA describes the impacts on small entities, which are defined in

the IRFA for this action and not repeated here. Analytical requirements for the FRFA are described in the RFA, section 604(a)(1) through (6). The FRFA must contain:

1. A statement of the need for, and objectives of, the rule;
2. A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;
4. A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;
5. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
6. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The “universe” of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (*e.g.*, user group, gear type, geographic area), that segment will be considered the universe for purposes of this analysis.

In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

Need for and Objectives of This Final Rule

A statement of the need for and objectives of this rule is contained earlier in the preamble and is not repeated here. This FRFA incorporates the IRFA (see **ADDRESSES**) and the summary of the IRFA in the proposed rule (81 FR 55408, August 19, 2016), a summary of the significant issues raised by the public comments, NMFS’ responses to those comments, and a summary of the analyses completed to support the action.

Summary of Significant Issues Raised During Public Comment

NMFS published the proposed rule to implement Amendment 101 on August 19, 2016 (81 FR 55408), with comments invited through September 19, 2016. An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. No comments were received that raised significant issues in response to the IRFA specifically; therefore, no changes were made to this rule as a result of comments on the IRFA. NMFS received several comments on the potential impacts of this final rule on the operators of sablefish vessels that cannot convert to longline pot gear due to economic or operational constraints. Several comments expressed concerns about the impacts of this action on small fishing operations that will continue to use hook-and-line gear to fish for sablefish in specific areas of the GOA. NMFS summarized and responded to these comments in the section above titled “Comments and Responses.” The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

Number and Description of Small Entities Regulated by This Rule

NMFS estimates that there are a total of 310 small catcher vessels and 1 small catcher/processor that participate in the GOA sablefish IFQ fishery using hook-and-line gear. These entities will be directly regulated by this rule because they will be subject to the requirements for using longline pot gear if they choose to use longline pot gear in the GOA sablefish IFQ fishery. Thus, NMFS estimates that 311 small entities are directly regulated by this rule.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

Several aspects of this rule directly regulate small entities. Small entities will be required to comply with the requirements for using longline pot gear in the GOA sablefish IFQ fishery, which

include using only longline pot gear, pot limits, and gear retrieval and gear marking requirements. Authorizing longline pot gear in this rule provides an opportunity for small entities to choose whether to use longline pot gear to increase harvesting efficiencies and reduce operating costs in the GOA sablefish IFQ fishery.

Based on public testimony to the Council and NMFS, and Section 4.9 of the Analysis, the requirements for using pot gear are not expected to adversely impact small entities because each entity can choose to use longline pot gear or continue to use hook-and-line gear. In addition, the requirements for using longline pot gear are not expected to unduly restrict sablefish harvesting operations. The Council and NMFS considered requirements that would impose larger costs on directly regulated small entities. These alternatives included requiring all vessels to remove gear from the fishing grounds each time the vessel made a landing and requiring more sophisticated and costly satellite-based gear marking systems. The Council and NMFS determined that these additional requirements were not necessary to meet the objectives of this action. These additional requirements could adversely impact small entities by reducing sablefish harvesting efficiency and increasing sablefish harvesting costs, contrary to the intent of this rule. This rule implements pot limits and gear retrieval and gear marking requirements that meet the objectives of this action while minimizing adverse impacts on fishery participants.

Small entities will be required to comply with additional recordkeeping and reporting requirements under this rule if they choose to use longline pot gear in the GOA sablefish IFQ fishery. Section 4.9 of the Analysis notes that directly regulated small entities using longline pot gear will be required to request pot tags from NMFS, maintain and submit logbooks to NMFS, have an operating VMS on board the vessel, and report additional information in a PNOL. The Analysis notes that these additional recordkeeping and reporting requirements are not expected to adversely impact directly regulated small entities because the costs of complying with these requirements is de minimis to total gross fishing revenue. In addition, NMFS anticipates that many of the vessels that choose to use longline pot gear under this rule currently comply with the logbook and VMS reporting requirements when participating in the sablefish IFQ fishery and in other fisheries. The Council and NMFS considered alternatives to implement additional requirements to

report locations of deployed and lost gear in an electronic database to reduce the likelihood that sablefish IFQ fishery participants would deploy fishing gear in these locations. The Analysis describes that the information reported in the electronic database would be confidential under section 402(b) of the Magnuson-Stevens Act and could not be provided to participants in the sablefish IFQ fishery to meet the intended purpose. The Council and NMFS determined that these additional requirements were not necessary to meet the objectives of this action. This rule meets the objectives of this action while minimizing the reporting burden for fishery participants.

Thus, there are no significant alternatives to this rule that accomplish the objectives to authorize longline pot gear in the GOA sablefish IFQ fishery and minimize adverse economic impacts on small entities.

Recordkeeping, Reporting, and Other Compliance Requirements

The recordkeeping, reporting, and other compliance requirements will be increased slightly under this rule. This rule contains new requirements for vessels participating in the longline pot fishery for sablefish IFQ in the GOA.

Prior to this final rule, NMFS required catcher vessel operators, catcher/processor operators, buying station operators, tender vessels, mothership operators, shoreside processor managers, and stationary floating processor managers to record and report all FMP species in logbooks, forms, eLandings, and eLogbooks. This rule revises regulations to require all vessels using longline pot gear in the GOA sablefish IFQ fishery to report information on fishery participation in logbooks, forms, and eLandings.

NMFS currently requires vessels in the BSAI to have an operating VMS on board the vessel while participating in the sablefish IFQ fishery. This rule revises regulations to extend this requirement to vessels using longline pot gear in the GOA sablefish IFQ fishery.

NMFS currently requires all vessels in the sablefish and halibut IFQ fisheries to submit a PNOL to NMFS. This rule revises regulations to require vessels using longline pot gear in the GOA sablefish IFQ fishery to report the number of pots deployed, the number of pots lost, and the number of pots left deployed on the fishing grounds in the PNOL, in addition to other required information.

Collection-of-Information Requirements

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB). The collections are listed below by OMB control number.

OMB Control Number 0648-0213

Public reporting burden is estimated to average 35 minutes per individual response for Catcher Vessel Longline and Pot Gear Daily Fishing Logbook; and 50 minutes for Catcher/processor Longline and Pot Gear Daily Cumulative Production Logbook.

OMB Control Number 0648-0272

Public reporting burden is estimated to average 15 minutes per individual response for Prior Notice of Landing.

OMB Control Number 0648-0353

Public reporting burden is estimated to average 15 minutes per individual response to mark longline pot gear; 15 minutes for IFQ Sablefish Longline Pot Gear: Vessel Registration and Request for Pot Gear Tags; and 15 minutes for IFQ Sablefish Longline Pot Gear: Request for Replacement of Longline Pot Gear Tags.

OMB Control Number 0648-0445

Public reporting burden is estimated to average 2 hours per individual response for VMS operation; and 12 minutes for VMS check-in report.

OMB Control Number 0648-0711

The cost recovery program is mentioned in this rule. The cost to implement and manage the sablefish IFQ longline pot gear fishery, including the cost of the pot tags, will be included in the annual calculation of NMFS' recoverable costs. These costs will be part of the total management and enforcement costs used in the calculation of the annual fee percentage. For example, when the pot gear tags are ordered, the payment of those tags is charged 100 percent to the IFQ Program for cost recovery purposes. This rule will not change the process that harvesters use to pay cost recovery fees.

The public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**), and by email to

OIRA_Submission@omb.eop.gov, or fax to 202-395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: http://www.cio.noaa.gov/services_programs/prasubs.html.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 19, 2016.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR parts 300 and 679 as follows:

Title 15—Commerce and Foreign Trade

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR”:

■ a. Remove entry for “679.24(a)”;

■ b. Revise entry for “679.42(a) through (j)”;

■ c. Add entries in alphanumeric order for “679.24”, “679.42(b), (k)(2), and (l)”.

The additions and revisions read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	* * * * *
50 CFR:	
* * * * *	* * * * *
679.24	-0353
* * * * *	* * * * *
679.42(a), and (c) through (j)	-0272 and -0665
679.42(b), (k)(2), and (l)	-0353
* * * * *	* * * * *

Title 50—Wildlife and Fisheries

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 3. The authority citation for part 300, subpart E, continues to read as follows:
Authority: 16 U.S.C. 773–773k.

■ 4. In § 300.61, revise the definitions of “Fishing” and “IFQ halibut” to read as follows:

§ 300.61 Definitions.

* * * * *

Fishing means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including:

(1) The deployment of any amount or component part of setline gear anywhere in the maritime area; or

(2) The deployment of longline pot gear as defined in § 679.2 of this title, or component part of that gear in Commission regulatory areas 2C, 3A, 3B, and that portion of Area 4A in the Gulf of Alaska west of Area 3B and east of 170°00' W. long.

* * * * *

IFQ halibut means any halibut that is harvested with setline gear as defined in this section or fixed gear as defined in § 679.2 of this title while commercial fishing in any IFQ regulatory area defined in § 679.2 of this title.

* * * * *

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 5. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

■ 6. In § 679.2:

- a. In the definition of “Authorized fishing gear,” revise paragraphs (4)(i) and (iii), and add paragraph (4)(iv); and
- b. Revise the definition of “IFQ halibut.”

The additions and revisions read as follows:

§ 679.2 Definitions.

* * * * *

Authorized fishing gear * * *

(4) * * *

(i) For sablefish harvested from any GOA reporting area, all longline gear, longline pot gear, and, for purposes of determining initial IFQ allocation, all pot gear used to make a legal landing.

* * * * *

(iii) For halibut harvested from any IFQ regulatory area, all fishing gear composed of lines with hooks attached, including one or more stationary, buoyed, and anchored lines with hooks attached.

(iv) For halibut harvested from any GOA reporting area, all longline pot gear, if the vessel operator is fishing for IFQ sablefish in accordance with § 679.42(l).

* * * * *

IFQ halibut means any halibut that is harvested with setline gear as defined in § 300.61 of this title or fixed gear as defined in this section while commercial fishing in any IFQ regulatory area defined in this section.

* * * * *

■ 7. In § 679.5:

- a. Revise paragraph (a)(4)(i);
- b. Revise note to the table at paragraph (c)(1)(vi)(B), and revise paragraphs (c)(2)(iii)(A), (c)(3)(i)(B), (c)(3)(ii)(A)(1) and (B)(1), (c)(3)(iv)(A)(2), (c)(3)(iv)(B)(2), (c)(3)(v)(G); and (l)(1)(iii)(F) and (G); and
- c. Add paragraphs (l)(1)(iii)(H) and (I).

The additions and revisions read as follows.

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(4) * * *

(i) *Catcher vessels less than 60 ft (18.3 m) LOA.* Except for vessels using longline pot gear as described in paragraph (c)(3)(i)(B)(1) of this section and the vessel activity report described

at paragraph (k) of this section, the owner or operator of a catcher vessel less than 60 ft (18.3 m) LOA is not required to comply with the R&R requirements of this section.

* * * * *

(c) * * *

(1) * * *

(vi) * * *

(B) * * *

* * * * *

Note: CP = catcher/processor; CV = catcher vessel; pot = longline pot or pot-and-line; lgl = longline; trw = trawl; MS = mothership.

* * * * *

(2) * * *

(iii) * * *

(A) If a catcher vessel, record vessel name, ADF&G vessel registration number, FFP number or Federal crab vessel permit number, operator printed name, operator signature, and page number.

* * * * *

(3) * * *

(i) * * *

(B) *IFQ halibut, CDQ halibut, and IFQ sablefish fisheries.* (1) The operator of a catcher vessel less than 60 ft (18.3 m) LOA, using longline pot gear to harvest IFQ sablefish or IFQ halibut in the GOA must maintain a longline and pot gear DFL according to paragraph (c)(3)(iv)(A)(2) of this section.

(2) Except as described in paragraph (f)(1)(i) of this section, the operator of a catcher vessel 60 ft (18.3 m) or greater LOA in the GOA must maintain a longline and pot gear DFL according to paragraph (c)(3)(iv)(A)(2) of this section, when using longline gear or longline pot gear to harvest IFQ sablefish and when using gear composed of lines with hooks attached, setline gear (IPHC), or longline pot gear to harvest IFQ halibut.

(3) Except as described in paragraph (f)(1)(i) of this section, the operator of a catcher vessel 60 ft (18.3 m) or greater LOA in the BSAI must maintain a longline and pot gear DFL according to paragraph (c)(3)(iv)(A)(2) of this section, when using hook-and-line gear or pot gear to harvest IFQ sablefish, and when using gear composed of lines with hooks attached or setline gear (IPHC) to harvest IFQ halibut or CDQ halibut.

(4) Except as described in paragraph (f)(1)(ii) of this section, the operator of a catcher/processor in the GOA must use a combination of a catcher/processor longline and pot gear DCPL and eLandings according to paragraph (c)(3)(iv)(B)(2) of this section, when using longline gear or longline pot gear to harvest IFQ sablefish and when using gear composed of lines with hooks attached, setline gear (IPHC), or longline pot gear to harvest IFQ halibut.

<p>(5) Except as described in paragraph (f)(1)(ii) of this section, the operator of a catcher/processor in the BSAI must use a combination of a catcher/processor longline and pot gear DCPL</p>	<p>and eLandings according to (c)(3)(iv)(B)(2) of this section, when using hook-and-line gear or pot gear to harvest IFQ sablefish, and when using gear composed of lines with hooks</p>	<p>attached or setline gear (IPHC) to harvest IFQ halibut or CDQ halibut. * * * * * (ii) * * * (A) * * *</p>
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REPORTING TIME LIMITS, CATCHER VESSEL LONGLINE OR POT GEAR

Required information	Time limit for recording
<p>(1) FFP number and/or Federal crab vessel permit number (if applicable), IFQ permit numbers (halibut, sablefish, and crab), CDQ group number, halibut CDQ permit number, set number, date and time gear set, date and time gear hauled, beginning and end positions of set, number of skates or pots set, and estimated total hail weight for each set.</p> <p align="center">* * * * *</p>	<p>Within 2 hours after completion of gear retrieval.</p>

(B) * * *

REPORTING TIME LIMITS, CATCHER/PROCESSOR LONGLINE OR POT GEAR

Required information	Record in DCPL	Submit via eLandings	Time limit for reporting
<p>(1) FFP number and/or Federal crab vessel permit number (if applicable), IFQ permit numbers (halibut, sablefish, and crab), CDQ group number, halibut CDQ permit number, set number, date and time gear set, date and time gear hauled, beginning and end positions of set, number of skates or pots set, and estimated total hail weight for each set.</p> <p align="center">* * * * *</p>	<p>X</p>	<p>.....</p>	<p>Within 2 hours after completion of gear retrieval.</p>

* * * * *
(iv) * * *
(A) * * *

(2) If a catcher vessel identified in paragraph (c)(3)(i)(A)(1) or (c)(3)(i)(B)(1) through (3) of this section is active, the operator must record in the longline and pot gear DFL, for one or more days on each logsheet, the information listed in paragraphs (c)(3)(v), (vi), (viii), and (x) of this section.

* * * * *

(B) * * *

(2) If a catcher/processor identified in paragraph (c)(3)(i)(A)(2) or (c)(3)(i)(B)(4) through (5) of this section is active, the operator must record in the catcher/processor longline and pot gear DCPL the information listed in paragraphs (c)(3)(v) and (vi) of this section and must record in eLandings the information listed in paragraphs (c)(3)(v), (vii), and (ix) of this section.

* * * * *

(v) * * *

(G) *Gear type*. Use a separate logsheet for each gear type. Place a check mark in the box for the gear type used to harvest the fish or crab. Record the information from the following table for the appropriate gear type on the logsheet. If the gear type is the same on subsequent logsheets, place a check mark in the box instead of re-entering the gear type information on the next logsheet.

If gear type is . . .	Then . . .
<p>(1) Other gear</p> <p>(2) Pot gear (includes pot-and-line and longline pot).</p>	<p>If gear is other than those listed within this table, indicate "Other" and describe.</p> <p>(i) If using longline pot gear in the GOA, enter the length of longline pot set to the nearest foot, the size of pot in inches (width by length by height or diameter), and spacing of pots to the nearest foot.</p> <p>(ii) If using longline pot gear in the GOA, enter the number of pots deployed in each set (see paragraph (c)(3)(vi)(F) of this section) and the number of pots lost when the set is retrieved (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title).</p> <p>(iii) If using pot gear, enter the number of pots deployed in each set (see paragraph (c)(3)(vi)(F) of this section) and the number of pots lost when the set is retrieved (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title).</p>
<p>(3) Hook-and-line gear</p>	<p>Indicate: (i) Whether gear is fixed hook (conventional or tub), autoline, or snap (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title).</p> <p>(ii) Number of hooks per skate (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title), length of skate to the nearest foot (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title), size of hooks, and hook spacing in feet.</p> <p>(iii) Enter the number of skates set and number of skates lost (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title).</p> <p>(iv) Seabird avoidance gear code(s) (see § 679.24(e) and Table 19 to this part).</p>

If gear type is . . .	Then . . .
	<p>(v) Enter the number of mammals sighted while hauling gear next to the mammal name: Sperm, orca, and other (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title).</p> <p>(vi) Enter the number of sablefish, halibut, other fish, or hooks damaged found while hauling gear (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title).</p>

* * * * *

(F) IFQ regulatory area(s) in which the IFQ halibut, CDQ halibut, or IFQ sablefish were harvested;

(G) IFQ permit number(s) that will be used to land the IFQ halibut, CDQ halibut, or IFQ sablefish;

(H) Gear type used to harvest the IFQ sablefish or IFQ halibut (see Table 15 to this part); and

(I) If using longline pot gear in the GOA, report the number of pots set, the number of pots lost, and the number of pots left deployed on the fishing grounds.

* * * * *

■ 8. In § 679.7:

a. Revise paragraph (a)(6) introductory text, paragraph (a)(6)(i), paragraph (a)(13) introductory text, paragraph (a)(13)(ii) introductory text, and paragraph (a)(13)(iv); and

b. Add paragraphs (f)(17) through (25). The additions and revisions read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(6) *Gear*. Deploy any trawl, longline, longline pot, pot-and-line, or jig gear in an area when directed fishing for, or retention of, all groundfish by operators of vessels using that gear type is prohibited in that area, except that this paragraph (a)(6) shall not prohibit:

(i) Deployment of fixed gear, as defined in § 679.2 under “Authorized fishing gear,” by an operator of a vessel fishing for IFQ halibut during the fishing period prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title.

* * * * *

(13) *Halibut*. With respect to halibut caught with fixed gear, as defined in § 679.2 under the definition of “Authorized fishing gear,” deployed from a vessel fishing for groundfish, except for vessels fishing for halibut as prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title:

* * * * *

(ii) Release halibut caught with longline gear by any method other than—

* * * * *

(iv) Allow halibut caught with longline gear to contact the vessel, if such contact causes, or is capable of causing, the halibut to be stripped from the hook.

* * * * *

(f) * * *

(17) Deploy, conduct fishing with, or retrieve longline pot gear in the GOA before the start or after the end of the IFQ sablefish fishing period specified in § 679.23(g)(1).

(18) Deploy, conduct fishing with, retrieve, or retain IFQ sablefish or IFQ halibut from longline pot gear in the GOA:

(i) In excess of the pot limits specified in § 679.42(l)(5)(ii); or

(ii) Without a pot tag attached to each pot in accordance with § 679.42(l)(4).

(19) Deploy, conduct fishing with, or retain IFQ sablefish or IFQ halibut in the GOA from a pot with an attached pot tag that has a serial number assigned to another vessel or has been reported lost, stolen, or mutilated to NMFS in a request for a replacement pot tag as described in § 679.42(l)(3)(iii).

(20) Deploy longline pot gear to fish IFQ sablefish in the GOA without marking the gear in accordance with § 679.24(a).

(21) Fail to retrieve and remove from the fishing grounds all deployed longline pot gear that is assigned to, and used by, a catcher vessel to fish IFQ sablefish in the Southeast Outside District of the GOA when the vessel makes an IFQ landing.

(22) Fail to redeploy or remove from the fishing grounds all deployed longline pot gear that is assigned to, and used by, a catcher/processor within five days of deploying the gear to fish IFQ sablefish in the Southeast Outside District of the GOA.

(23) Fail to redeploy or remove from the fishing grounds all deployed longline pot gear that is assigned to, and used by, a catcher vessel or a catcher/processor within five days of deploying the gear to fish IFQ sablefish in the West Yakutat District of the GOA and the Central GOA regulatory area.

(24) Fail to redeploy or remove from the fishing grounds all deployed longline pot gear that is assigned to, and used by, a catcher vessel or a catcher/processor within seven days of deploying the gear to fish IFQ sablefish in the Western GOA regulatory area.

(25) Operate a catcher vessel or a catcher/processor using longline pot gear to fish IFQ sablefish or IFQ halibut in the GOA and fail to use functioning VMS equipment as required in § 679.42(k)(2).

* * * * *

■ 9. In § 679.20, revise paragraphs (a)(4)(i), (a)(4)(ii) heading, and (a)(4)(ii)(A) to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(4) * * *

(i) *Eastern GOA regulatory area—(A) Fixed gear*. Vessels in the Eastern GOA regulatory area using fixed gear will be allocated 95 percent of the sablefish TAC.

(B) *Trawl gear*. Vessels in the Eastern GOA regulatory area using trawl gear will be allocated 5 percent of the sablefish TAC for bycatch in other trawl fisheries.

(ii) *Central and Western GOA regulatory areas—(A) Fixed gear*. Vessels in the Central and Western GOA regulatory areas using fixed gear will be allocated 80 percent of the sablefish TAC in each of the Central and Western GOA regulatory areas.

* * * * *

■ 10. In § 679.23, revise paragraph (g)(2) to read as follows:

§ 679.23 Seasons.

* * * * *

(g) * * *

(2) Except for catches of sablefish with longline pot gear in the GOA, catches of sablefish by fixed gear during other periods may be retained up to the amounts provided for by the directed fishing standards specified at § 679.20 when made by an individual aboard the vessel who has a valid IFQ permit and unused IFQ in the account on which the permit was issued.

* * * * *

■ 11. In § 679.24:

- a. Add paragraphs (a)(3) and (b)(1)(iii); and
- b. Revise paragraphs (c)(2)(i)(A) and (B); and (c)(3).

The additions and revisions read as follows.

§ 679.24 Gear limitations.

* * * * *

(a) * * *

(3) Each end of a set of longline pot gear deployed to fish IFQ sablefish in the GOA must have attached a cluster of four or more marker buoys including one hard buoy ball marked with the capital letters "LP" in accordance with paragraph (a)(2) of this section, a flag mounted on a pole, and radar reflector floating on the sea surface.

(b) * * *

(1) * * *

(iii) While directed fishing for IFQ sablefish in the GOA.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) No person may use any gear other than hook-and-line, longline pot, and trawl gear when fishing for sablefish in the Eastern GOA regulatory area.

(B) No person may use any gear other than hook-and-line gear and longline pot gear to engage in directed fishing for IFQ sablefish.

* * * * *

(3) *Central and Western GOA regulatory areas; sablefish as prohibited species.* Operators of vessels using gear types other than hook-and-line, longline pot, and trawl gear in the Central and Western GOA regulatory areas must treat any catch of sablefish in these areas as a prohibited species as provided by § 679.21(a).

* * * * *

- 12. In § 679.42:
- a. Revise paragraphs (b)(1) and (2), and paragraphs (k)(1) and (k)(2); and
- b. Add paragraph (l).

The addition and revisions read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(b) * * *

(1) *IFQ Fisheries.* Authorized fishing gear to harvest IFQ halibut and IFQ sablefish is defined in § 679.2.

(i) *IFQ halibut.* IFQ halibut must not be harvested with trawl gear in any IFQ regulatory area, or with pot gear in any IFQ regulatory area in the BSAI.

(ii) *IFQ sablefish.* IFQ sablefish must not be harvested with trawl gear in any IFQ regulatory area, or with pot-and-line gear in the GOA. A vessel operator using longline pot gear in the GOA to fish for

IFQ sablefish must comply with the GOA sablefish longline pot gear requirements in paragraph (l) of this section.

(2) *Seabird avoidance gear and methods.* The operator of a vessel using hook-and-line gear authorized at § 679.2 while fishing for IFQ halibut, CDQ halibut, or IFQ sablefish must comply with requirements for seabird avoidance gear and methods set forth at § 679.24(e).

* * * * *

(k) * * *

(1) *Bering Sea or Aleutian Islands.* (i) *General.* Any vessel operator who fishes for IFQ sablefish in the Bering Sea or Aleutian Islands must possess a transmitting VMS transmitter while fishing for IFQ sablefish.

(ii) *VMS requirements.* (A) The operator of the vessel must comply with VMS requirements at § 679.28(f)(3), (f)(4), and (f)(5); and

(B) The operator of the vessel must contact NMFS at 800-304-4846 (option 1) between 0600 and 0000 A.l.t. and receive a VMS confirmation number at least 72 hours prior to fishing for IFQ sablefish in the Bering Sea or Aleutian Islands.

(2) *Gulf of Alaska.* (i) *General.* A vessel operator using longline pot gear to fish for IFQ sablefish in the Gulf of Alaska must possess a transmitting VMS transmitter while fishing for sablefish.

(ii) *VMS requirements.* (A) The operator of the vessel must comply with VMS requirements at § 679.28(f)(3), (f)(4), and (f)(5); and

(B) The operator of the vessel must contact NMFS at 800-304-4846 (option 1) between 0600 and 0000 A.l.t. and receive a VMS confirmation number at least 72 hours prior to using longline pot gear to fish for IFQ sablefish in the Gulf of Alaska.

(l) *GOA sablefish longline pot gear requirements.* Additional regulations that implement specific requirements for any vessel operator who fishes for IFQ sablefish in the GOA using longline pot gear are set out under: § 300.61 Definitions, § 679.2 Definitions, § 679.5 Recordkeeping and reporting (R&R), § 679.7 Prohibitions, § 679.20 General limitations, § 679.23 Seasons, § 679.24 Gear limitations, and § 679.51 Observer requirements for vessels and plants.

(1) *Applicability.* Any vessel operator who fishes for IFQ sablefish with longline pot gear in the GOA must comply with the requirements of this paragraph (l). The IFQ regulatory areas in the GOA include the Southeast Outside District of the GOA, the West Yakutat District of the GOA, the Central GOA regulatory area, and the Western GOA regulatory area.

(2) *General.* To use longline pot gear to fish for IFQ sablefish in the GOA, a vessel operator must:

(i) Request and be issued pot tags from NMFS as specified in paragraph (l)(3);

(ii) Use pot tags as specified in paragraph (l)(4);

(iii) Deploy and retrieve longline pot gear as specified in paragraph (l)(5);

(iv) Retain IFQ halibut caught in longline pot gear if sufficient halibut IFQ is held by persons on board the vessel as specified in paragraph (l)(6); and

(v) Comply with other requirements as specified in paragraph (l)(7).

(3) *Pot tags.* (i) *Request for pot tags.*

(A) The owner of a vessel that uses longline pot gear to fish for IFQ sablefish in the GOA must use pot tags issued by NMFS. A vessel owner may only receive pot tags from NMFS for each vessel that uses longline pot gear to fish for IFQ sablefish in the GOA by submitting a complete IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form according to form instructions. The form is located on the NMFS Alaska Region Web site at alaskafisheries.noaa.gov.

(B) The vessel owner must specify the number of requested pot tags for each vessel for each IFQ regulatory area in the GOA (up to the maximum number of pots specified in paragraph (l)(5)(ii) of this section) on the IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form.

(ii) *Issuance of pot tags.* (A) Upon submission of a completed IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form, NMFS will assign each pot tag to the vessel specified on the form.

(B) Each pot tag will be a unique color that is specific to the IFQ regulatory area in the GOA in which it must be deployed and imprinted with a unique serial number.

(C) NMFS will send the pot tags to the vessel owner at the address provided on the IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form.

(iii) *Request for pot tag replacement.* (A) The vessel owner may submit a request to NMFS to replace pot tags that are lost, stolen, or mutilated.

(B) The vessel owner to whom the lost, stolen, or mutilated pot tag was issued must submit a complete IFQ Sablefish Request for Replacement of Longline Pot Gear Tags form according to form instructions. The form is located on the NMFS Alaska Region Web site at alaskafisheries.noaa.gov.

(C) A complete form must be signed by the vessel owner and is a sworn

affidavit to NMFS indicating the reason for the request for a replacement pot tag or pot tags and the number of replacement pot tags requested by IFQ regulatory area.

(D) NMFS will review a request to replace a pot tag or tags and will issue the appropriate number of replacement pot tags. The total number of pot tags issued to a vessel owner for an IFQ regulatory area in the GOA cannot exceed the maximum number of pots authorized for use by a vessel in that IFQ regulatory area specified in paragraph (l)(5)(ii) of this section. The total number of pot tags issued to a vessel owner for an IFQ regulatory area in the GOA equals the sum of the number of pot tags issued for that IFQ regulatory area that have not been replaced plus the number of replacement pot tags issued for that IFQ regulatory area.

(iv) *Annual vessel registration and pot tag assignment.* (A) The owner of a vessel that uses longline pot gear to fish for IFQ sablefish in the GOA must annually register the vessel with NMFS and specify the pot tags that NMFS will assign to the vessel. Pot tags must be assigned to only one vessel each year.

(B) To register a vessel and assign pot tags, the vessel owner must annually submit a complete IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form to NMFS.

(1) The vessel owner must specify the vessel to be registered on the IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form. The specified vessel must have a valid ADF&G vessel registration number.

(2) The vessel owner must specify on the IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form either that the vessel owner is requesting that NMFS assign pot tags to a vessel to which the pot tags were previously assigned or that the vessel owner is requesting new pot tags from NMFS.

(4) *Using pot tags.* (i) Each pot used to fish for IFQ sablefish in the GOA must be identified with a valid pot tag. A valid pot tag is:

- (A) Issued by NMFS according to paragraph (l)(3) of this section;
- (B) The color specific to the regulatory area in which it will be used; and
- (C) Inscribed with a legible unique serial number.

(ii) A valid pot tag must be attached to each pot on board the vessel to which the pot tags are assigned before the vessel departs port to fish.

(iii) A valid pot tag must be attached to a pot bridge or cross member such

that the entire pot tag is visible and not obstructed.

(5) *Restrictions on GOA longline pot gear deployment and retrieval—(i) General.*

(A) A vessel operator must mark longline pot gear used to fish IFQ sablefish in the GOA as specified in § 679.24(a).

(B) A vessel operator must deploy and retrieve longline pot gear to fish IFQ sablefish in the GOA only during the sablefish fishing period specified in § 679.23(g)(1).

(C) The gear retrieval and removal requirements in paragraphs (l)(5)(iii) and (iv) of this section apply to all longline pot gear that is assigned to the vessel and deployed to fish IFQ sablefish and to all other fishing equipment attached to longline pot gear that is deployed in the water by the vessel to fish IFQ sablefish. All other fishing equipment attached to longline pot gear includes, but is not limited to, equipment used to mark longline pot gear as required in § 679.24(a)(3).

(ii) *Pot limits.* A vessel operator is limited to deploying a maximum number of pots to fish IFQ sablefish in each IFQ regulatory area in the GOA.

(A) In the Southeast Outside District of the GOA, a vessel operator is limited to deploying a maximum of 120 pots.

(B) In the West Yakutat District of the GOA, a vessel operator is limited to deploying a maximum of 120 pots.

(C) In the Central GOA regulatory area, a vessel operator is limited to deploying a maximum of 300 pots.

(D) In the Western GOA regulatory area, a vessel operator is limited to deploying a maximum of 300 pots.

(iii) *Gear retrieval.* (A) In the Southeast Outside District of the GOA, a catcher vessel operator must retrieve and remove from the fishing grounds all longline pot gear that is assigned to the vessel and deployed to fish IFQ sablefish when the vessel makes an IFQ landing.

(B) In the Southeast Outside District of the GOA, a catcher/processor must redeploy or remove from the fishing grounds all longline pot gear that is assigned to the vessel and deployed to fish IFQ sablefish within five days of deploying the gear.

(C) In the West Yakutat District of the GOA and the Central GOA regulatory area, a vessel operator must redeploy or remove from the fishing grounds all longline pot gear that is assigned to the vessel and deployed to fish IFQ sablefish within five days of deploying the gear.

(D) In the Western GOA regulatory area, a vessel operator must redeploy or remove from the fishing grounds all

longline pot gear that is assigned to the vessel and deployed to fish IFQ sablefish within seven days of deploying the gear.

(iv) *Longline pot gear used on multiple vessels.* Longline pot gear assigned to one vessel and deployed to fish IFQ sablefish in the GOA must be removed from the fishing grounds, returned to port, and must have only one set of the appropriate vessel-specific pot tags before being deployed by another vessel to fish IFQ sablefish in the GOA.

(6) *Retention of halibut.* (i) A vessel operator who fishes for IFQ sablefish using longline pot gear must retain IFQ halibut if:

(A) The IFQ halibut is caught in any GOA reporting area in accordance with paragraph (l) of this section; and

(B) An IFQ permit holder on board the vessel has unused halibut IFQ for the IFQ regulatory area fished and IFQ vessel category.

(ii) [Reserved]

(7) *Other requirements.* A vessel operator who fishes for IFQ sablefish using longline pot gear in the GOA must:

(i) Complete a longline and pot gear Daily Fishing Logbook (DFL) or Daily Cumulative Production Logbook (DCPL) as specified in § 679.5(c); and

(ii) Comply with Vessel Monitoring System (VMS) requirements specified in paragraph (k)(2) of this section.

■ 13. In § 679.51, revise paragraphs (a)(1)(i) introductory text and (a)(1)(i)(B) to read as follows:

§ 679.51 Observer requirements for vessels and plants.

* * * * *

(a) * * *

(1) * * *

(i) *Vessel classes in partial coverage category.* Unless otherwise specified in paragraph (a)(2) of this section, the following catcher vessels and catcher/processors are in the partial observer coverage category when fishing for halibut or when directed fishing for groundfish in a federally managed or parallel groundfish fishery, as defined at § 679.2:

* * * * *

(B) A catcher vessel when fishing for halibut while carrying a person named on a permit issued under § 679.4(d)(1)(i), (d)(2)(i), or (e)(2), or for IFQ sablefish, as defined at § 679.2, while carrying a person named on a permit issued under § 679.4(d)(1)(i) or (d)(2)(i); or

* * * * *

14. In Table 15 to part 679, revise entries for “Pot”, “Authorized gear for

sablefish harvested from any GOA reporting area”, and “Authorized gear for halibut harvested from any IFQ regulatory area in the BSAI” to read as follows:

TABLE 15 TO PART 679—GEAR CODES, DESCRIPTIONS, AND USE
[X indicates where this code is used]

Name of gear	Use alphabetic code to complete the following:			Use numeric code to complete the following:		
	Alpha gear code	NMFS logbooks	Electronic check-in/check-out	Numeric gear code	IERS eLandings	ADF&G COAR
NMFS AND ADF&G GEAR CODES						
Pot (includes longline pot and pot-and-line).	POT		X	91	X	X
FIXED GEAR						
Authorized gear for sablefish harvested from any GOA reporting area.	All longline gear (hook-and-line, jig, troll, and handline) and longline pot gear. For purposes of determining initial IFQ allocation, all pot gear used to make a legal landing.					
Authorized gear for halibut harvested from any IFQ regulatory area in the GOA.	All fishing gear composed of lines with hooks attached, including one or more stationary, buoyed, and anchored lines with hooks attached and longline pot gear.					
Authorized gear for halibut harvested from any IFQ regulatory area in the BSAI.	All fishing gear composed of lines with hooks attached, including one or more stationary, buoyed, and anchored lines with hooks attached.					

[FR Doc. 2016-31057 Filed 12-27-16; 8:45 am]
BILLING CODE 3510-22-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 33-10075A; 34-77757A; File No. S7-12-14]

RIN 3235-AL40

Changes to Exchange Act Registration Requirements To Implement Title V and Title VI of the JOBS Act; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical correction.

SUMMARY: This document makes technical corrections to a rule that was published in the *Federal Register* on May 10, 2016 (81 FR 28689). The Commission adopted revisions to Rule 12g-1 under the Securities Exchange Act of 1934 (“Exchange Act”) in light of the statutory changes made by Title V and Title VI of the Jumpstart Our Business Startups Act and Title LXXXV of the Fixing America’s Surface Transportation Act. This document is being published to correct language in that rule to more precisely reflect the

holder of record threshold established by Exchange Act Section 12(g)(1).
DATES: Effective December 28, 2016.
FOR FURTHER INFORMATION CONTACT: Steven G. Hearne, Senior Special Counsel, at (202) 551-3430, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are making technical corrections to Rule 12g-1¹ under the Exchange Act.²

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

For the reasons set out above, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for part 240 continues to read 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, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q,

¹ 17 CFR 240.12g-1.
² 15 U.S.C. 78a *et seq.*

78q-1, 78s, 78u-5, 78w, 78x, 78ll, 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; Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112-106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 2. Amend § 240.12g-1 by revising paragraph (b)(1) to read as follows:

§ 240.12g-1 Registration of securities; Exemption from section 12(g).

* * * * *

(b)(1) The class of equity securities was held of record by fewer than 2,000 persons and fewer than 500 of those persons were not accredited investors (as such term is defined in § 230.501(a) of this chapter, determined as of such day rather than at the time of the sale of the securities); or

* * * * *

Dated: December 21, 2016.

Brent J. Fields,
Secretary.

[FR Doc. 2016-31286 Filed 12-27-16; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 9806]

RIN 1545-BK66

Definitions and Reporting Requirements for Shareholders of Passive Foreign Investment Companies**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance on determining ownership of a passive foreign investment company (PFIC) and on certain annual reporting requirements for shareholders of PFICs to file Form 8621, "Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund." In addition, the final regulations provide guidance on an exception to the requirement for certain shareholders of foreign corporations to file Form 5471, "Information Return of U.S. Persons with Respect to Certain Foreign Corporations." The regulations finalize proposed regulations and withdraw temporary regulations published on December 31, 2013. The final regulations affect United States persons that own interests in PFICs, and certain United States shareholders of foreign corporations.

DATES: *Effective Date:* These regulations are effective on December 28, 2016.*Applicability Dates:* For dates of applicability, see §§ 1.1291-1(j)(3), 1.1291-9(k)(3), 1.1298-1(h), 1.6038-2(m), and 1.6046-1(l)(3).**FOR FURTHER INFORMATION CONTACT:** Jeffery G. Mitchell at (202) 317-6934 (not a toll-free number).**SUPPLEMENTARY INFORMATION:****Background**

On December 31, 2013, the Treasury Department and the IRS published final and temporary regulations (2013 temporary regulations) under sections 1291, 1298, 6038, and 6046 (T.D. 9650) in the **Federal Register** (78 FR 79602, as corrected at 79 FR 26836). On the same date, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-140974-11) in the **Federal Register** (78 FR 79650, as corrected at 79 FR 27230) cross-referencing the 2013 temporary regulations (2013 proposed regulations). No public hearing was requested or

held. Written comments were received, and are available at www.regulations.gov or upon request.

On April 28, 2014, the Treasury Department and the IRS issued Notice 2014-28 (2014-18 I.R.B. 990), which announced that the regulations under section 1291 would provide that a United States person that owns stock of a PFIC through a tax-exempt organization or account is not treated as a shareholder of the PFIC with respect to the stock. In addition, on September 29, 2014, the Treasury Department and the IRS issued Notice 2014-51 (2014-40 I.R.B. 594), which announced that the regulations under section 1298 would provide guidance concerning United States persons that own stock in a PFIC that is marked to market under a provision of chapter 1 of the Code other than section 1296.

This Treasury decision adopts the 2013 proposed regulations with the changes described below as final regulations, including implementing the rules described in Notice 2014-28 and Notice 2014-51, and removes the corresponding 2013 temporary regulations.

Summary of Comments and Explanation of Revisions

The final regulations retain the basic approach and structure of the 2013 temporary regulations, with certain revisions. This Summary of Comments and Explanation of Revisions section discusses those revisions as well as comments received in response to the solicitation of comments in the notice of proposed rulemaking accompanying the 2013 temporary regulations. Several comments were received that did not pertain to the rules in the 2013 temporary regulations. These comments are beyond the scope of this rulemaking and are not addressed in this preamble. The Treasury Department and the IRS will consider these comments in connection with any future guidance projects addressing the issues discussed in the comments.

A. Definition of Shareholder and Indirect Shareholder in § 1.1291-1(b)(7) and (8)**1. Revision to Definition of Shareholder Announced in Notice 2014-28**

As described in Notice 2014-28, the application of the PFIC rules to a United States person treated as owning stock of a PFIC through a tax-exempt organization or account described in § 1.1298-1(c)(1) would be inconsistent with the tax policies underlying the PFIC rules and the treatment of tax-exempt organizations and accounts. For

example, applying the PFIC rules to a United States person that owns stock of a PFIC through an individual retirement account (IRA) described in section 408(a) would be inconsistent with the principle of deferred taxation provided by IRAs. Notice 2014-28 provides that the regulations incorporating the guidance described in the notice will be effective for taxable years of United States persons that own stock of a PFIC through a tax-exempt organization or account ending on or after December 31, 2013.

The final regulations modify the definition of shareholder in § 1.1291-1 as announced in Notice 2014-28. Under new § 1.1291-1(e)(2), a United States person is not treated as a shareholder of a PFIC to the extent the person owns PFIC stock through a tax-exempt organization or account described in § 1.1298-1(c)(1).

2. Indirect Shareholder as a Result of Attribution Through a Domestic Corporation**a. 1992 Proposed Regulations**

On April 1, 1992 (57 FR 11024) the Treasury Department and the IRS issued proposed regulations (1992 proposed regulations) that, among other things, included rules for determining when a United States person is treated as indirectly owning stock of a PFIC. Consistent with section 1298(a)(2)(A), § 1.1291-1(b)(8)(ii)(A) of the 1992 proposed regulations provided that a United States person who directly or indirectly owns 50 percent or more in value of the stock of a foreign corporation that is not a PFIC is considered to own a proportionate amount (by value) of any stock (including PFIC stock) owned directly or indirectly by the foreign corporation. Thus, for example, if a United States person owned 100 percent of the shares of FC, a foreign corporation that is not a PFIC but that owns 50 shares of a PFIC, the United States person would be treated as indirectly owning the 50 PFIC shares under § 1.1291-1(b)(8)(ii)(A) of the 1992 proposed regulations.

By contrast, section 1298(a)(1)(B) provides that PFIC stock owned by a domestic corporation (which generally would be treated as a PFIC shareholder itself) is not attributed to any other person, except to the extent provided in regulations. Pursuant to this grant of regulatory authority, § 1.1291-1(b)(8)(ii)(C) of the 1992 proposed regulations provided that, if stock of a section 1291 fund was not treated as owned indirectly by a United States person under the other attribution rules provided in the proposed regulations,

but would be treated as owned by a United States person if the ownership rule of § 1.1291-1(b)(8)(ii)(A) of the 1992 proposed regulations applied to domestic corporations (in addition to foreign corporations), then the stock of the section 1291 fund would be considered as owned by such United States person.

Both § 1.1291-1(b)(8)(ii)(A) and (C) of the 1992 proposed regulations were withdrawn and reissued under the 2013 temporary regulations as § 1.1291-1T(b)(8)(ii)(A) and (C), respectively.

b. Intended Scope of § 1.1291-1T(b)(8)(ii)(C)

The purpose of § 1.1291-1(b)(8)(ii)(C) of the 1992 proposed regulations and § 1.1291-1T(b)(8)(ii)(C), as explained in the preamble to the 1992 proposed regulations, was to attribute stock through a domestic C corporation in certain circumstances if, absent such attribution, the stock of a PFIC would not be treated as owned by any United States person. In particular, because § 1.1291-1T(b)(8)(ii)(A) provides that a United States person who directly or indirectly owns 50 percent or more in value of the stock of a foreign corporation that is not a PFIC is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the foreign corporation, without § 1.1291-1T(b)(8)(ii)(C), a United States person could interpose a domestic C corporation into an ownership structure to avoid shareholder status with respect to stock of a PFIC that the United States person indirectly owned through one or more foreign corporations that were not PFICs. In other words, § 1.1291-1T(b)(8)(ii)(C) provides guidance as to when a United States person is treated as indirectly owning stock of a foreign corporation through a domestic corporation for purposes of § 1.1291-1T(b)(8)(ii)(A).

For example, assume that A, a United States person, owns 49 percent of the stock of FC1, a foreign corporation that is not a PFIC, and separately all the stock of DC, a domestic corporation that is not an S corporation. DC, in turn, owns the remaining 51 percent of the stock of FC1, and FC1 owns 100 shares of stock in a PFIC (which is not a controlled foreign corporation within the meaning of section 957(a)). DC is an indirect shareholder with respect to 51 percent of the PFIC stock held by FC1 under § 1.1291-1T(b)(8)(ii)(A). Absent the application of § 1.1291-1T(b)(8)(ii)(C), because A directly or indirectly owns less than 50 percent of the value of the stock of FC1 and thus § 1.1291-1T(b)(8)(ii)(A) does not apply,

A would not be treated as an indirect shareholder with respect to any of the PFIC stock directly owned by FC1 when, from an economic perspective, A indirectly owns all the PFIC stock held by FC1. Therefore, without a rule treating A as owning DC's stock in FC1, the remaining 49 percent of the PFIC stock held by FC1 would not be treated as owned by any United States person.

On the other hand, the literal language of § 1.1291-1T(b)(8)(ii)(C) could have been interpreted to create overlapping ownership by two or more United States persons in the same stock of a section 1291 fund. Thus, in the foregoing example, A may have been considered as owning 100 percent of the stock of FC1, and therefore as indirectly owning all 100 shares of the PFIC stock held by FC1, even though 51 of those shares are considered indirectly owned by DC, a United States person. This outcome is inconsistent with the intended purpose of the rule to attribute stock through a domestic C corporation in certain circumstances if, absent such attribution, the stock of a PFIC would not be treated as owned by any United States person.

c. Revisions to 2013 Temporary Regulations

To address this concern, the final regulations include a non-duplication rule. Specifically, the final regulations provide under § 1.1291-1(b)(8)(ii)(C)(1) that, solely for purposes of determining whether a person owns 50 percent or more in value of the stock of a foreign corporation that is not a PFIC under § 1.1291-1(b)(8)(ii)(A), a person who directly or indirectly owns 50 percent or more in value of the stock of a domestic corporation is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the domestic corporation. However, the non-duplication rule in § 1.1291-1(b)(8)(ii)(C)(2) states that a United States person will not be treated, as a result of applying § 1.1291-1(b)(8)(ii)(C)(1), as owning (other than for purposes of determining whether a person satisfies the ownership threshold of § 1.1291-1(b)(8)(ii)(A)) stock of a PFIC that is directly owned or considered owned indirectly under § 1.1291-1(b)(8) by another United States person (determined without regard to § 1.1291-1(b)(8)(ii)(C)(1)).

Applying the non-duplication rule to the example above, to the extent that the 51 shares of PFIC stock are indirectly owned by DC (a United States person) under § 1.1291-1(b)(8)(ii)(A), those shares are not also treated as indirectly owned by A (other than for purposes of determining whether A satisfies the

ownership threshold of § 1.1291-1(b)(8)(ii)(A)). Only the remaining 49 shares of PFIC stock are considered to be indirectly owned by A.

d. Additional Revisions to 2013 Temporary Regulations

Lastly, the final regulations make two additional clarifications with respect to this rule. First, the final regulations clarify, under § 1.1291-1(b)(8)(ii)(C)(3), that the ownership rule of § 1.1291-1(b)(8)(ii)(C)(1) does not apply to stock owned directly or indirectly by an S corporation; rather, the indirect ownership rule under § 1.1291-1(b)(8)(iii)(B) applies in those instances. Second, the final regulations clarify that the attribution rule in § 1.1291-1(b)(8)(ii)(C) applies to all PFICs and not only section 1291 funds, in order to ensure that United States persons who are treated as indirect shareholders of PFICs are permitted to make qualified electing fund elections under section 1295.

B. Exceptions to Section 1298(f) Reporting

A number of comments requested that the final regulations expand the exceptions to section 1298(f) reporting provided in the 2013 temporary regulations or add new exceptions.

1. Exception for PFIC Stock That Is Marked To Market Under a Non-Section 1296 MTM Provision Announced in Notice 2014-51

Two comments requested an exception to section 1298(f) reporting for PFIC stock that is marked to market under a provision of chapter 1 of the Code other than section 1296 (a non-section 1296 MTM provision), such as section 475(f). In response to these comments, the Treasury Department and the IRS issued Notice 2014-51, which announced that the regulations under section 1298 would be amended to provide that United States persons that own stock in a PFIC that is marked to market under a non-section 1296 MTM regime generally are not subject to section 1298(f) reporting. In addition, the notice states that the regulations would provide that a shareholder's PFIC stock that is marked to market under a non-section 1296 MTM provision is not taken into account in determining whether the shareholder qualifies for the exceptions from reporting set forth in § 1.1298-1T(c)(2)(i)(A)(1) or (c)(2)(iii), which generally exempt certain shareholders from certain section 1298(f) reporting requirements when their aggregate PFIC holdings do not exceed \$25,000 (or, \$50,000 in the case of a shareholder that files a joint return).

Notice 2014–51 states that the regulations that incorporate the guidance described in the notice would be effective for taxable years of shareholders ending on or after December 31, 2013.

The final regulations, in accordance with Notice 2014–51, add § 1.1298–1(c)(3), which provides that United States persons that own PFIC stock that is marked to market under a non-section 1296 MTM provision are not subject to section 1298(f) reporting unless they are subject to section 1291 under the coordination rule in § 1.1291–1(c)(4)(ii). Generally, under § 1.1291–1(c)(4)(ii), when a United States person's PFIC stock is marked to market under a non-section 1296 MTM provision in a taxable year after the year in which the United States person acquired the stock, the United States person is subject to section 1291 for the first taxable year in which the United States person marks to market the PFIC stock. Thus, the United States person is subject to section 1291 with respect to any unrealized gain in the stock as of the last day of the first taxable year in which the stock is marked to market, as if the person disposed of the stock on that day. See § 1.1291–1(c)(4)(ii) and § 1.1296–1(i)(2) and (3).

Also consistent with Notice 2014–51, the final regulations add § 1.1298–1(c)(2)(ii)(C), pursuant to which a United States person's PFIC stock that is marked to market under a non-section 1296 MTM provision is not taken into account in determining whether the person qualifies for the exceptions from section 1298(f) reporting set forth in § 1.1298–1(c)(2)(i)(A)(1) or (c)(2)(iii), provided that the rules of § 1.1296–1(i)(2) and (3) do not apply with respect to the PFIC stock pursuant to § 1.1291–1(c)(4)(ii) for the taxable year. See Section B.7 of this preamble for a description of these exceptions.

2. Exception for Certain Domestic Partnerships

A comment requested that the final regulations add a new exception from the section 1298(f) filing requirements for domestic partnerships in which all of the partners are tax-exempt organizations (or other partnerships, all of the partners of which are tax-exempt organizations) that are not subject to the PFIC rules with respect to a PFIC held by the partnership because any income derived with respect to the PFIC would not be taxable to the tax-exempt partners under subchapter F of Subtitle A of the Code. The comment pointed out that a tax-exempt organization is subject to section 1298(f) reporting with respect to PFIC stock under § 1.1298–

1(c)(1) only if the income derived by the organization with respect to the PFIC stock would be taxable to the organization under subchapter F of Subtitle A of the Code. However, under the 2013 temporary regulations, a domestic partnership (such as a domestic partnership that exclusively pools the funds of tax-exempt organizations to invest in PFICs) is required to file a Form 8621 with respect to PFIC stock even when none of its partners are subject to the PFIC rules with respect to the PFIC stock.

Requiring reporting under section 1298(f) by a domestic partnership when none of its direct and indirect owners are subject to the PFIC rules may result in undue compliance costs and burdens. Accordingly, consistent with the exception in § 1.1298–1(c)(1), the final regulations adopt and expand upon this comment and provide a final rule in § 1.1298–1(c)(6) that exempts a domestic partnership from section 1298(f) reporting with respect to an interest in a PFIC for a taxable year when none of its direct or indirect partners are required to file Form 8621 (or successor form) with respect to the PFIC interest under section 1298(f) and these regulations because the partners are not subject to the PFIC rules.

Thus, for example, if all the partners of a domestic partnership are tax-exempt organizations exempt from PFIC taxation under § 1.1291–1(e) with respect to PFIC stock held by the partnership, and accordingly are exempt from reporting pursuant to § 1.1298–1(c)(1), the partnership, in turn, is exempt from filing Form 8621 under section 1298(f) with respect to the PFIC stock held by the partnership. Likewise, if all the partners of a domestic partnership are foreign corporations that are not considered to be shareholders under § 1.1291–1(b)(7) of PFIC stock held by the partnership, and no United States person is an indirect shareholder of the PFIC stock under § 1.1291–1(b)(8), the partnership, in turn, is exempt from filing Form 8621 under section 1298(f) with respect to the PFIC stock held by the partnership.

In contrast, a domestic partnership is not exempt from filing Form 8621 under § 1.1298–1(c)(6) with respect to stock it holds in a section 1291 fund when some or all of its partners are exempt from filing Form 8621 with respect to that stock but otherwise would be subject to tax on distributions on, or dispositions of, that stock. PFIC information reporting by the domestic partnership in these circumstances is appropriate because it furthers PFIC tax compliance and enforcement.

3. Exception for PFIC Stock Held Through Certain Foreign Pension Funds That Are Covered by a U.S. Income Tax Treaty

In general, § 1.1298–1T(b)(3)(ii) exempts a United States person from section 1298(f) reporting with respect to PFIC stock that is owned by the United States person through a foreign trust that is a foreign pension fund operated principally to provide pension or retirement benefits, when, pursuant to the provisions of a U.S. income tax treaty, the income earned by the pension fund may be taxed as the income of the United States person only when, and to the extent, the income is paid to, or for the benefit of, the United States person.

As a threshold matter, this rule applies only when the United States person owns the PFIC through a foreign pension fund that is treated as a foreign trust under section 7701(a)(31)(B). However, the applicable provisions of U.S. income tax treaties apply generally to foreign pension funds, regardless of whether the foreign pension fund is treated as a trust for U.S. income tax purposes.

The Treasury Department and the IRS have concluded that the treaty-based exception in § 1.1298–1T(b)(3)(ii) should be expanded to apply to PFICs held by United States persons through all applicable foreign pension funds (or equivalents, such as exempt pension trusts or pension schemes referred to in certain U.S. income tax treaties), regardless of their entity classification for U.S. income tax purposes. Accordingly, the final regulations revise the treaty-based exception for PFIC stock held by a United States person through certain foreign pension funds under § 1.1298–1T(b)(3)(ii) to eliminate the requirement that the foreign pension fund be treated as a foreign trust under section 7701(a)(31)(B). The final rule, which is renumbered § 1.1298–1(c)(4), clarifies that a foreign pension fund (or equivalent) covered by this exception may be any type of arrangement, including but not limited to one of the arrangements listed in § 1.1298–1(c)(4). The final rule also applies in the case of an income tax treaty that provides the relevant benefit by election (or other procedure), such as under paragraph 7 of Article 18 of the U.S.-Canada income tax treaty, to the extent that the election is in effect (or other procedure properly satisfied).

4. Exception for Dual Resident Taxpayers

A comment requested that an exception from the section 1298(f) filing

requirements be added for dual resident taxpayers who are treated as residents of another country (treaty country) pursuant to an income tax treaty between the United States and the treaty country. In general, a “dual resident taxpayer” is an individual who is considered a resident of the United States under the Code, and is also considered a resident of a treaty country under the treaty country’s internal laws. § 301.7701(b)–7(a)(1). Certain U.S. income tax treaties contain provisions that resolve the conflicting claims of residence by both countries (tie-breaker rules), pursuant to which dual resident taxpayers are treated as residents of only one country for purposes of income taxation. A dual resident taxpayer may claim the benefit of treatment as a resident of a treaty country for U.S. income tax purposes under a tie-breaker rule of an applicable treaty provision by timely filing Form 8833, “Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b),” with an appropriate income tax return, such as Form 1040NR, “U.S. Nonresident Alien Income Tax Return.” § 301.7701(b)–7(b) and (c). A dual resident taxpayer who properly claims this benefit is taxed as a nonresident alien (as defined in section 7701(b)(1)(B)) for U.S. income tax purposes.

Nonresident aliens are not subject to tax under the PFIC provisions (sections 1291 through 1298) because the PFIC rules apply only to “United States persons,” and nonresident aliens are not United States persons within the meaning of section 7701(a)(30). However, dual resident taxpayers treated as residents of a treaty country for U.S. income tax purposes generally are treated as United States residents under the Code for purposes other than the computation of their income tax liability. § 301.7701(b)–7(a)(3). Accordingly, dual resident taxpayers who are treated as residents of a treaty country under a tie-breaker rule and who own PFICs are subject to the section 1298(f) reporting rules set forth in the 2013 temporary regulations even though they are not subject to tax under the PFIC provisions.

The requirement to file Form 8621 under section 1298(f) increases taxpayer awareness of, and compliance with, the PFIC rules. However, because dual resident taxpayers treated as nonresident aliens for purposes of computing their U.S. tax liability are not subject to tax under the PFIC rules, section 1298(f) reporting by these dual resident taxpayers is not essential to the enforcement of the PFIC provisions. Thus, the Treasury Department and the IRS have determined that it is

appropriate to provide an exception from the section 1298(f) reporting rules for dual resident taxpayers who are treated as residents of a treaty country, and, accordingly, not subject to tax under the PFIC provisions.

Accordingly, the final regulations add § 1.1298–1(c)(5), which sets forth an exception from section 1298(f) reporting for a dual resident taxpayer for a taxable year, or the portion of a taxable year, during which the dual resident taxpayer determines any U.S. income tax liability as a nonresident alien under § 301.7701(b)–7, and complies with the filing requirements of § 301.7701(b)–7(b) and (c) and, if applicable, § 1.6012–1(b)(2)(ii)(b) (applicable when the dual resident taxpayer is treated as a resident of the treaty country on the last day of the taxable year), or § 1.6012–1(b)(2)(ii)(a) (applicable when the dual resident taxpayer is treated as a resident of the United States on the last day of the taxable year). This new section 1298(f) reporting exception is consistent with § 1.6038D–2(e), which generally exempts a dual resident taxpayer who is taxed as a nonresident alien from section 6038D reporting for a taxable year, or the portion of a taxable year, during which the taxpayer is treated as a nonresident alien and properly files Form 8833.

5. Exception for Certain PFIC Stock Held for a Period of 30 Days or Less

Under the 2013 temporary regulations, a shareholder who owns stock in a section 1291 fund for only a short period of time during a year, and does not recognize an excess distribution (or gain treated as an excess distribution) with respect to the section 1291 fund during the year may still have a filing obligation under section 1298(f). Assume, for example, that during a shareholder’s taxable year, its section 1291 fund (upper-tier PFIC) acquires all of the stock of another section 1291 fund (lower-tier PFIC), which is liquidated into the upper-tier PFIC a few days after it is acquired. The lower-tier PFIC does not make any distributions to the upper-tier PFIC before the liquidation, and the upper-tier PFIC does not recognize any gain upon the liquidation of the lower-tier PFIC. On the last day of its taxable year, the shareholder owns PFIC stock with a value of more than \$25,000, and thus the exception in § 1.1298–1T(c)(2) is not applicable. (See Section B.7 of this preamble for an explanation of the reporting exception in § 1.1298–1T(c)(2).) Accordingly, under the 2013 temporary regulations, the shareholder is required to report its ownership in the lower-tier PFIC, even though it only

owned the PFIC for a few days during the year and did not recognize any income with respect to the PFIC.

The Treasury Department and the IRS have concluded that compliance with, and enforcement of, the PFIC regime would not be adversely impacted by allowing a reporting exception for transitory ownership of section 1291 funds when there is no taxation under section 1291 with respect to the short period of ownership. Thus, the final regulations provide an exception for section 1298(f) reporting for certain shareholders with respect to PFICs that were owned for a short period of time during which no PFIC taxation was imposed on the shareholders. Specifically, under § 1.1298–1(c)(7), a shareholder is not required to file a Form 8621 under section 1298(f) with respect to stock of a section 1291 fund that it acquired either during its taxable year or the immediately preceding year, when the shareholder (i) does not own any stock of the section 1291 fund for more than 30 days during the period beginning 29 days before the first day of the shareholder’s taxable year and ending 29 days after the close of the shareholder’s taxable year and (ii) did not receive an excess distribution (including gain treated as an excess distribution) with respect to the section 1291 fund.

6. Exception for Certain Bona Fide Residents of U.S. Territories

A bona fide resident (within the meaning of section 937(a)) of a possession of the United States (U.S. territories) (namely, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands) may include an individual who is also a United States person, and thus the bona fide resident may be a shareholder of a PFIC.

Under the 2013 temporary regulations, the general section 1298(f) reporting requirements in § 1.1298–1T(b)(1) apply regardless of whether a shareholder is required to file a U.S. income tax return. As a result, under the 2013 temporary regulations, bona fide residents of U.S. territories who were shareholders of PFICs were subject to the section 1298(f) filing requirements set forth in the 2013 temporary regulations even when they were not required to file a U.S. income tax return. As described in greater detail in this Section B.6, the final regulations change this result for bona fide residents of Guam, the Northern Mariana Islands, and the United States Virgin Islands and, as provided in § 1.1298–1(h)(1), the final regulations apply to taxable years

ending on or after the issuance of the 2013 temporary regulations.

Three of the five U.S. territories (Guam, the Northern Mariana Islands, and the United States Virgin Islands) have a mirror code system of taxation, which means that their income tax laws generally are identical to the Code (except for the substitution of the name of the relevant territory for the term "United States," where appropriate). Bona fide residents of U.S. territories that are mirror code jurisdictions have no income tax obligation (or related filing obligation) with the United States provided, generally, that they properly report income and fully pay their income tax liability to the tax administration of their respective U.S. territory. See sections 932 and 935. Thus, for example, a bona fide resident of Guam who is a shareholder of a PFIC would generally not have a U.S. income tax obligation even in a year when the shareholder is treated as receiving an excess distribution (or recognizing gain treated as an excess distribution) with respect to the PFIC.

Bona fide residents of non-mirror code jurisdictions (American Samoa and Puerto Rico) generally exclude territory-source income from U.S. federal gross income under sections 931 and 933, respectively. (American Samoa currently is the only territory to which section 931 applies because it is the only territory that has entered into an implementing agreement under sections 1271(b) and 1277(b) of the Tax Reform Act of 1986.) However, unlike mirror code jurisdictions, these bona fide residents generally are subject to U.S. income taxation, and have a related income tax return filing requirement with the United States, to the extent they have non-territory-source income or income from amounts paid for services performed as an employee of the United States or any agency thereof. See sections 931(a) and (d) and 933. Further, under the 1992 proposed regulations, certain excess distributions (or gains treated as excess distributions) from a PFIC would be exempt from taxation with respect to a shareholder who is a bona fide resident of Puerto Rico if the amounts distributed were derived from sources in Puerto Rico. Section 1.1291-1(f) of the 1992 proposed regulations. Accordingly, for example, if a bona fide resident of Puerto Rico is a shareholder of a PFIC and is treated as receiving an excess distribution (or recognizing gain treated as an excess distribution) with respect to the PFIC that is from sources outside of Puerto Rico, such shareholder would be subject to U.S. income tax under the

PFIC provisions with respect to such amounts.

The Treasury Department and the IRS have concluded that relieving section 1298(f) reporting for PFIC stock held by an individual who is a bona fide resident of a U.S. territory that is a mirror code jurisdiction who is not required to file a U.S. income tax return for one or more taxable years would not adversely impact tax enforcement efforts related to PFICs. This is because such individuals are not subject to U.S. income tax in such years, given that they have properly reported income and fully paid their income tax liability to the tax administration of their respective U.S. territory, and it is unlikely such individuals will ever be subject to tax under the PFIC provisions in the years they receive excess distributions (or recognize gain treated as excess distributions). As a result, these final regulations add § 1.1298-1(c)(8) to provide an exception from reporting under section 1298(f) for a taxable year in which the individual is a bona fide resident of Guam, the Northern Mariana Islands, or the United States Virgin Islands and is not required to file a U.S. income tax return.

However, no exception from reporting is provided with respect to bona fide residents of Puerto Rico and American Samoa. Bona fide residents of Puerto Rico and American Samoa who are not required to file U.S. income tax returns in a given year may still be subject to tax under the PFIC provisions if they are shareholders of a PFIC and receive excess distributions (or recognize gain treated as excess distributions) in a later year. Thus, PFIC information reporting by these individuals can reasonably be expected to further PFIC tax compliance and enforcement.

7. \$25,000 and \$5,000 Exceptions

Under § 1.1298-1T(c)(2)(i), a shareholder generally is not required to file Form 8621 with respect to a section 1291 fund when the shareholder is not treated as receiving an excess distribution (or recognizing gain treated as an excess distribution) with respect to the section 1291 fund stock, and, as of the last day of the shareholder's taxable year, either the value of all PFIC stock considered owned by the shareholder is \$25,000 (or \$50,000 for shareholders that file a joint return) or less, or, if the stock of the section 1291 fund is owned indirectly, the value of the indirectly owned stock is \$5,000 or less. Stock in a PFIC that is indirectly owned through another PFIC or United States person that is a shareholder of the PFIC is not taken into account in determining if the \$25,000 (or \$50,000

for joint returns) threshold is met. § 1.1298-1T(c)(2)(ii).

A comment generally requested that the reporting exception thresholds in § 1.1298-1T(c)(2)(i) be increased for U.S. individuals living abroad. The apparent concern underlying the comment is the commenter's view that such persons often are not aware of the PFIC provisions. The Treasury Department and the IRS have determined that adopting an exception to the reporting requirements on this basis would adversely affect compliance with, and enforcement of, the PFIC provisions, because such individuals remain subject to tax under section 1291 regardless of the value of their PFIC stock, and a benefit of requiring reporting with respect to a section 1291 fund in a year in which a shareholder is not subject to tax under section 1291 is to enhance the shareholder's awareness of the PFIC requirements with respect to the section 1291 fund. The Treasury Department and the IRS proposed the dollar amounts for the reporting exception thresholds in the 2013 temporary regulations in order to balance administrative burdens with compliance and enforcement concerns. No comments were submitted that recommended a specific higher dollar amount or that provided a basis, consistent with the purposes of the PFIC provisions, for increasing the monetary thresholds. Accordingly, the final regulations do not increase the monetary thresholds for these exceptions.

A separate comment requested that the reporting exceptions under § 1.1298-1T(c)(2) be expanded to apply when a United States person recognizes an excess distribution under section 1291 in a taxable year with respect to one or more PFICs, to the extent the PFICs are indirectly held through domestic pass-through entities and the total excess distribution income from the PFICs in the taxable year is less than \$1,000, indexed for inflation. The comment explained that many United States persons hold indirect interests in section 1291 funds, particularly through partnerships, that generate only small amounts of excess distribution income, and exempting reporting for these PFIC shareholders would simplify PFIC reporting compliance. However, the section 1291 rules apply when a PFIC shareholder receives (or is treated as receiving) an excess distribution, regardless of the dollar amount of the excess distribution. After consideration of this comment, the Treasury Department and the IRS concluded that the request should not be adopted because of the potential for such a

reporting exception to reduce compliance with the substantive section 1291 rules.

C. Manner of Filing Form 8621

1. Filing Form 8621 When a Shareholder Is Not Otherwise Obligated To File a Return

Section 1.1298–1T(d) generally provides that a United States person required to file Form 8621 under section 1298(f) with respect to a PFIC for a taxable year must attach the form to the person's U.S. income tax return (or information return, if applicable) for the relevant taxable year. The instructions for Form 8621 further provide that a United States person who is required to file Form 8621 for a taxable year in which the person does not file an income tax return (or other return) must send the Form 8621 to the IRS at a mailing address designated in the instructions.

These final regulations clarify how a United States person files a Form 8621 (or successor form) when the United States person is not otherwise required to file a U.S. income tax return (or information return, if applicable). Section 1.1298–1(d) of the final regulations states that a United States person that is not otherwise required to file a U.S. income tax return must file the Form 8621 (or successor form) in accordance with the instructions for the form.

2. Protective Filing Procedure for Form 8621

A comment requested that the final regulations allow a "protective" Form 8621 to be filed under section 1298(f) with respect to a foreign corporation when a shareholder is unsure of its PFIC status due to factors beyond the control of the shareholder that prevent access to the books and records of the corporation necessary to make a PFIC determination. The purpose of the protective filing is to defer any potential section 1298(f) filing requirements so that the assessment period for the shareholder's entire return under section 6501(c)(8) would not be suspended if the foreign corporation is subsequently determined to have been a PFIC in the year to which the protective filing relates. The comment proposed that if the foreign corporation subsequently is determined to be a PFIC for a taxable year for which the protective filing was made, the shareholder would be subject to PFIC taxation in that year, and thus would be required to file Form 8621 for that year.

The failure to file Form 8621 to properly report PFIC information under section 1298(f) for a taxable year

suspends the period of limitation on assessment under section 6501(c)(8)(A) with respect to any tax return, event, or period to which the information relates until three years after the information is reported. However, if the failure to file the information is due to reasonable cause and not willful neglect, the period of limitation on assessment under section 6501(c)(8)(B) is suspended only with respect to items related to such failure. The Treasury Department and the IRS have concluded that the reasonable cause exception under section 6501(c)(8)(B) provides appropriate relief for a failure to file Form 8621. When a taxpayer can establish reasonable cause for a failure to file Form 8621, the assessment period is suspended only with respect to items related to the PFIC that were required to be reported on the Form 8621. Thus, the recommendation to add a protective filing rule to the final regulations is not adopted.

3. Consolidated Filings for Forms 8621

Two comments requested that the final regulations allow a United States person to file a consolidated Form 8621 that would include all of the person's PFICs and relevant information on a supporting schedule attached to the Form 8621. One of the comments explained that foreign investment partnerships commonly hold multiple PFIC investments, and, in such cases, a United States person who is a partner in the foreign partnership is required to file multiple Forms 8621 to report each underlying PFIC. This comment further noted that at least two commonly used commercial tax return preparation products, as of 2012, did not allow for electronic filing of a Form 1040 containing more than five Forms 8621, which is contrary to the IRS's goal of increasing e-filings of tax returns.

The Treasury Department and the IRS have concluded that the expenditures needed to redesign and reprogram the IRS's processing system to gather, compile, and cross-reference information from a consolidated Form 8621 outweigh the marginal administrative burden for United States persons to file a separate Form 8621 with respect to each of their PFICs. Accordingly, the final regulations do not adopt the comment to permit consolidated filings.

D. Form 5471 Filing Obligations

The final regulations adopt the 2013 temporary regulations with respect to the removal of the requirement under sections 6038 and 6046 that certain United States persons file a statement in circumstances where the United States

person qualifies for the constructive ownership exception, with certain clarifying changes to the language of the regulations.

Effect on Other Documents

Notice 2014–28, 2014–18 I.R.B. 990, is obsolete as of December 28, 2016.

Notice 2014–51, 2014–40 I.R.B. 594, is obsolete as of December 28, 2016.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that most small entities do not own an interest in a PFIC. Moreover, those small entities that are shareholders of a PFIC generally either make a qualified electing fund election under section 1295 or make a mark to market election under section 1296 and were therefore required to file Form 8621 with respect to the PFIC stock under the rules that preceded the 2013 temporary regulations. Thus, there is a limited class of small entities that are PFIC shareholders that were required to file Forms 8621 under the 2013 temporary regulations and that were not required to do so prior to the issuance of those regulations. The final regulations, as compared to the 2013 temporary regulations, provide additional exceptions that exempt certain PFIC shareholders, some of which could include certain small entities, from filing Form 8621. Accordingly, the collection of information required by these final regulations does not affect a substantial number of small entities.

Further, the collection of information required under these final regulations will not have a significant economic impact on a substantial number of small entities because neither the time nor the costs necessary for shareholders to comply with the collection of information requirements is significant. Therefore, a Regulatory Flexibility

Analysis under the Regulatory Flexibility Act is not required.

Drafting Information

The principal author of these regulations is Stephen M. Peng of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries for §§ 1.1291–1, 1.1291–9, and 1.1298–1, § 1.1298–1, and § 1.6046–1 in numerical order and revising the entry for § 1.6038–2 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
 Sections 1.1291–1, 1.1291–9, and 1.1298–1 also issued under 26 U.S.C. 1298(a) and (g).
 * * * * *

Section 1.1298–1 also issued under 26 U.S.C. 1298(f).
 * * * * *

Section 1.6038–2 also issued under 26 U.S.C. 6038(d).
 * * * * *

Section 1.6046–1 also issued 26 U.S.C. 6046(b).
 * * * * *

■ **Par. 2.** Section 1.1291–0 is amended by:

- 1. Revising the heading and entries for § 1.1291–1.
- 2. Revising the entry for § 1.1291–9(k).
 The revisions read as follows:

§ 1.1291–0 Treatment of shareholders of certain passive foreign investment companies; table of contents.

* * * * *

§ 1.1291–1 Taxation of U.S. persons that are shareholders of section 1291 funds.

- (a) through (b)(2)(i) [Reserved]
- (ii) Pedigreed QEF.
- (b)(2)(iii) and (iv) [Reserved]
- (v) Section 1291 fund.
- (3) through (6) [Reserved]
- (7) Shareholder.
- (8) Indirect shareholder.
 - (i) In general.
 - (ii) Ownership through a corporation.
 - (A) Ownership through a non-PFIC foreign corporation.
 - (B) Ownership through a PFIC.
 - (C) Ownership through a domestic corporation.
 - (iii) Ownership through pass-through entities.

- (A) Partnerships.
- (B) S Corporations.
- (C) Estates and nongrantor trusts.
- (D) Grantor trusts.
- (iv) Examples.
- (c) Coordination with other PFIC rules.
 - (1) and (2) [Reserved]
 - (3) Coordination with section 1296: Distributions and dispositions.
 - (4) Coordination with mark to market rules under chapter 1 of the Internal Revenue Code other than section 1296.
 - (i) In general.
 - (ii) Coordination rule.
 - (d) [Reserved]
 - (e) Exempt organization as shareholder.
 - (1) In general.
 - (2) Ownership through certain tax-exempt organizations and accounts.
 - (f) through (i) [Reserved]
 - (j) Applicability dates.

§ 1.1291–9 Deemed dividend election.

* * * * *
 (k) Effective/applicability dates.
 * * * * *

§ 1.1291–0T [Removed]

■ **Par. 3.** Section 1.1291–0T is removed.

■ **Par. 4.** Section 1.1291–1 is amended by:

- 1. Revising the section heading.
- 2. Adding paragraphs (b)(2)(ii) and (v), (b)(7), and (b)(8).
- 3. Revising paragraphs (e)(2) and (j).
 The revisions and additions read as follows:

§ 1.1291–1 Taxation of U.S. persons that are shareholders of section 1291 funds.

* * * * *

- (b) * * *
- (2) * * *

(ii) *Pedigreed QEF.* A PFIC is a *pedigreed QEF* with respect to a shareholder if the PFIC has been a QEF with respect to the shareholder for all taxable years during which the corporation was a PFIC that are included wholly or partly in the shareholder’s holding period of the PFIC stock.

* * * * *

(v) *Section 1291 fund.* A PFIC is a *section 1291 fund* with respect to a shareholder unless the PFIC is a *pedigreed QEF* with respect to the shareholder or a section 1296 election is in effect with respect to the shareholder.
 * * * * *

(7) *Shareholder.* A *shareholder* is a United States person that directly owns stock of a PFIC (a direct shareholder), or that is an indirect shareholder (as defined in section 1298(a) and paragraph (b)(8) of this section), except as provided in paragraph (e) of this section. For purposes of sections 1291 and 1298, a domestic partnership or S corporation (as defined in section 1361(a)(1)) is not treated as a

shareholder of a PFIC except for purposes of any information reporting requirements, including the requirement to file an annual report under section 1298(f). In addition, to the extent that a person is treated under sections 671 through 678 as the owner of a portion of a domestic trust, the trust is not treated as a shareholder of a PFIC with respect to PFIC stock held by that portion of the trust, except for purposes of the information reporting requirements of § 1.1298–1(b)(3)(i) (imposing an information reporting requirement on domestic liquidating trusts and fixed investment trusts).

(8) *Indirect shareholder—(i) In general.* An *indirect shareholder* of a PFIC is a United States person that indirectly owns stock of a PFIC. A person indirectly owns stock when it is treated as owning stock of a corporation owned by another person, including another United States person, under this paragraph (b)(8). In applying this paragraph (b)(8), the determination of a person’s indirect ownership is made on the basis of all the facts and circumstances in each case; the substance rather than the form of ownership is controlling, taking into account the purposes of sections 1291 through 1298.

(ii) *Ownership through a corporation—(A) Ownership through a non-PFIC foreign corporation.* A person that directly or indirectly owns 50 percent or more in value of the stock of a foreign corporation that is not a PFIC is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the foreign corporation.

(B) *Ownership through a PFIC.* A person that directly or indirectly owns stock of a PFIC is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the PFIC. Section 1297(d) does not apply in determining whether a corporation is a PFIC for purposes of this paragraph (b)(8)(ii)(B).

(C) *Ownership through a domestic corporation—(1) In general.* Solely for purposes of determining whether a person satisfies the ownership threshold described in paragraph (b)(8)(ii)(A) of this section, a person that directly or indirectly owns 50 percent or more in value of the stock of a domestic corporation is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the domestic corporation.

(2) *Non-duplication.* Paragraph (b)(8)(ii)(C)(1) of this section does not apply to treat a United States person as owning (other than for purposes of

applying the ownership threshold in paragraph (b)(8)(ii)(A) of this section) stock of a PFIC that is directly owned or considered owned indirectly within the meaning of this paragraph (b)(8) by another United States person (determined without regard to paragraph (b)(8)(ii)(C)(1)). See *Example 1* of paragraph (b)(8)(iv) of this section.

(3) *S corporations.* The 50 percent limitation in paragraph (b)(8)(ii)(C)(1) of this section does not apply with respect to stock owned directly or indirectly by an S corporation. See paragraph (b)(8)(iii)(B) of this section for rules regarding stock owned directly or indirectly by an S corporation.

(iii) *Ownership through pass-through entities—(A) Partnerships.* If a foreign or domestic partnership directly or indirectly owns stock, the partners of the partnership are considered to own such stock proportionately in accordance with their ownership interests in the partnership.

(B) *S Corporations.* If an S corporation directly or indirectly owns stock, each S corporation shareholder is considered to own such stock proportionately in accordance with the shareholder's ownership interest in the S corporation.

(C) *Estates and nongrantor trusts.* If a foreign or domestic estate or nongrantor trust (other than an employees' trust described in section 401(a) that is exempt from tax under section 501(a)) directly or indirectly owns stock, each beneficiary of the estate or trust is considered to own a proportionate amount of such stock. For purposes of this paragraph (b)(8)(iii)(C), a nongrantor trust is any trust or portion of a trust that is not treated as owned by one or more persons under sections 671 through 679.

(D) *Grantor trusts.* If a foreign or domestic trust directly or indirectly owns stock, a person that is treated under sections 671 through 679 as the owner of any portion of the trust that holds an interest in the stock is considered to own the interest in the stock held by that portion of the trust.

(iv) *Examples.* The rules of this paragraph (b)(8) are illustrated by the following examples:

Example 1. A is a United States person who owns 49 percent of the stock of FC1, a foreign corporation that is not a PFIC, and separately all the stock of DC, a domestic corporation that is not an S corporation. DC, in turn, owns the remaining 51 percent of the stock of FC1, and FC1 owns 100 shares of stock in a PFIC that is not a controlled foreign corporation (CFC) within the meaning of section 957(a). DC is an indirect shareholder with respect to 51 percent of the PFIC stock held by FC1 under paragraph (b)(8)(ii)(A) of this section. In determining whether A owns 50 percent or more of the

value of FC1 for purposes of applying paragraph (b)(8)(ii)(A) of this section, A is considered under paragraph (b)(8)(ii)(C)(1) of this section as indirectly owning all the stock of FC1 that DC directly owns. However, because 51 shares of the PFIC stock held by FC1 are indirectly owned by DC under paragraph (b)(8)(ii)(A) of this section, pursuant to the limitation imposed by paragraph (b)(8)(ii)(C)(2) of this section, only the remaining 49 shares of the PFIC stock are considered as indirectly owned by A under paragraph (b)(8) of this section.

* * * * *

(e) * * *
(2) *Ownership through certain tax-exempt organizations and accounts.* To the extent a United States person owns stock of a PFIC through an organization or account described in § 1.1298–1(c)(1), that person is not treated as a shareholder with respect to the PFIC stock.

* * * * *

(j) *Applicability dates.* (1) Paragraphs (c)(3) and (4) of this section apply for taxable years beginning on or after May 3, 2004.

(2) Paragraph (e)(1) of this section is applicable on and after April 1, 1992.

(3) Paragraphs (b)(2)(ii), (b)(2)(v), (b)(7), (b)(8), and (e)(2) of this section apply to taxable years of shareholders ending on or after December 31, 2013.

§ 1.1291–1T [Removed]

■ **Par. 5.** Section 1.1291–1T is removed.

■ **Par. 6.** Section 1.1291–9 is amended by revising paragraphs (j)(3) and (k)(3) to read as follows:

§ 1.1291–9 Deemed dividend election.

* * * * *

(j) * * *

(3) A shareholder is a United States person that is a shareholder as defined in § 1.1291–1(b)(7) or an indirect shareholder as defined in § 1.1291–1(b)(8), except as provided in § 1.1291–1(e).

(k) * * *

(3) Paragraph (j)(3) of this section applies to taxable years of shareholders ending on or after December 31, 2013.

§ 1.1291–9T [Removed]

■ **Par. 7.** Section 1.1291–9T is removed.

■ **Par. 8.** Section 1.1298–0 is amended by:

■ 1. Revising the section heading and introductory text.

■ 2. Adding a heading and entries for § 1.1298–1.

The revisions and additions read as follows:

§ 1.1298–0 Passive foreign investment company—table of contents.

This section contains a listing of the paragraph headings for §§ 1.1298–1 and 1.1298–3.

§ 1.1298–1 Section 1298(f) annual reporting requirements for United States persons that are shareholders of a passive foreign investment company.

(a) Overview.

(b) Requirement to file.

(1) General rule.

(2) Additional requirement to file for certain indirect shareholders.

(i) General rule.

(ii) Exception to indirect shareholder reporting for certain QEF inclusions and MTM inclusions.

(3) Special rules for estates and trusts.

(i) Domestic liquidating trusts and fixed investment trusts.

(ii) Beneficiaries of foreign estates and trusts.

(c) Exceptions.

(1) Exception if shareholder is a tax-exempt entity.

(2) Exception if aggregate value of shareholder's PFIC stock is \$25,000 or less, or value of shareholder's indirect PFIC stock is \$5,000 or less.

(i) General rule.

(ii) Determination of the \$25,000 threshold in the case of indirect ownership.

(iii) Application of the \$25,000 exception to shareholders who file a joint return.

(iv) Reliance on periodic account statements.

(3) Exception for PFIC stock marked to market under a provision other than section 1296.

(4) Exception for PFIC stock held through certain foreign pension funds.

(5) Exception for certain shareholders who are dual resident taxpayers.

(i) General rule.

(ii) Dual resident taxpayer filing as nonresident alien at end of taxable year.

(iii) Dual resident taxpayer filing as resident alien at end of taxable year.

(6) Exception for certain domestic partnerships.

(7) Exception for certain short-term ownership of PFIC stock.

(8) Exception for certain bona fide residents of U.S. territories.

(9) Exception for taxable years ending before December 31, 2013.

(d) Time and manner for filing.

(e) Separate annual report for each PFIC.

(1) General rule.

(2) Special rule for shareholders who file a joint return.

(f) Coordination rule.

(g) Examples.

(h) Applicability date.

* * * * *

§ 1.1298–0T [Removed]

■ **Par. 9.** Section 1.1298–0T is removed.

■ **Par. 10.** Section 1.1298–1 is added to read as follows:

§ 1.1298–1 Section 1298(f) annual reporting requirements for United States persons that are shareholders of a passive foreign investment company.

(a) *Overview.* This section provides rules regarding the reporting requirements under section 1298(f) applicable to a United States person that

is a shareholder (as defined in § 1.1291–1(b)(7)) of a passive foreign investment company (PFIC). Paragraph (b) of this section provides the section 1298(f) annual reporting requirements generally applicable to United States persons. Paragraph (c) of this section sets forth exceptions to reporting for certain shareholders. Paragraph (d) of this section provides rules regarding the time and manner of filing the annual report. Paragraph (e) of this section sets forth the requirement to file a separate annual report with respect to each PFIC. Paragraph (f) of this section coordinates the requirement to file an annual report under section 1298(f) with the requirement to file an annual report under other provisions of the Internal Revenue Code (Code). Paragraph (g) of this section sets forth examples illustrating the application of this section. Paragraph (h) of this section provides effective/applicability dates.

(b) *Requirement to file*—(1) *General rule.* Except as otherwise provided in this section, a United States person that is a shareholder of a PFIC must complete and file Form 8621, “Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund” (or successor form), under section 1298(f) and these regulations for the PFIC if, during the shareholder’s taxable year, the shareholder—

(i) Directly owns stock of the PFIC;

(ii) Is an indirect shareholder under § 1.1291–1(b)(8) that holds any interest in the PFIC through one or more entities, each of which is foreign; or

(iii) Is an indirect shareholder under § 1.1291–1(b)(8)(iii)(D) that is treated under sections 671 through 678 as the owner of any portion of a trust described in section 7701(a)(30)(E) that owns, directly or indirectly through one or more entities, each of which is foreign, any interest in the PFIC.

(2) *Additional requirement to file for certain indirect shareholders*—(i) *General rule.* Except as otherwise provided in this section, an indirect shareholder that owns an interest in a PFIC through one or more United States persons also must file Form 8621 (or successor form) with respect to the PFIC under section 1298(f) and these regulations if, during the indirect shareholder’s taxable year, the indirect shareholder is—

(A) Treated as receiving an excess distribution (within the meaning of section 1291(b)) with respect to the PFIC;

(B) Treated as recognizing gain that is treated as an excess distribution (under section 1291(a)(2)) as a result of a disposition of the PFIC;

(C) Required to include an amount in income under section 1293(a) with respect to the PFIC (QEF inclusion);

(D) Required to include or deduct an amount under section 1296(a) with respect to the PFIC (MTM inclusion); or

(E) Required to report the status of a section 1294 election with respect to the PFIC (see § 1.1294–1T(h)).

(ii) *Exception to indirect shareholder reporting for certain QEF inclusions and MTM inclusions.* Except as otherwise provided in this paragraph (b)(2)(ii), the filing requirements under paragraph (b) of this section do not apply with respect to an interest in a PFIC owned by an indirect shareholder described in paragraph (b)(2)(i)(C) or (D) of this section if another shareholder through which the indirect shareholder owns such interest in the PFIC timely files Form 8621 (or successor form) with respect to the PFIC under paragraph (b)(1) or (2) of this section. However, the exception in this paragraph (b)(2)(ii) does not apply with respect to a PFIC owned by an indirect shareholder described in paragraph (b)(2)(i)(C) of this section that owns the PFIC through a domestic partnership or S corporation if the domestic partnership or S corporation does not make a qualified electing fund election with respect to the PFIC (see § 1.1293–1(c)(2)(ii), addressing QEF stock transferred to a pass through entity that does not make a section 1295 election).

(3) *Special rules for estates and trusts*—(i) *Domestic liquidating trusts and fixed investment trusts.* A United States person that is treated under sections 671 through 678 as the owner of any portion of a trust described in section 7701(a)(30)(E) that owns, directly or indirectly, any interest in a PFIC is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the PFIC if the trust is either a domestic liquidating trust under § 301.7701–4(d) of this chapter created pursuant to a court order issued in a bankruptcy under Chapter 7 (11 U.S.C. 701 *et seq.*) of the Bankruptcy Code or a confirmed plan under Chapter 11 (11 U.S.C. 1101 *et seq.*) of the Bankruptcy Code, or a widely held fixed investment trust under § 1.671–5. Such a trust itself is treated as a shareholder for purposes of section 1298(f) and these regulations, and thus, except as otherwise provided in this section, the trust is required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the PFIC as provided in paragraphs (b)(1) and (2) of this section.

(ii) *Beneficiaries of foreign estates and trusts.* A United States person that is

considered to own an interest in a PFIC because it is a beneficiary of an estate described in section 7701(a)(31)(A) or a trust described in section 7701(a)(31)(B) that owns, directly or indirectly, stock of a PFIC, and that has not made an election under section 1295 or 1296 with respect to the PFIC, is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the stock of the PFIC that it is considered to own through the estate or trust if, during the beneficiary’s taxable year, the beneficiary is not treated as receiving an excess distribution (within the meaning of section 1291(b)) or as recognizing gain that is treated as an excess distribution (under section 1291(a)(2)) with respect to the stock.

(c) *Exceptions*—(1) *Exception if shareholder is a tax-exempt entity.* A shareholder that is an organization exempt under section 501(a) to the extent that it is described in section 501(c), 501(d), or 401(a), a state college or university described in section 511(a)(2)(B), a plan described in section 403(b) or 457(b), an individual retirement plan or annuity as defined in section 7701(a)(37), or a qualified tuition program described in section 529, a qualified ABLE program described in 529A, or a Coverdell education savings account described in section 530 is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC unless the income derived with respect to the PFIC stock would be taxable to the organization under subchapter F of Subtitle A of the Code.

(2) *Exception if aggregate value of shareholder’s PFIC stock is \$25,000 or less, or value of shareholder’s indirect PFIC stock is \$5,000 or less*—(i) *General rule.* A shareholder is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a section 1291 fund (as defined in § 1.1291–1(b)(2)(v)) for a shareholder’s taxable year if—

(A) On the last day of the shareholder’s taxable year:

(1) The value of all PFIC stock owned directly or indirectly under section 1298(a) and § 1.1291–1(b)(8) by the shareholder is \$25,000 or less; or

(2) The section 1291 fund stock is indirectly owned by the shareholder under section 1298(a)(2)(B) and § 1.1291–1(b)(8)(ii)(B), and the value of the section 1291 fund stock indirectly owned by the shareholder is \$5,000 or less;

(B) The shareholder is not treated as receiving an excess distribution (within

the meaning of section 1291(b) with respect to the section 1291 fund during the taxable year or as recognizing gain treated as an excess distribution under section 1291(a)(2) as the result of a disposition of the section 1291 fund during the taxable year; and

(C) An election under section 1295 has not been made to treat the section 1291 fund as a qualified electing fund with respect to the shareholder.

(ii) *Determination of the \$25,000 threshold in the case of indirect ownership.* For purposes of determining the value of stock held by a shareholder for purposes of paragraph (c)(2)(i)(A)(1) of this section, the shareholder must take into account the value of all PFIC stock owned directly or indirectly under section 1298(a) and § 1.1291-1(b)(8), except for PFIC stock that is—

(A) Owned through another United States person that itself is a shareholder of the PFIC (including a domestic partnership or S corporation treated as a shareholder of a PFIC for purposes of information reporting requirements applicable to a shareholder);

(B) Owned through a PFIC under section 1298(a)(2)(B) and § 1.1291-1(b)(8)(ii)(B); or

(C) Marked to market for the shareholder's taxable year under any provision of chapter 1 of the Internal Revenue Code other than section 1296, provided the rules of § 1.1296-1(i)(2) and (3) do not apply to the shareholder with respect to the PFIC stock pursuant to § 1.1291-1(c)(4)(ii) for the shareholder's taxable year.

(iii) *Application of the \$25,000 exception to shareholders who file a joint return.* In the case of a joint return, the exception described in paragraph (c)(2)(i)(A)(1) of this section shall apply if the value of all PFIC stock owned directly or indirectly (as determined under section 1298(a), § 1.1291-1(b)(8), and paragraph (c)(2)(ii) of this section) by both spouses is \$50,000 or less, and all of the other applicable requirements of paragraph (c)(2) of this section are met.

(iv) *Reliance on periodic account statements.* A shareholder may rely upon periodic account statements provided at least annually to determine the value of a PFIC unless the shareholder has actual knowledge or reason to know based on readily accessible information that the statements do not reflect a reasonable estimate of the PFIC's value.

(3) *Exception for PFIC stock marked to market under a provision other than section 1296.* A shareholder is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC

for any taxable year in which the PFIC is marked to market under any provision of chapter 1 of the Internal Revenue Code other than section 1296, provided the rules of § 1.1296-1(i)(2) and (3) do not apply to the shareholder with respect to the PFIC pursuant to § 1.1291-1(c)(4)(ii) for the taxable year.

(4) *Exception for PFIC stock held through certain foreign pension funds.* A shareholder who is a member or beneficiary of, or participant in, a plan, trust, scheme, or other arrangement that is treated as a foreign pension fund (or equivalent) under an income tax treaty to which the United States is a party and that owns, directly or indirectly, an interest in a PFIC is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the PFIC interest if, pursuant to the applicable income tax treaty, the income earned by the foreign pension fund may be taxed as the income of the shareholder only when and to the extent the income is paid to, or for the benefit of, the shareholder.

(5) *Exception for certain shareholders who are dual resident taxpayers—(i) General rule.* Subject to the provisions of paragraphs (c)(5)(ii) and (iii) of this section, a shareholder is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC for a taxable year, or the portion of a taxable year, in which the shareholder is a dual resident taxpayer (within the meaning of § 301.7701(b)-7(a)(1) of this chapter) who is treated as a nonresident alien of the United States for purposes of computing his or her United States income tax liability pursuant to § 301.7701(b)-7 of this chapter.

(ii) *Dual resident taxpayer filing as a nonresident alien at end of taxable year.* If a shareholder to whom this paragraph (c)(5) applies computes his or her U.S. income tax liability as a nonresident alien on the last day of the taxable year and complies with the filing requirements of § 301.7701(b)-7(b) and (c) of this chapter and, in particular, such individual timely files with the Internal Revenue Service Form 1040NR, "U.S. Nonresident Alien Income Tax Return," or Form 1040NR-EZ, "U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents," as applicable, and attaches thereto a properly completed Form 8833, "Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)," and the schedule required by § 1.6012-1(b)(2)(ii)(b) (if applicable), such shareholder will not be required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the

taxable year, or the portion of the taxable year, covered by Form 1040NR (or Form 1040NR-EZ).

(iii) *Dual resident taxpayer filing as resident alien at end of taxable year.* If a shareholder to whom this paragraph (c)(5) applies computes his or her U.S. income tax liability as a resident alien on the last day of the taxable year and complies with the filing requirements of § 1.6012-1(b)(2)(ii)(a) and, in particular such shareholder timely files with the Internal Revenue Service Form 1040, "U.S. Individual Income Tax Return," or Form 1040EZ, "Income Tax Return for Single and Joint Filers With No Dependents," as applicable, and attaches a properly completed Form 8833 to the schedule required by § 1.6012-1(b)(2)(ii)(a), such shareholder will not be required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the portion of the taxable year reflected on the schedule to such Form 1040 or Form 1040EZ required by § 1.6012-1(b)(2)(ii)(a).

(6) *Exception for certain domestic partnerships.* A shareholder that is a domestic partnership is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC directly or indirectly held by the domestic partnership for a taxable year if each person that directly or indirectly owns an interest in the domestic partnership for its taxable year in which or with which the taxable year of the partnership ends is either—

(i) Not a shareholder of the PFIC as defined by § 1.1291-1(b)(7);

(ii) A tax-exempt entity or account not required to file Form 8621 with respect to the stock of the PFIC under paragraph (c)(1) of this section;

(iii) A dual resident taxpayer not required to file Form 8621 with respect to the stock of the PFIC under paragraph (c)(5) of this section; or

(iv) A domestic partnership not required to file Form 8621 with respect to the stock of the PFIC under this paragraph (c)(6).

(7) *Exception for certain short-term ownership of PFIC stock.* A shareholder is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a section 1291 fund (as defined in § 1.1291-1(b)(2)(v)) for a taxable year when the shareholder—

(i) Acquires the section 1291 fund in the taxable year or the immediately preceding taxable year;

(ii) Is a shareholder of the section 1291 fund for a total of 30 days or less during the period beginning 29 days before the first day of the shareholder's

taxable year and ending 29 days after the close of the shareholder's taxable year; and

(iii) Is not treated as receiving an excess distribution (within the meaning of section 1291(b)) with respect to the section 1291 fund, including any gain recognized that is treated as an excess distribution under section 1291(a)(2) as a result of the disposition of the section 1291 fund.

(8) *Exception for certain bona fide residents of certain U.S. territories.* A shareholder is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC for a taxable year when the shareholder—

(i) Is a bona fide resident (as defined by section 937(a)) of Guam, the Northern Mariana Islands, or the United States Virgin Islands; and

(ii) Is not required to file an income tax return with the Internal Revenue Service with respect to such taxable year.

(9) *Exception for taxable years ending before December 31, 2013.* A United States person is not required under section 1298(f) and these regulations to file an annual report with respect to a PFIC for a taxable year of the United States person ending before December 31, 2013.

(d) *Time and manner for filing.* A United States person required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC must attach the form to its Federal income tax return (or information return, if applicable) for the taxable year to which the filing obligation relates on or before the due date (including extensions) for the filing of the return, or must separately file the form in accordance with the instructions for the form when the United States person is not required to file a Federal income tax return (or information return, if applicable) for the taxable year. In the case of any failure to report information that is required to be reported pursuant to section 1298(f) and these regulations, the time for assessment of tax will be extended pursuant to section 6501(c)(8).

(e) *Separate annual report for each PFIC—(1) General rule.* If a United States person is required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to more than one PFIC, the United States person must file a separate Form 8621 (or successor form) for each PFIC.

(2) *Special rule for shareholders who file a joint return.* United States persons that file a joint return may file a single Form 8621 (or successor form) with

respect to a PFIC in which they jointly or individually own an interest.

(f) *Coordination rule.* A United States person that is a shareholder of a PFIC may file a single Form 8621 (or successor form) with respect to the PFIC that contains all of the information required to be reported pursuant to section 1298(f) and these regulations and any other information reporting requirements or election rules under other provisions of the Code.

(g) *Examples.* The following examples illustrate the rules of this section:

Example 1. General requirement to file. (i) *Facts.* In 2013, J, a United States citizen, directly owns an interest in Partnership X, a domestic partnership, which, in turn, owns an interest in A Corp, which is a PFIC. In addition, J directly owns an interest in Partnership Y, a foreign partnership, which, in turn, owns an interest in A Corp. Neither J nor Partnership X has made a qualified electing fund election under section 1295 or a mark to market election under section 1296 with respect to A Corp. As of the last day of 2013, the value of Partnership X's interest in A Corp is \$200,000, and the value of J's proportionate share of Partnership Y's interest in A Corp is \$100,000. During 2013, J is not treated as receiving an excess distribution or recognizing gain treated as an excess distribution with respect to A Corp. Partnership X timely files a Form 8621 under section 1298(f) and paragraph (b)(1) of this section with respect to A Corp for 2013.

(ii) *Results.* J is the first United States person in the chain of ownership with respect to J's interest in A Corp held through Partnership Y. Under paragraph (b)(1) of this section, J must file a Form 8621 under section 1298(f) with respect to J's interest in A Corp held through Partnership Y because J is an indirect shareholder of A Corp under § 1.1291-1(b)(8) that holds PFIC stock through a foreign entity (Partnership Y), and there are no other United States persons in the chain of ownership. The fact that Partnership X filed a Form 8621 with respect to A Corp does not relieve J of the obligation under paragraph (b)(1) of this section to file a Form 8621 with respect to J's interest in A Corp held through Partnership Y. J has no filing obligation under section 1298(f) and paragraph (b)(2) of this section with respect to J's proportionate share of Partnership X's interest in A Corp.

Example 2. Application of the \$25,000 exception. (i) *Facts.* In 2013, J, a United States citizen, directly owns stock of A Corp, B Corp, and C Corp, all of which were PFICs during 2013. As of the last day of 2013, the value of J's interests was \$5,000 in A Corp, \$10,000 in B Corp, and \$4,000 in C Corp. J timely filed an election under section 1295 to treat A Corp as a qualified electing fund for the first year in which A Corp qualified as a PFIC, and a mark-to-market election under section 1296 with respect to the stock of B Corp. J did not make a qualified electing fund election under section 1295 or a mark to market election under section 1296 with respect to C Corp. J did not receive an excess distribution or recognize gain treated as an

excess distribution in respect of C Corp during 2013.

(ii) *Results.* Under paragraph (b)(1) of this section, J must file separate Forms 8621 with respect to A Corp and B Corp for 2013. However, J is not required to file a Form 8621 with respect to C Corp because J owns, in the aggregate, PFIC stock with a value of less than \$25,000 on the last day of J's taxable year, C Corp is not subject to a qualified electing fund election or mark to market election with respect to J, and J did not receive an excess distribution in respect of C Corp or recognize gain treated as an excess distribution in respect of C Corp during 2013. Therefore, J qualifies for the \$25,000 exception in paragraph (c)(2) of this section with respect to C Corp.

Example 3. Application of the \$25,000 exception to indirect shareholder. (i) *Facts.* E, a United States citizen, directly owns an interest in Partnership X, a domestic partnership. Partnership X, in turn, directly owns an interest in A Corp and B Corp, both of which are PFICs. Partnership X timely filed an election under section 1295 to treat B Corp as a qualified electing fund for the first year in which B Corp qualified as a PFIC. In addition, E directly owns an interest in C Corp, which is a PFIC. C Corp, in turn, owns an interest in D Corp, which is a PFIC. E has not made a qualified electing fund election under section 1295 or a mark to market election under section 1296 with respect to A Corp, C Corp, or D Corp. As of the last day of 2013, the value of Partnership X's interest in A Corp is \$30,000, the value of Partnership X's interest in B Corp is \$30,000, the value of E's indirect interest in A Corp is \$10,000, the value of E's indirect interest in B Corp is \$10,000, the value of E's interest in C Corp is \$20,000, and the value of C Corp's interest in D Corp is \$10,000. During 2013, E did not receive an excess distribution, or recognize gain treated as an excess distribution, with respect to A Corp, C Corp, or D Corp. Partnership X timely files Forms 8621 under section 1298(f) and paragraph (b)(1) of this section with respect to A Corp and B Corp for 2013.

(ii) *Results.* Under paragraph (b) of this section, E does not have to file a Form 8621 under section 1298(f) and these regulations with respect to A Corp because E is not the United States person that is at the lowest tier in the chain of ownership with respect to A Corp and E did not receive an excess distribution or recognize gain treated as an excess distribution with respect to A Corp. Furthermore, under paragraph (b)(2)(ii) of this section, E does not have to file a Form 8621 under section 1298(f) and these regulations with respect to B Corp because Partnership X timely filed a Form 8621 with respect to B Corp. In addition, under paragraph (c)(2)(ii)(A) of this section, E does not take into account the value of A Corp and B Corp, which E owns through Partnership X, in determining whether E qualifies for the \$25,000 exception. Further, under paragraph (c)(2)(ii)(B) of this section, E does not take into account the value of D Corp in determining whether E qualifies for the \$25,000 exception. Therefore, even though E is the United States person that is at the lowest tier in the chain of ownership with

respect to C Corp and D Corp, E does not have to file a Form 8621 with respect to C Corp or D Corp because E qualifies for the \$25,000 exception set forth in paragraph (c)(2)(i)(A)(1) of this section.

Example 4. Indirect shareholder's requirement to file. (i) *Facts.* The facts are the same as in *Example 3* of this paragraph (g), except that the value of E's interest in C Corp is \$30,000 and the value of E's proportionate share of C Corp's interest in D Corp is \$3,000.

(ii) *Results.* The results are the same as in *Example 3* of this paragraph (g) with respect to E having no requirement to file a Form 8621 under section 1298(f) and these regulations with respect to A Corp and B Corp. However, under the facts in this *Example 4*, E does not qualify for the \$25,000 exception under paragraph (c)(2)(i)(A)(1) of this section with respect to C Corp because the value of E's interest in C Corp is \$30,000. Accordingly, E must file a Form 8621 under section 1298(f) and these regulations with respect to C Corp. However, E does qualify for the \$5,000 exception under paragraph (c)(2)(i)(A)(2) of this section with respect to D Corp, and thus does not have to file a Form 8621 with respect to D Corp.

Example 5. Application of the domestic partnership exception. (i) *Facts.* Tax Exempt Entity A and Tax Exempt Entity B are both organizations exempt under section 501(a) because they are described in section 501(c). Tax Exempt Entity A and Tax Exempt Entity B own all the interests in Partnership X, a domestic partnership, which, in turn, owns, an interest in Partnership Y, also a domestic partnership. The remaining interests in Partnership Y are owned by F Corp, a foreign corporation owned solely by individuals that are not residents or citizens of the United States. Partnership Y owns an interest in A Corp, which is a PFIC. Any income derived with respect to A Corp would not be taxable to Tax Exempt Entity A or Tax Exempt Entity B under subchapter F of Subtitle A of the Code. Tax Exempt Entity A, Tax Exempt Entity B, Partnership X, and Partnership Y all are calendar year taxpayers.

(ii) *Results.* Under paragraph (c)(1) of this section, Tax Exempt Entity A and Tax Exempt Entity B do not have to file Form 8621 under section 1298(f) and these regulations with respect to A Corp because neither entity would be subject to tax under subchapter F of Subtitle A of the Code with respect to income derived from A Corp. In addition, under paragraph (c)(6) of this section, neither Partnership X nor Partnership Y is required to file Form 8621 under section 1298(f) and these regulations with respect to A Corp because all of the direct and indirect interests in Partnership X and Partnership Y are owned by persons described in paragraph (c)(1) of this section or persons that are not a shareholder of A Corp as defined by § 1.1291-1(b)(7).

(h) *Applicability dates.* (1) Except as provided in paragraph (h)(2) of this section, this section applies to taxable years of shareholders ending on or after December 31, 2013.

(2) Paragraph (c)(9) of this section applies to taxable years of shareholders ending before December 31, 2013.

§ 1.1298-1T [Removed]

■ **Par. 11.** Section 1.1298-1T is removed.

■ **Par. 12.** Section 1.6038-2 is amended by revising paragraphs (j)(3) and (m) to read as follows:

§ 1.6038-2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

* * * * *

(j) * * *

(3) *Statement required.* Any United States person required to furnish information under this section with his return who does not do so by reason of the provisions of paragraph (j)(1) of this section shall file a statement with his income tax return indicating that such requirement has been (or will be) satisfied and identifying the return with which the information was or will be filed and the place of filing.

* * * * *

(m) *Applicability dates.* Except as otherwise provided, this section applies with respect to information for annual accounting periods beginning on or after June 21, 2006. Paragraphs (k)(1) and (5) *Examples 3* and *4* of this section apply June 21, 2006. Paragraph (d) of this section applies to taxable years ending after April 9, 2008. Paragraph (j)(3) of this section applies to returns filed on or after December 31, 2013.

§ 1.6038-2T [Removed]

■ **Par. 13.** Section 1.6038-2T is removed.

■ **Par. 14.** Section 1.6046-1 is amended by revising paragraph (e)(5) and adding paragraph (l)(3) to read as follows:

§ 1.6046-1 Returns as to organizations or reorganizations of foreign corporations and as to acquisitions of their stock.

* * * * *

(e) * * *

(5) *Persons exempted from furnishing items of information.* Any person required to furnish any item of information under paragraph (b) or (c) of this section with respect to a foreign corporation may, if such item of information is furnished by another person having an equal or greater stock interest (measured in terms of either the total combined voting power of all classes of stock of the foreign corporation entitled to vote or the total value of the stock of the foreign corporation) in such foreign corporation, satisfy such requirement by filing a statement with his return on Form 5471 indicating that such requirement has been satisfied and identifying the return in which such item of information was included. This

paragraph (e)(5) does not apply to persons excepted from filing a return by reason of the provisions of paragraph (e)(4) of this section.

* * * * *

(l) * * *

(3) Paragraph (e)(5) of this section applies to returns filed on or after December 31, 2013. See paragraph (e)(5) of § 1.6046-1, as contained in 26 CFR part 1 revised as of April 1, 2012, for returns filed before December 31, 2013.

§ 1.6046-1T [Removed]

■ **Par. 15.** Section 1.6046-1T is removed.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved: December 13, 2016.

Mark D. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016-30712 Filed 12-27-16; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9792]

RIN 1545-BJ48

United States Property Held by Controlled Foreign Corporations in Transactions Involving Partnerships; Rents and Royalties Derived in the Active Conduct of a Trade or Business; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains corrections to the final regulations (TD 9792) that were published in the **Federal Register** on Thursday, November 3, 2016 (81 FR 76497). The final regulations provide rules regarding the treatment as United States property of property held by a controlled foreign corporation (CFC) in connection with certain transactions involving partnerships.

DATES: This correction is effective December 28, 2016 and is applicable on or after November 3, 2016.

FOR FURTHER INFORMATION CONTACT: Rose E. Jenkins, at (202) 317-6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9792) that are the subject of this correction are

under sections 954 and 956 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9792) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final regulations (TD 9792), that are the subject of FR Doc. 2016-26425, are corrected as follows:

1. On page 76499, third column, in the preamble, the eighth line from the bottom of the last paragraph, the language “generally is consistent with § 1.956–” is corrected to read “generally is consistent with existing § 1.956–”.

2. On page 76500, first column, in the preamble, the fourth line from the top of the page, the language “that is not included in the final or” is corrected to read “that is not included in the existing final or”.

3. On page 76500, first column, in the preamble, the seventh line in the first full paragraph, the language “§ 1.956–2(a)(3) nor proposed § 1.956–” is corrected to read “existing § 1.956–2(a)(3) nor proposed § 1.956–”.

4. On page 76500, first column, in the preamble, the eighth line in the first full paragraph, the language “4(b) include the limitation. A comment” is corrected to read “4(b) includes the limitation. A comment”.

5. On page 76500, third column, in the preamble, the eleventh line from the top of the first full paragraph, the language is corrected to read “book-up”.

6. On page 76501, first column, in the preamble, the eighth line of the first full paragraph, the language is corrected to read “§ 1.956–4(b)(2)(ii)”.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).
[FR Doc. 2016-31364 Filed 12-27-16; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9792]

RIN 1545-BJ48

United States Property Held by Controlled Foreign Corporations in Transactions Involving Partnerships; Rents and Royalties Derived in the Active Conduct of a Trade or Business; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to the final regulations (TD 9792) that were published in the **Federal Register** on Thursday, November 3, 2016 (81 FR 76497). The final regulations provide rules regarding the treatment as United States property of property held by a controlled foreign corporation (CFC) in connection with certain transactions involving partnerships.

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Need for Correction

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List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by deleting the entry for § 1.956–3T to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
* * * * *

§ 1.954–2 [Amended]

■ **Par. 2.** Section 1.954–2 is amended by removing paragraph (j).

■ **Par. 3.** Section 1.956–1T is amended by revising the section heading and the paragraph headings for paragraphs (a)(5) and (f) to read as follows:

§ 1.956–1T Shareholder’s pro rata share of the average of the amounts of United States property held by a controlled foreign corporation (temporary).

(a) * * *
(5) *Exclusion for certain recourse obligations.* * * *

(f) *Effective/applicability date.* * * *

■ **Par. 4.** Section 1.956–4 is amended by revising paragraphs (b)(2)(ii), (b)(3) introductory text, and (c)(3)(i) introductory text, and in paragraph (c)(4), *Example 3*, by removing “U.S.C.” each place that it appears and adding in its place, “USP2”.

The revisions read as follows:

§ 1.956–4 Certain rules applicable to partnerships.

(b) * * *
(2) * * *

(ii) *Special allocations.* For purposes of paragraph (b)(1) of this section, if a partnership agreement provides for the allocation of book income (or, where appropriate, book gain) from a subset of the property of the partnership to a partner other than in accordance with the partner’s liquidation value percentage in a particular taxable year (a *special allocation*), then the partner’s attributable share of that property is determined solely by reference to the partner’s special allocation with respect to the property, provided the special allocation will be respected for federal income tax purposes under section 704(b) and the regulations thereunder and does not have a principal purpose of avoiding the purposes of section 956.

(3) *Examples.* The following examples illustrate the rules of this paragraph (b):

(c) * * *
(3) * * *

(i) *General rule.* For purposes of determining a partner’s share of a foreign partnership’s obligation under section 956, if the foreign partnership distributes an amount of money or property to a partner that is related to a controlled foreign corporation within the meaning of section 954(d)(3) and whose obligation would be United States property if held (or if treated as held) by the controlled foreign

corporation, and the foreign partnership would not have made the distribution but for a funding of the partnership through an obligation held (or treated as held) by the controlled foreign corporation, notwithstanding § 1.956-1(e), the partner's share of the partnership obligation is the greater of—

* * * * *

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2016-31411 Filed 12-27-16; 8:45 am]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2016-0444; FRL-9955-94-Region 9]

Approval of California Air Plan Revisions, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern emissions of oxides of nitrogen (NO_x) from ovens, dryers, dehydrators, heaters, kilns, calciners, furnaces, crematories, incinerators, heated pots, cookers, roasters, smokers, fryers, closed and open heated tanks and evaporators, distillation units, afterburners, degassing units, vapor incinerators, catalytic or thermal oxidizers, soil and water remediation units, and other combustion equipment. We are finalizing our approval of local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: These rules will be effective on January 27, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2016-0444. 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 through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947-4126, Law.nicole@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

Table of Contents

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Proposed Action

On September 16, 2016, the EPA proposed to approve the following rules into the California SIP. 81 FR 63732.

Local agency	Rule No.	Rule title	Adopted/ amended/ revised	Submitted
SCAQMD	1147	NO _x Reductions from Miscellaneous Sources	09/09/2011	02/06/2013
SCAQMD	1153.1	Emissions of Oxides of Nitrogen from Commercial Food Ovens	09/07/2014	04/07/2015

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

The EPA’s proposed action provided a 30-day public comment period. During this period, we received one comment regarding EPA’s proposed approval of Rule 1153.1 that was submitted anonymously.

Comment: The comment generally supports EPA’s proposal to approve Rule 1153.1. The commenter acknowledges Rule 1153.1 was designed to address delays in emission reduction technology development. However, the comment letter expressed a concern regarding the exemption for units with daily NO_x emissions of 1 pound per day or less. The commenter states, “burners could be replaced with larger emission burners and it could easily go unknown by the enforcing agency.” Additionally, the commenter makes a

recommendation for “a testing schedule that is less strict for the small emission burners compared to the larger ones.”

Response: The EPA appreciates the comment letter’s general support of our approval of Rule 1153.1. The exemption discussed in the comment is found in section (g)(2) of Rule 1153.1. Sections (g)(2)(A)–(g)(2)(E) of Rule 1153.1 describe the documentation required of units with daily NO_x emissions of 1 pound per day or less. These requirements ensure the exempted units are rated at a heat input capacity of less than 325,000 BTU per hour, comply with a permit condition limiting NO_x emissions to 1 pound per day or less, and keep daily records of unit operation and fuel gas consumption. Because of these requirements, we disagree that the enforcing agency would not know about these units. The rule exempts these units from requirements to comply with the limits for larger units and testing requirements associated with those units. The testing required is used to confirm compliance with the limits in Table 1 of the rule. If the commenter’s recommendation for a less strict testing

schedule were implemented for the smaller units, it is unclear what would be tested, since the exempted units do not have emissions limits in the rule to comply with. As noted above, the comment letter generally supports our approval of Rule 1153.1 and does not request or recommend any specific changes to our proposed action. The comment letter recognizes that Rule 1153.1 will decrease NO_x emissions. For these reasons, the EPA is finalizing its proposed approval of Rule 1153.1 without change based on the comment.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving these rules into the California SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR

51.5, the EPA is finalizing the incorporation by reference of the SCAQMD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. 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 the 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 the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: November 21, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations 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 F—California

- 2. Section 52.220 is amended by adding paragraphs (c)(379)(i)(A)(7), (c)(428)(i)(D)(2), and (c)(461)(i)(C)(3) to read as follows:

§ 52.220 Identification of plan—in part.

(c) * * *
(379) * * *
(i) * * *
(A) * * *

(7) Previously approved on August 4, 2010 in paragraph (c)(379)(i)(A)(4) of this section and now deleted with replacement in paragraph (c)(428)(i)(D)(2), Rule 1147, "NO_x Reductions from Miscellaneous Sources," adopted on December 5, 2008.

* * * * *
(428) * * *
(i) * * *
(D) * * *

(2) Rule 1147, "NO_x Reductions from Miscellaneous Sources," amended on September 9, 2011.

* * * * *
(461) * * *
(i) * * *
(C) * * *

(3) Rule 1153.1, "Emissions of Oxides of Nitrogen from Commercial Food Ovens," adopted on November 7, 2014.

* * * * *

[FR Doc. 2016-31226 Filed 12-27-16; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2016-0393; FRL-9955-62-Region 9]

Approval of California Air Plan Revisions, Great Basin Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Great Basin Unified Air Pollution Control District (GBUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of particulate matter at Owens Lake, CA.

We are approving a local rule that regulates these emissions under the Clean Air Act (CAA or the Act).

DATES: This rule will be effective on January 27, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2016-0393. 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., CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, (415) 947-4125, vineyard.christine@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Proposed Action

On September 13, 2016 (81 FR 62849), the EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
GBUAPCD	433	Control of Particulate Emissions at Owens Lake	04/13/16	06/09/16

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

The EPA’s proposed action provided a 30-day public comment period. During this period, we received one comment that was submitted anonymously.

Comment: The comment begins, “I don’t see why this would not be approved right away,” and generally supports the EPA’s proposal to approve Rule 433. The comment also includes general statements and questions such as “the fact that ‘Indian’ is still the term being used in this proposed rule is troublesome,” “it would be nice to see them go above and beyond the EPA’s suggested guidelines,” “what does this mean for the Indigenous land,” “who is in charge of regulation,” “how will this alter the particle [sic] matters given off by this lakebed,” “what happened to cause this lakebed to behave in such a way . . . shouldn’t that be looked into instead of altering the way nature is now,” and “instead of being a reactive society we should be more proactive and investigate into ‘unintended consequences’ more so than we do now.”

Response: The comment generally supports EPA’s proposed approval of Rule 433. The comment does not provide specific information related to the basis for EPA’s proposed approval and does not request any changes to our proposed action. In addition, most of the statements and questions in the comment are not relevant to EPA’s action approving Rule 433 or are outside of the scope of this action. For those reasons, the EPA is finalizing its

proposed approval of Rule 433 without change based on the comment.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule into the California SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the GBUAPCD rule described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. 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 (Public Law 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 the 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 the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of

Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 10, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(483) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *
(c) * * *
(483) A new regulation was submitted on June 9, 2016 by the Governor's Designee.

(i) Incorporation by Reference.

(A) Great Basin Unified Air Pollution Control District.

(1) Rule 433, "Control of Particulate Emissions at Owens Lake," adopted on April 13, 2016.

[FR Doc. 2016-31225 Filed 12-27-16; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2016-0502; FRL-9955-89-Region 5]

Air Plan Approval; Illinois; Volatile Organic Compounds Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Under the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is approving a state submission as a revision to the Illinois State Implementation Plan (SIP). The revision amends the Illinois Administrative Code (IAC) by updating the definition of volatile organic material (VOM), otherwise known as volatile organic compounds (VOC), to exclude 2-amino-2-methyl-1-propanol (AMP). This revision is in response to an EPA rulemaking in 2014 which exempted this compound from the Federal definition of VOC on the basis that the compound makes a negligible contribution to tropospheric ozone formation.

DATES: This direct final rule will be effective February 27, 2017, unless EPA receives adverse comments by January 27, 2017. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2016-0502 at <http://www.regulations.gov> or via email to aburano.douglas@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for

submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Michelle Becker, Life Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-3901, becker.michelle@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background for this action?
- II. What is EPA's analysis of the SIP Revision?
- III. What action is EPA taking?
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. What is the background for this action?

The Illinois Environmental Protection Agency (IEPA) submitted a revision to the Illinois SIP to EPA for approval on August 9, 2016. The SIP revision excludes the chemical compound 2-amino-2-methyl-1-propanol (AMP) from the definition of VOM or VOC at 35 IAC Part 211, Subpart B, Section 211.7150(a).

The Illinois Pollution Control Board (IPCB) held a public hearing on the proposed SIP revision on January 8, 2015. There were no public comments received at the public hearing. IPCB received one comment from the American Coatings Association in a letter dated December 16, 2014, supporting the exemption of AMP from

the Illinois regulated VOCs. IPCB adopted the amendment to 35 IAC 211.7150(a) on March 5, 2015. IPCB also adopted minor administrative changes such as alphabetizing compound names, adding a subpart heading previously omitted, and replacing the word “above” with “of this Section” in 35 IAC 211.7150(d) for ease of cross-referencing within a section of the regulations.

II. What is EPA’s analysis of the SIP Revision?

In 2012, EPA received a petition requesting that AMP be exempted from VOC control based on its low reactivity to ethane. On March 27, 2014 (79 FR 17037), EPA responded to the petition by amending 40 CFR 51.100(s)(1) to exclude this chemical compound from the definition of VOC for purposes of preparing SIPs to attain the national ambient air quality standard for ozone under title I of the CAA (78 FR 9823). Based on the mass maximum incremental reactivity value for the compound being equal to or less than that of ethane, EPA concluded that this compound makes negligible contributions to tropospheric ozone formation. (79 FR 17037). Additionally, EPA considered risks not related to tropospheric ozone associated with currently allowed uses of the chemical to be acceptable. EPA’s action became effective on June 25, 2014. IEPA’s SIP revision is consistent with EPA’s action amending the definition of VOC at 40 CFR 51.100(s).

III. What action is EPA taking?

EPA is approving into the Illinois SIP revisions to 35 IAC 211 contained in the August 9, 2016, submittal. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective February 27, 2017 without further notice unless we receive relevant adverse written comments by January 27, 2017. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective February 27, 2017.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Illinois Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and/or at the National Archives and Records Administration (NARA), and/or at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). For information on the availability of this material at NARA, go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive 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 (Public Law 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 18, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

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.*

■ 2. Section 52.720 is amended by adding paragraph (c)(209) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(209) On August 9, 2016, the state submitted a proposed revision to the Illinois SIP updating the definition of Volatile Organic Material (VOM) or Volatile Organic Compound (VOC) to exclude the chemical compound 2-amino-2-methyl-1-propanol (AMP), along with minor administrative revisions.

(i) *Incorporation by reference.* Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Station Sources, Part 211: Definitions and General Provisions, Subpart B: Definitions, Section 211.7150 Volatile Organic Material (VOM) or Volatile Organic Compounds (VOC), effective March 24, 2015.

[FR Doc. 2016-31227 Filed 12-27-16; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2014-0513; FRL-9956-45-Region 6]

Approval and Promulgation of Implementation Plans; Louisiana; State Boards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is approving revisions to the Louisiana State Implementation Plan (SIP) that address requirements in CAA Section 128 regarding State Board composition and Conflict of Interest and Disclosure requirements.

DATES: This rule is effective on February 27, 2017 without further notice, unless the EPA receives relevant adverse comment by January 27, 2017. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2014-0513, at <http://www.regulations.gov> or via email to donaldson.tracie@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Tracie Donaldson, 214-665-6633, Donaldson.tracie@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy

at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT:

Tracie Donaldson, 214-665-6633, Donaldson.tracie@epa.gov. To inspect the hard copy materials, please schedule an appointment with Tracie Donaldson or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

A. CAA and Section 128: State Boards and Heads of Executive Agency, Conflicts of Interest

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

The requirements of CAA section 128(a)(1) are not applicable to Louisiana because it does not have any board or body which approves air quality permits or enforcement orders. The requirements of CAA section 128(a)(2), however, are applicable to Louisiana because LDEQ's cabinet level Secretary (*i.e.*, the head of an executive agency) makes the referenced decisions. Under Louisiana Revised Statutes at Title 30; Subtitle 2. Environmental Quality; Chapter 2; Department of Environmental Quality, and Chapter 3; Louisiana Air Control Law, the Secretary of the Louisiana Department of Environmental Quality (LDEQ), has the power and duty to, among other things, grant or deny air quality related permits.

B. Louisiana's Submittal

On April 30, 1997 Louisiana submitted a SIP revision that contains revisions to the Louisiana Revised Statutes for inclusion into the SIP. The revisions that are necessary for inclusion into the State's SIP address the requirements of CAA section 128 in

relation to State Boards/Head of Executive Agency and Conflicts of Interest/Disclosure. The specific Louisiana statutes governing the relevant CAA section 128 requirements are found in Title 42, Chapter 15 Code of Governmental Ethics and Title 30 Minerals, Oil, Gas and Environmental Quality, Subtitle 2, Environmental Quality, as detailed below: The relevant provisions of those Titles in the Louisiana SIP to meet these CAA requirements are the following: Louisiana Revised Statutes at Title 30; Chapter 2 Sections 2014.1(A)–(D); Permit review; Prohibition; Title 42; Chapter 15: Code of Governmental Ethics; Part 1, General Provisions, Section 1102 Definitions, Section 1102(3) “Agency Head;” Section 1102(13) “Immediate Family;” Section 1102(22)(a) “Thing of Economic Value;” Section 1102(19) “Public Servant;” Section 1102(23), “Transaction involving governmental entity;” Section 1112 “Participation in Certain Transaction Involving the Governmental Entity;” Sections 1114(A)(1)–(4) and (C) “Financial disclosure.”

II. The EPA’s Evaluation

CAA section 128 requires that each state’s SIP demonstrate how State Boards or the head of an executive agency who approves CAA permits or enforcement orders disclose any potential conflicts of interest. The LDEQ Secretary is subject to the requirements of the relevant conflict of interest and disclosure provisions as the head of an Executive Agency.

LDEQ approves all CAA permits and enforcement orders in Louisiana. LDEQ is an executive agency that acts through its Secretary. LDEQ submits that public disclosure of any potential conflict in the SIP as required by CAA sections 128 and 110(a)(2)(E)(ii) pursuant to the requirements that if such person derives anything of economic value that such person should be aware, he/she must disclose specified elements under Title 42; Chapter 15: Code of Governmental Ethics; Section 1114(A)(1)–(4) and (C) “Financial disclosure.” In addition, if the Secretary of LDEQ receives or had received, during the previous two years, a significant portion of income directly or indirectly from a permit applicant, among other specified prohibitions, such individual must be recused from the permit approval process for that permit under Title 30; Chapter 2, Sections 2014.1(A)–(D); Permit review; Prohibition. The SIP revision through submittal of these relevant revised statutes demonstrates that Louisiana complies with the requirements of CAA sections 128 and 110(a)(2)(E)(ii).

It is necessary to act on the above-cited provisions to meet the requirements of the CAA Section 128 which sets forth requirements for State Boards and Agency Head and Conflicts of Interest/Disclosure. We find that the cited provisions are approvable and meet the requirements of CAA Section 128. This submittal included other Louisiana Revised Statutes that are unnecessary for inclusion into the Louisiana SIP as they do not relate to the CAA 128 and the Conflict of Interest/Disclosure provisions and thus not relevant for inclusion into the SIP.

We are also approving a ministerial change to remove language from 40 CFR part 52.2270(e) concerning Title 40: Chapter 12, EPA Approved Statutes in the Louisiana SIP. This will correct a citation that was included in the CFR when the format of part 52 was converted and was not previously approved into the SIP.

III. Final Action

We are approving revisions to the Louisiana SIP that contain several provisions of the Louisiana Revised Statutes to update the federally approved Louisiana SIP. Those are the following: Louisiana Revised Statutes at Title 30; Chapter 2 Sections 2014.1(A)–(D); Permit review; Prohibition; Title 42; Chapter 15: Code of Governmental Ethics; Part 1, General Provisions, Section 1102 Definitions, Section 1102(3) “Agency Head;” Section 1102(13) “Immediate Family;” Section 1102(22)(a) “Thing of Economic Value;” Section 1102(19) “Public Servant;” Section 1102(23), “Transaction involving governmental entity;” Section 1112 “Participation in Certain Transaction Involving the Governmental Entity;” Sections 1114(A)(1)–(4) and (C) “Financial disclosure.” We are also approving a ministerial change to remove language from 40 CFR part 52.2270(e).

The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on February 27, 2017 without further notice unless we receive relevant adverse comment by January 27, 2017. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final

rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

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

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

health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect

until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Samuel Coleman was designated the Acting Regional Administrator on December 21, 2016 through the order of succession outlined in Regional Order R6-1110.1, a copy of which is included in the docket for this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Government employees.

Dated: December 21, 2016.

Samuel Coleman,

Acting 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(e), the table titled “EPA Approved Statutes in the Louisiana SIP” is amended by removing the centered heading and the entries for “LA of R.S. of 1950. Title 40, Chapter 12. The Louisiana Air Control Law, Part 1, Louisiana Air Control Commission” and adding centered headings and entries for “Louisiana Revised Statutes (La. R.S. of 1993) Title 30” and “Louisiana Revised Statutes (La. R.S. of 1972) Title 42” at the end of the table.

The amendments read as follows:

§ 52.970 Identification of plan.

* * * * *
(e) * * *

EPA APPROVED STATUTES IN THE LOUISIANA SIP

State citation	Title/subject	State approval/ effective date	EPA approval date	Comments
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Louisiana Revised Statutes (La. R.S. of 1993). Title 30, Minerals, oil, gas and environmental quality, Subtitle II. Environmental Quality, Chapter 2. Department of Environment Quality; Permit Review; Prohibition				
Title 30: Subtitle II, Permit Review, Ch. 2, Permit Review; Prohibition, Section 2014.1(A) and (B).	Permit review; Prohibition	06/10/1993	12/28/2016, [Insert Federal Register citation].	
Louisiana Revised Statutes (La. R.S. of 1972). Title 42, Public Officers and Employees, Chapter 15 Code of Governmental Ethics Part 1, General Provisions and Part 2 Ethical Standards for Public Servants				
Title 42 Part 1, General Provisions.	Definitions	04/01/1980	12/28/2016, [Insert Federal Register citation].	
1102(3)	Agency Head	04/01/1980	12/28/2016, [Insert Federal Register citation].	
1102(13)	Immediate Family	04/01/1980	12/28/2016, [Insert Federal Register citation].	
1102(19)	Public Servant	04/01/1980	12/28/2016, [Insert Federal Register citation].	
1102(22)(a)	Thing of Economic Value	04/01/1980	12/28/2016, [Insert Federal Register citation].	
1102(23)	Transaction Involving Government Entity	04/01/1980	12/28/2016, [Insert Federal Register citation].	
Section 1112	Participation in Certain Transactions Involving the Governmental Entity.	04/01/1980	12/28/2016, [Insert Federal Register citation].	
Title 42 Part 2, Ethical Standards for Public Servants.	Financial disclosure	04/01/1980	12/28/2016, [Insert Federal Register citation].	

EPA APPROVED STATUTES IN THE LOUISIANA SIP—Continued

State citation	Title/subject	State approval/ effective date	EPA approval date	Comments
Section 1114(A)(1–4)	Financial Disclosures	04/01/1980	12/28/2016, [Insert Federal Register citation].	
Section 1114(C)	Financial Disclosures	04/01/1980	12/28/2016, [Insert Federal Register citation].	

[FR Doc. 2016–31332 Filed 12–27–16; 8:45 am]
 BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA–HQ–OW–2015–0372; FRL 9957–48–OW]

State of Kentucky Underground Injection Control (UIC) Class II Program; Primacy Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking this action to approve the Commonwealth of Kentucky’s Underground Injection Control (UIC) Class II Program for primacy. EPA determined that the state’s program represents an effective program to prevent underground injection activities that endanger underground sources of drinking water (USDWs), as required under section 1425 of the Safe Drinking Water Act (SDWA). EPA’s approval allows the state to implement and enforce state regulations for UIC Class II injection wells located within the state. The Commonwealth’s authority excludes the regulation of injection well Classes I, III, IV, V and VI and all wells on Indian lands, as required by rule under the SDWA.

DATES: This rule is effective on January 27, 2017. For judicial purposes, this final rule is promulgated as of January 27, 2017. The incorporation by reference of certain publications listed in the rule is approved by the Director of the **Federal Register** as of January 27, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2015–0372, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. 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., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Holly S. Green, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 566–0651; fax number: (202) 564–3754; email address: green.holly@epa.gov; or Nancy H. Marsh, Safe Drinking Water Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303; telephone number (404) 562–9450; fax number:

(404) 562–9439; email address: marsh.nancy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is EPA issuing this final rule?

On October 28, 2016, EPA published Kentucky’s Class II primacy approval via a direct final rule with a parallel proposal. The EPA stated in the direct final rule that if we received adverse comment, the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. During the 30-day comment period, which ended on November 28, 2016, the EPA received three adverse comment letters questioning Kentucky’s capacity to run the Class II program, along with some technical concerns regarding the state’s program. As a result, EPA withdrew the direct final rule in the **Federal Register** in a separate notice on December 28, 2016, Insert **Federal Register** Citation. As stated in the direct final rule and the parallel proposed rule, EPA indicated that it will address the public comments in any subsequent final action, which will be based on the parallel proposed rule, and will not institute a second comment period on this action.

EPA has responded in detail to the public comments received and has placed the response to comment document in the docket for this action. A summary of the comments received and EPA response can be found in section V of this action.

II. Does this action apply to me?

REGULATED ENTITIES

Category	Examples of potentially regulated entities	North American industry classification system
Industry	Private owners and operators of Class II injection wells located within the state (Enhance Recovery, Produce Fluid Disposal and Hydro-carbon Storage).	211111 & 213111.

This table is intended to be a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. If you have questions

regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. Legal Authorities

The state applied to EPA for primacy (primary implementation and enforcement authority) under section 1425 of the SDWA, 42 U.S.C. Sections

300h–4, for all Class II injection wells within the state except those on Indian lands. EPA approves the Commonwealth of Kentucky's UIC Program primacy application for these Class II injection wells by rule, as required under the SDWA, finding that it represents an "effective" program to prevent underground injection activities that endanger USDWs. Accordingly, EPA codifies the state's program in the *Code of Federal Regulations* (CFR) at 40 CFR part 147, under the authority of the SDWA, sections 1425, 42 U.S.C. 300h–4.

EPA's approval is based on a legal and technical review of the state's primacy application as directed at 40 CFR part 145 and the requirements for state permitting and compliance evaluation programs, enforcement authority and information sharing to determine that the state's program is effective. EPA oversees the state's administration of the UIC program; part of the agency's oversight responsibility requires quarterly reports of non-compliance and annual UIC performance reports pursuant to 40 CFR 144.8. The Memorandum of Agreement between EPA and the Commonwealth of Kentucky, signed by the Regional Administrator on October 20, 2015, provides EPA with the opportunity to review and comment on all permits. Under section 1422 of the SDWA, EPA continues to administer the UIC program for Class I, III, IV, V and VI injection wells in the state and all wells on Indian lands (if any such lands exist in the state in the future).

IV. Kentucky's Application

A. Public Participation Activities Conducted by the Commonwealth of Kentucky

As part of the primacy application requirements, the state held a public hearing on the state's intent to apply for primacy. The hearing was held on September 23, 2014, in the city of Frankfort, Kentucky. Both oral and written comments received for the hearing were generally supportive of the state pursuing primacy for the UIC Class II injection well program.

B. Public Participation Activities Conducted by EPA

On November 10, 2015, EPA published a notice of the state's application in the **Federal Register** (80 FR 69629). This notice provided a comment period and that a public hearing would be held if requested. EPA received one comment during the comment period, and no requests for a public hearing. An anonymous

commenter suggested the state agency give permission to construct these Class II wells so that energy dependency and job creation remain domestic and that extraction of oil and gas resources be done in an environmentally sound manner. EPA determined that the issue was outside the scope of the UIC program and not relevant as to whether the state's regulations are effective to manage the UIC Class II injection well program in accordance with section 1425 of the Safe Drinking Water Act.

C. Incorporation by Reference

This final rule amends 40 CFR part 147 and incorporates by reference EPA-approved state statutes and regulations. The provisions of the Commonwealth of Kentucky Code that contain standards, requirements and procedures applicable to owners or operators of UIC Class II wells are incorporated by reference into 40 CFR part 147. Any provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, will be enforceable by EPA pursuant to the SDWA, section 1423 and 40 CFR 147.1(e).

In order to better serve the public, the agency is reformatting the codification of the EPA-approved state statutes and regulations. Instead of codifying the Commonwealth of Kentucky's Statutes and Regulations as separate paragraphs in the text of 40 CFR part 147, EPA is now codifying a binder that contains the "EPA-Approved Commonwealth of Kentucky Safe Drinking Water Act § 1425 Underground Injection Control (UIC) Program Statutes and Regulations for Class II wells." This binder will be incorporated by reference into 40 CFR part 147 and available at www.regulations.gov in the docket for this rule. The agency is also codifying a table listing the "EPA-Approved Commonwealth of Kentucky Safe Drinking Water Act § 1425 Underground Injection Control (UIC) Program Statutes and Regulations for Class II wells" in 40 CFR part 147.

V. Summary of Response to Comments

A. Resources

Commenters believe that Kentucky does not have adequate resources to implement the Class II UIC Program. Kentucky is planning on filling two new positions once primacy is granted. Kentucky has 16 inspectors as compared to EPA's 2 full-time inspectors. EPA evaluated proposed resources and determined that they are adequate for an effective program to prevent endangerment to USDWs.

B. Administrative Procedures for Processing Permits

One commenter does not believe that Kentucky has the same regulatory requirements as the EPA for providing public participation in the permitting process. The commenter has concerns that the public was not provided access to the draft permit or statement of basis and that Kentucky was not required to provide a written response to comments received during the public comment period. For primacy approval under Section 1425, the state's regulations do not have to be as stringent as the federal regulations; therefore, Kentucky's public notice process does not need to mirror EPA's public notice process. Kentucky's public notice, which is included in the Program Description, provides the opportunity to request a copy of the draft permit and statement of basis. Commenters and those that attend a public hearing are notified if their comments do not result in a change to the final permit. An additional public notice is issued if comments do result in a change to the final permit. The public notice also provides an opportunity to petition the state for review of the permit and any conditions therein. Accordingly, the EPA has determined that Kentucky's administrative permitting procedures are effective for protecting USDWs.

C. Area of Review

One commenter is concerned that Kentucky does not have criteria for the applicant to use in determining whether the minimum ¼ mile fixed radius area of review around the project or an evaluation of a zone of endangering influence (ZEI) is required to ensure that USDWs are not endangered. The commenter is also concerned that it is the applicant, not the agency, that is required to make the determination on whether a ZEI is appropriate. With respect to the commenter's first concern, the state's regulations are not inconsistent with the federal regulations, which similarly lack criteria for determining whether to use fixed radius or ZEI for the area of review, providing only that the permit writer may solicit input from well owners/operators as to which method is most appropriate. 40 CFR 146.6. With respect to the commenter's concern about the applicant, not the agency, selecting the method, this is not entirely consistent with EPA's Class II regulations, which require this determination to be made by the agency. However, a state applying for primacy under SDWA section 1425 is required to demonstrate only that its regulations are "effective,"

not that they are equivalent to the federal regulations. EPA guidance on state submissions under SDWA section 1425 provides that an “effective” state program would be expected to incorporate an area of review of not less than ¼ mile, or a ZEI in lieu of this fixed radius. Kentucky has included both the fixed radius and ZEI methods as options, which goes beyond the recommendations provided in the guidance, and is consistent with the two options provided in EPA’s regulations. Moreover, under the state’s proposed program, the applicant has the burden of proof to provide information to the state to ensure that the injection operation does not endanger a USDW. Kentucky has stated in its response to comments that it has statutory authority to require owners/operators of Class II wells to ensure that their operations do not endanger any USDWs, which could include the authority to require the applicant to calculate the area of review based on the ZEI method, if necessary to prevent endangerment to USDWs.

D. Hydraulic Fracturing

Commenters are concerned with how the state would regulate hydraulic fracturing activities. Under the SDWA, only wells that use diesel fuels for hydraulic fracturing are subject to regulation under the federal underground injection control program. Therefore, this Class II UIC primacy approval would give the state primacy only over this small subset of hydraulic fracturing wells. To the extent that there are any such wells, they would be subject to Kentucky’s Class II program regulations, which EPA has found to be effective to prevent endangerment to USDWs. In addition, Kentucky has indicated in its application that it will consider, as appropriate, EPA’s permitting guidance on diesel fuels hydraulic fracturing in regulating these wells. The state has regulatory authority over all other types of hydraulic fracturing.

VI. Statutory and Executive Order Reviews

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

This action is exempt from review by the Office of Management and Budget (OMB) because OMB has determined that the approval of state UIC primacy for Class II rules are not significant regulatory actions.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. EPA determined that there is no need for an Information Collection Request under the Paperwork Reduction Act because this final rule does not impose any new federal reporting or recordkeeping requirements. Reporting or recordkeeping requirements are based on the Commonwealth of Kentucky’s UIC Regulations, and the state is not subject to the Paperwork Reduction Act. However, OMB has previously approved the information collection requirements contained in the existing UIC regulations at 40 CFR parts 144–148 for SDWA section 1422 states and also for section 1425 states under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control number 2040–0042. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action does not impose any new requirements on any regulated entities. It simply codifies the Commonwealth of Kentucky’s UIC Program regulations, which meets the effectiveness standard under SDWA section 1425 for regulating a Class II well program. I have therefore concluded that this action will have no net regulatory burden for any directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1521–1538. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132—Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175 as explained in section V.C. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it approves a state action as explained in section V.C.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act 10(NTTAA)

This rulemaking does not involve technical standards.

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

EPA believes the human health or environmental risk addressed by this action will *not* have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because the rule does not change the level of protection provided to human health or the environment.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 147

Environmental protection, Appeals, Incorporation by reference, Penalties, Protection for USDWs, Requirements for plugging and abandonment, Underground injection control.

Dated: December 20, 2016.

Gina McCarthy,
Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

■ 1. The authority citation for Part 147 is revised to read as follows:

Authority: 42 U.S.C. 300h–4.

Subpart S—Kentucky

■ 2. Section 147.900 is added to read as follows:

§ 147.900 State-administered program—Class II wells.

The UIC program for Class II injection wells in the Commonwealth of

Kentucky, except for those on Indian lands, is the program administered by the Kentucky Department of Natural Resources, Division of Oil and Gas approved by the EPA pursuant to section 1425 of the SDWA. Notification of this approval was published in the **Federal Register** on December 28, 2016; the effective date of this program is January 27, 2017. Table 1 to paragraph (a) of this section is the table of contents of the Kentucky state statutes and regulations incorporated as follows by reference. This program consists of the following elements, as submitted to the EPA in the state’s program application.

(a) *Incorporation by reference.* The requirements set forth in the Kentucky State statutes and regulations cited in the binder entitled “EPA-Approved Commonwealth of Kentucky Safe Drinking Water Act § 1425 Underground Injection Control (UIC) Program Statutes and Regulations for Class II wells,”

dated August 2016 is hereby incorporated by reference and made a part of the applicable UIC program under the SDWA under the Commonwealth of Kentucky. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the Kentucky regulations may be obtained or inspected at the Kentucky Department of Natural Resources, Division of Oil and Gas, 3th Floor, 300 Sower Blvd., Frankfort, Kentucky 40601, (315) 532–0191; at the U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960, (404) 562–8190; or at the National Archives and Records Administration (NARA). For information on availability of this material at NARA, call (202) 741–6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

TABLE 1 TO PARAGRAPH (a)—EPA-APPROVED KENTUCKY SDWA § 1425 UNDERGROUND INJECTION CONTROL PROGRAM STATUTES AND REGULATIONS FOR CLASS II WELLS

State citation	Title/subject	State effective date	EPA approval date ¹
Kentucky Revised Statutes Chapter 13B.	Kentucky Administrative Procedures Act KRS 13B.005 to 13B.170.	June 15, 1994	[Insert Federal Register citation].
Kentucky Revised Statutes 353.180.	Requirements for plugging abandoned well—Bids—Remedy for possessor of adjacent land or for department.	June 24, 2015	[Insert Federal Register citation].
Kentucky Revised Statutes 353.510.	Definition of KRS 353.500 to 353.720	July 15, 2010	[Insert Federal Register citation].
Kentucky Revised Statutes 353.520.	Territorial application of KRS 353.500 to 353.720—Waste of oil and gas prohibited.	June 24, 2003	[Insert Federal Register citation].
Kentucky Revised Statutes 353.550.	Specific authority over oil and gas operators	July 15, 1996	[Insert Federal Register citation].
Kentucky Revised Statutes 353.570.	Permit Required—May authorize operation prior to issuance of permit.	July 15, 1998	[Insert Federal Register citation].
Kentucky Revised Statutes 353.590.	Application for permit—Fees—Plat—Bond to insure plugging—Schedule—Blanket bonds—Corporate guarantee—Use of forfeited funds—Oil and gas well. plugging fund—Wells not included in “water supply well.”.	July 15, 2010	[Insert Federal Register citation].
Kentucky Revised Statutes 353.591.	Purpose and application of KRS 353.592 and 353.593	July 15, 1986	[Insert FR citation].
Kentucky Revised Statutes 353.592.	Powers of the department	June 24, 2015	[Insert FR citation].
Kentucky Revised Statutes 353.593.	Appeals	July 15, 1996	[Insert FR citation].
Kentucky Revised Statutes 353.992.	Penalties	July 15, 1986	[Insert FR citation].
805 Kentucky Administrative Regulations 1:020.	Providing Protection for USDWs	August 9, 2007	[Insert FR citation].
805 Kentucky Administrative Regulations 1:030.	Well location and as-drilled location plat, preparation, form and contents.	October 23, 2009	[Insert FR citation].
805 Kentucky Administrative Regulations 1:060.	Plugging wells; non-coal-bearing strata	June 11, 1975	[Insert FR citation].
805 Administrative Regulations 1:070.	Plugging wells; coal bearing strata	October 23, 1975	[Insert FR citation].
805 Kentucky Administrative Regulations 1:110.	Underground Injection Control	April 4, 2008	[Insert FR citation].

¹ In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** document cited in this column for the particular provision.

(b) *Memorandum of Agreement (MOA)*. The MOA between EPA Region

4 and the Commonwealth of Kentucky Department of Natural Resources signed

by EPA Regional Administrator on October 20, 2015.

(c) *Statements of Legal Authority.* “Underground Injection Control Program, Attorney General’s Statement,” signed by General Counsel of Kentucky Energy and Environmental Cabinet on June 7, 2010.

(d) *Program Description.* The Program Description submitted as part of Kentucky’s application, and any other materials submitted as part of this application or as a supplement thereto.

■ 3. Section 147.901 is amended by revising the section heading and the first sentence of paragraph (a) to read as follows:

§ 147.901 EPA-administered program—Class I, III, IV, V, and VI wells and Indian lands.

(a) *Contents.* The UIC program for Class I, III, IV, V and VI wells and all wells on Indian lands in the Commonwealth of Kentucky is administered by the EPA. * * *

* * * * *

■ 4. Section 147.902 is added to read as follows:

§ 147.902 Aquifer exemptions.

(a) This section identifies any aquifers or their portions exempted in accordance with §§ 144.7(b) and 146.4 of this chapter. These aquifers are not being proposed for exemption under the Commonwealth of Kentucky’s primacy approval. Rather, the exempted aquifers listed below were previously approved while EPA had primary enforcement authority for the Class II UIC program in the Commonwealth of Kentucky and are included here for reference. Additional information pertinent to these exempted aquifers or their portions resides in EPA Region 4.

(1) The following eight aquifers (underground sources of drinking water) in the Commonwealth of Kentucky have been exempted in accordance with the provisions of §§ 144.7(b) and 146.4 of this chapter for Class II injection activities only: A portion of the Tar Springs sandstone formation that has a quarter mile radius areal extent (125.6 acres) that is located at latitude 37.7261 and longitude –86.6914. The formation has a true vertical depth from surface of 280 feet.

(2) A portion of the Tar Springs sandstone formation that has a quarter mile radius areal extent (125.6 acres) that is located at latitude 37.7294 and longitude –86.7212. The formation has a true vertical depth from surface of 249 feet.

(3) A portion of the Tar Springs sandstone formation that has a quarter mile radius areal extent (125.6 acres) that is located at latitude 37.7055 and longitude –86.7177. The formation has

a true vertical depth from surface of 210 feet.

(4) A portion of the Pennsylvania Age sandstone formation that has a quarter mile radius areal extent (125.6 acres) that is located at latitude 37.5402 and longitude –87.2551. The formation has a true vertical depth from surface of 1,050 feet.

(5) A portion of the Tar Springs sandstone formation that has a quarter mile radius areal extent (125.6 acres) that is located at latitude 37.7301 and longitude –87.6922. The formation has a true vertical depth from surface of 240 feet.

(6) A portion of the Caseyville sandstone formation that has a quarter mile radius areal extent (125.6 acres) that is located at latitude 37.5776 and longitude –87.1321. The formation had a true vertical depth from surface of 350 feet.

(7) A portion of the Caseyville sandstone formation that has a quarter mile radius areal extent (125.6 acres) that is located at latitude 37.5778 and longitude –87.1379. The formation has a true vertical depth from surface of 1,080 feet.

(8) A portion of the Caseyville sandstone formation that has a quarter mile radius areal extent (125.6 acres) that is located at latitude 37.5652 and longitude –87.1222. The formation has a true vertical depth from surface of 1,060 feet.

(b) [Reserved]

■ 5. Section 147.903 is amended by revising the section heading to read as follows:

§ 147.903 Existing Class I and III wells authorized by rule.

* * * * *

§ 147.904 [Removed and Reserved]

■ 6. Section 147.904 is removed and reserved.

[FR Doc. 2016–31268 Filed 12–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA–HQ–OW–2015–0372; FRL–9957–47–OW]

State of Kentucky Underground Injection Control (UIC) Class II Program; Withdrawal of Primacy Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because the U.S. Environmental Protection Agency (EPA) received adverse comment, we are withdrawing the direct final rule approving the Commonwealth of Kentucky’s Underground Injection Control (UIC) Class II Program for primacy, published on October 28, 2016.

DATES: Effective December 28, 2016, EPA withdraws the direct final rule published at 81 FR 74927, on October 28, 2016.

FOR FURTHER INFORMATION CONTACT:

Holly S. Green, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 566–0651; fax number: (202) 564–3754; email address: *green.holly@epa.gov*; or Nancy H. Marsh, Safe Drinking Water Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303; telephone number (404) 562–9450; fax number: (404) 562 9439; email address: *marsh.nancy@epa.gov*.

SUPPLEMENTARY INFORMATION: Because EPA received adverse comment, we are withdrawing the direct final rule approving the Commonwealth of Kentucky’s Underground Injection Control Class II (UIC).

Program for primacy, published on October 28, 2016. We stated in that direct final rule that if we received adverse comment by November 28, 2016, the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. We subsequently received adverse comment on that direct final rule. We will address those comments in any subsequent final action, which will be based on the parallel proposed rule also published on October 28, 2016 (81 FR 75006). As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

Dated: December 20, 2016.

Gina McCarthy,
Administrator.

Accordingly, the direct final rule published on October 28, 2016, (81 FR 74927) is withdrawn effective December 28, 2016.

[FR Doc. 2016–31267 Filed 12–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180**

[EPA-HQ-OPP-2015-0776 and EPA-HQ-OPP-2015-0831; FRL-9955-82]

Methyl Isobutyrate and Isobutyl Isobutyrate; Exemption From the Requirement of a Tolerance**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance for residues of methyl isobutyrate (CAS Reg. No. 547-63-7) and for residues of isobutyl isobutyrate (CAS Reg. No. 97-85-8) when used as inert ingredients (solvents) applied to growing crops or raw agricultural commodities after harvest. Jeneil Biosurfactant Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of methyl isobutyrate and isobutyl isobutyrate when used in accordance with the conditions.

DATES: This regulation is effective December 28, 2016. Objections and requests for hearings must be received on or before February 27, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2015-0776 and EPA-HQ-OPP-2015-0831, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200

Pennsylvania Ave. NW., Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: RDfRNNotices@epa.gov.

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

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2015-0776 and EPA-HQ-OPP-2015-0831 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 27, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior

notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2015-0776 and EPA-HQ-OPP-2015-0831, by one of the following methods:

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

Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

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

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

II. Petition for Exemption

In the **Federal Register** of March 16, 2016 (81 FR 14030) (FRL-9942-86), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of two pesticide petitions (PP IN-10848 & PP IN-10850) by Jeneil Biosurfactant Company, 400 N. Dekora Woods Blvd., Saukville, WI 53080. The petitions requested that 40 CFR 180.910 be amended by establishing two exemptions from the requirement of a tolerance: One for residues of methyl isobutyrate (CAS Reg. No. 547-63-7) (PP IN-10848) and one for isobutyl isobutyrate (CAS Reg. No. 97-85-8) (PP IN-10850), when used as inert ingredients (solvents) applied to growing crops or raw agricultural commodities after harvest. That document referenced a summary of each petition prepared by Jeneil Biosurfactant Company, the petitioner, which are available in the respective dockets (PP IN-10848 in docket ID number EPA-HQ-OPP-2015-0776 and PP IN-10850 in docket ID number EPA-HQ-OPP-2015-0831), <http://www.regulations.gov>. Comments were received in response to the notice of filing, requesting the denial of these petitions based only generally on a concern for the use of "toxic chemicals" in or on food. Because the commenters did not provide any information upon which to evaluate these specific inert ingredient tolerance exemptions and because EPA has determined that such exemptions would be safe, EPA is not denying the petition as requested.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own):

Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

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

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If

EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by methyl isobutyrate and isobutyl isobutyrate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Methyl isobutyrate and isobutyl isobutyrate are rapidly metabolized through hydrolysis to form an alcohol and carboxylic acid in the body. Many of the supporting data for methyl isobutyrate comes directly from the closely related and similarly metabolized compound isobutyl isobutyrate. Where separate information for methyl isobutyrate and isobutyl isobutyrate is available, the studies will be presented along with information for their common metabolite isobutanol.

An LD₅₀ value of 16,000 milligrams/kilogram body weight (mg/kg bw) was determined in rats for methyl isobutyrate. The LC₅₀ of methyl isobutyrate was 25.5 milligrams per Liter (mg/L) in mice. The acute oral LD₅₀ for isobutyl isobutyrate value in rats and mice was >6,400 mg/kg. The acute inhalation LC₅₀ (6 hour exposure duration) was between 3.88 and 31.94 mg/L isobutyl isobutyrate in rats. The dermal LD₅₀ value for isobutyl isobutyrate in guinea pigs was >8,550 mg/kg.

No repeat-dose studies of methyl isobutyrate were identified in a search of the toxicological literature. In an 18-week oral gavage study in rats with isobutyl isobutyrate, there were no treatment related effects in hematology, clinical chemistry parameters, urinalysis, histological examination, behavior, appearance, body weight, or food/water consumption. The NOAEL was 1,000 mg/kg/day; the highest dose tested. In a 90-day oral toxicity study in rats with isobutanol, treatment related effects were seen only at 1,000 mg/kg bw/day, and included hypoactivity, which was significant during week one and decreased markedly after week 4, and lower body weight gain (18% below that of control rats) in males during week one. The NOAEL was 316 mg/kg bw/day.

In a 90-day study toxicity study in rats exposed to isobutanol in drinking water, no effects on body weight, food/water consumption, and clinical signs of toxicity and organ weights (livers, kidneys, adrenal glands, and testes) were observed at doses up to 1,450 mg/kg/day. The NOAEL for isobutanol was 1,450 mg/kg/day.

In a 90-day isobutanol inhalation study, no differences were found in body weight, food consumption, ophthalmoscopic examination, clinical observation, clinical chemistry, neurobehavioral observations, organ weights, gross pathology, and histopathology. The NOAEL for repeat-dose effects including neurotoxicity was 2,500 ppm.

In two prenatal developmental toxicity studies via inhalation, female rats and Himalayan rabbits were exposed to vapor of isobutanol. In rats, no mortality or significant differences in clinical signs, body weight development, or gross pathology between controls and treated groups and no effects on development were noted. The maternal and developmental rat NOAELs were 3,030 ppm. In rabbits, no mortality or significant differences in clinical signs, body weight development, or gross pathology between controls and treated groups and no effects on development were noted. The maternal no observed adverse effect level (NOAEL) for rabbits was 758 ppm. Fetuses exhibited no signs of developmental changes in response to isobutanol. Therefore, the developmental NOAEL was 3,030 ppm, the highest dose.

In a 2-generation reproduction study in rats with isobutanol via inhalation, no exposure-related effects were observed on F0 and F1 parental survival or on F0 and F1 reproductive performance, body weights, food

consumption and food efficiency in males or females. The NOAEL for isobutanol for parental systemic, reproductive and neonatal toxicity is 2,500 ppm (7,380 mg/m³ the maximum concentrations exposed).

There were no adequate studies on the carcinogenic potential of methyl isobutyrate or isobutanol isobutyrate. Methyl isobutyrate did not significantly induce chromosome loss in mitotically growing *Saccharomyces cerevisiae*. The structurally similar isobutyl isobutyrate did not induce reverse mutations at concentrations as high as 5,000 microgram/milliliter (ug/mL). An evaluation of the structure of methyl isobutyrate for alerts to genotoxicity yields no identifiable structures of concern. Based on negative results in genotoxicity assays and an extensive history of exposure to isobutyl isobutyrate, carcinogenic potential of this compound is likely to be low. Methyl isobutyrate was not genotoxic in one study and it does not contain reactive substructures of concern and isobutyl isobutyrate was also negative in genotoxic assays and in extensive exposure history; therefore the carcinogenic potential of both compounds is low.

Metabolism of aliphatic esters such as methyl isobutyrate and isobutyl isobutyrate proceeds rapidly through hydrolysis to form an alcohol and carboxylic acid. These are reactions of the carboxylesterases or esterases, which predominate in hepatocytes but are present in most tissues throughout the body, including small intestine, colon, kidney, trachea and lung. Hydrolysis of methyl isobutyrate is extensive and will form methanol and isobutyric acid. Isobutyric acid is metabolized to propionic acid which, in turn, is converted to succinic acid and ultimately to glucose and glycogen. Methanol is oxidized and excreted ultimately as CO₂ and water. In male rats injected intravenously with isobutyl isobutyrate, the parent compound decreased rapidly in blood and was undetected after 166 seconds. The half-life was calculated at 11.1 seconds. Isobutanol and isobutyric acid levels increased rapidly, with the acid consistently higher than the alcohol, suggesting that the former is a metabolic product of the alcohol in addition to the parent compound. Isobutyric acid will be conjugated and excreted or will undergo β -oxidation in the fatty acid metabolic pathway.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies

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

EPA has not identified any toxicological points of departure for assessing methyl isobutyrate and isobutyl isobutyrate. On the basis of the metabolism of as methyl isobutyrate and isobutyl isobutyrate proceeding rapidly through hydrolysis to form an alcohol and carboxylic acid and ultimately to glucose and glycogen, low acute toxicity for animals via the dermal, inhalation, and oral routes of exposure, and low toxicity of the metabolite isobutyl alcohol, no adverse effect is expected from methyl isobutyrate and isobutyl isobutyrate as a result of exposure by any route.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to methyl isobutyrate and isobutyl isobutyrate, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from methyl isobutyrate and isobutyl isobutyrate in food as follows:

Acute and chronic dietary assessments take into account exposure estimates from dietary consumption of food and drinking water. Because no adverse effects attributable to a single or repeat exposures to methyl isobutyrate and isobutyl isobutyrate were seen in the toxicity databases, quantitative dietary risk assessments are not

appropriate. Due to expected use of methyl isobutyrate and isobutyl isobutyrate in pesticide formulations applied to growing crops and raw agricultural commodities after harvest, it is reasonable to expect that there will be some exposure to these substances from their use in pesticide products. In addition, FDA has approved the use of methyl isobutyrate and isobutyl isobutyrate as synthetic flavoring substances in food for direct human consumption (21 CFR 172.515), so there is expected to be additional dietary exposure to these substances from non-pesticidal sources.

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for methyl isobutyrate and isobutyl isobutyrate, a conservative drinking water concentration value would normally be included in dietary exposure screening level model. However, because no adverse effects attributable to a single or repeat exposures to methyl isobutyrate and isobutyl isobutyrate were seen in the toxicity databases, quantitative dietary risk assessments are not appropriate.

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

It is possible that methyl isobutyrate or isobutyl may be used as an inert ingredient in pesticide products that may result in residential exposures, although no residential uses are currently proposed.

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

Because methyl isobutyrate and isobutyl isobutyrate do not have a toxic mode of action or a mechanism of toxicity, this provision does not apply.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for

prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

Because methyl isobutyrate and isobutyl isobutyrate do not have threshold effects and because of the lack of safety factors needed for this qualitative assessment, this provision does not apply to the assessment of methyl isobutyrate and isobutyl isobutyrate.

E. Aggregate Risks and Determination of Safety

Determination of safety section. Based on the lack of any endpoints of concern, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to methyl isobutyrate and isobutyl isobutyrate residues.

V. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

VI. Conclusions

Therefore, exemptions from the requirement of a tolerance are established under 40 CFR 180.910 for methyl isobutyrate (CAS Reg. No. 547-63-7) and isobutyl isobutyrate (CAS Reg. No. 97-85-8) when used as inert ingredients (solvents) in pesticide formulations applied to growing crops or raw agricultural commodities after harvest.

VII. Statutory and Executive Order Reviews

This action establishes exemptions from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the

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

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination

with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 15, 2016.

Daniel J. Rosenblatt,
Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

- 1. The authority citation for part 180 continues to read as follows:
Authority: 21 U.S.C. 321(q), 346a and 371.
- 2. In § 180.910, add alphabetically the inert ingredients “Isobutyl isobutyrate (CAS Reg. No. 97-85-8)” and “Methyl isobutyrate (CAS Reg. No. 547-63-7)” to the table to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

	Inert ingredients	Limits	Uses
	* * * * *		
Isobutyl isobutyrate (CAS Reg. No. 97-85-8)		None	Solvent
	* * * * *		
Methyl isobutyrate (CAS Reg. No. 547-63-7)		None	Solvent
	* * * * *		

[FR Doc. 2016-31215 Filed 12-27-16; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 578**

[Docket No. NHTSA-2016-0136]

RIN 2127-AL82

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; response to petition for reconsideration; response to petition for rulemaking.

SUMMARY: On July 5, 2016, NHTSA published an interim final rule updating the maximum civil penalty amounts for violations of statutes and regulations administered by NHTSA, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. This decision responds to a petition for partial reconsideration of that interim final rule. After carefully considering the issues raised, the Agency grants some aspects of the petition, and denies other aspects. This decision amends the relevant regulatory text accordingly. This decision also responds to a petition for rulemaking on a similar topic.

DATES: *Effective date:* This rule is effective January 27, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Rebecca Yoon, Office of the Chief Counsel, NHTSA, telephone (202) 366-2992, facsimile (202) 366-3820, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:**I. Background on CAFE Penalties and Interim Final Rule**

The National Highway Traffic Safety Administration (NHTSA) administers Corporate Average Fuel Economy (CAFE) standards under 49 U.S.C. 32901 *et seq.* Vehicle manufacturers that produce passenger cars and light trucks for sale in the United States are subject to these standards,¹ and are subject to civil penalties for failure to meet the standards.² Manufacturers generally meet the standards by applying technology to their vehicles to improve their fleet-wide fuel economy, but may also apply credits earned from over-

compliance with standards in another year or purchased from another manufacturer. If a manufacturer does not have credits to apply, and does not apply sufficient fuel economy-improving technologies to their vehicles to meet their fleet-wide standards, then that manufacturer is liable for civil penalties.³

Congress has prescribed the formula for calculating a civil penalty for violation of a CAFE standard. That formula multiplies the penalty rate times the number of tenths-of-a-mile-per-gallon by which a non-compliant fleet falls short of an applicable CAFE standard, times the number of vehicles in that non-compliant fleet.⁴ For many years, the penalty rate has been \$5.50 per tenth-of-a-mile-per-gallon. As an illustration, assume that Manufacturer A produced 1,000,000 light trucks in model year 2010. Assume further that A has a light truck standard of 20 mpg for MY 2010, and an achieved light truck average fuel economy level of 19.7 mpg in that model year. If A has no credits to apply, then A's assessed civil penalty under this historical penalty rate would be:

$$\begin{aligned} & \$5.50 \text{ (penalty rate)} \times 3 \text{ (tenths of an} \\ & \text{mpg)} \times 1,000,000 \text{ (vehicles in} \\ & \text{Manufacturer A's light truck fleet)} = \\ & \$16,500,000 \text{ due for A's light truck} \\ & \text{fleet for MY 2010.} \end{aligned}$$

To date, few manufacturers have actually paid civil penalties, and the amounts of CAFE penalties paid generally have been relatively low. Additionally, since the introduction of credit trading and transfers for MY 2011 and after, many manufacturers have taken advantage of those flexibilities rather than paying civil penalties for non-compliance.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act (November 2, 2015) (the "Act") prescribed an inflation adjustment for many civil monetary penalties, including CAFE's civil penalty rate. In that Act, Congress generally required Federal agencies that administer civil monetary penalties to make an initial "catch-up" adjustment for inflation through an interim final rule by July 1, 2016, and then to make subsequent annual adjustments for inflation (*see* Pub. L. 114-74, Sec. 701). NHTSA developed an interim final rule (IFR) implementing the Agency's responsibilities under that Act, and that IFR published in the **Federal Register** on July 5, 2016. The NHTSA IFR included adjustments for all civil

monetary penalties administered by the Agency, including those prescribed by the CAFE program. In accordance with the Act and OMB guidance, the updated penalty rate increased from \$5.50 per tenth of a mile per gallon (mpg) to \$14 per tenth of an mpg.⁵ NHTSA stated in implementation guidance that it issued following the IFR that the Agency intended to apply the \$14 rate to any penalties assessed on and after August 4, 2016, beginning with penalties applicable to violations for MY 2015, and also applying to any violations from prior model years that resulted from recalculation of a manufacturer's previous CAFE levels.⁶

II. Industry Petition for Reconsideration

The Auto Alliance and Global Automakers jointly petitioned NHTSA for reconsideration of the interim final rule with regard to the inflation adjustment for CAFE non-compliance penalties (hereafter, the Alliance and Global petition will be referred to as the "Industry Petition") on August 1, 2016. The Industry Petition asked that NHTSA not apply the penalty increase to non-compliances associated with "model years that have already been completed or for which a company's compliance plan has already been set." Specifically, the Industry Petition stated that:

Our most significant concern with the IFR is that it would apply retroactively to the 2014 and 2015 Model Years (which have been completed for all manufacturers but for which the compliance files are not all closed), to the 2016 Model Year (which is complete for many manufacturers) and to the 2017 and 2018 Model Years (for which manufacturers have already set compliance plans based on guidance from NHTSA, including the [historical penalty amounts of \$5.50 per tenth of an mpg]). Applying the increased civil penalties in this manner is profoundly unfair to manufacturers, does not improve the effectiveness of this penalty, and does nothing to further the policies underlying the CAFE statute.

Industry Petition at 3.

In the alternative, the Industry Petition requested that if NHTSA decided to apply the penalty increase to MYs 2014-2018, the Agency should recalculate the adjusted penalty rate

⁵ NHTSA's explanation of its process, including reliance on OMB guidance for calculating the initial adjustment required by the Act, is set forth in the interim final rule at 81 FR 43524-26 (Jul. 5, 2016). The interim final rule also discusses the "rounding rule" under the prior version of the Federal Civil Penalties Inflation Adjustment Act, which prevented NHTSA from raising the \$5.50 rate after 1997.

⁶ Memorandum, "Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 for the Corporate Average Fuel Economy (CAFE) Program," July 18, 2016.

¹ 49 U.S.C. 32911(b).

² 49 U.S.C. 32912(b).

³ Civil penalties are remitted to the U.S. Treasury. 49 U.S.C. 32912(b).

using 2007 as the “base year” for calculating the inflation adjustment. As another alternative, the Industry Petition sought a finding that immediately increasing the penalty to \$14 would cause a “negative economic impact,” thereby requiring a smaller initial penalty increase. See Public Law 114–74, Sec. 701(c) (providing for an exception to the otherwise-applicable penalty increase, if the Agency finds through a rulemaking proceeding that the increase would cause a “negative economic impact,” a term that the statute does not define).⁷

III. Petition for Rulemaking To Raise Civil Penalty Rate

The Center for Biological Diversity (CBD) petitioned NHTSA on October 1, 2015, just over a month prior to passage of the Act, to conduct a rulemaking to raise the civil penalty rate for CAFE standard violations under NHTSA’s then-existing statutory authority. The CBD petition stated correctly that NHTSA had not adjusted the \$5.50 civil penalty rate for inflation since 1997, and requested that the Agency follow the procedure laid out at 49 U.S.C. 32912(c) to undertake a rulemaking to raise the amount to the maximum then allowed by Congress, \$10 per tenth-of-an-mpg. A month later, Congress changed the statutory landscape by enacting the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

IV. NHTSA Response to Petitions

Having carefully considered the issues raised by the petitioners, NHTSA will grant the Industry Petition in part and deny it in part. Beginning with model year 2019, NHTSA will apply the full penalty prescribed by the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015. NHTSA is required by the Act to continue adjusting the civil penalty for inflation each year, so the penalty rate applicable to MY 2019 and after fleets will be \$14 per tenth-of-an-mpg, *plus* any adjustment(s) for inflation that occur between now and a violation’s assessment. The Agency concludes that this decision also effectively addresses the issue raised by the CBD Petition. The discussion below presents the Agency’s analysis and conclusion.

A. Model Years 2014–2016

NHTSA agrees with the Industry Petitioners that applying the \$14 civil

penalty rate to violations of CAFE standards in model years prior to the enactment of the Act would not result in additional fuel savings, and thus would seem to impose retroactive punishment without accomplishing Congress’ specific intent in establishing the civil penalty provision of the Energy Policy and Conservation Act (“EPCA”). Model years typically begin prior to their respective calendar year. By November 2, 2015 (the date of enactment of the civil penalties adjustment Act), nearly all manufacturers subject to the CAFE standards had completed both model years 2014 and 2015, and no further vehicles in those model years were being produced in significant numbers. This argument is even stronger considering that all manufacturers would have completed these model years prior to July 5, 2016, the date of the IFR. If all the vehicles for a model year have already been produced, then there is no way for their manufacturers to raise the fuel economy level of those vehicles in order to avoid higher penalty rates for non-compliance.

In the specific context of EPCA as amended, the purpose of civil penalties for non-compliance is to encourage manufacturers to comply with the CAFE standards. See 49 CFR 578.2 (section addressing penalties states that a “purpose of this part is to effectuate the remedial impact of civil penalties and to foster compliance with the law”); see generally, 49 U.S.C. 32911–32912; *United States v. General Motors*, 385 F.Supp. 598, 604 (D.D.C. 1974), *vacated on other grounds*, 527 F.2d 853 (D.C. Cir. 1975) (“The policy of the Act with regard to civil penalties is clearly to discourage noncompliance”). Assuming that higher civil penalty rates are intended, in the particular context of CAFE, to provide greater incentives for manufacturers to comply with applicable standards, then raising penalty rates for model years already completed and thus unchangeable would be not only retroactive,⁸ but incapable of serving the purpose of causing greater compliance with CAFE standards. Based on the governing statutory framework and the specific CAFE regulatory scheme, NHTSA

⁸ Retroactivity is not favored in the law. The Supreme Court has stated that “congressional enactments . . . will not be construed to have retroactive effect unless their language requires this result.” *Landgraf v. USI Film Products*, 511 U.S. 244, 280 (1994), citing *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988). NHTSA believes that in the specific context of the CAFE program and the statutes that govern it, Congress could not have intended to impose higher civil penalty rates for time periods when they would not incentivize increased fuel economy.

believes that Congress would not have intended retroactive application of an inflation adjustment to overcome this core substantive purpose and intent of EPCA. This analysis compels the conclusion that applying an increased penalty rate to MYs 2014 and 2015 would not be appropriate, nor would applying it to MY 2016, which was underway by November 2, 2015 and over halfway complete by July 5, 2016.⁹

B. Model Years 2017 and 2018

The Industry Petition asserts that manufacturers have set their product and compliance plans for MY 2017 and 2018 based on the CAFE penalty provisions in place prior to July 2016, and that it is too late at this juncture to make significant changes to those plans and avoid non-compliances (for the manufacturers already intending not to comply). The Agency determined above that it is not appropriate to apply an increased penalty rate to CAFE non-compliance in past model years, *i.e.*, MY 2016 and before, which could not be changed in response to a higher penalty rate. The next question presented by the Industry Petition is how to address future model years’ vehicles whose fuel economy levels cannot be changed at this juncture.

For immediate future model years (*i.e.*, 2017 and 2018), the theoretical possibility exists that manufacturers could respond to a higher penalty rate by increasing their fleet fuel economy and thus achieving CAFE compliance or mitigating their non-compliance. However, because of industry design, development, and production cycles, vehicle designs (including drivetrains, which are where many fuel economy improvements are made) are often fixed years in advance, making adjustments to fleet fuel economy difficult without a lead time of multiple years.

Here, the Industry Petitioners assert that their plans for what technology to put on which MYs 2017 and 2018 vehicles are, at the point the IFR was issued, fixed and inalterable. NHTSA takes manufacturers’ product cycles into account when NHTSA sets fuel economy standards. For example,

⁹ The decision not to apply the increased penalties retroactively is similar to the approach taken by various other federal agencies in implementing the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. See, e.g., Department of Justice, Interim final rule with request for comments: Civil Monetary Penalties Inflation Adjustment, 81 FR 42491 (June 30, 2016) (applying increased penalties only to violations after November 2, 2015, the date of the Act’s enactment); Federal Aviation Administration, Interim Final Rule: Revisions to Civil Penalty Inflation Adjustment Tables, 81 FR 43463 (July 5, 2016) (applying increased penalties only to violations after August 1, 2016).

⁷ Because the Agency is granting the Industry Petition’s request to apply inflation-adjusted penalties only to MY 2019 and after, the Agency need not address the Industry Petition’s alternative requests.

because NHTSA recognizes that manufacturers' product and compliance plans are difficult to alter significantly for years ahead of a given model year,¹⁰ the Agency includes product cadence in its assessment of CAFE standards, by limiting application of technology in its analytical model to years in which vehicles are refreshed or redesigned. NHTSA believes that this approach facilitates continued fuel economy improvements over the longer term by accounting for the fact that manufacturers will seek to make improvements when and where they are most cost-effective.

In an analogous context, EPCA provides that when DOT amends a fuel economy standard to make it more stringent, that new standard must be promulgated "at least 18 months before the beginning of the model year to which the amendment applies." 49 U.S.C. 32902(a)(2). The 18 months' notice requirement for increases in fuel economy standards represents a congressional acknowledgement of the importance of advance notice to vehicle manufacturers to allow them the lead time necessary to adjust their product plans, designs, and compliance plans to address changes in fuel economy standards. Similarly here, affording manufacturers lead time to adjust their products and compliance plans helps them to account for such an increase in the civil penalty amount. In this unique case, the 18-month lead time for increases in the stringency of fuel economy standards provides a reasonable proxy for appropriate advance notice of the application of substantially increased—here nearly tripled—civil penalties.

Given that NHTSA issued the IFR in July 2016, 18 months from that date would be January 2018, which would encompass MY 2017 for most manufacturers and models and part of MY 2018. Based on the Industry Petition, comments, and agency expertise, NHTSA believes that, in this instance, applying the adjusted penalties only for MY 2019 and after provides a reasonable amount of lead time for manufacturers to adjust their plans and products to take into account the substantial change in penalty level.

For future model years for which the vehicles to be produced and their technologies are essentially fixed (*i.e.*, MYs 2017–2018), it is conceivable that some manufacturers might be able to change production volumes of certain

lower- or higher-fuel-economy models, which could help them to reduce or avoid CAFE non-compliance penalties. However, in this particular instance, compelling such a result through the immediate application of higher penalty rates to product design decisions that have already been made and cannot be changed would be contrary to a fundamental congressional purpose of the CAFE program. The Energy Independence and Security Act (EISA) amendments of 2007 required that fuel economy standards be attribute-based, demonstrating congressional intent that the CAFE program be responsive to consumer demand. *See* 49 U.S.C. 32902(b)(3). Applying higher civil penalty rates in a way that would force manufacturers to disregard consumer demand (*e.g.*, by restricting the availability of vehicles that consumers want) would be inconsistent with that fundamental statutory command. Providing some lead time, as here, mitigates that concern.

In order to reconcile competing statutory objectives in the unique context of multi-year vehicle product cycles, NHTSA will grant the Industry Petition insofar as it seeks to apply the penalty increase only for model years 2019 and after. For CAFE standard non-compliances that occur(ed) for model years 2014–2018, NHTSA intends to assess civil penalties at the rate of \$5.50 per tenth of an mpg. Beginning with model year 2019, NHTSA will apply the full penalty prescribed by the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015. NHTSA is required by the Act to continue adjusting the civil penalty for inflation each year, so the penalty rate applicable to MY–2019-and-after fleets will be \$14 per tenth-of-an-mpg, *plus* any adjustment(s) for inflation that occur between now and then. *See* Public Law 114–74, Sec. 701(b)(2).

NHTSA believes this approach appropriately harmonizes the two congressional directives of adjusting civil penalties to account for inflation and maintaining attribute-based, consumer-demand-focused standards, applied in the context of the presumption against retroactive application of statutes. *See, e.g., Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208. This decision increases civil penalties starting with the model year that manufacturers, in this particular instance, are reasonably able to design and produce vehicles in response to the increased penalties. *See* Industry Petition at 4–6 (seeking application of the adjusted civil penalties only to MY 2019 and after).

In summary, NHTSA partially grants the Industry Petition for Reconsideration insofar as it seeks implementation of the civil penalties adjustment only to MY 2019 and after, and denies the Industry Petition in all other respects.

This action also effectively responds to the petition for rulemaking from CBD to increase the civil penalty rate as permitted by EPCA/EISA. The civil penalty rate beginning in MY 2019 will be substantially higher than the CBD petition requested, and NHTSA believes that the increased penalty will accomplish CBD's goal of encouraging manufacturers to apply more fuel-saving technologies to their vehicles in those future model years. To the extent that the CBD Petition requests an earlier penalty rate increase, it is denied for the reasons set forth in this decision.

V. Regulatory Notices and Analyses

A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866 or Executive Order 13563, and has been determined not to be "significant" under the Department of Transportation's regulatory policies and procedures and the policies of the Office of Management and Budget.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this rule under the Regulatory Flexibility Act. I certify that this rule will not have a significant impact on a substantial number of small entities. The following provides the factual basis for this certification under 5 U.S.C. 605(b). The amendments only affect manufacturers of motor vehicles. Low-volume manufacturers can petition NHTSA for an alternate CAFE standard under 49 CFR part 525, which lessens the impacts of this rulemaking on small businesses by allowing them to avoid liability for potential penalties under 49 CFR 578.6(h)(2). Small organizations and governmental jurisdictions will not be significantly affected as the price of motor vehicles and equipment ought not change as the result of this rule.

C. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials

¹⁰ One of the Industry Petitioners, the Alliance, submitted supplemental materials describing the activities and events that make up product cycles, which support this point. *See* Docket No. NHTSA–2016–0136.

in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that 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.” Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local governments early in the process of developing the proposed regulation.

This 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, as specified in Executive Order 13132. The reason is that this rule applies to motor vehicle manufacturers. Thus, the requirements of Section 6 of the Executive Order do not apply.

D. Unfunded Mandates Reform Act of 1995 (UMRA)

The Unfunded Mandates Reform Act of 1995, Public Law 104–4, requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. Because NHTSA does not believe that this rule will necessarily have a \$100 million effect, no Unfunded Mandates assessment will be prepared.

E. Executive Order 12778 (Civil Justice Reform)

This rule does not have a retroactive or preemptive effect. Judicial review of this rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, we state that there are no requirements for information collection associated with this rulemaking action.

G. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit <https://www.transportation.gov/privacy>.

List of Subjects in 49 CFR Part 578

Fuel economy, Motor vehicles, Penalties.

In consideration of the foregoing, 49 CFR part 578 is amended as set forth below.

PART 578—CIVIL AND CRIMINAL PENALTIES

■ 1. The authority citation for 49 CFR part 578 is revised to read as follows:

Authority: Pub. L. 101–410, Pub. L. 104–134, Pub. L. 109–59, Pub. L. 114–74, Pub. L. 114–94, 49 U.S.C. 32902 and 32912; delegation of authority at 49 CFR 1.81, 1.95.

■ 2. Section 578.6 is amended by revising paragraph (h) to read as follows:

§ 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

* * * * *

(h) *Automobile fuel economy.* (1) A person that violates 49 U.S.C. 32911(a) is liable to the United States Government for a civil penalty of not more than \$40,000 for each violation. A separate violation occurs for each day the violation continues.

(2) Except as provided in 49 U.S.C. 32912(c), beginning with model year 2019, a manufacturer that violates a standard prescribed for a model year under 49 U.S.C. 32902 is liable to the United States Government for a civil penalty of \$14, plus any adjustments for inflation that occurred or may occur (for model years before model year 2019, the civil penalty is \$5.50), multiplied by each .1 of a mile a gallon by which the applicable average fuel economy standard under that section exceeds the average fuel economy—

(i) Calculated under 49 U.S.C. 32904(a)(1)(A) or (B) for automobiles to which the standard applies produced by the manufacturer during the model year;

(ii) Multiplied by the number of those automobiles; and

(iii) Reduced by the credits available to the manufacturer under 49 U.S.C. 32903 for the model year.

* * * * *

Issued on: December 21, 2016.

Mark R. Rosekind,
Administrator.

[FR Doc. 2016–31136 Filed 12–27–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–XF074

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Possession and Trip Limit Modifications for the Common Pool Fishery

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: This action increases the possession and trip limits for Southern New England/Mid-Atlantic yellowtail flounder and reduces the possession and trip limits for Georges Bank cod in place for Northeast multispecies common pool vessels for the remainder of the 2016 fishing year. The Regional Administrator is authorized to adjust possession and trip limits for common pool vessels to facilitate harvesting, or prevent exceeding, the pertinent common pool quotas during the fishing year. Increasing the possession and trip limits on Southern New England/Mid-Atlantic yellowtail flounder is intended to provide additional fishing opportunities and help allow the common pool fishery to catch its allowable quota for the stock, while reducing the possession and trip limits for Georges Bank cod is necessary to prevent overharvest of the common pool quota for that stock.

DATES: The action increasing the possession and trip limits for Southern New England/Mid-Atlantic yellowtail flounder is effective December 22, 2016, through April 30, 2017. The action decreasing the possession and trip limits for Georges Bank cod is effective January 1, 2017, through April 30, 2017.

FOR FURTHER INFORMATION CONTACT: Kyle Molton, Fishery Management Specialist, 978–281–9236.

SUPPLEMENTARY INFORMATION: The regulations at 50 CFR 648.86(o) authorize the Regional Administrator to adjust the possession and trip limits for common pool vessels in order to

prevent the overharvest and facilitate utilization of the common pool quotas. As of December 1, 2016, the common pool had caught less than 5 percent of its sub-annual catch limit (ACL) of Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder. We project that a moderate increase in the possession and trip limit for SNE/MA yellowtail flounder will result in greater fishing opportunities and little risk of exceeding the common pool sub-ACL of that stock in the current fishing year. To allow the common pool fishery to catch more of its quota for this stock, effective December 22, 2016, the possession and trip limit of SNE/MA yellowtail flounder for all common pool vessels of 250 lb (113.4 kg) per day-at-sea (DAS), and 500 lb (226.8 kg) per trip is

increased, to 500 lb (226.8 kg) per DAS, and 1,000 lb (453.6 kg) per trip. It is unlawful for any common pool vessel to exceed the new possession and trip limits.

On November 15, 2016, we reduced possession and trip limits for Georges Bank (GB) cod to prevent an overage of the common pool's quota for the stock. These reduced possession and trip limits were set to expire on December 31, 2016, and return to the initial limits set by Framework Adjustment 55 to the Northeast Multispecies Fishery Management Plan (FMP). We project that if the current possession and trip limits were to expire there will likely be a significant overage of the common pool quota for this stock before the end of the fishing year. As of December 1,

2016, the common pool had caught approximately 76 percent of its sub-ACL of GB cod. To prevent the common pool fishery from exceeding its quota for this stock during the remainder of the fishing year, effective January 1, 2017, the possession and trip limits for GB cod will remain at the current limits (see Table 1) instead of returning to the initial limits set by Framework Adjustment 55 to the Northeast Multispecies FMP. We are also setting a new 25-lb (11.3-kg) per trip GB cod trip limit on common pool vessels fishing with a small vessel category permit. As a result, effective January 1, 2017, it is unlawful for a common pool vessel to exceed the possession and trip limits listed in Table 1.

TABLE 1—CURRENT AND UPDATED COMMON POOL POSSESSION AND TRIP LIMITS FOR GB COD

Permit	Current limits (as of November 15, 2016)	Updated limits (effective January 1, 2017)
A DAS* (outside of the Eastern U.S./Canada Area).	25 lb (11.3 kg) per DAS up to 50 lb (22.7 kg) per trip ...	25 lb (11.3 kg) per DAS up to 50 lb (22.7 kg) per trip (unchanged).
A DAS (Eastern U.S./Canada Area).	25 lb (11.3 kg) per DAS up to 50 lb (22.7 kg) per trip ...	25 lb (11.3 kg) per DAS up to 50 lb (22.7 kg) per trip (unchanged).
A DAS (Special Access Programs).	50 lb (22.7 kg) per trip	50 lb (22.7 kg) per trip (unchanged).
Handgear A	25 lb (11.3 kg) per trip	25 lb (11.3 kg) per trip (unchanged).
Handgear B	25 lb (11.3 kg) per trip	25 lb (11.3 kg) per trip (unchanged).
Regular B DAS Program	25 lb (11.3 kg) per DAS up to 50 lb (22.7 kg) per trip ...	25 lb (11.3 kg) per DAS up to 50 lb (22.7 kg) per trip (unchanged).
Small Vessel Category (≤30 ft).	300 lb (136.1 kg) of cod, haddock, and yellowtail flounder combined. Maximum of 25 lb (11.3 kg) of GOM cod and 200 lb (90.7 kg) of GOM haddock within the 300-lb (136.1-kg) combined trip limit.	300 lb (136.1 kg) of cod, haddock, and yellowtail flounder combined. Maximum of 25 lb (11.3 kg) of cod and 200 lb (90.7 kg) of GOM haddock within the 300-lb (136.1-kg) combined trip limit.

* Day-at-sea (DAS).

Weekly quota monitoring reports for the common pool fishery can be found on our Web site at: <http://www.greateratlantic.fisheries.noaa.gov/ro/fso/MultiMonReports.htm>. We will continue to monitor common pool catch through vessel trip reports, dealer-reported landings, vessel monitoring system catch reports and other available information and, if necessary, we will make additional adjustments to common pool management measures.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment and the 30-day delayed effectiveness period because it would be impracticable and contrary to the public interest.

The regulations at § 648.86(o) authorize the Regional Administrator to adjust the Northeast multispecies possession and trip limits for common pool vessels to prevent the overharvest and facilitate utilization of common pool sub-ACLs. The catch data used to justify increasing the SNE/MA yellowtail flounder possession and trip limits and maintaining current possession and trip limits for GB cod only recently became available. The possession and trip limit increase implemented through this action allows for increased harvest of SNE/MA yellowtail flounder, to help ensure that the fishery may achieve the optimum yield (OY) for this stock. As a result, the time necessary to provide for prior notice and comment, and a 30-day delay in effectiveness, would prevent us from increasing the possession and trip limit for SNE/MA yellowtail flounder in a timely manner, which could prevent the fishery from achieving the OY. Further, the same delay would prevent us from implementing measures to prevent

overutilization of the GB cod sub-ACL, leading to further negative impacts on the fishery. Either outcome would undermine management objectives of the Northeast Multispecies FMP and cause unnecessary negative economic impacts to the common pool fishery. There is additional good cause to waive the delayed effective period because this action in part relieves restrictions on fishing vessels by increasing a trip limit on SNE/MA yellowtail flounder and also limits regulatory confusion by maintaining status quo restrictions to more effectively prevent overharvest of the GB cod sub-ACL.

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

Dated: December 22, 2016.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. 2016–31403 Filed 12–22–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160906823–6999–01]

RIN 0648–XE876

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustments to 2017 Management Area Annual Catch Limits

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

ACTION: Temporary final rule; adjustment of specifications.

SUMMARY: In accordance with the regulations implementing the Atlantic Herring Fishery Management Plan, this action adjusts the 2017 catch limits in the four herring management areas (Areas 1A, 1B, 2, and 3) to account for underages in those areas during 2015. In order to ensure that the carryover of underages do not cause overfishing of the herring resource, management area-specific carryover does not increase the stock-wide annual catch limit. This action is necessary to ensure that NMFS accounts for herring catch consistent with the requirements of the Atlantic Herring Fishery Management Plan.

DATES: Effective December 28, 2016, through December 31, 2017.

ADDRESSES: Copies of supporting documents, including the 2013–2015 Specifications/Framework 2 and the

2016–2017 Specifications to the Atlantic Herring Fishery Management Plan (FMP), are available from the Sustainable Fisheries Division, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930, telephone (978) 281–9315, or online at: <http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/atlherring/index.html>.

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fishery Management Specialist, 978–282–8456, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic herring harvest in the United States is managed under the FMP developed by the New England Fishery Management Council (Council). The FMP divides the stock-wide herring annual catch limit (ACL) among three management areas, one of which has two sub-areas. It divides Area 1 (located in the Gulf of Maine (GOM)) into an inshore section (Area 1A) and an offshore section (Area 1B). Area 2 is located in the coastal waters between Massachusetts and North Carolina, and Area 3 is on Georges Bank (GB). The FMP considers the herring stock complex to be a single stock, but there are inshore (GOM) and offshore (GB) stock components. The GOM and GB stock components segregate during spawning and mix during feeding and migration. Each management area has its own sub-ACL to allow greater control of the fishing mortality on each stock component.

NMFS issued a final rule that implemented Amendment 4 to the FMP (76 FR 11373, March 2, 2011) to address ACL and accountability measure (AM) requirements. As a way to account for ACL/sub-ACL overages in the herring fishery, Amendment 4 established an AM that requires NMFS to deduct any ACL/sub-ACL overages from the corresponding ACL/sub-ACL in the year following the catch overage determination. Amendment 4 also specified that NMFS will announce overage deductions in the **Federal Register** prior to the start of the fishing year, if possible.

NMFS also published a final rule implementing Framework 2 to the FMP and the 2013–2015 specifications for the herring fishery on October 4, 2013 (78 FR 61828). Among other measures, Framework 2 allowed for the carryover of unharvested allocations (underages) in the year immediately following the catch determination. Up to 10 percent of each sub-ACL may be carried over and added to the following year’s sub-ACL, provided total catch did not exceed the stock-wide ACL. The carryover provision allows a sub-ACL increase for a management area, but it does not allow a corresponding increase to the stock-wide ACL.

NMFS published the 2016–2018 specifications for the herring fishery on November 1, 2016 (81 FR 75731). Table 1 outlines the 2017 herring sub-ACLs, minus deductions for research set-aside catch (RSA), that will be effective on January 1, 2017. RSA equal to 3 percent of each sub-ACL has been awarded to two research projects.

TABLE 1—2017 HERRING SUB-ACLs
[mt]

	2017 sub-ACLs	Research set-aside (3 percent of sub-ACLs)	2017 sub-ACLs (minus RSA)
Area 1A	30,300	909	29,391
Area 1B	4,500	135	4,365
Area 2	29,100	873	28,227
Area 3	40,900	1,227	39,673
Stock-wide	104,800	3,144	101,656

Provisions Implemented Through This Final Rule

NMFS completed the 2015 catch determination in December 2016, and determined that the herring fishery caught less than its allocated catch in

2015 in all four herring management areas (Areas 1A, 1B, 2, and 3). As a result, this action carries over unharvested 2015 catch to the 2017 herring sub-ACL in all four areas. This carryover equals to the amount of each

area’s underages (or up to ten percent of the allocated 2015 sub-ACL, whichever is less) for Areas 1A, 1B, 2, and 3. Table 2 provides catch details for 2015 and corresponding adjustments for 2017 sub-ACLs.

TABLE 2—HERRING SUB-ACLS, CATCH, AND CARRYOVER
[mt]

	Adjusted 2015 sub-ACLS	2015 Catch	2015 Underages	Carryover* (up to 10 percent)	2017 sub-ACLS	Adjusted 2017 sub-ACLS
Area 1A	30,585	28,861	1,724	1,724	29,391	31,115
Area 1B	4,922	2,819	2,103	460	4,365	4,825
Area 2	32,100	15,114	16,986	3,000	28,227	31,227
Area 3	44,910	33,217	11,693	4,200	39,673	43,873
Stock-wide	104,566	80,011	24,555	NA	101,656	**101,656

* Maximum carryover, where applicable, is based on 10 percent of initial 2015 sub-ACLS: Area 1A, 31,200 mt; Area 1B, 4,600 mt; Area 2, 30,000 mt; and Area 3, 42,000 mt.

** The 2017 stock-wide ACL cannot be increased by carryover.

NMFS calculated the amount of herring landings in 2015 based on dealer reports (Federal and state) of herring purchases, supplemented by vessel trip reports (VTRs) and vessel monitoring system (VMS) reports (Federal and State of Maine) of herring landings. NMFS generally uses dealer reports to estimate herring landings. However, if the amount of herring reported via VTR exceeded the amount of herring reported by the dealer by 10 percent or more, NMFS assumes the dealer report for that trip was in error and uses the VTR report instead. NMFS assigns herring landings to individual herring management areas using VMS reports or using latitude and longitude coordinates from VTR reports when a VMS report is not available. NMFS uses recent fishing activity to assign landings to a management area if dealer reports do not have a corresponding VTR or VMS catch report.

NMFS estimates herring discards by extrapolating discards from herring trips observed by the Northeast Fisheries Observer Program to all herring trips (observed and unobserved) according to gear and herring management area. Because RSA is removed from management area sub-ACLS at the beginning of the fishery year, NMFS tracks RSA catch but does not count it towards the herring sub-ACLS.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP,

other provisions of the MSA, and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action. Notice and comment are impracticable and contrary to the public interest because a delay would potentially impair achievement of the management plan’s objectives of preventing overfishing and achieving optimum yield due by impairing a vessel’s ability to harvest available catch allocations. Allowing for prior notice and public comment on this adjustment is also impracticable because regulations require notification of adjustments, if possible, before the herring fishing year begins on January 1, 2017. Further, this is a nondiscretionary action required by provisions of Amendment 4 and Framework 2, which were previously subject to public notice and comment. The adjustments required by these regulations are formulaic. This action simply effectuates these mandatory calculations. The proposed and final rules for Framework 2 and Amendment 4 explained the need and likelihood for adjustments to the sub-ACLS based on final catch amounts. Framework 2, specifically, provided prior notice of the need to distribute carryover catch. These actions provided a full opportunity for the public to comment on the substance and process of this action.

For the same reasons as noted above, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date and make the rule effective upon publication in the

Federal Register. To prevent confusion and potential overharvests, it will be in the best interest of the fleet and the herring resource to set the adjusted sub-ACLS as soon as possible. Two areas are currently closed due to seasonal closures and will open on either May 1 (i.e., Management Areas 1B) or June 1 (i.e., Management Area 1A). Management Areas 2 and 3 are already open and subject to a lower catch limit until NMFS implements this action. The adjustments in this notice increase the amount of catch available to fishermen. Putting in place the adjusted sub-ACLS as soon as possible will provide the fleet with an opportunity to develop their business plans in sufficient time to facilitate their full harvest of available catch in the open areas.

This action is required by 50 CFR part 648 subpart K and is exempt from review under Executive Order 12866.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

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

Dated: December 22, 2016.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–31392 Filed 12–27–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 81, No. 249

Wednesday, December 28, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 371

RIN 3064-AE54

Recordkeeping Requirements for Qualified Financial Contracts

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC proposes to amend its regulations regarding Recordkeeping Requirements for Qualified Financial Contracts (“Part 371”), which require insured depository institutions (“IDIs”) in a troubled condition to keep records relating to qualified financial contracts (“QFCs”) to which they are party. The proposed rule would expand the scope of QFC records required to be maintained by an IDI that is subject to the FDIC’s recordkeeping requirements and that has total consolidated assets equal to or greater than \$50 billion or is a member of a corporate group where one or more affiliates is subject to the QFC recordkeeping requirements set forth in the regulations adopted by the Department of the Treasury (a “full scope entity”); for all other IDIs subject to the FDIC’s QFC recordkeeping requirements, add and delete a limited number of data requirements and make certain formatting changes with respect to the QFC recordkeeping requirements; require full scope entities to keep QFC records of certain of their subsidiaries; and include certain other changes, including changes that would provide additional time for certain IDIs in a troubled condition to comply with the regulations.

DATES: Comments must be received on or before February 27, 2017.

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

- **FDIC Web site:** <https://www.fdic.gov/regulations/laws/federal/>. Follow the instructions for submitting comments on the agency Web site.

- **Email:** comments@fdic.gov. Include RIN 3064-AE54 on the subject line of the message.

- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, 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 550 17th Street Building (located on 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/>.

FOR FURTHER INFORMATION CONTACT:

Legal Division: Phillip E. Sloan, Counsel, (703) 562-6137; Joanne W. Rose, Counsel, (917) 320-2854. Division of Resolutions and Receiverships: Marc Steckel, Deputy Director, (571) 858-8824; George C. Alexander, Assistant Director, (571) 858-8182.

SUPPLEMENTARY INFORMATION:

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I. Policy Objectives

The proposed rule would enhance and update recordkeeping requirements as to QFCs of IDIs in troubled condition in order to facilitate the orderly resolution of IDIs with QFC portfolios. The proposed rule would revise the format of records required to be maintained in order to provide more

ready access to expanded QFC portfolio data. Additionally, the proposed rule would require that more comprehensive information be maintained to facilitate the FDIC’s understanding of complex QFC portfolios in receivership. The proposed changes to both the formatting and the quantity of information would enable the FDIC, as receiver, to make better informed and efficient decisions as to whether to transfer some or all of a failed IDI’s QFCs during the one-business-day stay period for the transfer of QFCs. This would help the FDIC achieve a least costly resolution.

Part 371 was adopted in 2008 pursuant to 12 U.S.C. 1821(e)(8)(H) (the “FDIA Recordkeeping Provision”) to enable the FDIC to have prompt access to detailed information about the QFC portfolios of IDIs for which the FDIC is appointed receiver.¹ In the eight years since Part 371 was adopted, the FDIC has obtained QFC information pursuant to Part 371 from many IDIs in troubled condition, ranging in size from large, complex institutions to small community banks. While the information obtained has proved useful to the FDIC as receiver, the necessity for more comprehensive information from institutions with complex QFC portfolios in formats that reflect recent developments in digital technology was evident.

In July 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act² (“Dodd-Frank Act”), section 210(c)(8)(H) (“Section 210(c)(8)(H)”) of which requires the adoption of regulations that require financial companies to maintain QFC records that are determined to be necessary or appropriate to assist the FDIC as receiver for a covered financial company in being able to exercise its rights and fulfill its obligations under section 210(c)(8), (9), or (10) of the Dodd-Frank Act. These sections of the Dodd-Frank Act are in most respects identical to 12 U.S.C. 1821(e) (8)–(10) of the FDIA and cover, among other subjects, the stay applicable to QFCs and the FDIC’s rights to transfer QFCs during the one-business-day stay period.

On October 31, 2016, in implementation of Section 210(c)(8)(H), the Department of the Treasury published regulations (Part 148) that require large U.S. financial holding

¹ 12 CFR part 371.

² 12 U.S.C. 5301 *et seq.*

companies and their U.S. subsidiaries (other than IDIs, certain IDI subsidiaries and insurance companies) to maintain QFC recordkeeping systems.³ The scope of records required to be maintained by companies subject to Part 148 is more comprehensive than that required under Part 371 for IDIs in troubled condition. Part 148 was prepared in consultation with the FDIC. Its recordkeeping requirements reflect the insights obtained by the FDIC in administering Part 371. Part 148, as adopted, reflects comments received on the Part 148 notice of proposed rulemaking, and the input from those comments are, where appropriate, considered in this proposed rule. Part 148 requires companies that are subject to that rule to maintain comprehensive QFC records in formats that will enable the FDIC to expeditiously analyze the information in the event it is appointed as receiver for a covered financial company pursuant to Title II of the Dodd-Frank Act. The comprehensive data fields reflect the data that the FDIC has identified as important for it to make its determinations as to whether to transfer QFCs of a failed institution.

The proposed rule would harmonize the recordkeeping requirements under Part 371 for large IDIs and IDIs that are affiliates of financial companies subject to Part 148 with the recordkeeping requirements of Part 148. The harmonization would support the policy objective of enabling the FDIC to make judicious QFC transfer decisions and would enable the FDIC, as receiver of an IDI that is a member of a corporate group subject to Part 371, to rapidly obtain a complete picture of the QFC positions of the entire group by combining the records maintained under the two regulations. Such harmonization would also have the indirect benefit of reducing costs to IDIs that become subject to Part 371 and that are members of a corporate group subject to Part 148 by enabling such IDIs to utilize the information technology infrastructure established by their corporate group for purposes of complying with Part 148.

II. Background

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005⁴ includes the FDIA Recordkeeping Provision that authorizes the FDIC, in consultation with the appropriate Federal banking agencies, to prescribe regulations requiring more detailed recordkeeping by an IDI with respect to QFCs if such IDI is in a troubled

condition. Pursuant to this provision, in 2008 the FDIC adopted Part 371, which requires that IDIs in a troubled condition maintain information relating to QFCs to which they are party in a format set forth in two Appendices to the regulation. As the FDIC noted in the adopting release for Part 371, the FDIC as receiver has very little time—the period between the day on which the FDIC is appointed receiver and 5:00 p.m. Eastern time on the following business day—to determine whether to transfer QFCs to which a failed IDI is party.⁵ The release stated that “[g]iven the FDIA Act’s short time frame for such decision by the FDIC, in the case of a QFC portfolio of any significant size or complexity, it may be difficult to obtain and process the large amount of information necessary for an informed decision by the FDIC as receiver unless the information is readily available to the FDIC in a format that permits the FDIC to quickly and efficiently carry out an appropriate financial and legal analysis.”⁶ It was the FDIC’s expectation, when it adopted Part 371, that the regulations would provide the FDIC with QFC information in a format that would assist the FDIC in making these determinations.

In the eight years since it was adopted, Part 371 has proved very useful to the FDIC in connection with QFCs of IDIs for which it was appointed receiver. While these institutions, in general, had limited QFC portfolios, several large IDIs with significant QFC portfolios also became in a troubled condition and were required to comply with the recordkeeping requirements of Part 371. The process of working with these IDIs to achieve compliance with Part 371, in addition to being very useful in resolution planning for these institutions, was instructive for the FDIC and caused the FDIC to identify areas where additional data in a more accessible format would provide the FDIC, as receiver, with important benefits in making determinations as to whether to transfer the institution’s QFCs in a manner that would help preserve the value of the receivership and minimize losses to the Deposit Insurance Fund. The FDIC also gained experience with respect to the length of time that sometimes is necessary to complete QFC recordkeeping requirements, and identified areas where the requirements could be made clearer.

As previously noted, Part 148 requires more extensive record keeping than that required by Part 371 as currently in

effect (“Current Part 371”). The additional data include, among other data points, information on underlying QFCs where the QFC in question is a guarantee, additional information as to whether a QFC is guaranteed, information as to positions for which a QFC serves as a hedge, certain information as to the netting sets to which the QFCs pertain, information as to cross-default provisions in QFCs, information as to location of collateral, whether the collateral is segregated by the entity holding the collateral, whether the collateral is subject to re-hypothecation, and information as to the value of QFC positions in the currency applicable to the QFCs. This additional information could greatly assist the FDIC as receiver in making decisions as to the treatment of the receivership’s QFCs under the Dodd-Frank Act within the same, short one-business-day stay period that applies where the FDIC is appointed as receiver⁷ for an IDI under the Federal Deposit Insurance Act (“FDIA”).⁸

III. The Proposed Rule

A. Summary

The proposed rule would amend and restate Part 371 in its entirety. The proposed rule would require full scope entities to maintain the full complement of data required by Part 148.⁹ Full scope entities include IDIs with total consolidated assets of \$50 billion or more as well as IDIs (“Part 148 affiliates”) that are affiliates of one or more companies required to maintain records pursuant to Part 148. The additional data with respect to credit support and collateral, among other items, would provide the FDIC as receiver with important information as to the risks associated with the QFC portfolio and thus assist the FDIC in addressing more complex QFC portfolios. This is appropriate for larger institutions that are more likely to have significant and more complex QFC portfolios. It also is appropriate for Part 148 affiliates, regardless of size. Consistency of recordkeeping throughout the entire corporate group

⁷ Most of the restrictions applicable to the treatment of QFCs by an FDIC receiver also apply to the FDIC in its conservatorship capacity. See 12 U.S.C. 1821(e)(8), (9), (10), and (11). While the treatment of QFCs by an FDIC conservator is not identical to the treatment of QFCs in a receivership, see 12 U.S.C. 1821(e)(8)(E) and (10)(B)(i)–(ii), for purposes of this preamble reference to the FDIC in its receivership capacity includes reference to its role as conservator under this statutory authority.

⁸ 12 U.S.C. 1811 *et seq.*

⁹ One data row, relating to the status of non-reporting subsidiaries under the provisions of Part 148, has been omitted from the proposed tables for full scope entities.

³ 31 CFR part 148.

⁴ Public Law 109–8, 119 Stat. 23.

⁵ 73 FR 78162, 78163 (December 22, 2008).

⁶ *Id.*

will provide additional functionality and useful information to the FDIC as receiver of an IDI in that group. Moreover, the additional burden of this scope of recordkeeping on smaller IDIs that are Part 148 affiliates should be mitigated, as the information technology infrastructure required to comply with Part 371 as proposed to be revised would be the same information technology infrastructure that the corporate group would need to construct in order to comply with Part 148.

The FDIC decided that the \$50 billion total consolidated asset threshold for full scope entities was appropriate for several reasons. Institutions with this higher threshold are more likely to have larger and more complex QFC portfolios. Also, this is the threshold used in 12 CFR part 360 to identify institutions that are required to file resolution plans¹⁰ and, accordingly, was the subject of comments that were considered in the formulation of Part 360 as adopted. The considerations that merit additional resolution planning for these institutions also apply to the QFC recordkeeping requirements of this Part. This threshold also corresponds to the threshold that was established for determining which bank holding companies would be subject to enhanced supervision and prudential standards under Title I of the Dodd-Frank Act¹¹ and was also adopted by the Financial Stability Oversight Council as an initial threshold for identifying nonbank financial companies that merit further evaluation as to whether they should be designated under section 113 of the Dodd-Frank Act.¹² Part 148 also uses a \$50 billion threshold.¹³ All of the previously described uses of the \$50 billion threshold reflect a consensus that it is a reasonable cut-off to identify institutions for heightened attention and, in the case of QFC records, for requirements that would provide quick

access to more comprehensive data in the event of failure.

The proposed rule makes only limited additions to the data required Current Part 371 for IDIs other than full scope entities (“limited scope entities”) because the data from the tables with the limited additions set forth in the proposed rule will provide sufficient information for the FDIC as receiver to take necessary actions with respect to QFC portfolios of all but the largest IDIs and IDIs that are part of a large group, with extensive QFC portfolios, that are subject to Part 148. It is unlikely that most limited scope entities will have QFC positions of a magnitude and complexity that would justify the added burden of being subject to the full scope of data requirements imposed by Part 148. In assessing what additions to information should be required for limited scope entities, FDIC staff was informed by its experience in administering Part 371.

Only certain portions of Current Part 371 would be substantively changed by the proposed rule. The changes include the following: (i) The recordkeeping requirements for full scope IDIs would be expanded; (ii) full scope IDIs would be required to keep records on the QFC activity of certain of their subsidiaries; (iii) the required format for QFC records for limited scope IDIs would be revised and a limited number of additional data fields would be added for these IDIs; (iv) the length of time that certain IDIs have to comply with the rule would be increased; (v) changes to the process for obtaining extensions and to the permitted duration of extensions for certain types of IDIs; (vi) clarifications relating to records access requirements; and (vii) certain other changes relating to transition and other matters.

B. Section-By-Section Analysis

1. Scope, Purpose, and Compliance Dates

Section 371.1 sets forth the scope and purpose of the proposed rule, as well as required compliance dates. The expressed purpose of Part 371—to establish recordkeeping requirements with respect to QFCs for IDIs in a troubled condition—would not change from Current Part 371.

Under Current Part 371, an IDI is required to comply with Part 371 after receiving written notice from the IDI’s appropriate Federal banking agency or the FDIC that it is in troubled condition under Part 371. Section 371.1(a) of the proposed rule would provide that Part 371 applies to an IDI that is a “records entity.” A records entity is an IDI that has received notice from its appropriate

Federal banking agency or the FDIC that it is in a troubled condition *and* has also received written notification from the FDIC that it is subject to the recordkeeping requirements of Part 371. The proposed rule would include a requirement that an IDI receive notification from the FDIC that it is subject to Part 371 in order ensure an orderly administration of Part 371 by the FDIC.

Section 371.1(c)(1) of the proposed rule would require that, within three business days of receiving notice that it is a records entity, an IDI must provide the FDIC with the contact information of the person who is responsible for the QFC recordkeeping under Part 371 and a directory of the electronic files that will be used by the IDI to maintain the information required to be kept under Part 371. These requirements are substantially similar to those set forth in Current Part 371, although the proposed rule would clarify that the contact person must be the person responsible for the recordkeeping system, rather than simply a knowledgeable person. The electronic file directory consists of the file path or paths of the electronic files located on the IDI’s systems.

The proposed rule would set forth a different compliance date schedule than that set forth in Current Part 371. Under Current Part 371, an IDI is required to comply with Part 371 within 60 days of being notified that it is in troubled condition under Part 371, unless it obtains an extension of this deadline. It has been the FDIC’s experience that some IDIs with significant QFC portfolios that were subject to Part 371 needed up to 270 days to establish systems that enabled them to maintain QFC records in accordance with Part 371. Because extensions under Current Part 371 are limited to 30 days, several extensions were necessary.

Under section 371.1(c)(2)(i) of the proposed rule, all IDIs except for an IDI that is an accelerated records entity (as defined in the next paragraph) would have 270 days to comply with Part 371. In addition, § 371.1(d)(1) of the proposed rule would authorize the FDIC to provide extensions of up to 120 days to records entities other than accelerated records entities. This proposed change would reduce or eliminate the need for repeated extensions for IDIs that are not accelerated records entities and thus would reduce the burden on such IDIs.

Accelerated records entities are IDIs with a composite rating of 4 or 5 or that are determined to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress. In view of the increased risk of near-term failure of IDIs that are

¹⁰ 12 CFR 360.10.

¹¹ 12 U.S.C. 5365(a).

¹² See Financial Stability Oversight Council Guidance for Nonbank Financial Company Determinations, 12 CFR part 1310, app. A, III.A.

¹³ \$50 billion is also one of the thresholds used in the OCC guidelines establishing standards for recovery planning by certain large IDIs. See 12 CFR part 30. In its preamble to its 2014 guidelines establishing heightened standards for certain large IDIs, the OCC stated that “the \$50 billion asset criteria is a well understood threshold that the OCC and other Federal banking regulatory agencies have used to demarcate larger, more complex banking organizations from smaller, less complex banking organizations.” 79 FR 54518, 54521–22 (September 11, 2014) (citing 12 CFR 46.1 (stress testing); 12 CFR 252.30 (enhanced prudential standards for bank holding companies with total consolidated assets of \$50 billion or more)).

accelerated records entities, accelerated records entities would remain subject to a 60-day compliance period and extensions for such entities would be limited to 30 days. The 270-day compliance period with extensions of up to 120 days is proposed for other records entities because those entities do not pose the same near-term failure risk as accelerated records entities. The proposed rule, under § 371.1(c)(2)(iii), would specify that if a records entity that was not initially an accelerated records entity becomes an accelerated records entity, the entity would be required to comply with this rule within the shorter of 60 days from the date it became an accelerated records entity or 270 days from the date it became a records entity.

Section 371.1(d)(3) of the proposed rule would retain the requirement of Current Part 371 that written extension requests be submitted not less than 15 days prior to the deadline for compliance, accompanied by a statement of the reasons why the deadline cannot be met. In order to reflect the FDIC's past practice in considering extension requests under Part 371, the proposed rule would also expressly require that all extension requests include a project plan for achieving compliance (including timeline) and a progress report.

2. Definitions

Section 371.2 contains definitions used in Part 371. The proposed rule would add new definitions that reflect the proposed changes to the text and tables of Part 371.

Newly defined terms include "records entity," which is added for clarity and conciseness to denote an IDI that is subject to Part 371. As previously discussed, the definition would provide that in order to be a records entity, and thus subject to Part 371, an IDI must receive notice from its appropriate Federal banking agency or the FDIC that it is in a troubled condition and must also receive notice from the FDIC that it is subject to the recordkeeping requirements of Part 371. The definition of records entity would include an IDI already subject to the recordkeeping requirements of Part 371 as of the effective date of the final rule.

Current Part 371 defines "troubled condition" to mean any IDI that (1) has a composite rating, as determined by its appropriate Federal banking agency in its most recent report of examination, of 3 (only for IDIs with total consolidated assets of \$10 billion dollars or greater), 4, or 5 under the Uniform Financial Institution Rating System, or in the case of an insured branch of a foreign bank,

an equivalent rating; (2) is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance; (3) is subject to a cease-and-desist order or written agreement issued by the appropriate Federal banking agency, as defined in 12 U.S.C. 1813(q), that requires action to improve the financial condition of the IDI or is subject to a proceeding initiated by the appropriate Federal banking agency which contemplates the issuance of an order that requires action to improve the financial condition of the IDI, unless otherwise informed in writing by the appropriate Federal banking agency; (4) is informed in writing by the IDI's appropriate Federal banking agency that it is in troubled condition for purposes of 12 U.S.C. 1831i on the basis of the IDI's most recent report of condition or report of examination, or other information available to the IDI's appropriate Federal banking agency; or (5) is determined by the appropriate Federal banking agency or the FDIC in consultation with the appropriate Federal banking agency to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the IDI by its appropriate Federal banking agency in its most recent report of examination.

While the proposed rule would make no change to the definition of troubled condition, the FDIC notes that the third prong of the definition, which addresses IDIs subject to a cease-and-desist order or written agreement issued by the appropriate Federal banking agency that requires action to improve the financial condition of the IDI¹⁴ is intended to be broadly interpreted to include consent orders, or stipulations entered into by, or imposed upon, the IDI pursuant to 12 U.S.C. 1818(b) of the FDIA. Whether any such consent order or stipulation, or any cease-and-desist order or written agreement, requires "action to improve the financial condition" of the IDI will depend on the facts and circumstances surrounding the particular order or agreement, but it is not limited to an order or agreement that specifically mentions adequacy of capital. It may also include, where appropriate, factors relating to asset quality, management, earnings, liquidity, and sensitivity to market risk, as each factor is defined in the FDIC's notice of adoption of policy statement regarding the Uniform Financial Institutions Rating System.¹⁵ For instance, in the case of management, an order or agreement that requires

improvements in risk management practices and internal policies and controls addressing the operations and risks of significant activities may fall within the scope of orders or agreements that require action to improve the financial condition of the IDI within the meaning of the proposed rule.¹⁶ On the other hand, a cease-and-desist order or consent order relating to improvements with respect to Bank Secrecy Act reporting requirements may not fall within the meaning of an order to improve the financial condition of the IDI.

As discussed previously, the proposed rule would define an "accelerated records entity" as a records entity with a composite rating of 4 or 5 under the Uniform Financial Institution Rating System (or in the case of an insured branch of a foreign bank, an equivalent rating system), or that is determined to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the institution by its appropriate Federal banking agency in its most recent report of examination.

The proposed rule would require different recordkeeping requirements for "full scope entities" and "limited scope entities," and adds definitions of those terms for clarity and conciseness. The rule would define a full scope entity as a records entity that has total consolidated assets equal to or greater than \$50 billion or that is a Part 148 affiliate. "Part 148 affiliate" is defined as a records entity that is a member of a corporate group one or more other members of which are required to maintain QFC records pursuant to Part 148. A limited scope entity would be defined as a records entity that is not a full scope entity. As discussed previously, the proposed rule would require full scope entities to keep more detailed QFC records than limited scope entities.

The proposed rule would require that full scope entities include, among other items, records for their reportable subsidiaries. A reportable subsidiary would be defined to include a subsidiary of an IDI that is not a functionally regulated subsidiary as defined in 12 U.S.C. 1844(c)(5), a security-based swap dealer as defined in 15 U.S.C. 78c(a)(71), or a major security-based swap participant as defined in 15 U.S.C. 78c(a)(67). Since QFC data for reportable subsidiaries is not required to be maintained under Part 148, requiring this information in Part 371 would provide the FDIC as receiver with more

¹⁴ 12 CFR 371.2(f)(3) (2016).

¹⁵ See 62 FR 752 (Jan. 6, 1997).

¹⁶ *Id.* at 755.

complete recordkeeping for the largest entities, which are likely to have more subsidiaries and, as discussed previously, are likely to have larger and more complex QFC portfolios.

The proposed rule would also add a definition for “business day” that is consistent with the definition of this term used in 12 U.S.C. 1821(e)(10)(D) and a definition for “control” (used in the definition of the term “affiliate”), which is defined consistently with the definition of this term in the FDI Act.¹⁷ In addition, the proposed rule would define “total consolidated assets,” used in the definition of troubled condition and in the definition of full scope entity, as total consolidated assets as reported on a records entity’s most recent audited consolidated statement of financial condition filed with its appropriate Federal banking agency.

Minor drafting changes to the definition of “qualified financial contract” are included in the proposed rule. These changes are for clarity only and are not intended to make substantive changes in the meaning of this term.

The proposed rule would also add certain terms in order to clarify portions of Part 371, including terms used in the proposed new data tables. These terms include “parent entity,” “corporate group,” “counterparty,” “amendment effective date,” “legal entity identifier” (LEI), and “subsidiary.”

3. Maintenance of Records

Section 371.3 of the proposed rule would set forth the requirements for maintaining QFC records. As under Current Part 371, paragraph (a) of the proposed rule would require that QFC records be maintained in electronic form in the format set forth in the Appendices to Part 371, unless the records entity qualifies for the exemption from electronic recordkeeping for institutions with fewer than 20 QFC positions, and that all such records in electronic form be updated on a daily basis. In recognition of the value to the FDIC of consistency of recordkeeping through an entire corporate group, the proposed rule would add a new requirement, in § 371.3(a)(4), that records maintained by a Part 148 affiliate are compiled consistently with records compiled by its affiliates pursuant to Part 148. This would require that an IDI subject to Part 371 use the same data inputs (for example, counterparty identifier) as the inputs used for reporting pursuant to Part 148. The proposed rule would

clarify that these updates be based on the previous end-of-day values. The proposed rule would require that the records entity be capable of providing the preceding day’s end-of-day values to the FDIC no later than 7:00 a.m. (Eastern Time) each day. The 7:00 a.m. deadline is proposed in light of the limited stay period for transfer of QFCs by the FDIC as receiver, which ends at 5:00 p.m. (Eastern Time) on the business day following the date of the appointment of the receiver.¹⁸ This deadline represents a clarification of the requirement contained in Current Part 371 that IDIs subject to Part 371 maintain the capacity to produce records at the close of processing on a daily basis.¹⁹ The next-day 7:00 a.m. deadline would be applicable, whether or not the day on which access would be required (the next day) is a business day, to allow the FDIC to have the maximum time to make necessary decisions and take necessary actions with respect to the QFC portfolio, even where the IDI is closed on a Friday. Even though, in the case of a Friday closing, the next day is not a business day, the next day deadline should impose no additional burden on an IDI since the proposed rule would require that the IDI be capable of providing records on the next day in all circumstances. Finally, the proposed rule would extend the 7:00 a.m. deadline if the FDIC does not request access to the records at least eight hours before the 7:00 a.m. deadline.

The proposed rule would also add a new requirement that electronic records be compiled in a manner that permits aggregation and disaggregation of such records by counterparty, and if a records entity is maintaining records in accordance with Appendix B, by records entity and reportable subsidiary. The proposed rule would add a requirement that a records entity maintain daily records for a period of not less than five business days in order to ensure that there are records available to the FDIC that indicate the trends in an institution’s QFC holdings even before the actual previous end-of-day’s records are available to the FDIC.

The proposed rule also would change the requirement in Current Part 371 with respect to the point of contact at the records entity to answer questions with respect to the electronic files being maintained at the records entity. Section 371.1(c) of the proposed rule would require that records entities provide the FDIC the name and contact information for the person responsible for

recordkeeping, and § 371.3(b) would require that the FDIC be notified within 3 business days of any change to such information.

The proposed rule would make no change to the requirement in Current Part 371 that a records entity may cease maintaining records one year after it ceases to be a records entity or, if it is acquired by or merges with an IDI entity that is not in troubled condition, following the time it ceases to be a separately insured IDI.

4. Content of Records

Section 371.4 of the proposed rule would set forth the requirements for the content of the QFC records that are required to be maintained by records entities. As discussed previously, Section 371.4(b) would require a full scope entity to maintain QFC records in accordance with Appendix B to Part 371, which requires significantly more comprehensive records than are required under Current Part 371. In general, full scope entities are likely to have significant QFC portfolios and the expanded recordkeeping will facilitate the decisions that must be made by the FDIC with respect to these QFC portfolios. Appendix B is substantially similar to the tables included in the Part 148 regulations and, accordingly, if a records entity is an affiliate of an entity that is required to keep records under Part 148, it is likely that it would be able to use the recordkeeping infrastructure developed to comply with Part 148. Consistency of the information as to the IDI and its reportable subsidiaries as well as the other entities in the corporate group will provide the FDIC with a more comprehensive understanding of the QFC exposure of the group.

Section 371.4 (a) of the proposed rule would require a limited scope entity to maintain less comprehensive QFC records under Appendix A, which is similar in scope to the Appendix to Current Part 371, with the changes discussed under “7. Appendix A”. Section 371.4(a) would give a limited scope entity the option to maintain the more comprehensive QFC records required under paragraph (b). The FDIC anticipates that if a limited scope entity expects to meet the criteria of a full scope entity at some point in the future, it might wish to maintain records under Appendix B in order to avoid changing its records system.

The QFC records under Appendices A and B are necessary to assist the FDIC in determining, during the short one-business-day stay period applicable to QFCs, whether to transfer QFCs.

¹⁷ 12 U.S.C. 1813(w)(5), which uses the definition set forth in 12 U.S.C. 1841(a)(2).

¹⁸ See 12 U.S.C. 1821(e)(10)(A).

¹⁹ See 12 CFR 371.3.

The proposed rule also would require records entities that are subject to § 371.4(b) to include information on QFCs to which their reportable subsidiaries are a party. This information would be provided by the records entity, not the reportable subsidiary. As discussed previously, a reportable subsidiary would be defined to include a subsidiary of an IDI that is not a functionally regulated subsidiary as defined in 12 U.S.C. 1844(c)(5), a security-based swap dealer as defined in 15 U.S.C. 78c(a)(71), or a major security-based swap participant as defined in 15 U.S.C. 78c(a)(67). Like IDIs, reportable subsidiaries are excluded from the recordkeeping requirements of Part 148, while information as to subsidiaries that are not reportable subsidiaries would be available to the FDIC from information provided under Part 148. Without information as to QFCs of reportable subsidiaries, the FDIC, as receiver, might not have information that would allow it to assess the effect of its transfer and retention decisions for QFCs of an IDI on the entire group comprised of the IDI and its subsidiaries. While this information would also be useful from limited scope entities maintaining information in accordance with Appendix A, the FDIC does not believe that the advantage of having this information on reportable subsidiaries would outweigh the burden for these smaller IDIs which, individually or with their subsidiaries, are not expected to normally have significant QFC positions.

Section 371.4(c) of the proposed rule would provide requirements for a records entity that changes its recordkeeping status. It would require that a limited scope entity that is maintaining QFC records in accordance with the tables in Appendix A that subsequently becomes a full scope entity maintain QFC records in accordance with the tables in Appendix B within 270 days of becoming a full scope entity or, if it is an accelerated records entity, within 60 days. The proposed rule would require such an entity to continue to maintain the records under the tables in Appendix A until it maintains the QFC records specified in the tables to Appendix B. A full scope entity that subsequently becomes a limited scope entity would be permitted to opt to maintain records under the tables in Appendix A. This entity would be required to continue to maintain the records specified in the tables to Appendix B until it maintains the records in accordance with Appendix A. The FDIC is not requiring a time period for compliance in such

instance because the records under Appendix B are more comprehensive than the records under Appendix A.

If a limited scope entity that is not yet maintaining QFC records in accordance with Appendix A or B becomes a full scope entity, the proposed rule would require the records entity to maintain QFC records in accordance with Appendix B within 270 days of the date on which it became a records entity or, if it is an accelerated records entity, within 60 days. The same compliance timeframes would apply to a records entity that is a full scope entity that becomes a limited scope entity before it maintains QFC records in accordance with Appendix B. These compliance periods for records entities that change their recordkeeping status reflect the importance to the FDIC of promptly obtaining QFC records from IDIs in troubled condition.

Records entities that experience a change in status, like IDIs newly subject to Part 371, would be permitted to apply for extensions of time to comply under § 371.1(d).

The proposed rule would retain the de minimis exception included in Current Part 371. This provision allows a records entity with fewer than 20 QFC positions at the time it becomes a records entity to maintain these records in any format it chooses, including paper records, so long as the required records are capable of being updated daily, provided that the records entity does not subsequently have 20 or more QFC positions.

5. Transition for Existing Records Entities

Section 371.5 of the proposed rule would provide rules for full scope entities that are subject to Current Part 371 immediately prior to the effective date of the amendments to Part 371 to transition to the new recordkeeping requirements included in the proposed rule. Limited scope entities that are subject to Current Part 371 immediately prior to the effective date of the amendments would not be required to transition to the new recordkeeping requirements. If, however, any such limited scope entity ceases to be subject to the recordkeeping requirements because it ceases to be in troubled condition for one year pursuant to § 371.3(d) but subsequently again becomes subject to the recordkeeping requirements, at such subsequent time the limited scope entity would be subject to the new recordkeeping requirements.

Under the proposed rule, a full scope entity that is maintaining QFC records in accordance with Current Part 371

immediately prior to the effective date of the amendments to Part 371 would be required to comply with all recordkeeping requirements of Part 371 within 270 days after the effective date of the amendments or, in the case of an accelerated records entity, 60 days. Any such records entity would also be required to continue to maintain the records required by Current Part 371 until it maintains the records required by § 371.4(b), as applicable.

Additionally, the proposed rule contains a provision that addresses the transition of a full scope entity that is required to keep records under the Current Part 371 but is not in compliance with Current Part 371's recordkeeping requirements immediately prior to the effective date of the amendments to Part 371. The proposed rule would require such a records entity to comply with the recordkeeping requirements of Part 371, as amended, within 270 days after the date that it first became a records entity or, in the case of an accelerated records entity, 60 days.

The effect of these provisions would be to provide more time for the transition to the recordkeeping requirements of Part 371, as amended, for full scope entities that are keeping the records required under Current Part 371 and less time for those that are not. The FDIC believes that it is reasonable to give IDIs that are actually maintaining the information required by Current Part 371 more time to transition to the recordkeeping requirements of the amendments to Part 371 because even in the worst case scenario where the IDI is placed into receivership prior to the transition, the FDIC will have some information on the QFCs of the IDI to use in making the transfer determination. If the transition provisions of the proposed rule were to give a full new 270 day period to an IDI already subject to Part 371, it might be the case that the IDI would be placed into receivership prior to providing any of the records required by Current Part 371 or the proposed rule.

6. Enforcement Actions

Section 371.6 of the proposed rule is unchanged from § 371.5 of Current Part 371. It provides that violation of Part 371 would subject a records entity to enforcement action under Section 8 of the FDI Act (12 U.S.C. 1818).

7. Appendix A

Appendix A of the proposed rule would apply to a records entity that is

a limited scope entity.²⁰ The file structure for Appendix A would require two data tables: (1) Table A-1—Position-level data and (2) Table A-2—Counterparty Netting Set Data. It would also require two master data lookup tables: (1) Corporate Org Master Table and (2) Counterparty Master Table. Although the scope of Appendix A is generally similar to the scope of information required under Current Part 371, the approach to the format of the data required is changed. All of the proposed tables are expected to be data sets that allow for sorting and review using readily available tools which the FDIC expects will make them more useful to the institution as well as to the FDIC in the event it is appointed as receiver. To accommodate this change in format and to make it easier to input and to sort data, the lookup tables have been added.

Table A-1. Like Table A-1 of Current Part 371, Table A-1 would require position level information as to each QFC of a records entity. Certain changes have been made with respect to the information required on current Table A-1, however, with two data fields eliminated and a few others added in proposed Table A-1.

Specifically, Table A-1 of the proposed rule would make a limited number of additions to the rows included in Table A-1 of Current Part 371 in order to provide ready electronic access to information that FDIC staff has found to be important in determining whether to transfer or retain QFCs of a failed IDI. These additions include Row A1.1, which requires an “as of” date. This information is important because a records entity often derives data from multiple systems in multiple locations and the FDIC needs to be able to expeditiously determine whether, due to differences in time zone, legal holidays or other factors, any of the data is not current. Other additions are made to allow for systematic, electronic identification of parties. Row A1.2 would require that a records entity identifier be provided and Row A1.4 would require use of a counterparty identifier. Current Part 371 requires that a records entity provide a list of counterparty identifiers, but the new proposed format will facilitate the prompt and accurate identification of counterparties as well as the determination of whether they are affiliated entities. This is important because in an FDIA resolution, QFCs must be transferred on an all-or-none

basis with respect to all QFCs entered into with counterparties of the same affiliated group. This may, but does not always, comport with straightforward netting sets, so the efficient identification of affiliated counterparties is critical to the FDIC’s decisions that must be made within the short one-business-day stay period. In addition, proposed Table A-1 would require that the identifier used for records entities as well as counterparties be a Legal Entity Identifier (“LEI”), if the records entity or counterparty has one. LEIs are identifiers maintained for companies by a global organization and are increasingly used by financial institutions. Accordingly, their use in Part 371 would ensure that variations from formal names do not result in the misidentification of a records entity or counterparty and thus help ensure that the FDIC satisfies its obligation to transfer all, or none, of the QFC positions between a failed IDI and a counterparty and its affiliates.

Proposed new Rows A1.5 and A1.6, which would require that data include the internal booking location identifier and the unique booking unit or desk identifier of a QFC, are intended to improve the ability of the FDIC to identify individuals at a records entity who are familiar with a particular position. This can be of major importance to the FDIC in determining, during the one business day stay period, whether to retain or transfer a QFC. This requirement would replace the requirement in Current Part 371 that the table specify a portfolio location identifier and provide a list of booking locations.

Some of the new rows in Table A-1 are designed to provide the FDIC with information about other positions or assets of the records entity to which a QFC relates. For example, where an interest rate swap relates to a loan made by an IDI or to a different swap of the IDI, this information would be of critical importance to the FDIC in making its determination of whether to transfer or retain that QFC. The FDIA provides that a guarantee or other credit enhancement of a QFC is itself a QFC.²¹ Under Current Part 371, a guarantee or other credit enhancement was reported in the same manner as any other QFC, but experience under Current Part 371 made clear that records on guarantees and credit enhancements would be clearer and more complete with clear information with respect to the type of QFC covered by the enhancement and the QFC party whose obligations are being credit enhanced be specified.

Accordingly, new rows A1.8 and A1.9 would require that information.

Rows A1.19–A1.21 would require additional information as to third party credit enhancements in favor of the records entity. This information is important to assessing credit risk and net exposure with respect to QFCs, which will facilitate decisions with respect to transfer of those QFCs. Rows A1.22–A1.24 would require information as to positions of the records entity to which the QFC relates. For example, these rows would indicate if obligations relating to a loan made by the failed IDI are being hedged by the QFC.

Other proposed changes are intended to facilitate the ability of the FDIC to electronically identify positions and governing agreements. Rows A1.10–A1.12 would require identifying information regarding the QFC master agreement or primary agreement (e.g., the guarantee agreement in the case of a guarantee) and, if different, netting agreement, in lieu of the requirement in Current Part 371 that these agreements be separately listed. Row A1.13 would add a requirement that the trade date of a position be specified in order to help the FDIC differentiate between different positions with the same counterparty.

Finally, Table A-1 does not include two data fields in Table A of Current Part 371 that in practice have not generally proved to elicit useful information. These are the rows that require that the purpose of the QFC position and that documentation status be identified.

Table A-2. Like Table A-2 of Current Part 371, Table A-2 would require information as to QFC positions aggregated by counterparty and maintained at each level of netting under the relevant governing agreement. If a master agreement covers multiple types of transactions, but does not require that the different types of transactions be netted against each other the net exposures under each type of transaction would need to be separately reported. Thus, for example, where a single Master Agreement covered both interest rate swaps and forward exchange transactions but did not require netting between the swap positions and the repo positions, the net exposures of the interest rate swaps would be reported separately from the net exposures of the repurchase agreements.

While there are several non-substantive, clarifying drafting changes and additions to rows included in the existing Table A-2, the substantive additions are limited. Like Table A-1, Table A-2 includes new rows that require records entity identifiers,

²⁰ As discussed previously, a limited scope entity may elect to report on the more comprehensive Appendix B.

²¹ 12 U.S.C.(e)(8)(D).

information as to third party credit enhancements in favor of the records entity and additional information relating to the underlying contracts for QFCs that are themselves credit enhancements.

Rows A2.16–A2.17 would require information as to the next margin payment date in order to help the receiver or transferee avoid inadvertent defaults and analyze the positions.

Table A–2 would continue require information as to the net current market value of all positions under a netting agreement, but would also require that the current positive market value and current negative market value of all such positions be separately stated. This break down of information would assist the FDIC in its analysis of the net overall position.

Corporate Org Master Table. The proposed rule retains the requirement of Current Part 371 for complete information regarding the organizational structure of the records entity, however, proposed Appendix A would require that a records entity maintain that information in the corporate organizational master table in lieu of any other form of organizational chart. Requiring this information in this format will make this information more easily accessible to the FDIC with improved functionality.

Counterparty Master Table. The FDIA requires that in making a transfer of a QFC the receiver must either (1) transfer all QFCs between a records entity and a counterparty and the counterparty's affiliates to the same transferee IDI, or (2) transfer none of such QFCs.²² Thus, an understanding of the relationship of the counterparties is critical to the FDIC's function as receiver. Current Part 371 required this information in the form of a list of affiliates of counterparties that are also counterparties to QFC transactions with a records entity or its affiliates. The proposed rule would require that a records entity maintain this information in the form of a counterparty organizational master table that would be completed with respect to each counterparty of a records entity. The listing on each such table of the immediate and ultimate parent entity of the counterparty would enable the FDIC to efficiently and reliably identify counterparties that are affiliates of each other without requiring full organizational charts of each counterparty group.

8. Appendix B

Appendix B of the proposed rule would apply to a records entity that is a full scope entity as well as to a limited scope entity that elects to use Appendix B rather than Appendix A. As discussed previously, Appendix B corresponds to the information required for records entities under Part 148. It includes all of the data discussed above that is required by Appendix A plus additional information that is important for understanding the larger and more complex QFC portfolios of the largest IDIs. The file structure for Appendix B would require four data tables: (1) Table A–1—Position-level data, (2) Table A–2—Counterparty Netting Set Data, (3) Table A–3—Legal Agreements and (4) Table A–4—Collateral Detail Data. It would also require four master data lookup tables: (1) Corporate Org Master Table, (2) Counterparty Master Table, (3) Booking Location Master Table and (4) Safekeeping Agent Master Table.

The most significant additional data required by Appendix B, as compared to Appendix A, is provided for in Tables A–3 and A–4 of Appendix B. In general, these Tables require additional information with respect to the master agreements or other contracts governing QFCs as well as additional information regarding collateral supporting QFCs.

In addition, Tables A–1 and A–2 for these entities require that the market value and notional amount of positions be expressed in local currencies, as well as in U.S. dollars, and that information as to amount of collateral subject to re-hypothecation be provided.

Table A–3. This table would require specific information as to each governing agreement, such as an ISDA master agreement or other netting agreement or, in the case of a QFC that is a credit enhancement, the agreement governing such credit enhancement. The required information would include the agreement's governing law, whether the agreement includes a cross-default determined by reference to an entity that is not a party to the agreement and, if so, the identity of such other party, and contact information for each counterparty.

The information as to governing law is needed to evaluate whether there is any likelihood of different treatment of transfer of the QFC, access to collateral or other matters under non-U.S. law. The cross-default information is necessary so that the likelihood of the QFC terminating on account of the insolvency or payment defaults or other matters relating to a third party can be analyzed. The counterparty contact information may be important in

connection with the FDIC's obligations under 12 U.S.C. 1821(e)(10) to take steps reasonably calculated to give notice of transfer of a QFC.

Table A–4. This table would require data as to the different items of collateral that support different netting sets. For each netting set, this table would require information as to the original face amount, local currency, market value, location and jurisdiction of each item of collateral provided. This table would also require an indication of whether the item of collateral is segregated from other assets of the safekeeping agent (which can be a third party or a party to the QFC), and whether re-hypothecation of the item of collateral is permitted. This data would help the FDIC evaluate the adequacy of collateral for each QFC netting set, as well as the potential for the collateral to be subject to ring-fencing by a foreign jurisdiction.

Table A–1. Proposed Table A–1 in Appendix B is very similar to proposed Table A–1 in Appendix A. In addition to requiring that data be expressed in U.S. dollars, the table as proposed to be included in Appendix B requires that certain data also be expressed in local currency in order to assist the FDIC's analysis of positions. It also requires that the fair value asset classification under GAAP, IFRs or other applicable accounting standards be set forth and that additional information be provided relating to credit enhancements that benefit a QFC counterparty of the records entity.

Table A–2. Table A–2 in Appendix B is very similar to Table A–2 in Appendix A. The only added rows would require information about collateral that is subject to re-hypothecation, information as to the identity of the safekeeping agent, *i.e.*, the party holding the collateral, which can be either a party to the QFC or a third party, and information as to credit enhancements that benefit a QFC counterparty of the records entity.

Booking Location Master Table. This master table would require certain additional information regarding each QFC, including internal booking location identifiers, and booking unit or desk contact information. This information would assist the FDIC in locating personnel at the IDI with knowledge of the QFC.

Safekeeping Agent Master Table. This table would provide information as to points of contact for each collateral safekeeping agent. This information would assist the FDIC in locating personnel at the safekeeping agent who are familiar with the collateral and the safekeeping arrangements.

²² 12 U.S.C. 1821(e)(9).

IV. Expected Effects

The FDIC has considered the expected effects of the proposed rule on covered institutions, the financial sector and the U.S. economy. The proposed rule will likely pose some costs for covered institutions, but by expanding the QFC recordkeeping requirements for institutions in troubled condition the proposed rule will enable the FDIC to make better informed decisions on how to manage the QFC portfolio of covered institutions if they enter into receivership. The proposed rule also would harmonize the scope and format of Part 371's QFC recordkeeping requirements for full scope entities with the recordkeeping requirements under Part 148 and thereby permit IDIs that become subject to Part 371 and are members of corporate groups subject to Part 148 to use information technology systems developed by their Part 148 affiliates in order to comply with Part 371. Finally, by enabling the FDIC to more efficiently evaluate and understand QFC portfolios the proposed rule will help the FDIC as receiver minimize unintended defaults through failures to make timely payments or collateral deliveries to QFC counterparties.

During the financial crisis of 2008 and ensuing recession many banks failed, some of which were party to significant volumes of QFCs. Through its experience of working with banks in troubled condition that were establishing systems to comply with the recordkeeping requirements of Current Part 371, the FDIC concluded that institutions with larger and more complex portfolios of QFCs would be more difficult to resolve in an efficient manner unless more QFC information was readily accessible. Readily available information on collateral, guarantees, credit enhancements, etc. would be necessary to evaluate counterparty risk and maximize value to the receivership. The proposed rule should provide benefits by reducing the likelihood that a future failure of an insured depository institution with a large and complex portfolio of QFCs could result in unnecessary losses to the receivership.

Full Scope Entities

The proposed rule would likely result in large implementation costs for full scope entities. Significantly more information on QFCs is required to be maintained by the proposed rule relative to Current Part 371, including additional information as to collateral, guarantees and credit enhancements. The added information would enable the FDIC to more accurately assess and

understand the QFC portfolios of institutions this size, which are more likely to be large and complex than the QFC portfolios of limited scope entities. As of September 30th, 2016, based on Consolidated Reports of Condition and Income as of that date, there were 40 FDIC-insured institutions with consolidated assets in excess of \$50 billion. There are another 29 FDIC-insured institutions with consolidated assets of less than \$50 billion that are members of corporate groups that are subject to Part 148, resulting in a total of 69 potential full-scope entities. In the event that one of these institutions becomes in a troubled condition, as defined in the rule, the FDIC assumes that, on average, it will take approximately 3,000 labor hours to comply with the recordkeeping requirements of the proposed revisions to Part 371 for full scope entities over and above the amount of time that would be expected to be required in order to comply with Current Part 371 for comparable entities. The implementation costs borne by covered institutions primarily include costs that would be incurred in order to accommodate the proposed new data elements. They are anticipated to be incurred when an institution becomes in a troubled condition and begins maintaining the QFC information in accordance with Part 371. Full scope entities that are subject to Current Part 371 when the final rule becomes effective could incur some transition expenses. Ongoing costs of recordkeeping for the proposed rule are assumed to be approximately similar to those under Current Part 371. The labor hours necessary to comply with the proposed rule will vary greatly for each institution depending upon the size and complexity of the QFC portfolio, the efficiency of the institution's QFC information management system(s), and the availability and accessibility of information on QFCs. Therefore, they are difficult to accurately estimate. Additionally, some costs related to complying with the rule might be ameliorated for an institution that is part of a corporate group subject to the Part 148, since its parent company may have already developed the capacity to meet the recordkeeping requirements for Part 148, which cover the same information, in the same format, as the proposed rule.

Finally, any implementation costs of the proposed rule are contingent upon an entity becoming in a troubled condition and subject to the proposed rule. Based on FDIC supervisory experience, it is estimated that two full

scope entities per year, on average, will be subject to the recordkeeping requirements of the proposed rule. It is anticipated that the proposed rule would result in an additional 6,000 labor hours per year for covered institutions.²³ To comply with the recordkeeping requirements of the rule it is assumed that IDIs in troubled condition will employ attorneys, compliance officers, credit analysts, computer programmers, computer systems analysts, database administrators, financial managers, and computer information systems managers. The FDIC has estimated that the average hourly wage rate for recordkeepers to comply with the recordkeeping burden is approximately \$57 per hour based on average hourly wage information by occupation from the U.S. Department of Labor, Bureau of Labor Statistics.²⁴ Therefore the FDIC estimates that the proposed rule will pose approximately \$342,000 in expected additional compliance costs on average, each year, for full scope entities.

Limited Scope Entities

The proposed rule would likely pose some costs for limited scope entities, but those costs would be relatively small. Only slightly more QFC information is required to be maintained by limited scope entities to comply with the proposed rule relative to Current Part 371. The FDIC is proposing to remove three data elements from the Current Part 371 recordkeeping requirements while adding less than twenty additional data elements. The FDIC understands that most of the added data elements cover information

²³This estimate is potentially somewhat greater than would be expected based upon past practice for two reasons. First, not all institutions that become in a troubled condition ultimately complete recordkeeping compliance, as their condition may improve so that they are no longer in a troubled condition before the commencement or completion of recordkeeping. Secondly, the same institution may have cycled in and out of troubled condition more than once in the 16-year look back period and therefore their recordkeeping costs may have been counted more than once. The additional recordkeeping costs could be significantly lower for subsequent instances of institutions becoming in troubled condition because the recordkeeping procedures and systems have already been established.

²⁴Wage estimate is in nominal dollars and has not been adjusted for inflation. The average hourly wage estimate is derived from May 2015 Occupational Employment Statistics (OES) from the Bureau of Labor Statistics (BLS) for occupations in depository credit intermediation organizations. Hourly wage rates represent the 75th percentile for Legal Occupations (\$75.90), Computer Programmers (\$49.86), Computer Systems Analyst (\$53.12), Database Administrators (\$54.25), Compliance Officers (\$38.40), Credit Analysts (\$44.99), Financial Managers (\$63.22), and Computer and Information Systems Managers (\$78.17).

that is either information that an IDI would need to ascertain in order to comply with Current Part 371 or that would otherwise be readily available to the IDI.

As of September 30th, 2016 there were 6,009 FDIC-insured institutions with total consolidated assets less than \$50 billion. Of those institutions only 1,238 (21 percent) reported some amount of QFCs.²⁵ To estimate the number of institutions affected by the proposed rule the FDIC analyzed the frequency with which FDIC-insured institutions with consolidated assets of less than \$50 billion became in a troubled condition. Based on supervisory experience, it is estimated that limited scope entities become in a troubled condition 310 times per year on average. The annual average estimate of institutions in troubled condition with consolidated assets of less than \$50 billion is adjusted to 65 to reflect the number of institutions in troubled condition that are likely to be a party to some volume of QFCs, and therefore subject to the proposed rule.²⁶

In the event that a limited scope entity becomes in a troubled condition, the FDIC assumes that it will take approximately 5 labor hours, on average, to comply with the added recordkeeping requirements of the proposed revisions to Part 371. The implementation costs borne by covered institutions primarily include costs that would be incurred in order to accommodate the proposed new data elements. They are anticipated to be incurred when an institution becomes in a troubled condition and begins maintaining the QFC information in accordance with Part 371. Ongoing costs of recordkeeping for the proposed rule are assumed to be approximately similar to those under Current Part 371. Therefore, the FDIC estimates that the added compliance costs associated with the proposed rule are 325 hours annually²⁷ for limited scope entities that are likely to become in a troubled condition.²⁸ However, assuming that the

proportion of limited scope entities that become in a troubled condition in future years remains constant, 29 of the 65 estimated average annual limited scope entities that are likely to become in a troubled condition have less than \$550 million in assets. They are therefore likely to have insignificant volumes of QFCs and an associated burden estimate of 1 hour or less. The labor hours necessary to comply with the proposed rule will vary greatly for each institution depending upon the size and complexity of its QFC portfolio, the efficiency of the institution's QFC information management system(s) and the availability and accessibility of information on QFCs. Therefore, the added compliance costs associated with the proposed rule are difficult to accurately estimate.

To comply with the recordkeeping requirements of the rule it is assumed that entities in troubled condition will employ attorneys, compliance officers, credit analysts, computer programmers, computer systems analysts, database administrators, financial managers, and computer information systems managers. The FDIC has estimated that the average hourly wage rate for recordkeepers to comply with the initial recordkeeping burden is approximately \$57 per hour based on average hourly wage information by occupation from the U.S. Department of Labor, Bureau of Labor Statistics.²⁹ Therefore the FDIC estimates that the proposed rule would pose approximately \$19,000 in expected compliance costs each year on average, for limited scope entities. However, the costs realized by limited scope entities as a result of the proposed rule are likely to be lower in the first few years given that the proposed rule allows covered entities already maintaining information in accordance with the current Part 371 rule to continue to do so.

condition may improve so that they are no longer in a troubled condition before the commencement or completion of recordkeeping. Secondly, some institutions may be double-counted, because the same institution may have cycled in and out of troubled condition more than once in the 16-year look back period. The additional recordkeeping costs could be significantly lower the second time around.

²⁹ Wage estimate is in nominal dollars and has not been adjusted for inflation. The average hourly wage estimate is derived from May 2015 Occupational Employment Statistics (OES) from the Bureau of Labor Statistics (BLS) for depository credit intermediation occupations. Hourly wage rates represent the 75th percentile for Legal Occupations (\$75.90), Computer Programmers (\$49.86), Computer Systems Analyst (\$53.12), Database Administrators (\$54.25), Compliance Officers (\$38.40), Credit Analysts (\$44.99), Financial Managers (\$63.22), and Computer and Information Systems Managers (\$78.17).

All Covered Entities

The total estimated compliance costs for all covered entities, both full scope and limited scope, is approximately \$361,000 each year. The realized compliance costs for covered entities are dependent upon future utilization rates of QFCs, and the propensity of institutions to become troubled. Therefore it is difficult to accurately estimate.

The proposed rule provides some relief from compliance costs relative to Current Part 371 by extending the time period allotted for an institution in troubled condition to start maintaining the required QFC information from 60 days to 270 days, with the exception of accelerated records entities. It has been the FDIC's experience that large institutions with complex QFC portfolios had difficulty meeting the current 60-day compliance deadline. Failure to meet the initial deadline necessitated multiple rounds of extension requests that were cumbersome and time-consuming for institutions in troubled condition and their primary regulator. By extending the compliance period to 270 days for all institutions, both "full scope" and "limited scope" entities, the proposed rule will reduce the overall compliance costs. Along with the extended compliance period the proposed rule also requires institutions to include a project plan with their extension request. However, the proposed inclusion of the project plan provision reflects current FDIC practice, and therefore, poses no additional burden.

The proposed rule would harmonize QFC recordkeeping requirements for full scope entities in troubled condition with the Part 148 requirements for other members of their corporate groups. This harmonization benefits these IDIs by enabling them to reduce costs by using information technology created for compliance with Part 148 by other members of their corporate group. Moreover, consistency of reporting across the corporate group would benefit the FDIC as receiver by enabling it to better analyze how an IDI's QFC positions relate to QFC positions of other members of the corporate group.

The proposed rule should also provide indirect benefits to QFC counterparties of institutions in troubled condition by helping the FDIC as receiver avoid unintended payment or delivery disruptions. The additional information required by the proposed rule includes detailed information about collateral, guarantees and credit enhancements which will significantly enhance the ability of the FDIC to

²⁵ Consolidated Reports of Condition and Income, September 30, 2016.

²⁶ 1,238 FDIC-insured institutions out of 6,009 reported some volume of QFCs on their Consolidated Reports of Condition and Income. Therefore it is estimated that only 21 percent of the historical average annual rate of institutions in a troubled condition had some volume of QFCs ($310 \times 0.21 = 65$).

²⁷ The estimated average annual compliance burden hours for limited scope entities is the calculated as 65×5 hours, which equals 325 hours.

²⁸ As discussed previously with respect to full scope entities, this estimate is potentially somewhat greater than would be expected based upon past practice for two reasons. First, not all institutions that become in a troubled condition ultimately complete recordkeeping compliance, as their

judiciously exercise its rights and responsibilities related to QFC portfolios for institutions in troubled condition within the statutory one-business day stay period.

V. Alternatives Considered

The FDIC considered a number of alternatives in developing the proposed rule. The major alternatives include: (i) Expanding the recordkeeping scope to include IDIs subject to any cease-and-desist order by, or written agreement with, the appropriate federal banking agency; (ii) expanding the recordkeeping scope for records entities to include all subsidiaries; (iii) recordkeeping thresholds of above and below \$10 billion or \$50 billion in total consolidated assets; (iv) requiring all records entities to maintain QFC records under the tables in Appendix B; (v) requiring the same compliance period for all records entities; (vi) not requiring existing full scope records entities to transition to the new recordkeeping requirements; and (vii) requiring existing limited scope entities to transition to the new recordkeeping requirements.

The FDIC considered expanding the definition of “troubled condition” to include all cease-and-desist orders or written agreements issued by the appropriate Federal banking agency in addition to those requiring action to improve the financial condition of an IDI. In reviewing the types of orders and agreements, including stipulations and consent orders, that may be issued or entered into, the FDIC determined that the requirement with respect to an action to improve the financial condition of the IDI is appropriate because it is more likely that such orders relate to an institution for which failure is less remote than is likely the case in connection with other types of orders and agreements. As a result, the FDIC decided not to expand this prong of the definition of “troubled condition.” Nonetheless, this preamble clarifies (in section III.B.2) that an “action to improve the financial condition,” for purposes of this Part, may include, but is not limited to, an action to improve capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk.

The FDIC also considered requiring IDIs that report on Appendix B to report QFC information for all subsidiaries rather than only “reportable subsidiaries.” However, expanding the scope of recordkeeping to all subsidiaries would be burdensome and would also be redundant for corporate groups that are subject to Part 148 because QFC information for subsidiaries that are not reportable

subsidiaries (other than IDIs and insurance companies) is required under Part 148.

In determining the scope of recordkeeping for records entities, the FDIC considered total consolidated asset thresholds above and below \$50 billion. As discussed under “III.A The Proposed Rule, Summary”, the FDIC determined the \$50 billion threshold was appropriate because institutions at or above this threshold are more likely to have complex QFC portfolios and it is an asset level used in the several regulations cited in the above section that has been deemed appropriate for enhanced regulation and supervision. The FDIC determined that a threshold below \$50 billion would impact smaller IDIs and unduly burden community banks.

The proposed rule requires certain records entities, as described previously, to maintain QFC records according to the tables in Appendix A or B depending on the size of the records entity.

The FDIC considered requiring the same compliance period for all records entities subject to this Part. Based on its experience, the FDIC has found that the longer period (270 days) is appropriate for larger entities. Larger entities that are required to report on Appendix B due to a composite CAMEL rating of 3 generally need a longer period to comply and, because an entity with a composite CAMEL rating of 3 is less likely to fail imminently, the additional time for recordkeeping should not pose significant additional risks that the FDIC as receiver will lack the information it needs with respect to the QFC portfolio. Entities with a composite CAMEL rating of 4 or 5 pose greater risk of near-term failure. For the same reason, the proposed rule would not increase the length of extensions available for 4 and 5 rated entities (30 days), regardless of their size. Although it may not be feasible for large entities with complex QFC portfolios to complete the recordkeeping requirements within 60 days, the short deadline with the requirement that extension requests be accompanied by progress reports and action plans will help assure that the recordkeeping requirements are being met in the most expeditious manner and that appropriate resources are being devoted to the effort by the IDI in troubled condition.

Finally, the FDIC considered other transition requirements. The alternative of not requiring transition to the new recordkeeping requirements by full scope entities was rejected because of the importance of having available for these entities, that are more likely to

have complex QFC portfolios, all of the additional information included in the proposed rule, should such an entity become subject to receivership. The FDIC also considered requiring existing limited scope entities to transition to the new recordkeeping requirements, but determined that given the limited nature of almost all existing limited scope entity QFC portfolios the added burden would exceed the benefit of requiring this transition.

VI. Request for Comments

The FDIC invites comments on all aspects of the proposed rule and requests feedback on the following specific questions.

A. Scope of Coverage

The proposed rule requires records entities, which are IDIs in troubled condition that receive notice from the FDIC that it is subject to this rule, to maintain QFC records in compliance with the provisions of this Part.

- Should the definition of “troubled condition” be modified to increase or decrease the scope of IDIs that potentially may be subject to this rule? If so, how?

B. Requirements

Records entities would be required to maintain QFC records subject to the provisions of this Part. The FDIC requests comments on all aspects of the proposed requirement. In particular:

- Should the same compliance periods apply to all records entities, including accelerated records entities and existing records entities?
- Are the compliance periods in the proposed rule appropriate? If not, how much time should be provided?
 - A full scope entity is a records entity that has total consolidated assets equal to or greater than \$50 billion or that is a member of a corporate group where at least one affiliate is required to maintain QFC records pursuant to 31 CFR part 148. Is the full scope entity threshold of \$50 billion in total consolidated assets appropriate? If not, what threshold would be more appropriate and why?
 - Are the differences in recordkeeping requirements between full scope and limited scope entities appropriate? Are the additional requirements of Appendix B appropriate?
 - Should a limited scope entity be required to report under the tables in Appendix A, Appendix B, or be given the option of either Appendix A or B?
 - Should a records entity be provided a compliance timeframe when transitioning from being required to

maintain records under the tables in Appendix B to deciding on maintaining records under the tables in Appendix A?

- Should a limited scope entity have the option to maintain records under Appendix B in anticipation of meeting the criteria of a full scope entity at some point in the future?

- Are there any data fields in the proposed tables of Appendix A or Appendix B that should be modified? Which fields and why?

- Are there any additional data fields that should be included in the tables of Appendix A or Appendix B? What fields and why?

- Is the proposed 7:00 a.m. deadline for an IDI to be capable of providing records to the FDIC unduly burdensome?

- Is the new information that would be required of limited scope entities information that such entities would maintain in order to comply with Current Part 371 or information that is otherwise readily available to such entities? For example, would an IDI with a QFC that benefits from a guarantee ordinarily keep records concerning the guarantor? Would an IDI that is required to provide margin under its QFC ordinarily keep track of current margin delivery requirements either by keeping its own records or having access to data made available by its counterparty? Do the proposed changes to the recordkeeping requirements for limited scope entities impose a significant new burden on these entities as compared to the requirements currently in effect? If so, which aspects of the proposed requirements are significantly burdensome? Please be as specific as possible in your comments and quantify costs where possible.

C. Implementation

The FDIC recognizes implementing information technology systems that will be required for compliance with this Part will take time and has proposed 270 days for records entities other than accelerated records entities

and 60 days for accelerated records entities.

- Are there any aspects of the requirements that would take more time to implement? Which aspects and why? How much more time would be required?

- Should accelerated records entities be given more or less time to comply with the recordkeeping requirements than is provided in the proposed rule? How much time and why?

- Regarding § 371.5 (Transition for Existing Records Entities), should records entities that are not maintaining records under Part 371 at the time the proposed amendments to Part 371 become effective be given the same amount of time to comply with the recordkeeping requirements of this Part, as amended, as records entities that are maintaining such records on the effective date?

- Should existing full scope entities that are maintaining records in accordance with Part 371 when the proposed amendments become effective be required to transition to the new recordkeeping requirements?

- Should existing limited scope entities be required to transition to the new recordkeeping requirements?

D. Benefits and Costs

The proposed rule would impose costs on certain records entities, but it would also provide some benefits.

- To what extent would the proposed rule impact the QFC recordkeeping operations and IT systems normally maintained by IDIs?

- What would be the costs or savings associated with these changes?

- By aligning the data requirements of Part 371 with those of Part 148, would it reduce the burden on corporate groups that are subject to the QFC recordkeeping requirements of both Part 148 and that contain an IDI subject to Part 371? Please quantify costs or burden to the extent possible.

- How burdensome would it be for a records entity that is maintaining records according to the appendix and

tables in the existing Part 371 to transition to the requirements of Appendix B? What costs would be associated with that burden?

VII. Regulatory Process

A. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC has determined that this proposed rule would revise an existing collection of information. The FDIC will request approval from the OMB for this proposed information collection. OMB will assign an OMB control number.

Certain provisions of the proposed rule contain “collection of information” requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently-valid Office of Management and Budget (OMB) control number. The OMB control number is 3064–0163 and will be revised. The information collection requirements contained in this proposed rulemaking will be submitted by the FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and § 1320.11 of the OMB’s implementing regulations (5 CFR 1320.11).

As discussed above, the FDIC proposes to amend its regulations regarding Part 371 which requires IDIs in a troubled condition to keep records relating to QFCs to which they are party. The FDIC estimates that the total compliance burden for covered entities, including full scope and limited scope entities, is as follows:

Title	Type of burden	Estimated number of respondents	Estimated number of responses	Estimated time per response (hours)	Frequency of response	Total annual estimated burden (hours)
Full Scope Entities: Recordkeeping related to QFCs to which they are a party when they are in troubled condition.	Recordkeeping	2	1	3,000	On Occasion	6,000
Limited Scope Entities: Recordkeeping related to QFCs to which they are a party when they are in troubled condition.	Recordkeeping	65	1	5	On Occasion	325
Total Burden .....	.....	.....	.....	.....	.....	6,325

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer for the agencies: By mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503; by facsimile to (202) 395-5806; or by email to: oira_submission@omb.eop.gov, Attention, Federal Banking Agency Desk Officer.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires an agency to provide an initial regulatory flexibility analysis with a proposed rule, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of 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).

For the same reasons as stated in the NPR of the existing Part 371 (73 FR 43635, 43640 (July 28, 2008)), the proposed rule would not have a significant economic impact on a

substantial number of small entities. Most small entities do not participate in capital markets involving QFCs since QFCs are "generally sophisticated financial instruments that are usually used by larger financial institutions to hedge assets, provide funding, or increase income." *Id.* According to data from the September 30th, 2016 Consolidated Reports of Condition and Income the FDIC insures 4,748 small depository institutions and 543 (11 percent) report some volume of QFCs. To estimate the number of small institutions affected by the proposed rule the FDIC analyzed the frequency with which FDIC-insured institutions with consolidated assets less than \$550 million became in a troubled condition. Based on FDIC supervisory experience, it is estimated that small institutions became in a troubled condition 267 times per year on average. The annual average estimate of institutions in troubled condition with consolidated assets less than \$550 million is adjusted to 29 to reflect the number of institutions in troubled condition that are likely to be a party to some volume of QFCs, and therefore subject to the proposed rule.³⁰

In the event that one of these small institutions becomes in a troubled condition, the FDIC assumes that it will take approximately one labor hour, on average, to comply with the added recordkeeping requirements of the proposed revisions to Part 371. Small depository institutions generally do not have large and complex portfolios of QFCs and, therefore, the anticipated burden hours associated with the proposed rule is going to be low. Accordingly, the FDIC estimates that the

³⁰ 543 small FDIC-insured institutions out of 4,748 reported some volume of QFCs on their Consolidated Reports of Condition and Income. Therefore it is estimated that only 11 percent of the historical average annual rate of small institutions in a troubled condition had some volume of QFCs (267*0.11 = 29).

added compliance costs associated with the proposed rule are 29 hours annually for all small institutions with some volume of QFCs that become in a troubled condition. The labor hours necessary to comply with the proposed rule will vary greatly for each institution depending upon the size and complexity of the QFC portfolio, the efficiency of the institution's QFC information management system(s) and the availability and accessibility of information on QFCs.

To comply with the recordkeeping requirements of the rule it is assumed that entities in troubled condition will employ attorneys, compliance officers, credit analysts, computer programmers, computer systems analysts, database administrators, financial managers, and computer information systems managers. The FDIC has estimated that the average hourly wage rate for recordkeepers to comply with the initial recordkeeping burden is approximately \$57 per hour based on average hourly wage information by occupation from the U.S. Department of Labor, Bureau of Labor Statistics.³¹ Therefore the FDIC estimates that the proposed rule would pose \$1,653 in expected compliance costs each year on average, for small depository institutions. However, the costs realized by limited scope entities as a result of the proposed rule are likely to be lower in the first few years given that the proposed rule allows covered entities already maintaining information in accordance with the

³¹ Wage estimate is in nominal dollars and has not been adjusted for inflation. The average hourly wage estimate is derived from May 2015 Occupational Employment Statistics (OES) from the Bureau of Labor Statistics (BLS) for depository credit intermediation occupations. Hourly wage rates represent the 75th percentile for Legal Occupations (\$75.90), Computer Programmers (\$49.86), Computer Systems Analyst (\$53.12), Database Administrators (\$54.25), Compliance Officers (\$38.40), Credit Analysts (\$44.99), Financial Managers (\$63.22), and Computer and Information Systems Managers (\$78.17).

current Part 371 rule to continue to do so. For these reasons, the FDIC hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

C. The Treasury and General Government Appropriations Act, 1999

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (1999)) requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invites your comments on how to make this proposed rule easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be stated more clearly?
- Does the proposed regulation contain language or jargon that is unclear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could the FDIC do to make the regulation easier to understand?

Text of the Proposed Rule

Federal Deposit Insurance Corporation

12 CFR Chapter III

List of Subjects in 12 CFR Part 371

Administrative practice and procedure, Bank deposit insurance, Banking, Banks, Reporting and recordkeeping requirements, Securities, State non-member banks.

Authority and Issuance

For the reasons set forth in the preamble, the Federal Insurance Deposit Corporation proposes to revise 12 CFR part 371 to read as follows:

PART 371—RECORDKEEPING REQUIREMENTS FOR QUALIFIED FINANCIAL CONTRACTS

Sec.

371.1 Scope, purpose, and compliance dates.

371.2 Definitions.

371.3 Maintenance of records.

371.4 Content of records.

371.5 Enforcement actions.

Appendix A to Part 371—File structure for qualified financial contract records for Limited Scope Entities.

Appendix B to Part 371—File structure for qualified financial contract records for Full Scope Entities.

Authority: 12 U.S.C. 1819(a)(Tenth); 1820(g); 1821(e)(8)(D) and (H); 1831g; 1831i; and 1831s.

§ 371.1 Scope, purpose, and compliance dates.

(a) *Scope.* This part applies to each insured depository institution that qualifies as a “records entity” under the definition set forth in § 371.2(q).

(b) *Purpose.* This part establishes recordkeeping requirements with respect to qualified financial contracts for insured depository institutions that are in a troubled condition.

(c) *Compliance Dates.* (1) Within 3 business days of becoming a records entity, the records entity shall provide to the FDIC, in writing, the name and contact information for the person at the records entity who is responsible for recordkeeping under this part and, unless not required to maintain files in electronic form pursuant to § 371.4(d), a directory of the electronic files that will be used to maintain the information required to be kept by this part.

(2) Except as provided in § 371.5:

(i) A records entity, other than an accelerated records entity, shall comply with all applicable recordkeeping requirements of this part within 270 days after it becomes a records entity.

(ii) An accelerated records entity shall comply with all applicable recordkeeping requirements of this part within 60 days after it becomes a records entity.

(iii) Notwithstanding paragraphs (c)(2)(i) and (ii) of this section, a records entity that becomes an accelerated records entity after it became a records entity shall comply with all applicable recordkeeping requirements of this part within 60 days after it becomes an accelerated records entity or its original 270 day compliance period, whichever time period is shorter.

(d) *Extensions of time to comply.* The FDIC may, in its discretion, grant one or more extensions of time for compliance with the recordkeeping requirements of this part.

(1) Except as provided in paragraph (d)(2) of this section, no single extension for a records entity shall be for a period of more than 120 days.

(2) For a records entity that is an accelerated records entity at the time of a request for an extension, no single extension shall be for a period of more than 30 days.

(3) A records entity may request an extension of time by submitting a written request to the FDIC at least 15 days prior to the deadline for its compliance with the recordkeeping requirements of this part. The written request for an extension must contain a statement of the reasons why the records entity cannot comply by the deadline for compliance, a project plan (including timeline) for achieving compliance, and a progress report describing the steps taken to achieve compliance.

§ 371.2 Definitions.

For purposes of this part:

(a) *Accelerated records entity* means a records entity that:

(1) Has a composite rating, as determined by its appropriate Federal banking agency in its most recent report of examination, of 4 or 5 under the Uniform Financial Institution Rating System, or in the case of an insured branch of a foreign bank, an equivalent rating; or

(2) Is determined by the appropriate Federal banking agency or by the FDIC in consultation with the appropriate Federal banking agency to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the institution by its appropriate Federal banking agency in its most recent report of examination.

(b) *Affiliate* means any entity that controls, is controlled by, or is under common control with another entity.

(c) *Amendment Effective Date* means [insert effective date of amendment].

(d) *Appropriate Federal banking agency* means the agency or agencies designated under 12 U.S.C. 1813(q).

(e) *Business day* means any day other than any Saturday, Sunday or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(f) *Control.* An entity controls another entity if:

(1) The entity directly or indirectly or acting through one or more persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the other entity;

(2) The entity controls in any manner the election of a majority of the directors or trustees of the other entity; or

(3) The Board of Governors of the Federal Reserve System has determined, after notice and opportunity for hearing in accordance with 12 CFR 225.31, that the entity directly or indirectly exercises a controlling influence over the management or policies of the other entity.

(g) *Corporate group* means an entity and all affiliates of that entity.

(h) *Counterparty* means any natural person or entity (or separate non-U.S. branch of any entity) that is a party to a QFC with a records entity or, if the records entity is required or chooses to maintain the records specified in § 371.4(b), a reportable subsidiary of such records entity.

(i) *Full scope entity* means a records entity that has total consolidated assets equal to or greater than \$50 billion or that is a Part 148 affiliate.

(j) *Insured depository institution* means any bank or savings association, as defined in 12 U.S.C. 1813, the deposits of which are insured by the FDIC.

(k) *Legal entity identifier* or *LEI* for an entity means the global legal entity identifier maintained for such entity by a utility accredited by the Global LEI Foundation or by a utility endorsed by the Regulatory Oversight Committee. As used in this definition:

(1) *Regulatory Oversight Committee* means the Regulatory Oversight Committee (of the Global LEI System), whose charter was set forth by the Finance Ministers and Central Bank Governors of the Group of Twenty and the Financial Stability Board, or any successor thereof; and

(2) *Global LEI Foundation* means the not-for-profit organization organized under Swiss law by the Financial Stability Board in 2014, or any successor thereof.

(l) *Limited scope entity* means a records entity that is not a full scope entity.

(m) *Parent entity* with respect to an entity means an entity that controls that entity.

(n) *Part 148 affiliate* means a records entity that is a member of a corporate group one or more other members of which are required to maintain QFC records pursuant to 31 CFR part 148.

(o) *Position* means an individual transaction under a qualified financial contract and includes the rights and obligations of a person or entity as a party to an individual transaction under a qualified financial contract.

(p) *Qualified financial contract* or *QFC* means any qualified financial contract as defined in 12 U.S.C. 1821(e)(8)(D), and any agreement or transaction that the FDIC determines by

regulation, resolution, or order to be a QFC, including without limitation, any securities contract, commodity contract, forward contract, repurchase agreement, and swap agreement.

(q) *Records entity* means any insured depository institution that has received written notice from the institution's appropriate Federal banking agency or the FDIC that it is in a troubled condition and written notice from the FDIC that it is subject to the recordkeeping requirements of this part.

(r) *Reportable subsidiary* means any subsidiary of a records entity that is not:

(1) A functionally regulated subsidiary as defined in 12 U.S.C. 1844(c)(5);

(2) A security-based swap dealer as defined in 15 U.S.C. 78c(a)(71); or

(3) A major security-based swap participant as defined in 15 U.S.C. 78c(a)(67).

(s) *Subsidiary* has the meaning set forth in 12 U.S.C. 1813(w)(4).

(t) *Total consolidated assets* means the total consolidated assets of a records entity and its consolidated subsidiaries as reported in the records entity's most recent year-end audited consolidated statement of financial condition filed with the appropriate Federal banking agency.

(u) *Troubled condition* means an insured depository institution that:

(1) Has a composite rating, as determined by its appropriate Federal banking agency in its most recent report of examination, of 3 (only for insured depository institutions with total consolidated assets of \$10 billion or greater), 4 or 5 under the Uniform Financial Institution Rating System, or in the case of an insured branch of a foreign bank, an equivalent rating;

(2) Is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance;

(3) Is subject to a cease-and-desist order or written agreement issued by the appropriate Federal banking agency, as defined in 12 U.S.C. 1813(q), that requires action to improve the financial condition of the insured depository institution or is subject to a proceeding initiated by the appropriate Federal banking agency which contemplates the issuance of an order that requires action to improve the financial condition of the insured depository institution, unless otherwise informed in writing by the appropriate Federal banking agency;

(4) Is informed in writing by the insured depository institution's appropriate Federal banking agency that it is in troubled condition for purposes of 12 U.S.C. 1831i on the basis of the institution's most recent report of condition or report of examination, or

other information available to the institution's appropriate Federal banking agency; or

(5) Is determined by the appropriate Federal banking agency or the FDIC in consultation with the appropriate Federal banking agency to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the institution by its appropriate Federal banking agency in its most recent report of examination.

§ 371.3 Maintenance of records.

(a) *Form and availability.*

(1) Unless it is not required to maintain records in electronic form as provided in § 371.4(d), a records entity shall maintain the records described in § 371.4 in electronic form and shall be capable of producing such records electronically in the format set forth in the appendices of this part.

(2) All such records shall be updated on a daily basis and shall be based upon values and information no less current than previous end-of-day values and information.

(3) Except as provided in § 371.4(d), a records entity shall compile the records described in § 371.4(a) or § 371.4(b) (as applicable) in a manner that permits aggregation and disaggregation of such records by counterparty. If the records are maintained pursuant to § 371.4(b), they must be compiled by the records entity on a consolidated basis for itself and its reportable subsidiaries in a manner that also permits aggregation and disaggregation of such records by the records entity and its reportable subsidiary.

(4) Records maintained pursuant to § 371.4(b) by a records entity that is a Part 148 affiliate shall be compiled consistently, in all respects, with records compiled by its affiliate(s) pursuant to 31 CFR part 148.

(5) A records entity shall maintain each set of daily records for a period of not less than five business days.

(b) *Change in Point of Contact.* A records entity shall provide to the FDIC, in writing, any change to the name and contact information for the person at the records entity who is responsible for recordkeeping under this part within 3 business days of any change to such information.

(c) *Access to Records.* A records entity shall be capable of providing the records specified in § 371.4 (based on the immediately preceding day's end-of-day values and information) to the FDIC no later than 7:00 a.m. (Eastern Time) each day. A records entity is required to make such records available to the FDIC

following a written request by the FDIC for such records. Any such written request shall specify the date such records are to be made available (and the period of time covered by the request) and shall provide the records entity at least 8 hours to respond to the request. If the request is made less than 8 hours before such 7:00 a.m. deadline, the deadline shall be automatically extended to the time that is 8 hours following the time of the request.

(d) *Maintenance of records after a records entity is no longer in a troubled condition.* A records entity shall continue to maintain the capacity to produce the records required under this part on a daily basis for a period of one year after the date that the appropriate Federal banking agency or the FDIC notifies the institution, in writing, that it is no longer in a troubled condition as defined in § 371.2 (u).

(e) *Maintenance of records after an acquisition of a records entity.* If a records entity ceases to exist as an insured depository institution as a result of a merger or a similar transaction with an insured depository institution that is not in a troubled condition immediately following the transaction, the obligation to maintain records under this part on a daily basis will terminate when the records entity ceases to exist as a separately insured depository institution.

§ 371.4 Content of records.

(a) *Limited scope entities.* Except as provided in § 371.5, a limited scope entity must maintain (at the election of such records entity) either the records described in paragraph (b) of this section or the following records:

(1) The position-level data listed in Table A–1 in Appendix A of this part with respect to each QFC to which it is a party, without duplication.

(2) The counterparty-level data listed in Table A–2 in Appendix A of this part with respect to each QFC to which it is a party, without duplication.

(3) The corporate organization master table in Appendix A of this part for the records entity and its affiliates.

(4) The counterparty master table in Appendix A of this part with respect to each QFC to which it is a party, without duplication.

(5) All documents that govern QFC transactions between the records entity and each counterparty, including, without limitation, master agreements and annexes, schedules, netting agreements, supplements, or other modifications with respect to the agreements, confirmations for each QFC position that has been confirmed and all trade acknowledgments for each QFC

position that has not been confirmed, all credit support documents including, but not limited to, credit support annexes, guarantees, keep-well agreements, or net worth maintenance agreements that are relevant to one or more QFCs, and all assignment or novation documents, if applicable, including documents that confirm that all required consents, approvals, or other conditions precedent for such assignment or novation have been obtained or satisfied.

(6) A list of vendors directly supporting the QFC-related activities of the records entity and the vendors' contact information.

(b) *Full scope entities.* A full scope entity must maintain the following records:

(1) The position-level data listed in Table A–1 in Appendix B of this part with respect to each QFC to which it or any of its reportable subsidiaries is a party, without duplication.

(2) The counterparty-level data listed in Table A–2 in Appendix B of this part with respect to each QFC to which it or any of its reportable subsidiaries is a party, without duplication.

(3) The legal agreements information listed in Table A–3 in Appendix B of this part with respect to each QFC to which it or any of its reportable subsidiaries is a party, without duplication.

(4) The collateral detail data listed in Table A–4 in Appendix B of this part with respect to each QFC to which it or any of its reportable subsidiaries is a party, without duplication.

(5) The corporate organization master table in Appendix B of this part for the records entity and its affiliates.

(6) The counterparty master table in Appendix B of this part with respect to each QFC to which it or any of its reportable subsidiaries is a party, without duplication.

(7) The booking location master table in Appendix B of this part for each booking location used with respect to each QFC to which it or any of its reportable subsidiaries is a party, without duplication.

(8) The safekeeping agent master table in Appendix B of this part for each safekeeping agent used with respect to each QFC to which it or any of its reportable subsidiaries is a party, without duplication.

(9) All documents that govern QFC transactions between the records entity (or any of its reportable subsidiaries) and each counterparty, including, without limitation, master agreements and annexes, schedules, netting agreements, supplements, or other modifications with respect to the agreements, confirmations for each QFC

position that has been confirmed and all trade acknowledgments for each QFC position that has not been confirmed, all credit support documents including, but not limited to, credit support annexes, guarantees, keep-well agreements, or net worth maintenance agreements that are relevant to one or more QFCs, and all assignment or novation documents, if applicable, including documents that confirm that all required consents, approvals, or other conditions precedent for such assignment or novation have been obtained or satisfied.

(10) A list of vendors directly supporting the QFC-related activities of the records entity and its reportable subsidiaries and the vendors' contact information.

(c) *Change in recordkeeping status.* (1) A records entity that was a limited scope entity maintaining the records specified in paragraphs (a)(1) through (a)(6) of this section and that subsequently becomes a full scope entity must maintain the records specified in paragraph (b) of this section within 270 days of becoming a full scope entity (or 60 days of becoming a full scope entity if it is an accelerated records entity). Until the records entity maintains the records required by paragraph (b) of this section it must continue to maintain the records required by paragraphs (a)(1) through (a)(6) of this section.

(2) A records entity that was a full scope entity maintaining the records specified in paragraph (b) of this section and that subsequently becomes a limited scope entity may continue to maintain the records specified in paragraph (b) of this section or, at its option, may maintain the records specified in paragraphs (a)(1) through (a)(6) of this section, provided however, that such records entity shall continue to maintain the records specified in paragraph (b) of this section until it maintains the records specified in paragraphs (a)(1) through (a)(6) of this section.

(3) A records entity that changes from a limited scope entity to a full scope entity and at the time it becomes a full scope entity is not yet maintaining the records specified in paragraph (a) of this section or paragraph (b) of this section must satisfy the recordkeeping requirements of paragraph (b) of this section within 270 days of first becoming a records entity (or 60 days of first becoming a records entity if it is an accelerated records entity).

(4) A records entity that changes from a full scope entity to a limited scope entity and at the time it becomes a limited scope entity is not yet maintaining the records specified in

paragraph (b) of this section must satisfy the recordkeeping requirements of paragraph (a) of this section within 270 days of first becoming a record entity (or 60 days of first becoming a record entity if it is an accelerated records entity).

(d) *Records entities with fewer than 20 QFC positions.* Notwithstanding any other requirement of this part, if a records entity and, if it is a full scope entity, its reportable subsidiaries, have fewer than 20 open QFC positions in total (without duplication) on the date the institution becomes a records entity, the records required by this section are not required to be recorded and maintained in electronic form as would otherwise be required by this section, so long as all required records are capable of being updated on a daily basis. If at any time after it becomes a records entity, the institution and, if it is a full scope entity, its reportable subsidiaries, if applicable, have 20 or more open QFC positions in total (without duplication), it must record and maintain records in electronic form as required by this section within 270 days (or, if it is an accelerated records entity at that time, within 60 days). The records entity must provide to the FDIC, within 3 business days of reaching the 20-QFC threshold, a directory of the electronic files that will be used to maintain the information required to be kept by this section.

§ 371.5 Transition for existing records entities.

(a) *Limited Scope Entities.* Notwithstanding any other provision of this part, an insured depository institution that became a records entity prior to the Amendment Effective Date and constitutes a limited scope entity on the Amendment Effective Date shall continue to comply with this part as in effect immediately prior to the Amendment Effective Date or, if it elects to comply with this part as in effect on and after such date, as so in effect, for so long as the entity remains a limited scope entity that has not ceased to be required to maintain the capacity to produce records pursuant to § 371.3(d).

(b) *Transition for full scope entities maintaining records on effective date.* If an insured depository institution that constitutes a full scope entity on the Amendment Effective Date became a records entity prior to the Amendment Effective Date and is maintaining the records required by this part immediately prior to the Amendment Effective Date, such records entity shall comply with all recordkeeping requirements of this part within 270 days after the Amendment Effective Date (or no later than 60 days after the Amendment Effective Date if it is an accelerated records entity). Until the records entity maintains the records

required by § 371.4(a) or § 371.4(b), as applicable, it must continue to maintain the records required by this part immediately prior to the Amendment Effective Date.

(c) *Transition for full scope entities not maintaining records on effective date.* If an insured depository institution that constitutes a full scope entity on the Amendment Effective Date became a records entity prior to the Amendment Effective Date but is not maintaining the records required by this part immediately prior to the Amendment Effective Date, such records entity shall comply with all recordkeeping requirements of this part within 270 days after the date that it first became a records entity (or no later than 60 days after it first became a records entity if it is an accelerated records entity).

§ 371.6 Enforcement Actions.

Violating the terms or requirements set forth in this part constitutes a violation of a regulation and subjects the records entity to enforcement actions under Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

Appendix A to Part 371—File Structure for Qualified Financial Contract (QFC) Records for Limited Scope Entities

TABLE A-1—POSITION-LEVEL DATA

	Field	Example	Instructions and data application	Definition	Validation
A1.1 ...	As of date	2015-01-05	Provide data extraction date ...	YYYY-MM-DD.	
A1.2 ...	Records entity identifier	999999999	Provide LEI for records entity if available. Information needed to review position-level data by records entity.	Varchar(50)	Validated against CO.2.
A1.3 ...	Position identifier	20058953	Provide a position identifier. Use the unique transaction identifier if available. Information needed to readily track and distinguish positions.	Varchar(100).	
A1.4 ...	Counterparty identifier	888888888	Provide a counterparty identifier. Use LEI if counterparty has one. Information needed to identify counterparty by reference to Counterparty Master Table.	Varchar(50)	Validated against CP.2
A1.5 ...	Internal booking location identifier.	New York, New York.	Provide office where the position is booked. Information needed to determine system on which the trade is booked and settled.	Varchar(50).	
A1.6 ...	Unique booking unit or desk identifier.	xxxxxx	Provide an identifier for unit or desk at which the position is booked. Information needed to help determine purpose of position.	Varchar(50).	

TABLE A-1—POSITION-LEVEL DATA—Continued

	Field	Example	Instructions and data application	Definition	Validation
A1.7 ...	Type of QFC	Credit, equity, foreign exchange, interest rate (including cross-currency), other commodity, securities repurchase agreement, securities lending, loan repurchase agreement, guarantee or other third party credit enhancement of a QFC.	Provide type of QFC. Use unique product identifier if available. Information needed to determine the nature of the QFC.	Varchar(100).	
A1.8 ...	Type of QFC covered by guarantee or other third party credit enhancement.	Credit, equity, foreign exchange, interest rate (including cross-currency), other commodity, securities repurchase agreement, securities lending, or loan repurchase agreement.	If QFC type is guarantee or other third party credit enhancement, provide type of QFC that is covered by such guarantee or other third party credit enhancement. Use unique product identifier if available. If multiple asset classes are covered by the guarantee or credit enhancement, enter the asset classes separated by comma. If all the QFCs of the underlying QFC obligor identifier are covered by the guarantee or other third party credit enhancement, enter "All."	Varchar(200)	Only required if QFC type (A1.7) is a guarantee or other third party credit enhancement.
A1.9 ...	Underlying QFC obligor identifier.	88888888	If QFC type is guarantee or other third party credit enhancement, provide an identifier for the QFC obligor whose obligation is covered by the guarantee or other third party credit enhancement. Use LEI if underlying QFC obligor has one. Complete the counterparty master table with respect to a QFC obligor that is a non-affiliate.	Varchar(50)	Only required if QFC asset type (A1.7) is a guarantee or other third party credit enhancement. Validated against CO.2 if affiliate or CP.2 if non-affiliate.
A1.10	Agreement identifier	xxxxxxxx	Provide an identifier for primary governing documentation, e.g. the master agreement or guarantee agreement, as applicable.	Varchar(50).	
A1.11	Netting agreement identifier	xxxxxxxx	Provide an identifier for netting agreement. If this agreement is the same as provided in A1.10, use same identifier. Information needed to identify unique netting sets.	Varchar(50).	
A1.12	Netting agreement counterparty identifier.	xxxxxxxx	Provide a netting agreement counterparty identifier. Use same identifier as provided in A1.4 if counterparty and netting agreement counterparty are the same. Use LEI if netting agreement counterparty has one. Information needed to identify unique netting sets.	Varchar(50)	Validated against CP.2.

TABLE A-1—POSITION-LEVEL DATA—Continued

	Field	Example	Instructions and data application	Definition	Validation
A1.13	Trade date	2014-12-20	Provide trade or other commitment date for the QFC. Information needed to determine when the entity's rights and obligations regarding the position originated.	YYYY-MM-DD.	
A1.14	Termination date	2014-03-31	Provide date the QFC terminates or is expected to terminate, expire, mature, or when final performance is required. Information needed to determine when the entity's rights and obligations regarding the position are expected to end.	YYYY-MM-DD.	
A1.15	Next call, put, or cancellation date.	2015-01-25	Provide next call, put, or cancellation date.	YYYY-MM-DD.	
A1.16	Next payment date	2015-01-25	Provide next payment date	YYYY-MM-DD.	
A1.17	Current market value of the position in U.S. dollars.	995000	In the case of a guarantee or other third party credit enhancements, provide the current mark-to-market expected value of the exposure. Information needed to determine the current size of the obligation/benefit associated with the QFC.	Num (25,5).	
A1.18	Notional or principal amount of the position In U.S. dollars.	1000000	Provide the notional or principal amount, as applicable, in U.S. dollars. In the case of a guarantee or other third party credit enhancements, provide the maximum possible exposure. Information needed to help evaluate the position.	Num (25,5).	
A1.19	Covered by third-party credit enhancement agreement (for the benefit of the records entity)?.	Y/N	Indicate whether QFC is covered by a guarantee or other third-party credit enhancement. Information needed to determine credit enhancement.	Char(1)	Should be "Y" or "N"
A1.20	Third-party credit enhancement provider identifier (for the benefit of the records entity).	999999999	If QFC is covered by a guarantee or other third-party credit enhancement, provide an identifier for provider. Use LEI if available. Complete the counterparty master table with respect to a provider that is a non-affiliate.	Varchar(50)	Required if A1.20 is "Y". Validated against CP.2
A1.21	Third-party credit enhancement agreement identifier (for the benefit of the records entity).	.....	If QFC is covered by a guarantee or other third-party credit enhancement, provide an identifier for the agreement.	Varchar(50)	Required if A1.20 is "Y".
A1.22	Related position of records entity.	3333333	Use this field to link any related positions of the records entity . All positions that are related to one another should have same designation in this field.	Varchar(100).	
A1.23	Reference number for any related loan.	9999999	Provide a unique reference number for any loan held by the records entity or a member of its corporate group related to the position (with multiple entries delimited by commas).	Varchar(500).	

TABLE A-1—POSITION-LEVEL DATA—Continued

	Field	Example	Instructions and data application	Definition	Validation
A1.24	Identifier of the lender of the related loan.	999999999	For any loan recorded in A1.23, provide identifier for records entity or member of its corporate group that holds any related loan. Use LEI if entity has one.	Varchar(500).	

TABLE A-2—COUNTERPARTY NETTING SET DATA

	Field	Example	Instructions and data application	Def	Validation
A2.1 ...	As of date	2015-01-05	Data extraction date	YYYY-MM-DD.	
A2.2 ...	Records entity identifier	999999999	Provide the LEI for the records entity if available.	Varchar(50)	Validated against CO.2.
A2.3 ...	Netting agreement counterparty identifier.	888888888	Provide an identifier for the netting agreement counterparty. Use LEI if counterparty has one.	Varchar(50)	Validated against CP.2.
A2.4 ...	Netting agreement identifier	xxxxxxxxx	Provide an identifier for the netting agreement.	Varchar(50).	
A2.5 ...	Underlying QFC obligor identifier.	888888888	Provide identifier for underlying QFC obligor if netting agreement is associated with a guarantee or other third party credit enhancement. Use LEI if available.	Varchar(50)	Validated against CO.2 or CP.2.
A2.6 ...	Covered by third-party credit enhancement agreement (for the benefit of the records entity)?	Y/N	Indicate whether the positions subject to the netting set agreement are covered by a third-party credit enhancement agreement.	Char(1)	Should be "Y" or "N".
A2.7	Third-party credit enhancement provider identifier (for the benefit of the records entity).	999999999	Use LEI if available. Information needed to identify third-party credit enhancement provider.	Varchar(50)	Required if A2.6 is "Y". Should be a valid entry in the Counterparty Master Table. Validated against CP.2.
A2.8 ...	Third-party credit enhancement agreement identifier (for the benefit of the records entity).	4444444 .....	.....	Varchar(50)	Required if A2.6 is "Y". Validated against A3.3.
A2.9 ...	Aggregate current market value in U.S. dollars of all positions under this netting agreement.	- 1000000	Information needed to help evaluate the positions subject to the netting agreement.	Num (25,5)	Market value of all positions in A1 for the given netting agreement identifier should be equal to this value. A2.9 = A2.10 + A2.11.
A2.10	Current market value in U.S. dollars of all positive positions, as aggregated under this netting agreement.	3000000	Information needed to help evaluate the positions subject to the netting agreement.	Num (25,5)	Market value of all positive positions in A1 for the given netting agreement identifier should be equal to this value. A2.9 = A2.10 + A2.11.
A2.11	Current market value in U.S. dollars of all negative positions, as aggregated under this netting agreement.	- 4000000	Information needed to help evaluate the positions subject to the netting agreement.	Num (25,5)	Market value of all negative positions in A1 for the given Netting Agreement Identifier should be equal to this value. A2.9 = A2.10 + A2.11.
A2.12	Current market value in U.S. dollars of all collateral posted by records entity, as aggregated under this netting agreement.	950000	Information needed to determine the extent to which collateral has been provided by records entity.	Num (25,5).	
A2.13	Current market value in U.S. dollars of all collateral posted by counterparty, as aggregated under this netting agreement.	50000	Information needed to determine the extent to which collateral has been provided by counterparty.	Num (25,5).	

TABLE A-2—COUNTERPARTY NETTING SET DATA—Continued

	Field	Example	Instructions and data application	Def	Validation
A2.14	Records entity collateral—net	950,000	Provide records entity's collateral excess or deficiency with respect to all of its positions, as determined under each applicable agreement, including thresholds and haircuts where applicable.	Num (25,5)	Should be less than or equal to A2.15.
A2.15	Counterparty collateral—net ...	950,000	Provide counterparty's collateral excess or deficiency with respect to all of its positions, as determined under each applicable agreement, including thresholds and haircuts where applicable.	Num (25,5)	Should be less than or equal to A2.16.
A2.16	Next margin payment date	2015-11-05	Provide next margin payment date for position.	YYYY-MM-DD.	
A2.17	Next margin payment amount in U.S. dollars.	150,000	Use positive value if records entity is due a payment and use negative value if records entity has to make the payment.	Num (25,5).	

CORPORATE ORGANIZATION MASTER TABLE *

	Field	Example	Instructions and data application	Def	Validation
CO.1 ..	As of date	2015-01-05	Data extraction date	YYYY-MM-DD.	
CO.2 ..	Entity identifier	888888888	Provide unique identifier. Use LEI if available. Information needed to identify entity.	Varchar(50)	Should be unique across all record entities.
CO.3 ..	Has LEI been used for entity identifier?	Y/N	Specify whether the entity identifier provided is an LEI.	Char(1)	Should be "Y" or "N".
CO.4 ..	Legal name of entity	John Doe & Co	Provide legal name of entity ...	Varchar(200).	
CO.5 ..	Immediate parent entity identifier.	77777777	Use LEI if available. Information needed to complete org structure.	Varchar(50).	
CO.6 ..	Has LEI been used for immediate parent entity identifier?	Y/N	Specify whether the immediate parent entity identifier provided is an LEI.	Char(1)	Should be "Y" or "N".
CO.7 ..	Legal name of immediate parent entity.	John Doe & Co	Information needed to complete org structure.	Varchar(200).	
CO.8 ..	Percentage ownership of immediate parent entity in the entity.	100.00	Information needed to complete org structure.	Num (5,2).	
CO.9 ..	Entity type	Subsidiary, foreign branch, foreign division.	Information needed to complete org structure.	Varchar(50).	
CO.10	Domicile	New York, New York.	Enter as city, state or city, foreign country.	Varchar(50).	
CO.11	Jurisdiction under which incorporated or organized.	New York	Enter as state or foreign jurisdiction.	Varchar(50).	

* Foreign branches and divisions shall be separately identified to the extent they are identified in an entity's reports to its PFRAs.

COUNTERPARTY MASTER TABLE

	Field	Example	Instructions and data application	Def	Validation
CP.1 ... CP.2 ...	As of date Counterparty identifier	2015-01-05 888888888	Data extraction date Use LEI if counterparty has one. The counterparty identifier shall be the global legal entity identifier if one has been issued to the entity. If a counterparty transacts with the records entity through one or more separate foreign branches or divisions and any such branch or division does not have its own unique global legal entity identifier, the records entity must include additional identifiers, as appropriate to enable the FDIC to aggregate or disaggregate the data for each counterparty and for each entity with the same ultimate parent entity as the counterparty.	YYYY-MM-DD. Varchar(50).	
CP.3 ...	Has LEI been used for counterparty identifier?	Y/N	Indicate whether the counterparty identifier is an LEI.	Char(1)	Should be "Y" or "N".
CP.4 ...	Legal name of counterparty	John Doe & Co	Information needed to identify and, if necessary, communicate with counterparty.	Varchar(200).	
CP.5 ...	Domicile	New York, New York	Enter as city, state or city, foreign country.	Varchar(50).	
CP.6 ...	Jurisdiction under which incorporated or organized.	New York	Enter as state or foreign jurisdiction.	Varchar(50).	
CP.7 ...	Immediate parent entity identifier.	77777777	Provide an identifier for the parent entity that directly controls the counterparty. Use LEI if immediate parent entity has one.	Varchar(50).	
CP.8 ...	Has LEI been used for immediate parent entity identifier?	Y/N	Indicate whether the immediate parent entity identifier is an LEI.	Char(1)	Should be "Y" or "N".
CP.9 ...	Legal name of immediate parent entity.	John Doe & Co	Information needed to identify and, if necessary, communicate with counterparty.	Varchar(200).	
CP.10	Ultimate parent entity identifier	66666666	Provide an identifier for the parent entity that is a member of the corporate group of the counterparty that is not controlled by another entity. Information needed to identify counterparty. Use LEI if ultimate parent entity has one.	Varchar(50).	
CP.11	Has LEI been used for ultimate parent entity identifier?	Y/N	Indicate whether the ultimate parent entity identifier is an LEI.	Char(1)	Should be "Y" or "N".
CP.12	Legal name of ultimate parent entity.	John Doe & Co	Information needed to identify and, if necessary, communicate with counterparty.	Varchar(100).	

DETAILS OF FORMATS

Format	Content in brief	Additional explanation	Examples
YYYY-MM-DD ..	Date	YYYY = four digit date, MM = 2 digit month, DD = 2 digit date.	2015-11-12.
Num (25,5)	Up to 25 numerical characters including 5 decimals.	Up to 20 numerical characters before the decimal point and up to 5 numerical characters after the decimal point. The dot character is used to separate decimals.	1352.67. 12345678901234567890.12345.0. - 20000.25. - 0.257.
Char(3)	3 alphanumeric characters	The length is fixed at 3 alphanumeric characters.	USD. X1X. 999.
Varchar(25)	Up to 25 alphanumeric characters	The length is not fixed but limited at up to 25 alphanumeric characters.	asgaGEH3268EFdsagtTRCF543.

Appendix B to Part 371—File Structure for Qualified Financial Contract Records for Full Scope Entities³²

TABLE A-1—POSITION-LEVEL DATA

	Field	Example	Instructions and data application	Definition	Validation
A1.1	As of date	2015-01-05	Provide data extraction date ..	YYYY-MM-DD ..	
A1.2	Records entity identifier	999999999	Provide LEI for records entity. Information needed to review position-level data by records entity.	Varchar(50)	Validated against CO.2.
A1.3	Position identifier	20058953	Provide a position identifier. Should be used consistently across all records entities. Use the unique transaction identifier if available. Information needed to readily track and distinguish positions.	Varchar(100)	
A1.4	Counterparty identifier	888888888	Provide a counterparty identifier. Use LEI if counterparty has one. Should be used consistently by all records entities. Information needed to identify counterparty by reference to Counterparty Master Table.	Varchar(50)	Validated against CP.2.
A1.5	Internal booking location identifier.	New York, New York.	Provide office where the position is booked. Information needed to determine system on which the trade is booked and settled.	Varchar(50)	Combination A1.2 + A1.5 + A1.6 should have a corresponding unique combination BL.2 + BL.3 + BL.4 entry in Booking Location Master Table.
A1.6	Unique booking unit or desk identifier.	xxxxxx	Provide an identifier for unit or desk at which the position is booked. Information needed to help determine purpose of position.	Varchar(50)	Combination A1.2 + A1.5 + A1.6 should have a corresponding unique combination BL.2 + BL.3 + BL.4 entry in Booking Location Master Table.

³² Pursuant to § 374(b), the records entity is required to provide the information required by

Appendix B for itself and each of its reportable subsidiaries in manner that can be disaggregated by

legal entities (*i.e.*, the records entity and each reportable subsidiary).

TABLE A-1—POSITION-LEVEL DATA—Continued

	Field	Example	Instructions and data application	Definition	Validation
A1.7	Type of QFC	Credit, equity, foreign exchange, interest rate (including cross-currency), other commodity, securities repurchase agreement, securities lending, loan repurchase agreement, guarantee or other third party credit enhancement of a QFC.	Provide type of QFC. Use unique product identifier if available. Information needed to determine the nature of the QFC.	Varchar(100).	
A1.7.1 ...	Type of QFC covered by guarantee or other third party credit enhancement.	Credit, equity, foreign exchange, interest rate (including cross-currency), other commodity, securities repurchase agreement, securities lending, or loan repurchase agreement.	If QFC type is guarantee or other third party credit enhancement, provide type of QFC of the QFC that is covered by such guarantee or other third party credit enhancement. Use unique product identifier if available. If multiple asset classes are covered by the guarantee or credit enhancement, enter the asset classes separated by comma. If all the QFCs of the underlying QFC obligor identifier are covered by the guarantee or other third party credit enhancement, enter "All".	Varchar(500)	Only required if QFC type (A1.7) is a guarantee or other third party credit enhancement.
A1.7.2 ...	Underlying QFC obligor identifier.	888888888	If QFC type is guarantee or other third party credit enhancement, provide an identifier for the QFC obligor whose obligation is covered by the guarantee or other third party credit enhancement. Use LEI if underlying QFC obligor has one. Complete the counterparty master table with respect to a QFC obligor that is a non-affiliate.	Varchar(50)	Only required if QFC asset type (A1.7) is a guarantee or other third party credit enhancement. Validated against CO.2 if affiliate or CP.2 if non-affiliate.
A1.8	Agreement identifier	xxxxxxxx	Provide an identifier for the primary governing documentation, e.g., the master agreement or guarantee agreement, as applicable.	Varchar(50)	Validated against A3.3.
A1.9	Netting agreement identifier ...	xxxxxxxx	Provide an identifier for netting agreement. If this agreement is the same as provided in A1.10, use same identifier. Information needed to identify unique netting sets.	Varchar(50)	Validated against A3.3.
A1.10	Netting agreement counterparty identifier.	xxxxxxxx	Provide a netting agreement counterparty identifier. Use same identifier as provided in A1.4 if counterparty and netting agreement counterparty are the same. Use LEI if netting agreement counterparty has one. Information needed to identify unique netting sets.	Varchar(50)	Validated against CP.2.

TABLE A-1—POSITION-LEVEL DATA—Continued

	Field	Example	Instructions and data application	Definition	Validation
A1.11	Trade date	2014-12-20	Provide trade or other commitment date for the QFC. Information needed to determine when the entity's rights and obligations regarding the position originated.	YYYY-MM-DD.	
A1.12	Termination date	2014-03-31	Provide date the QFC terminates or is expected to terminate, expire, mature, or when final performance is required. Information needed to determine when the entity's rights and obligations regarding the position are expected to end.	YYYY-MM-DD.	
A1.13	Next call, put, or cancellation date.	2015-01-25	Provide next call, put, or cancellation date.	YYYY-MM-DD.	
A1.14	Next payment date	2015-01-25	Provide next payment date	YYYY-MM-DD.	
A1.15	Local Currency Of Position	USD	Provide currency in which QFC is denominated. Use ISO currency code.	Char(3).	
A1.16	Current market value of the position in local currency.	995000	Provide current market value of the position in local currency. In the case of a guarantee or other third party credit enhancements, provide the current mark-to-market expected value of the exposure. Information needed to determine the current size of the obligation or benefit associated with the QFC.	Num (25,5).	
A1.17	Current market value of the position in U.S. dollars.	995000	In the case of a guarantee or other third party credit enhancements, provide the current mark-to-market expected value of the exposure. Information needed to determine the current size of the obligation/benefit associated with the QFC.	Num (25,5).	
A1.18	Asset Classification	1	Provide fair value asset classification under GAAP, IFRS, or other accounting principles or standards used by records entity. Provide "1" for Level 1, "2" for Level 2, or "3" for Level 3. Information needed to assess fair value of the position.	Char(1).	
A1.19	Notional or principal amount of the position in local currency.	1000000	Provide the notional or principal amount, as applicable, in local currency. In the case of a guarantee or other third party credit enhancement, provide the maximum possible exposure. Information needed to help evaluate the position.	Num (25,5).	

TABLE A-1—POSITION-LEVEL DATA—Continued

	Field	Example	Instructions and data application	Definition	Validation
A1.20	Notional or principal amount of the position in U.S. dollars.	1000000	Provide the notional or principal amount, as applicable, in U.S. dollars. In the case of a guarantee or other third party credit enhancements, provide the maximum possible exposure. Information needed to help evaluate the position.	Num (25,5).	
A1.21	Covered by third-party credit enhancement agreement (for the benefit of the records entity)?.	Y/N	Indicate whether QFC is covered by a guarantee or other third-party credit enhancement. Information needed to determine credit enhancement.	Char(1)	Should be "Y" or "N".
A1.21.1	Third-party credit enhancement provider identifier (for the benefit of the records entity).	999999999	If QFC is covered by a guarantee or other third-party credit enhancement, provide an identifier for provider. Use LEI if available. Complete the counterparty master table with respect to a provider that is a non-affiliate.	Varchar(50)	Required if A1.21 is "Y". Validated against CP.2.
A1.21.2	Third-party credit enhancement agreement identifier (for the benefit of the records entity).	4444444	If QFC is covered by a guarantee or other third-party credit enhancement, provide an identifier for the agreement.	Varchar(50)	Required if A1.21 is "Y." Validated against A3.3.
A1.21.3	Covered by third-party credit enhancement agreement (for the benefit of the counterparty)?.	Y/N	Indicate whether QFC is covered by a guarantee or other third-party credit enhancement. Information needed to determine credit enhancement.	Char(1)	Should be "Y" or "N".
A1.21.4	Third-party credit enhancement provider identifier (for the benefit of the counterparty).	999999999	If QFC is covered by a guarantee or other third-party credit enhancement, provide an identifier for provider. Use LEI if available. Complete the counterparty master table with respect to a provider that is a non-affiliate.	Varchar(50)	Required if A1.21.3 is "Y". Validated against CO.2 or CP.2.
A1.21.5	Third-party credit enhancement agreement identifier (for the benefit of the counterparty).	4444444	If QFC is covered by a guarantee or other third-party credit enhancement, provide an identifier for agreement.	Varchar(50)	Required if A1.21.3 is "Y". Validated against A3.3.
A1.22	Related position of records entity.	3333333	Use this field to link any related positions of the records entity. All positions that are related to one another should have same designation in this field.	Varchar(100).	
A1.23	Reference number for any related loan.	9999999	Provide a unique reference number for any loan held by the records entity or a member of its corporate group related to the position (with multiple entries delimited by commas).	Varchar(500).	
A1.24	Identifier of the lender of the related loan.	999999999	For any loan recorded in A1.23, provide identifier for records entity or member of its corporate group that holds any related loan. Use LEI if entity has one.	Varchar(500).	

TABLE A-2—COUNTERPARTY NETTING SET DATA

	Field	Example	Instructions and data application	Def	Validation
A2.1 ...	As of date	2015-01-05	Data extraction date	YYYY-MM-DD ..	
A2.2 ...	Records entity identifier	999999999	Provide the LEI for the records entity.	Varchar(50)	Validated against CO.2.
A2.3 ...	Netting agreement counterparty identifier.	888888888	Provide an identifier for the netting agreement counterparty. Use LEI if counterparty has one.	Varchar(50)	Validated against CP.2.
A2.4 ...	Netting agreement identifier	xxxxxxxxx	Provide an identifier for the netting agreement.	Varchar(50)	Validated against A3.3.
A2.4.1	Underlying QFC obligor identifier.	888888888	Provide identifier for underlying QFC obligor if netting agreement is associated with a guarantee or other third party credit enhancement. Use LEI if available.	Varchar(50)	Validated against CO.2 or CP.2.
A2.5 ...	Covered by third-party credit enhancement agreement (for the benefit of the records entity)?	Y/N	Indicate whether the positions subject to the netting set agreement are covered by a third-party credit enhancement agreement.	Char(1)	Should be "Y" or "N".
A2.5.1	Third-party credit enhancement provider identifier (for the benefit of the records entity).	999999999	Use LEI if available. Information needed to identify third-party credit enhancement provider.	Varchar(50)	Required if A2.5 is "Y". Validated against CP.2.
A2.5.2	Third-party credit enhancement agreement identifier (for the benefit of the records entity).	4444444 .....	.....	Varchar(50)	Required if A2.5 is "Y". Validated against A3.3.
A2.5.3	Covered by third-party credit enhancement agreement (for the benefit of the counterparty)?	Y/N	Information needed to determine credit enhancement.	Char(1)	Should be "Y" or "N".
A2.5.4	Third-party credit enhancement provider identifier (for the benefit of the counterparty).	999999999	Use LEI if available. Information needed to identify third-party credit enhancement provider.	Varchar(50)	Required if A2.5.3 is "Y". Should be a valid entry in the Counterparty Master Table. Validated against CP.2.
A2.5.5	Third-party credit enhancement agreement identifier (for the benefit of the counterparty).	4444444	Information used to determine guarantee or other third-party credit enhancement.	Varchar(50)	Required if A2.5.3 is "Y". Validated against A3.3.
A2.6 ...	Aggregate current market value in U.S. dollars of all positions under this netting agreement.	- 1000000	Information needed to help evaluate the positions subject to the netting agreement.	Num (25,5)	Market value of all positions in A1 for the given netting agreement identifier should be equal to this value. $A2.6 = A2.7 + A2.8$.
A2.7 ...	Current market value in U.S. dollars of all positive positions, as aggregated under this netting agreement.	3000000	Information needed to help evaluate the positions subject to the netting agreement.	Num (25,5)	Market value of all positive positions in A1 for the given netting agreement identifier should be equal to this value. $A2.6 = A2.7 + A2.8$.
A2.8 ...	Current market value in U.S. dollars of all negative positions, as aggregated under this netting agreement.	- 4000000	Information needed to help evaluate the positions subject to the netting agreement.	Num (25,5)	Market value of all negative positions in A1 for the given Netting Agreement Identifier should be equal to this value. $A2.6 = A2.7 + A2.8$.
A2.9 ...	Current market value in U.S. dollars of all collateral posted by records entity, as aggregated under this netting agreement.	950000	Information needed to determine the extent to which collateral has been provided by records entity.	Num (25,5)	Market value of all collateral posted by records entity for the given netting agreement Identifier should be equal to sum of all A4.9 for the same netting agreement identifier in A4.

TABLE A-2—COUNTERPARTY NETTING SET DATA—Continued

	Field	Example	Instructions and data application	Def	Validation
A2.10	Current market value in U.S. dollars of all collateral posted by counterparty, as aggregated under this netting agreement.	50000	Information needed to determine the extent to which collateral has been provided by counterparty.	Num (25,5)	Market value of all collateral posted by counterparty for the given netting agreement identifier should be equal to sum of all A4.9 for the same netting agreement identifier in A4.
A2.11	Current market value in U.S. dollars of all collateral posted by records entity that is subject to re-hypothecation, as aggregated under this netting agreement.	950,000	Information needed to determine the extent to which collateral has been provided by records entity.	Num (25,5).	
A2.12	Current market value in U.S. dollars of all collateral posted by counterparty that is subject to re-hypothecation, as aggregated under this netting agreement.	950,000	Information needed to determine the extent to which collateral has been provided by records entity.	Num (25,5).	
A2.13	Records entity collateral—net	950,000	Provide records entity's collateral excess or deficiency with respect to all of its positions, as determined under each applicable agreement, including thresholds and haircuts where applicable.	Num (25,5)	Should be less than or equal to A2.9.
A2.14	Counterparty collateral—net ...	950,000	Provide counterparty's collateral excess or deficiency with respect to all of its positions, as determined under each applicable agreement, including thresholds and haircuts where applicable.	Num (25,5)	Should be less than or equal to A2.10.
A2.15	Next margin payment date	2015-11-05	Provide next margin payment date for position.	YYYY-MM-DD.	
A2.16	Next margin payment amount in U.S. dollars.	150,000	Use positive value if records entity is due a payment and use negative value if records entity has to make the payment.	Num (25,5).	
A2.17	Safekeeping agent identifier for records entity.	888888888	Provide an identifier for the records entity's safekeeping agent, if any. Use LEI if safekeeping agent has one.	Varchar(50)	Validated against SA.2.
A2.18	Safekeeping agent identifier for counterparty.	888888888	Provide an identifier for the counterparty's safekeeping agent, if any. Use LEI if safekeeping agent has one.	Varchar(50)	Validated against SA.2.

TABLE A-3—LEGAL AGREEMENTS

	Field	Example	Instructions and data application	Def	Validation
A3.1	As of Date	2015-01-05	Data extraction date	YYYY-MM-DD.	Validated against CO.2.
A3.2	Records entity identifier	999999999	Provide LEI for records entity	Varchar(50)	
A3.3	Agreement identifier	xxxxxx	Provide identifier for each master agreement, governing document, netting agreement or third-party credit enhancement agreement.	Varchar(50).	
A3.4	Name of agreement or governing document.	ISDA Master 1992 or Guarantee Agreement or Master Netting Agreement.	Provide name of agreement or governing document.	Varchar(50).	

TABLE A-3—LEGAL AGREEMENTS—Continued

	Field	Example	Instructions and data application	Def	Validation
A3.5	Agreement date	2010-01-25	Provide the date of the agreement.	YYYY-MM-DD.	
A3.6	Agreement counterparty identifier.	888888888	Use LEI if counterparty has one. Information needed to identify counterparty.	Varchar(50)	Validated against field CP.2.
A3.6.1 ...	Underlying QFC obligor identifier.	888888888	Provide underlying QFC obligor identifier if document identifier is associated with a guarantee or other third party credit enhancement. Use LEI if underlying QFC obligor has one.	Varchar(50)	Validated against CO.2 or CP.2.
A3.7	Agreement governing law	New York	Provide law governing contract disputes.	Varchar(50).	
A3.8	Cross-default provision?	Y/N	Specify whether agreement includes default or other termination event provisions that reference an entity not a party to the agreement ("cross-default Entity"). Information needed to determine exposure to affiliates or other entities.	Char(1)	Should be "Y" or "N".
A3.9	Identity of cross-default entities.	777777777	Provide identity of any cross-default entities referenced in A3.8. Use LEI if entity has one. Information needed to determine exposure to other entities.	Varchar(500)	Required if A3.8 is "Y". ID should be a valid entry in Corporate Org Master Table or Counterparty Master Table, if applicable. Multiple entries comma separated.
A3.10	Covered by third-party credit enhancement agreement (for the benefit of the records entity)?	Y/N	Information needed to determine credit enhancement.	Char(1)	Should be "Y" or "N".
A3.11	Third-party credit enhancement provider identifier (for the benefit of the records entity).	999999999	Use LEI if available. Information needed to identify Third-Party Credit Enhancement Provider.	Varchar(50)	Required if A3.10 is "Y". Should be a valid entry in the Counterparty Master Table. Validated against CP.2.
A3.12	Associated third-party credit enhancement agreement document identifier (for the benefit of the records entity).	333333333	Information needed to determine credit enhancement.	Varchar(50)	Required if A3.10 is "Y". Validated against field A3.3.
A3.12.1	Covered by third-party credit enhancement agreement (for the benefit of the counterparty)?	Y/N	Information needed to determine credit enhancement.	Char(1)	Should be "Y" or "N".
A3.12.2	Third-party credit enhancement provider identifier (for the benefit of the counterparty).	999999999	Use LEI if available. Information needed to identify Third-Party Credit Enhancement Provider.	Varchar(50)	Required if A3.12 is "Y". Should be a valid entry in the Counterparty Master. Validated against CP.2.
A3.12.3	Associated third-party credit enhancement agreement document identifier (for the benefit of the counterparty).	333333333	Information needed to determine credit enhancement.	Varchar(50)	Required if A3.12.2 is "Y". Validated against field A3.3.
A3.13	Counterparty contact information: name.	John Doe & Co	Provide contact name for counterparty as provided under notice section of agreement.	Varchar(200).	
A3.14	Counterparty contact information: address.	123 Main St, City, State Zip code.	Provide contact address for counterparty as provided under notice section of agreement.	Varchar(100).	
A3.15	Counterparty contact information: phone.	1-999-999-9999	Provide contact phone number for counterparty as provided under notice section of agreement.	Varchar(50).	

TABLE A-3—LEGAL AGREEMENTS—Continued

	Field	Example	Instructions and data application	Def	Validation
A3.16 ...	Counterparty's contact information: email address.	<i>Jdoe@JohnDoe.com.</i>	Provide contact email address for counterparty as provided under notice section of agreement.	Varchar(100).	

TABLE A-4—COLLATERAL DETAIL DATA

	Field	Example	Instructions and data application	Def	Validation
A4.1 ...	As of date	2015-01-05	Data extraction date	YYYY-MM-DD.	
A4.2 ...	Records entity identifier	999999999	Provide LEI for records entity	Varchar(50)	Validated against CO.2.
A4.3 ...	Collateral posted/collateral received flag.	P/N	Enter "P" if collateral has been posted by the records entity. Enter "R" for collateral received by Records Entity.	Char(1).	
A4.4 ...	Counterparty identifier	888888888	Provide identifier for counterparty. Use LEI if counterparty has one.	Varchar(50)	Validated against CP.2.
A4.5 ...	Netting agreement identifier ...	xxxxxxxx	Provide identifier for applicable netting agreement.	Varchar(50)	Validated against field A3.3.
A4.6 ...	Unique collateral item identifier	CUSIP/ISIN	Provide identifier to reference individual collateral posted.	Varchar(50).	
A4.7 ...	Original face amount of collateral item in local currency.	1500000	Information needed to evaluate collateral sufficiency and marketability.	Num (25,5).	
A4.8 ...	Local currency of collateral item.	USD	Use ISO currency code	Char(3).	
A4.9 ...	Market value amount of collateral item in U.S. dollars.	850000	Information needed to evaluate collateral sufficiency and marketability and to permit aggregation across currencies.	Num (25,5)	Market value of all collateral posted by Records Entity or Counterparty A2.9 or A2.10 for the given netting agreement identifier should be equal to sum of all A4.9 for the same netting agreement identifier in A4.
A4.10	Description of collateral item ..	U.S. Treasury Strip, maturity 2020/6/30.	Information needed to evaluate collateral sufficiency and marketability.	Varchar(200).	
A4.11	Asset classification	1	Provide fair value asset classification for the collateral item under GAAP, IFRS, or other accounting principles or standards used by records entity. Provide "1" for Level 1, "2" for Level 2, or "3" for Level 3.	Char(1)	Should be "1" or "2" or "3".
A4.12	Collateral or portfolio segregation status.	Y/N	Specify whether the specific item of collateral or the related collateral portfolio is segregated from assets of the safekeeping agent.	Char(1)	Should be "Y" or "N".
A4.13	Collateral location	ABC broker-dealer (in safekeeping account of counterparty).	Provide location of collateral posted.	Varchar(200).	
A4.14	Collateral jurisdiction	New York, New York.	Provide jurisdiction of location of collateral posted.	Varchar(50).	
A4.15	Is collateral re-hypothecation allowed?	Y/N	Information needed to evaluate exposure of the records entity to the counterparty or vice-versa for re-hypothecated collateral.	Char(1)	Should be "Y" or "N".

CORPORATE ORGANIZATION MASTER TABLE *

	Field	Example	Instructions and data application	Def	Validation
CO.1 ..	As of date	2015-01-05	Data extraction date	YYYY-MM-DD.	
CO.2 ..	Entity identifier	888888888	Provide unique identifier. Use LEI if available. Information needed to identify entity.	Varchar(50)	Should be unique across all records entities.
CO.3 ..	Has LEI been used for entity identifier?	Y/N	Specify whether the entity identifier provided is an LEI.	Char(1)	Should be "Y" or "N".
CO.4 ..	Legal name of entity	John Doe & Co	Provide legal name of entity	Varchar(200).	
CO.5 ..	Immediate parent entity identifier.	77777777	Use LEI if available. Information needed to complete org structure.	Varchar(50).	
CO.6 ..	Has LEI been used for immediate parent entity identifier?.	Y/N	Specify whether the immediate parent entity identifier provided is an LEI.	Char(1)	Should be "Y" or "N".
CO.7 ..	Legal name of immediate parent entity.	John Doe & Co	Information needed to complete org structure.	Varchar(200).	
CO.8 ..	Percentage ownership of immediate parent entity in the entity.	100.00	Information needed to complete org structure.	Num (5,2).	
CO.9 ..	Entity type	Subsidiary, foreign branch, foreign division.	Information needed to complete org structure.	Varchar(50).	
CO.10	Domicile	New York, New York.	Enter as city, state or city, foreign country.	Varchar(50).	
CO.11	Jurisdiction under which incorporated or organized.	New York	Enter as state or foreign jurisdiction.	Varchar(50).	

* Foreign branches and divisions shall be separately identified to the extent they are identified in an entity's reports to its PFRAs.

COUNTERPARTY MASTER TABLE

	Field	Example	Instructions and data application	Def	Validation
CP.1 ...	As of date	2015-01-05	Data extraction date	YYYY-MM-DD.	
CP.2 ...	Counterparty identifier	888888888	Use LEI if counterparty has one. Should be used consistently across all records entities within a corporate group. The counterparty identifier shall be the global legal entity identifier if one has been issued to the entity. If a counterparty transacts with the records entity through one or more separate foreign branches or divisions and any such branch or division does not have its own unique global legal entity identifier, the records entity must include additional identifiers, as appropriate to enable the FDIC to aggregate or disaggregate the data for each counterparty and for each entity with the same ultimate parent entity as the counterparty.	Varchar(50).	
CP.3 ...	Has LEI been used for counterparty identifier?	Y/N	Indicate whether the counterparty identifier is an LEI.	Char(1)	Should be "Y" or "N".
CP.4 ...	Legal name of counterparty	John Doe & Co	Information needed to identify and, if necessary, communicate with counterparty.	Varchar(200).	

COUNTERPARTY MASTER TABLE—Continued

	Field	Example	Instructions and data application	Def	Validation
CP.5 ...	Domicile	New York, New York.	Enter as city, state or city, foreign country.	Varchar(50).	
CP.6 ...	Jurisdiction under which incorporated or organized.	New York	Enter as state or foreign jurisdiction.	Varchar(50).	
CP.7 ...	Immediate parent entity identifier.	77777777	Provide an identifier for the parent entity that directly controls the counterparty. Use LEI if immediate parent entity has one.	Varchar(50).	
CP.8 ...	Has LEI been used for immediate parent entity identifier?	Y/N	Indicate whether the immediate parent entity identifier is an LEI.	Char(1)	Should be "Y" or "N".
CP.9 ...	Legal name of immediate parent entity.	John Doe & Co	Information needed to identify and, if necessary, communicate with counterparty.	Varchar(200).	
CP.10	Ultimate parent entity identifier	66666666	Provide an identifier for the parent entity that is a member of the corporate group of the counterparty that is not controlled by another entity. Information needed to identify counterparty. Use LEI if ultimate parent entity has one.	Varchar(50).	
CP.11	Has LEI been used for ultimate parent entity identifier?	Y/N	Indicate whether the ultimate parent entity identifier is an LEI.	Char(1)	Should be "Y" or "N".
CP.12	Legal name of ultimate parent entity.	John Doe & Co	Information needed to identify and, if necessary, communicate with Counterparty.	Varchar(100).	

BOOKING LOCATION MASTER TABLE

	Field	Example	Instructions and data application	Def	Validation
BL.1 ...	As of date	2015-01-05	Data extraction date	YYYY-MM-DD.	Should be a valid entry in the Corporate Org Master Table.
BL.2 ...	Records entity identifier	99999999	Provide LEI	Varchar(50)	
BL.3 ...	Internal booking location identifier.	New York, New York.	Provide office where the position is booked. Information needed to determine the headquarters or branch where the position is booked, including the system on which the trade is booked, as well as the system on which the trade is settled.	Varchar(50).	
BL.4 ...	Unique booking unit or desk identifier.	xxxxxx	Provide unit or desk at which the position is booked. Information needed to help determine purpose of position.	Varchar(50).	
BL.5 ...	Unique booking unit or desk description.	North American trading desk.	Additional information to help determine purpose of position.	Varchar(50).	
BL.6 ...	Booking unit or desk contact—phone.	1-999-999-9999	Information needed to communicate with the booking unit or desk.	Varchar(50).	
BL.7 ...	Booking unit or desk contact—email.	Desk@Desk.com	Information needed to communicate with the booking unit or desk.	Varchar(100).	

SAFEKEEPING AGENT MASTER TABLE

	Field	Example	Instructions and data application	Def	Validation
SA.1 ... SA.2 ...	As of date Safekeeping agent identifier ...	2015-01-05 888888888	Data extraction date Provide an identifier for the safekeeping agent. Use LEI if safekeeping agent has one.	YYYY-MM-DD. Varchar(50).	
SA.3 ...	Legal name of safekeeping agent.	John Doe & Co	Information needed to identify and, if necessary, communicate with the safekeeping agent.	Varchar(200).	
SA.4 ...	Point of contact—name	John Doe	Information needed to identify and, if necessary, communicate with the safekeeping agent.	Varchar(200).	
SA.5 ...	Point of contact—address	123 Main St, City, State Zip Code.	Information needed to identify and, if necessary, communicate with the safekeeping agent.	Varchar(100).	
SA.6 ...	Point of contact—phone	1-999-999-9999	Information needed to identify and, if necessary, communicate with the safekeeping agent.	Varchar(50).	
SA.7 ...	Point of contact—email	Jdoe@ JohnDoe.com.	Information needed to identify and, if necessary, communicate with the safekeeping agent.	Varchar(100).	

DETAILS OF FORMATS

Format	Content in brief	Additional explanation	Examples
YYYY-MM-DD ..	Date	YYYY = four digit date, MM = 2 digit month, DD = 2 digit date.	2015-11-12.
Num (25,5)	Up to 25 numerical characters including 5 decimals.	Up to 20 numerical characters before the decimal point and up to 5 numerical characters after the decimal point. The dot character is used to separate decimals.	1352.67. 12345678901234567890.12345. 0. -20000.25. -0.257.
Char(3)	3 alphanumeric characters	The length is fixed at 3 alphanumeric characters.	USD. X1X. 999.
Varchar(25)	Up to 25 alphanumeric characters	The length is not fixed but limited at up to 25 alphanumeric characters.	asgaGEH3268EFdsagtTRCF543.

Dated at Washington, DC, this 13th day of December 2016.

By order of the Board of Directors.
Federal Deposit Insurance Corporation.

Valerie J. Best,
Assistant Executive Secretary.

[FR Doc. 2016-30734 Filed 12-27-16; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2016-9531; Directorate Identifier 2015-CE-011-AD]

RIN 2120-AA64

Airworthiness Directives; M7 Aerospace LLC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain M7 Aerospace LLC Models SA226-T, SA226-AT, SA226-T(B), SA226-TC, SA227-AC (C-26A), SA227-AT, SA227-BC (C-26A), SA227-CC, SA227-

DC (C-26B), and SA227-TT airplanes. This proposed AD was prompted by detachment of the power lever linkage to the TPE331 engine propeller pitch control. This proposed AD would require installing a secondary retention device and repetitively inspecting the propeller pitch control for proper torque, with corrections as necessary. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by February 13, 2017.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD contact information M7 Aerospace LLC, 10823 NE Entrance Road, San Antonio, Texas 78216; phone: (210) 824-9421; fax: (210) 804-7766; Internet: <http://www.elbitsystems-us.com>; email: MetroTech@M7Aerospace.com; or Honeywell International Inc., 111 S. 34th Street, Phoenix, Arizona 85034-2802; phone: (855) 808-6500; email: AeroTechSupport@honeywell.com; Internet: <https://aerospace.honeywell.com/en/services/maintenance-and-monitoring>.

You may view this 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.

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-2016-9531; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT ONE OF THE FOLLOWING:

- Justin Carter, ASW-142, Aerospace Engineer, Fort Worth Airplane Certification Office (ACO), FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137-4298; telephone: (817) 222-5146; fax: (817) 222-5960; email: justin.carter@faa.gov; or
- Kristin Bradley, ASW-143, Aerospace Engineer, Fort Worth ACO, FAA, 2601 Meacham Blvd., Fort Worth,

Texas 76137-4298; telephone: (817) 222-5485; fax: (817) 222-5960; email: kristin.bradley@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2016-9531; Directorate Identifier 2015-CE-011-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received reports of the airplane power lever linkage detaching from the TPE331 engine propeller pitch control (PPC) shaft on M7 Aircraft SA226 and SA227 airplanes. In flight operations, detachment may result in fuel flow to the engine remaining constant regardless of the power lever movement by the pilot. The orientation of the engine on certain M7 Aerospace airplanes increases the vulnerability of detachment. The PPC lever is an airplane part and its detachment from the TPE311 has been the subject of previous ADs on other airplane type designs. This condition, if not corrected, could result in uncommanded change to the engine power settings with consequent loss of control.

Related Service Information Under 1 CFR Part 51

We reviewed M7 Aerospace LLC SA226 Series Service Bulletin 226-76-012, dated March 17, 2015; M7 Aerospace LLC SA227 Series Service Bulletin 227-76-007, dated March 17, 2015; and M7 Aerospace LLC SA227 Series Commuter Category Service Bulletin CC7-76-004, dated March 17,

2015; that in combination for the applicable models describes the actions that must be done to comply with this NPRM.

We also reviewed M7 Aerospace SA226 Series Maintenance Manual Temporary Revision 71-02, dated March 15, 2016; M7 Aerospace SA227 Series Maintenance Manual Temporary Revision 71-03, dated March 15, 2016; and M7 Aerospace SA227 Series Commuter Category Maintenance Manual Temporary Revision 71-02, dated March 15, 2016; that in combination for the applicable models describes procedures for installing the secondary retention device on the PPC assembly and doing a visual inspection of the PPC lever.

We also reviewed Honeywell International Inc. Service Bulletin TPE331-72-2190, dated December 21, 2011, that describes procedures for replacing or reworking the propeller pitch control assembly, incorporating a threaded hole in the splined end of the shouldered shaft, and reassembling the propeller pitch control assembly.

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

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require replacement or rework of the PPC assembly to have a threaded hole in the splined end of the shouldered shaft, installation of a secondary retention feature for the airplane control linkage interface, and a repetitive inspection of the PPC lever torque with corrective action as necessary.

Costs of Compliance

We estimate that this proposed AD affects 360 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement or rework of the PPC assembly	19 work-hours × \$85 per hour = 1,615.	\$1,000	\$2,615	\$941,400

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Install secondary retention device	1 work-hour × \$85 per hour = \$85.	10	95	34,200
Visual inspection of propeller pitch control lever.	.5 work-hour × \$85 per hour = \$42.50.	Not applicable	42.50	15,300

We estimate the following costs to do any necessary adjustments that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these adjustments:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Correct attachment of the propeller pitch control lever.	.5 work-hour × \$85 per hour = \$42.50	Not applicable	\$42.50

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

M7 Aerospace LLC: Docket No. FAA–2016–9531; Directorate Identifier 2015–CE–011–AD.

(a) Comments Due Date

We must receive comments by February 13, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to M7 Aerospace LLC SA226–T, SA226–AT, SA226–T(B), SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), SA227–CC, SA227–DC (C–26B), and SA227–TT airplanes; all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 61, Propellers/Propulsors.

(e) Unsafe Condition

This AD was prompted by detachment of the power lever linkage to the TPE331 engine propeller pitch control (PPC). We are issuing this AD to prevent detachment of the power lever linkage to the TPE331 engine propeller pitch control, which could result in uncommanded change to the engine power settings with consequent loss of control.

(f) Compliance

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

(g) Applicable M7 Aerospace LLC Service Bulletins

Use the applicable service bulletins as listed in paragraph (g)(1), (2), or (3) of this AD as reference to complete the actions in paragraph (h)(1) or (2) of this AD:

- (1) M7 Aerospace LLC SA226 Series Service Bulletin 226–76–012, dated March 17, 2015;
- (2) M7 Aerospace LLC SA227 Series Service Bulletin 227–76–007, dated March 17, 2015; or
- (3) M7 Aerospace LLC SA227 Series Commuter Category Service Bulletin CC7–76–004, dated March 17, 2015.

(h) PPC Lever Installation

(1) Within 100 hours time-in-service (TIS) after the effective date of this AD and repetitively thereafter at intervals not to exceed 100 hours TIS, visually inspect the PPC lever to assure the attachment is properly installed following the applicable service information listed in paragraph (h)(1)(i), (ii), or (iii) of this AD, as applicable.

- (i) For Models SA226 Series: Pages TR–224 through TR–228 from M7 Aerospace SA226 Series Maintenance Manual Temporary Revision 71–02, dated March 15, 2016.
- (ii) For Models SA227 Series: Pages 206 and 207 from M7 Aerospace SA227 Series

Maintenance Manual Temporary Revision 71-03, dated March 15, 2016.

(iii) For Models SA227 Series Commuter Category: Pages 206 and 206A from M7 Aerospace SA227 Series Commuter Category Maintenance Manual Temporary Revision 71-02, dated March 15, 2016.

(2) Installation of the secondary retention device required in paragraph (j) of this AD terminates the repetitive visual inspections of the PPC lever attachment required in paragraph (h)(1) of this AD.

(i) Replace or Rework the Propeller Pitch Assembly

Within the next 600 hours TIS after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first, do the actions in either paragraph (i)(1) or (2) of this AD following the Accomplishment Instructions in Honeywell International Inc. Service Bulletin TPE331-72-2190, dated December 21, 2011, as referenced in the applicable service information listed in paragraph (g)(1), (2), or (3) this AD.

(1) *Replace the PPC.* Remove the PPC assembly and replace with the applicable new design PPC using the part numbers listed in table 1 to paragraph (i)(1) of this AD.

TABLE 1 TO PARAGRAPH (I)(1) OF THIS AD—PART NUMBER PPC ASSEMBLIES

Part No. PPC assembly to remove	Part No. PPC assembly to install
869130-11	70000295-11
869130-12	70000295-12
869130-13	70000295-13
869130-14	70000295-14
869130-16	70000295-16
869130-17	70000295-17
869130-18	70000295-18
869130-19	70000295-19
869130-30	70000295-30
895481-1	70000298-1
895481-2	70000298-2
895481-4	70000298-4
895481-5	70000298-5
895481-6	70000298-6
895481-7	70000298-7
895481-17	70000298-17
895481-18	70000298-18
895481-19	70000298-19
895481-20	70000298-20
895481-22	70000298-22

(2) *Rework the PPC assembly.* Inspect the splined end of the shouldered shaft for the presence and good condition of a threaded hole, repairing or replacing the cam assembly, and reworking the PPC assembly as necessary.

(j) Secondary Retention Feature

(1) Before further flight after the replacement or rework of the PPC assembly required in paragraph (i) of this AD, install the secondary retention feature on the PPC assembly following the applicable service information listed in paragraph (j)(1)(i), (ii), or (iii) of this AD.

(i) For Models SA226 Series: Pages TR-224 through TR-228 from M7 Aerospace SA226

Series Maintenance Manual Temporary Revision 71-02, dated March 15, 2016.

(ii) For Models SA227 Series: Pages 206 and 207 from M7 Aerospace SA227 Series Maintenance Manual Temporary Revision 71-03, dated March 15, 2016.

(iii) For Models SA227 Series Commuter Category: Pages 206 and 206A from M7 Aerospace SA227 Series Commuter Category Maintenance Manual Temporary Revision 71-02, dated March 15, 2016.

(2) Installation of the secondary retention device terminates the requirement for the repetitive inspections of the PPC lever torque required in paragraph (h) of this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Fort Worth Airplane Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (l)(1), Related Information, of this AD.

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

(l) Related Information

(1) For more information about this AD, contact one of the following individuals:

(i) Justin Carter, ASW-142, Aerospace Engineer, Fort Worth Airplane Certification Office (ACO), FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137-4298; telephone: (817) 222-5146; fax: (817) 222-5960; email: justin.carter@faa.gov; or

(ii) Kristin Bradley, ASW-143, Aerospace Engineer, Fort Worth ACO, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137-4298; telephone: (817) 222-5485; fax: (817) 222-5960; email: kristin.bradley@faa.gov.

(2) For service information identified in this AD, contact M7 Aerospace LLC, 10823 NE Entrance Road, San Antonio, Texas 78216; phone: (210) 824-9421; fax: (210) 804-7766; Internet: <http://www.elbitsystems-us.com>; email: MetroTech@M7Aerospace.com; or Honeywell International Inc., 111 S. 34th Street, Phoenix, Arizona 85034-2802; phone: (855) 808-6500; email: AeroTechSupport@honeywell.com; Internet: <https://aerospace.honeywell.com/en/services/maintenance-and-monitoring>. You may view this 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.

Issued in Kansas City, Missouri on December 8, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-30292 Filed 12-27-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2016-9518; Directorate Identifier 2015-NM-091-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2013-19-09 and AD 2014-25-51, for all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2013-19-09 currently requires replacing Angle of Attack (AOA) sensor conic plates with AOA sensor flat plates. AD 2014-25-51 currently requires revising the airplane flight manual (AFM) to advise the flightcrew of emergency procedures for abnormal Alpha Protection (Alpha Prot). Since we issued AD 2013-19-09 and AD 2014-25-51, we have received a report indicating that certain AOA sensors appear to have a greater susceptibility to adverse environmental conditions. This proposed AD would require replacing certain AOA sensors; and doing a detailed inspection and a functional heating test for discrepancies on certain AOA sensors, and replacing the affected AOA sensors. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by February 13, 2017.

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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Airbus service information identified in this NPRM, contact Airbus, Airworthiness Office—EIAS, 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.

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-2016-9518; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1405; fax 425-227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2016-9518; Directorate Identifier 2015-NM-091-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On March 8, 2013, we issued AD 2013-06-03, Amendment 39-17399 (78 FR 19085, March 29, 2013) (“AD 2013-06-03”) for all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2013-06-03 was prompted by reports of oil residue between the stator and the rotor parts of the position resolvers of the AOA vane, which was a result of incorrect removal of the machining oil during the manufacturing process of the AOA resolvers. AD 2013-06-03 requires an inspection to

determine if certain AOA probes are installed, and replacement of any affected AOA probe. We issued AD 2013-06-03 to prevent erroneous AOA information and consequent delayed or non-activation of the AOA protection systems, which during flight at a high AOA, could result in reduced control of the airplane.

On September 13, 2013, we issued AD 2013-19-09, Amendment 39-17591 (78 FR 60667, October 2, 2013) (“AD 2013-19-09”) for all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2013-19-09 was prompted by a determination that replacement of AOA sensor conic plates is necessary to address the identified unsafe condition. AD 2013-19-09 requires replacing AOA sensor conic plates with AOA sensor flat plates, and subsequent removal of an AFM revision. We issued AD 2013-19-09 to prevent reduced control of the airplane.

On January 7, 2015, we issued AD 2014-25-51, Amendment 39-18067 (80 FR 3153, January 22, 2015) (“AD 2014-25-51”) for all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2014-25-51 was prompted by a report of AOA probes jamming on an in-service Airbus Model A321 airplane. AD 2014-25-51 requires revising the AFM to advise the flight crew of emergency procedures for abnormal Alpha Prot. We issued AD 2014-25-51 to ensure that the flightcrew has procedures to counteract the pitch down order due to abnormal activation of the Alpha Prot. An abnormal Alpha Prot, if not corrected, could result in loss of control of the airplane.

Since we issued AD 2013-06-03, AD 2013-19-09, and AD 2014-25-51, we have received a report indicating that certain AOA sensors appear to have a greater susceptibility to adverse environmental conditions. It has been determined that replacement of certain AOA sensors is necessary to address the unsafe condition on these airplanes.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015-0135, dated July 8, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Airbus Model A318, A319, A320, and A321 series airplanes. The MCAI states:

An occurrence was reported where an Airbus A321 aeroplane encountered a blockage of two Angle of Attack (AOA) probes during climb, leading to activation of the Alpha Protection (Alpha Prot) while the Mach number increased. The flight crew

managed to regain full control and the flight landed uneventfully.

When Alpha Prot is activated due to blocked AOA probes, the flight control laws order a continuous nose down pitch rate that, in a worst case scenario, cannot be stopped with backward sidestick inputs, even in the full backward position. If the Mach number increases during a nose down order, the AOA value of the Alpha Prot will continue to decrease. As a result, the flight control laws will continue to order a nose down pitch rate, even if the speed is above minimum selectable speed, known as VLS.

This condition, if not corrected, could result in loss of control of the airplane.

Investigation results indicated that A320 family airplanes equipped with certain UTC Aerospace (UTAS, formerly known as Goodrich) AOA sensors, or equipped with certain SEXTANT/THOMSON AOA sensors, appear to have a greater susceptibility to adverse environmental conditions than airplanes equipped with the latest Thales AOA sensor, Part Number (P/N) C16291AB, which was designed to improve A320 airplane AOA indication behaviour in heavy rain conditions.

Having determined that replacement of these AOA sensors is necessary to achieve and maintain the required safety level of the airplane, EASA issued AD 2015-0087, retaining the requirements of EASA AD 2012-0236R1 [which corresponds to FAA AD 2013-06-03], [EASA] AD 2013-0022 (partially) [which corresponds to FAA AD 2013-19-09], and [EASA] AD 2014-0266-E [which corresponds to FAA AD 2014-25-51], which were superseded, and requiring modification of the airplanes by replacement of the affected P/N sensors, and, after modification, prohibiting (re-)installation of those P/N AOA sensors. That [EASA] AD also required repetitive detailed visual inspections (DET) and functional heating tests of certain Thales AOA sensors and provided an optional terminating action for those inspections.

Since EASA AD 2015-0087 was issued, based on further analysis results, Airbus issued Operators Information Transmission (OIT) Ref. 999.0015/15 Revision 1, instructing operators to speed up the removal from service of UTAS P/N 0861ED2 AOA sensors.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2015-0087, which is superseded, but reduces the compliance times for airplanes with UTAS P/N 0861ED2 AOA sensors installed.

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-2016-9518.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information:

- Service Bulletin A320-34-1415, Revision 03, dated July 8, 2010. This service information describes

procedures for a detailed inspection and a functional heating test for discrepancies on certain AOA sensors, and replacing the affected AOA sensors.

- Service Bulletin A320-34-1444, Revision 01, dated March 17, 2011. This service information describes procedures for replacing certain SEXTANT/THOMSON AOA sensors.

- Service Bulletin A320-34-1610, dated March 31, 2015. This service information describes procedures for replacing certain UTAS AOA sensors.

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.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

The requirements specified in paragraphs (1), (2), (3), and (4) of the MCAI correspond to the requirements of AD 2013-06-03. We have determined that leaving AD 2013-06-03 as a stand-alone AD provides better clarification of the actions instead of superseding AD 2013-06-03 as part of this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 959 airplanes of U.S. registry.

The actions required by AD 2013-19-09, and retained in this proposed AD take about 8 work-hours per product, at an average labor rate of \$85 per work-hour. Required parts cost about \$0 per product. Based on these figures, the estimated cost of the actions that are required by AD 2013-19-09 is \$680 per product.

The actions required by AD 2014-25-51, and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of \$85 per work-hour. Required parts cost about \$0 per product. Based on these figures, the estimated cost of the actions that are required by AD 2014-25-51 is \$85 per product.

We also estimate that it would take about 5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. The parts cost is not available. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be at least \$407,575, or \$425 per product.

In addition, we estimate that any necessary follow-on actions would take about 5 work-hours. The parts cost is not available. We have no way of determining the number of aircraft that might need these actions.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013-19-09, Amendment 39-17591 (78 FR 60667, October 2, 2013), and AD 2014-25-51, Amendment 39-18067 (80 FR 3153, January 22, 2015), and adding the following new AD:

Airbus: Docket No. FAA-2016-9518; Directorate Identifier 2015-NM-091-AD.

(a) Comments Due Date

We must receive comments by February 13, 2017.

(b) Affected ADs

(1) This AD replaces AD 2013-19-09, Amendment 39-17591 (78 FR 60667, October 2, 2013) ("AD 2013-19-09"), and AD 2014-25-51, Amendment 39-18067 (80 FR 3153, January 22, 2015) ("AD 2014-25-51").

(2) This AD affects AD 2013-06-03, Amendment 39-17399 (78 FR 19085, March 29, 2013) ("AD 2013-06-03").

(c) Applicability

This AD applies to the Airbus airplanes listed in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus Model A318-111, -112, -121, and -122 airplanes.

(2) Airbus Model A319-111, -112, -113, -114, -115, -131, -132, and -133 airplanes.

(3) Airbus Model A320-211, -212, -214, -231, -232, and -233 airplanes.

(4) Airbus Model A321-111, -112, -131, -211, -212, -213, -231, and -232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by a report indicating that an Airbus Model A321 airplane encountered a blockage of two Angle of Attack (AOA) probes during climb, leading to activation of the Alpha Protection (Alpha

Prot) while the Mach number increased. We are issuing this AD to prevent a pitch down order due to abnormal activation of the Alpha Prot. An abnormal Alpha Prot, if not corrected, could result in loss of control of the airplane.

(f) Compliance

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

(g) Retained New Flat Plate Installation, With Removed Post-Installation Requirement and With Specific Delegation Approval Language

This paragraph restates the requirements of paragraph (j) of AD 2013–19–09, with removed post-installation requirement and with specific delegation approval language. Within 5 months after November 6, 2013 (the effective date of AD 2013–19–09), remove all AOA sensor conic plates having part number (P/N) F3411060200000 or P/N F3411060900000 and install AOA sensor flat plates having part numbers specified in paragraph (g)(1) or (g)(2) of this AD, except as specified in paragraph (h) of this AD. Install the AOA sensor plates in accordance with the applicable method specified in paragraph (g)(1) or (g)(2) of this AD.

(1) Install P/N D3411013520200 in accordance with the Accomplishment Instructions of Airbus Mandatory Service

Bulletin A320–34–1564, including Appendix 01, dated January 25, 2013.

(2) Install P/N D3411007620000 or P/N D3411013520000, 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).

(h) Retained Exception, With No Changes

This paragraph restates the exception provided by paragraph (k) of AD 2013–19–09, with no changes. An airplane on which Airbus modification 154863 (installation of AOA sensor flat plate) and modification 154864 (coating protection) have been embodied in production is not affected by the requirements of paragraph (g) of this AD, provided that, since first flight, no AOA sensor conic plate having P/N F3411060200000 or P/N F3411060900000 has been installed on that airplane.

(i) Retained Parts Installation Prohibition, With No Changes

This paragraph restates the requirements of paragraph (m) of AD 2013–19–09, with no changes.

(1) For any airplane that has AOA sensor flat plates installed: As of November 6, 2013 (the effective date of AD 2013–19–09), do not install any AOA sensor conic plate having P/N F3411060200000 or P/N F3411060900000,

and do not use any AOA protection cover having P/N 98D34203003000.

(2) For any airplane that has AOA sensor conic plates installed: As of November 6, 2013 (the effective date of AD 2013–19–09), after modification of the airplane as required by paragraph (g) of this AD, do not install any AOA sensor conic plate having P/N F3411060200000 or P/N F3411060900000, and do not use any AOA protection cover having P/N 98D34203003000.

(j) Retained Revision of Airplane Flight Manual (AFM), With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2014–25–51, with no changes. Within 2 days after February 6, 2015 (the effective date of AD 2014–25–51), revise the AFM to incorporate procedures to address undue activation of Alpha Prot by inserting the text specified in figure 1 to paragraph (j) of this AD into the Emergency Procedures section of the applicable AFM, to advise the flight crew of emergency procedures for abnormal Alpha Prot. This may be accomplished by inserting a copy of this AD into the AFM. When a statement identical to the text specified in figure 1 to paragraph (j) of this AD is included in the general revisions of the AFM, the general revisions may be inserted in the AFM, and the text specified in figure 1 to paragraph (j) of this AD may be removed.

Figure 1 to paragraph (j) of this AD - *AFM Procedure*

- **At any time, with a speed above VLS, if the aircraft goes to a continuous nose down pitch rate that cannot be stopped with backward sidestick inputs, immediately:**
Keep on one ADR.
Turn off two ADRs.
- **If the Alpha Max strip (red) hides completely the Alpha Prot strip (black and amber) in a stabilized wings-level flight path (without an increase in load factor):**
Keep on one ADR.
Turn off two ADRs.
In case of dispatch with one ADR inoperative, switch only one ADR to OFF.

CAUTION RISK OF ERRONEOUS DISPLAY OF THE VSW STRIP (RED AND BLACK)

Consider using the Flight Path Vector (FPV).

- **If the Alpha Prot strip (black and amber) rapidly moves by more than 30 kt during flight maneuvers (with an increase in load factor), with AP ON and speed brakes retracted:**
Keep on one ADR.
Turn off two ADRs.
In case of dispatch with one ADR inoperative, switch only one ADR to OFF.

CAUTION RISK OF ERRONEOUS DISPLAY OF THE VSW STRIP (RED AND BLACK)

**(k) New Requirement of This AD:
Replacement of Certain UTAS (formerly
Goodrich) AOA Sensors**

For airplanes on which any UTAS AOA sensor, P/N 0861ED or P/N 0861ED2, is installed: Within the applicable compliance times specified in paragraphs (k)(1), (k)(2), (k)(3), and (k)(4) of this AD, replace the affected Captain and First Officer AOA sensors with Thales AOA sensors, P/N C16291AB, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-34-1610, dated March 31, 2015.

(1) For Model A318 and A321 series airplanes on which any UTAS AOA sensor, P/N 0861ED, is installed: Replace within 7 months after the effective date of this AD.

(2) For Model A319 and A320 series airplanes on which any UTAS AOA sensor, P/N 0861ED, is installed: Replace within 22 months after the effective date of this AD.

(3) For Model A318 and A321 series airplanes on which any UTAS AOA sensor, P/N 0861ED2, is installed: Replace within 4 months after the effective date of this AD.

(4) For Model A319 and A320 series airplanes on which any UTAS AOA sensor, P/N 0861ED2, is installed: Replace within 7 months after the effective date of this AD.

**(l) New Requirement of This AD:
Replacement of Certain SEXTANT/
THOMSON AOA Sensors**

For airplanes on which any SEXTANT/THOMSON AOA sensor, P/N 45150320 or P/N 16990568, is installed: Within the applicable compliance time specified in paragraph (l)(1) or (l)(2) of this AD, replace each SEXTANT/THOMSON AOA sensor, P/N 45150320 and P/N 16990568, with a Thales AOA sensor, P/N C16291AB, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-34-1444, Revision 01, dated March 17, 2011; except AOA sensors modified in accordance with the Accomplishment Instructions of Thales Avionics Service Bulletin C16291A-34-009, dated September 10, 2009, cannot be used for the replacement.

(1) For Model A318 and A321 series airplanes on which any SEXTANT/THOMSON AOA sensor, P/N 45150320 or P/N 16990568, is installed: Replace within 7 months after the effective date of this AD.

(2) For Model A319 and A320 series airplanes on which any SEXTANT/THOMSON AOA sensor, P/N 45150320 or P/N 16990568, is installed: Replace within 22 months after the effective date of this AD.

**(m) New Requirement of This AD:
Functional Heating Test, and Corrective
Action for Certain AOA Sensors**

For an airplane on which any Thales AOA sensor, P/N C16291AA, is installed: Before exceeding 5,200 flight hours accumulated by each affected Thales AOA sensor since its first installation on an airplane, or within 6 months after the effective date of this AD, whichever occurs later, do a functional heating test of each AOA sensor, P/N C16291AA, to determine the maximum current (Imax) value, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-34-1415, Revision 03, dated July 8, 2010. If, during any functional heating test, any Imax value is below the flow chart value as specified in Airbus Service Bulletin A320-34-1415, Revision 03, dated July 8, 2010, before further flight, replace each discrepant AOA sensor with a sensor identified in paragraph (m)(1) or (m)(2) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-34-1415, Revision 03, dated July 8, 2010. Repeat the functional heating test thereafter at intervals not to exceed 2,000 flight hours.

(1) Replace with a Thales AOA sensor, P/N C16291AA, that has passed a functional

heating test as specified in the Accomplishment Instructions of Airbus Service Bulletin A320–34–1415, Revision 03, July 8, 2010.

(2) Replace with a Thales AOA sensor, P/N C16291AB, except AOA sensors modified as specified in Thales Avionics Service Bulletin C16291A–34–009, dated September 10, 2009, cannot be used for the replacement.

(n) Optional Terminating Action

Modification of an airplane by replacing each Thales P/N C16291AA AOA sensor with a Thales P/N C16291AB AOA sensor, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–34–1444, Revision 01, dated March 17, 2011, terminates the repetitive functional heating tests required in paragraph (m) of this AD for that airplane; except AOA sensors modified in accordance with the Accomplishment Instructions of Thales Avionics Service Bulletin C16291A–34–009, dated September 10, 2009, cannot be used for the replacement.

(o) New Provisions of This AD: Airplanes Not Affected

An airplane with Airbus modification 150006 (installation of Thales P/N C16291AB AOA sensors), but without modification 26934 (installation of UTAS P/N 0861ED AOA sensors) embodied in production, is not affected by the requirements of paragraphs (k), (l), and (m) of this AD, provided it is determined that no AOA sensor having SEXTANT/THOMSON P/N 45150320 or 16990568, or UTAS P/N 0861ED or 0861ED2, has been installed on that airplane since its date of manufacture.

(p) New Requirement of This AD: Parts Installation Prohibitions

(1) As of the effective date of this AD: For an airplane on which only Thales AOA sensors, P/N C16291AB, are installed, do not install a Thales AOA sensor, P/N C16291AA, on that airplane. This parts installation prohibition terminates the requirements of paragraph (i)(1) of AD 2013–06–03, for the airplanes identified in this paragraph.

(2) As of the effective date of this AD: For an airplane on which any combination of Thales AOA sensors, P/N C16291AA and Thales P/N C16291AB, are installed, do not install any SEXTANT/THOMSON AOA sensor, P/N 45150320 or 16990568, or UTAS AOA sensor, P/N 0861ED or 0861ED2, on that airplane.

(3) After modification of an airplane as required by paragraph (k) of this AD, do not install any AOA sensor with a part number specified in paragraphs (p)(3)(i) and (p)(3)(ii) of this AD on that airplane, with the exception that installation of a UTAS P/N 0861ED AOA sensor is allowed in the standby position of that airplane.

(i) SEXTANT/THOMSON AOA sensors, P/N 45150320 and P/N 16990568.

(ii) UTAS AOA sensors, P/N 0861ED and P/N 0861ED2.

(q) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (l) of this AD, if those actions were performed before the effective date of this AD using Airbus Service

Bulletin A320–34–1444, dated October 7, 2009; provided the replacement AOA sensors were not modified as specified in Thales Avionics Service Bulletin C16291A–34–009, dated September 10, 2009.

(r) Acceptable Parts

Installation of a version (part number) of an AOA sensor approved after the effective date of this AD is an approved method of compliance with the requirements of paragraph (k), (l), or (m) of this AD, as applicable, provided the requirements specified in paragraphs (r)(1) and (r)(2) of this AD are met.

(1) The version (part number) must be approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA.

(2) The installation must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA.

(s) 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov.

(i) 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.

(ii) AMOCs approved previously for AD 2013–19–09, are approved as AMOCs for the corresponding provisions of paragraphs (g), (h), (i), and (t)(1) of this AD.

(iii) AMOCs approved previously for AD 2014–25–51, are approved as AMOCs for the corresponding provisions of paragraph (j) of this AD.

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

(t) Retained Special Flight Permits

(1) For AD 2013–19–09, Amendment 39–17591 (78 FR 60667, October 2, 2013): Special flight permits may be issued in

accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified (if the operator elects to do so), provided Airbus A318/A319/A320/A321 TR TR286, Issue 1.0, dated December 17, 2012, has been inserted into the Emergency Procedures of the Airbus A318/A319/A320/A321 AFM.

(2) For AD 2014–25–51, Amendment 39–18067 (80 FR 3153, January 22, 2015): Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified (if the operator elects to do so), provided the revision required by paragraph (j) of this AD has been done.

(u) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0135, dated July 8, 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–2016–9518.

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

Issued in Renton, Washington, on December 8, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–30610 Filed 12–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9516; Directorate Identifier 2016–NM–053–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 787–8 and 787–9 airplanes. This proposed AD was

prompted by wire harness chafing on the electro-mechanical actuators (EMAs) for certain spoilers due to insufficient separation with adjacent structure. This proposed AD would require replacement of affected EMAs. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by February 13, 2017.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; Internet <https://www.myboeingfleet.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-2016-9516.

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-2016-9516; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday,

except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sean Schauer, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6479; fax: 425-917-6590; email: sean.schauer@faa.com.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2016-9516; Directorate Identifier 2016-NM-053-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

Boeing discovered that the wire harnesses on the EMAs for spoilers 4, 5, 10, and 11 do not have sufficient separation with the adjacent structure. Subsequent checks found that approximately 30 percent of undelivered airplanes at Boeing had the similar wire harness separation issue on the spoiler EMAs. One operator also reported that the EMA wire harness was

in contact with adjacent structure, but no damage was found. Analysis indicates that the wire harness separation is reduced to its minimum with the flaps fully extended and the spoiler fully drooped; this is where the chafing most likely occurs if the wire harness does not have sufficient separation. This condition, if not corrected, could result in chafing that would cause wire damage that could result in a potential source of ignition in the flammable leakage zone and a consequent fire or explosion.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Service Bulletin B787-81205-SB270030-00, Issue 001, dated October 22, 2015. The service information describes procedures for replacing affected EMAs with new EMAs. 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.

FAA’s Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously. For information on the procedures and compliance times, see this service information at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-9516.

Costs of Compliance

We estimate that this proposed AD affects 19 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
EMA replacement	32 work-hours × \$85 per hour = \$2,720 per EMA replacement.	1 \$0	\$2,720	\$51,680

¹ Parts cost are not included in the service information, but Boeing has indicated that existing parts can be modified to become the new parts.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more

detail the scope of the Agency’s authority.

We are issuing this rulemaking under the authority described in Subtitle VII,

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2016–9516; Directorate Identifier 2016–NM–053–AD.

(a) Comments Due Date

We must receive comments by February 13, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8 and 787–9 airplanes, certificated in any category, as identified in Boeing Service Bulletin B787–81205–SB270030–00, Issue 001, dated October 22, 2015.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by wire harness chafing on the electro-mechanical actuators (EMAs) for certain spoilers due to insufficient separation with adjacent structure. We are issuing this AD to prevent chafing that would cause wire damage that could result in a potential source of ignition in the flammable leakage zone and a consequent fire or explosion.

(f) Compliance

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

(g) EMA Replacement

Within 40 months after the effective date of this AD, replace the EMAs with new EMAs, in accordance with the Accomplishment Instructions of Boeing Service Bulletin B787–81205–SB270030–00, Issue 001, dated October 22, 2015.

(h) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (h)(4)(i) and (h)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or sub-step is labeled "RC Exempt," then the RC requirement is removed from that step or sub-step. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled 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 RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(i) Related Information

(1) For more information about this AD, contact Sean Schauer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6479; fax: 425–917–6590; email: sean.schauer@faa.com.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet <https://www.myboeingfleet.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.

Issued in Renton, Washington, on December 9, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–30419 Filed 12–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9517; Directorate Identifier 2016–NM–100–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A330–200, A330–300, A340–500, and A340–600 series airplanes; and A340–313 airplanes. This proposed AD was prompted by the discovery of Tartaric Sulfuric Anodizing (TSA)/Chromic Acid

Anodizing (CAA) surface treatment in certain bulk cargo door frame holes of certain airplanes. This proposed AD would require inspection of the fuselage bulk cargo door frames at specific locations, and corrective action if necessary. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by February 13, 2017.

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

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

For service information identified in this NPRM, 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.

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-2016-9517; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: 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:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2016-9517; Directorate Identifier 2016-NM-100-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016-0102, dated June 1, 2016; corrected June 7, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”); to correct an unsafe condition for all Airbus Model A330-200, A330-200 Freighter, A330-300, A340-500, and A340-600 series airplanes; and A340-313 airplanes. The MCAI states:

In the frame of the certification of the A330 Extended Service Goal exercise, it has been identified that Tartaric Sulfuric Anodising (TSA)/Chromic Acid Anodising (CAA) surface treatment is present in some frame holes, from aeroplane MSN 0400 and later MSN, following production process modification. On bulk cargo door frames (FR) 67 and FR 69 Right Hand Side, the door fitting attachment holes have this TSA/CAA treatment, which leads to a detrimental effect on fatigue behaviour. This condition, if not detected and corrected, could lead to critical cracks in the primary structure, possibly resulting in in-flight loss of a bulk cargo door, consequent decompression and potential damage to the aeroplane that could reduce the control of the aeroplane.

To address this potential unsafe condition, Airbus issued Alert Operators Transmission (AOT) A53L012-16 to provide instructions to inspect the fuselage bulk cargo door frames at specific locations.

For the reasons described above, this [EASA] AD requires repetitive non-destructive test (rototest and high-frequency eddy-current (HFEC)) inspection or visual detailed (DET) inspections [to detect cracking] of the affected areas, and, depending on findings, accomplishment of a repair.

This [EASA] AD is considered an interim measure, and further [EASA] AD action may follow.

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-2016-9517.

Related Service Information Under 1 CFR Part 51

We reviewed Airbus Alert Operators Transmission (AOT), AOT A53L012-16, Revision 00, including Appendices 1 through 6, dated May 30, 2016:

- Appendix 1. Technical disposition TD_K48_S3_01755_2016, Issue B, dated May 12, 2016.
- Appendix 2. Technical disposition TD_K48_S3_01754_2016, Issue B, dated May 12, 2016.
- Appendix 3. Technical disposition TD_K48_S3_01772_2016, Issue A, dated May 12, 2016.
- Appendix 4. Technical disposition TD_K48_S3_01773_2016, Issue A, dated May 12, 2016.
- Appendix 5. AOT A53L012-16, Revision 00, undated, titled Appendix 4: AOT reporting sheet 1; and AOT A53L012-16, Revision 00, undated, titled Appendix 4: AOT reporting sheet 2. (Appendix 5 of this document is incorrectly identified as “Appendix 4.”)
- Appendix 6. Non-destructive Testing Manual Procedure 53-40-18, “Bulk Cargo Compartment Door Cut-Out Lateral Frames at Bulk Door-Fittings FR67 at STGR 37 and at STGR 42 and FR 69 at STRG 38 and at STGR 45,” advanced copy approved for use, dated May 18, 2016.

The service information describes procedures for inspections of the fuselage bulk cargo frames at the door support and latch fittings location; repair instructions; and reporting instructions. 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.

FAA’s Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD affects 96 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	2 work-hours × \$85 per hour = \$170 per inspection cycle.	\$0	\$170 per inspection cycle	\$16,320 per inspection cycle.
Reporting	1 work-hour × \$85 per hour = \$85	0	\$85	\$8,160.

We estimate the following costs to do any necessary replacements that would

be required based on the results of the proposed inspection. We have no way of

determining the number of airplanes that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Optional door frame replacement	200 work-hours × \$85 per hour = \$17,000	\$68,000	\$85,000

Paperwork Reduction Act

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:
Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Airbus: Docket No. FAA-2016-9517; Directorate Identifier 2016-NM-100-AD.

(a) Comments Due Date

We must receive comments by February 13, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Airbus airplanes, certificated in any category, manufacturer serial numbers (MSNs) 0400 and higher.

- (1) Airbus Model A330-201, -202, -203, -223, and -243 airplanes.
- (2) Airbus Model A330-223F and -243F airplanes.
- (3) Airbus Model A330-301, -302, -303, -321, -322, -323, -341, -342, and -343 airplanes.
- (4) Airbus Model A340-313 airplanes.
- (5) Airbus Model A340-541 airplanes.
- (6) Airbus Model A340-642 airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by the discovery of Tartaric Sulfuric Anodizing (TSA)/Chromic Acid Anodizing (CAA) surface treatment in certain bulk cargo door frame holes of airplanes with MSNs 0400 and higher. We are issuing this AD to detect and correct fatigue cracks in the bulk cargo door frames,

caused by TSA/CAA surface treatment in certain bulk cargo door frame holes. Cracks in the bulk cargo door frames can cause the in-flight loss of a bulk cargo door, damage to the airplane and subsequent reduced control of the airplane.

(f) Compliance

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

(g) Initial Inspection

At the applicable compliance time specified in table 1 to paragraph (g) of this AD, do the actions specified in paragraph (g)(1) or (g)(2) of this AD, in accordance with the instructions of Airbus Alert Operators Transmission (AOT), AOT A53L012-16, Revision 00, dated May 30, 2016.

(1) Accomplish a rototest inspection to detect cracking of the holes for the bulk cargo door support fittings at fuselage frame (FR) 67 and FR 69, and a high-frequency eddy-current (HFEC) inspection of the holes for the door latch fitting at FR 69.

(2) Accomplish a detailed visual inspection to detect cracking in the bulk cargo door support fittings at FR 67 and FR 69 and the holes for the door latch fitting at FR 69.

TABLE 1 TO PARAGRAPH (g) OF THIS AD—INITIAL INSPECTION

Total flight cycles accumulated since airplane first flight, on the effective date of this AD	Compliance time
12,500 total flight cycles or more.	Within 200 flight cycles or 2 months, whichever occurs first, after the effective date of this AD.
Fewer than 12,500 total flight cycles.	Within 200 flight cycles or 2 months, whichever occurs first, after exceeding 12,500 flight cycles.

(h) Repetitive Inspections

At intervals not to exceed the values specified in table 2 to paragraph (h) of this AD, as applicable, depending on the previously selected inspection method, repeat the inspection(s) specified in either paragraph (g)(1) or (g)(2) of this AD.

TABLE 2 TO PARAGRAPH (h) OF THIS AD—REPETITIVE INSPECTIONS

Inspection method	Inspection interval
Detailed visual inspection.	150 flight cycles.
Rototest and HFEC inspections.	2,900 flight cycles.

(i) Repair

If, during any inspection required by paragraph (g) or (h) of this AD, any crack is detected, 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) Terminating Action

Accomplishment of a repair on an airplane, as required by paragraph (i) of this AD, does not constitute terminating action for the inspections required by this AD for that airplane, unless otherwise specified in repair instructions approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA.

(k) Reporting

After the initial inspection specified in paragraph (g) of this AD, and after each repetitive inspection specified in paragraph (h) of this AD, at the applicable times specified in paragraph (k)(1) and (k)(2) of this AD: Report inspection findings, both positive and negative, to Airbus in accordance with the instructions of Airbus AOT A53L012-16, Revision 00, dated May 30, 2016.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(l) 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 EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Reporting Requirements*: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that

collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120-0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES-200.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2016-0102, dated June 1, 2016; corrected June 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-2016-9517.

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

Issued in Renton, Washington, on December 2, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-30611 Filed 12-27-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-114734-16]

RIN 1545-BN51

United States Property Held by Controlled Foreign Corporations Through Partnerships With Special Allocations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG-114734-16) that was published in the **Federal Register** on Thursday, November 3, 2016 (81 FR 76542). The proposed regulations provide rules regarding the

determination of the amount of the United States property treated as held by a controlled foreign corporation (CFC) through a partnership.

DATES: Written or electronic comments and request for a public hearing are still being accepted and must be received by February 1, 2017.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-114734-16), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-114734-16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-114734-16).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Rose E. Jenkins, (202) 317-6934; concerning submissions of comments or request for a public hearing, Regina Johnson, (202) 317-6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG-114734-16) that is the subject of this document is under sections 954 and 956 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG-114734-16) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking, (REG-114734-16), that was the subject of FR Doc. 2016-26424, is corrected as follows:

■ 1. On page 76543, first column, in the preamble, the sixth line from the top of the page, the language, "property that does not have a principal" is corrected to read "property that is respected for Federal income tax purposes under section 704(b) and the regulations thereunder and does not have a principal".

§ 1.956-4 [Corrected]

■ 2. On page 76543, third column, third line from the bottom of paragraph (b)(2)(ii), the language "allocation does not have a principal" is corrected to read "allocation will be respected for Federal income tax purposes under section 704(b) and the regulations

thereunder and does not have a principal".

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2016-31358 Filed 12-27-16; 8:45 am]

BILLING CODE 4830-01-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1270

[FDMS No. NARA-16-0005; NARA-2017-011]

RIN 3095-AB87

Presidential Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: We are proposing to revise this regulation to reflect changes instituted by the Presidential and Federal Records Acts Amendments of 2014 (2014 Amendments). These Amendments in part added new requirements to the Presidential Records Act (PRA), which went into effect in 2014 and remain in effect, even without this proposed regulatory revision. The proposed changes make clear that, when we maintain electronic Presidential records on behalf of the President before the President's term of office expires, the President retains exclusive control over the records. In addition, the proposed changes establish procedures that we will follow to notify an incumbent President and former President when we propose to disclose Presidential records to the public, Congress, the courts, or the incumbent President under the provisions of the PRA allowing for access to Presidential records otherwise subject to restrictions. We began the regulatory revision process in response to the 2014 Amendments and issue this updated regulation to reduce confusion about access to Presidential records in light of these recent changes in the law.

DATES: Submit comments by January 27, 2017.

ADDRESSES: You may submit comments, identified by RIN 3095-AB87, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* Regulation_comments@nara.gov. Include RIN 3095-AB87 in the subject line of the message.
- *Mail* (for paper, disk, or CD-ROM submissions). Include RIN 3095-AB87

on the submission); Regulations Comments Desk (External Policy Program, Strategy and Performance Division (SP)); Suite 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740-6001

• *Hand delivery or courier:* Deliver comments to the front desk at the address above.

Instructions: You must include on all submissions the Regulatory Information Number (RIN) for this rulemaking (RIN 3095-AB87) and NARA's name. We may publish any comments we receive without changes, including any personal information you provide.

FOR FURTHER INFORMATION CONTACT:

Kimberly Keravuori, by email at regulation_comments@nara.gov, or by telephone at 301-837-3151.

SUPPLEMENTARY INFORMATION:

Background

We are revising our regulations governing Presidential and Vice Presidential records to incorporate changes made by the Presidential and Federal Records Act Amendments of 2014, ("2014 Amendments," Pub. L. 113-187, 128 Stat. 1017).

The 2014 Amendments made several changes to the Presidential Records Act (44 U.S.C. 2201-2209). The most substantial change was codifying the procedures by which we notify former and incumbent Presidents so that they may consider whether to restrict public access to Presidential records of former Presidents that are in our legal custody. This privilege review process was previously controlled by an Executive Order, subject to change by any sitting administration. Because Congress codified the privilege review process for public disclosures in the 2014 Amendments, we are revising the regulation to set out processes for giving notice in such cases, and for former or incumbent Presidents to consider whether to assert a constitutionally based privilege.

The 2014 Amendments did not codify the provisions of the Executive Order allowing for notification to the former and incumbent President when Congress, the courts, or the incumbent President (instead of the public) makes the request for records subject to access restrictions. To ensure that the former and incumbent Presidents are given notice and an opportunity to consider whether to assert a constitutionally based privilege in those circumstances as well, we are revising our regulation to set out procedures we follow prior to disclosing records under the PRA's exceptions to restricted access, which

are similar to the procedures we follow when we propose to make disclosures to the public.

The 2014 Amendments also authorized an incumbent President to transfer physical custody of their permanent electronic Presidential records to NARA, while leaving legal custody with the President, and some other more minor changes. We are therefore also revising the regulation to reflect these changes (the regulatory changes are identified in more detail below).

We are also making a small revision to the regulation to be consistent with 2016 amendments to the Freedom of Information Act, and are revising the wording and organization of the regulation to make it easier to follow, in compliance with provisions of the Plain Writing Act of 2010.

Substantive Changes in the Regulation

Subpart A

§ 1270.1, Scope: Removed “Nothing in these regulations is intended to govern procedures for assertion of, or response to, any constitutionally based privilege which may be available to an incumbent or former President.” The 2014 Amendments at 44 U.S.C. 2208 now include the President’s authority to assert a constitutionally based privilege and those provisions have been added to this regulation.

§ 1270.2, Application: Removed “These regulations apply to all Presidential records created during a term of office of the President beginning on or after January 20, 1981.” This is already included elsewhere in the regulation and thus was redundant.

Changed from stating that all provisions in the regulation apply to the Vice President and Vice Presidential records, to stating that all provisions except §§ 1270.46 and 1270.48 apply to the Vice President as to the President, because those sections have now been revised due to the 2014 Amendments at 44 U.S.C. 2208 to cover only Presidential authorities.

§ 1270.4, Definitions: Removed “documentary material, personal records, President, Presidential archival depository, Vice Presidential records, filed” definitions because they are terms not used in the regulation any longer or the definitions were identical to the statute and not needed.

Subpart B

Changed the title of the subpart from “Handling Presidential records upon death or disability” to “Custody and control of Presidential records” and revised the subpart to add a provision

on “Presidential records in the Archivist’s physical custody” (§ 1270.20), because the President may request that the Archivist maintain physical custody of Presidential records (now, under the 2014 Amendments at 44 U.S.C. 2203(f), also including electronic records) during the President’s term of office. However, the President remains responsible for control and access to these records until the end of the President’s term of office.

Subpart C

§ 1270.32, Disposal of Presidential records in the Archivist’s custody: Revised to require a preliminary notice of proposed disposal with a 45-day public comment period, in addition to the final notice published 60 days prior to the disposal, as established in the 2014 Amendments at 44 U.S.C. 2203(g)(3).

Subpart D

Added § 1270.38 to clarify when public access to Presidential records may occur based on requirements in 44 U.S.C. 2204, to make it easier for readers to understand the context in which the subsequent sections on restricting access occur.

§ 1270.42(b), Appealing restricted access: Expanded the time in which a person denied access due to a Presidential restriction may file an appeal, from 35 days after receiving NARA’s denial letter to 90 days, to be consistent with the 2016 Amendments to the Freedom of Information Act, at 5 U.S.C. 552(a)(6)(i)(III)(aa).

§ 1270.44, Exceptions to restricted access: Under the 2014 Amendments at 44 U.S.C. 2204(f), added a provision at (a)(4) that the Archivist will not release original Presidential records to a President’s designated representative who has been convicted of a crime that involves misuse or misappropriation of NARA records.

Added provisions at (d) through (g) allowing for notification of a request for records to the former and incumbent President so that they may consider whether to assert a constitutionally based privilege. These provisions are similar to new section 1270.48, which, in accord with the 2014 Amendments at 44 U.S.C. 2208, covers releasing records to the public and claiming privilege against disclosure.

§ 1270.46, Notice of intent to disclose Presidential records to the public: In accord with the 2014 Amendments at 44 U.S.C. 2208(2)(B), added detail in subsection (b) about what will be included in the notice to the public (such as the NARA case number and the end date of the 60-day working period

set out in § 1270.48 for the President to assert a constitutional privilege).

§ 1270.48, Releasing records to the public and claiming privilege against disclosure: Revised to include procedures, now codified in the 2014 Amendments, by which Presidents may restrict public access to Presidential records of former Presidents that are in NARA’s legal custody through a constitutionally based privilege against disclosure. This new section parallels new provisions in 44 U.S.C. 2208, including a 60-day notice period in which a President may assert a constitutionally based claim of privilege against disclosure.

The regulation has also been revised throughout with non-substantive edits and reorganization to incorporate Plain Writing Act practices and make it clearer and easier to read.

Regulatory Analysis

Review Under Executive Orders 12866 and 13563

Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (September 30, 1993), and Executive Order 13563, Improving Regulation and Regulation Review, 76 FR 23821 (January 18, 2011), direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This proposed rule is “significant” under section 3(f) of Executive Order 12866. It involves revisions to existing regulations to bring them in line with statutory changes, and affects only individuals or Government entities and access to Presidential or Vice Presidential records. The Office of Management and Budget (OMB) has reviewed this proposed regulation.

Review Under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.)

Although this proposed rule is not subject to the Regulatory Flexibility Act, see 5 U.S.C. 553(a)(2), 601(2), NARA has considered whether this rule, if promulgated, would have a significant economic impact on a substantial number of small entities (5 U.S.C. 603). NARA certifies, after review and analysis, that this rule will not have a significant adverse economic impact on a substantial number of small entities because it affects only individuals or Government entities and access to Presidential or Vice Presidential records.

Review Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.)

This proposed rule does not contain any information collection requirements subject to the Paperwork Reduction Act.

Review Under Executive Order 13132, Federalism, 64 FR 43255 (August 4, 1999)

Review under Executive Order 13132 requires that agencies review regulations for Federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, prepare a Federal assessment to assist senior policy makers. This proposed rule will not have any direct effects on State and local governments within the meaning of the Executive Order. Therefore, the proposed regulation requires no Federalism assessment.

List of Subjects in 36 CFR Part 1270

Archives and records, Government in the Sunshine Act, Open government, Presidential records.

For the reasons stated in the preamble, NARA proposes to revise 36 CFR part 1270 to read as follows:

PART 1270—PRESIDENTIAL RECORDS

Subpart A—General Provisions

- Sec.
1270.1 Scope of part.
1270.2 Application.
1270.4 Definitions.

Subpart B—Custody and Control of Presidential Records

- 1270.20 Presidential records in the physical custody of the Archivist.
1270.22 Designating a representative to act for a President.
1270.24 When the Archivist may act for a President.

Subpart C—Disposing of Presidential Records

- 1270.30 Disposing of Presidential records by an incumbent President.
1270.32 Disposing of Presidential records in the Archivist's custody.

Subpart D—Accessing Presidential Records

- 1270.38 Public access to Presidential records.
1270.40 Restricting access to Presidential records.
1270.42 Appealing restricted access.
1270.44 Exceptions to restricted access.
1270.46 Notice of intent to disclose Presidential records to the public.
1270.48 Releasing records to the public and claiming privilege against disclosure.
1270.50 Consulting with law enforcement agencies.

Authority: 44 U.S.C. 2201–2209.

Subpart A—General Provisions

§ 1270.1 Scope of part.

This part implements the provisions of the Presidential Records Act of 1978, as amended, 44 U.S.C. 2201–2209, and establishes requirements for preserving, protecting, disposing of, and providing access to all Presidential and Vice-Presidential records created during a Presidential or Vice Presidential term of office beginning on or after January 20, 1981.

§ 1270.2 Application.

This part, except §§ 1270.46 and 1270.48, applies to Vice-Presidential records in the same manner as to Presidential records. The Vice President's duties and responsibilities, with respect to Vice-Presidential records, are the same as the President's duties and responsibilities with respect to Presidential records, except those in §§ 1270.46 and 1270.48. The Archivist's authority with respect to Vice-Presidential records is the same as the Archivist's authority with respect to Presidential records, except that the Archivist may enter into an agreement with a non-Federal archival repository to deposit Vice-Presidential records, if the Archivist determines it to be in the public interest.

§ 1270.4 Definitions.

For the purposes of this part—
Agency has the meaning given by 5 U.S.C. 551(1)(A)–(D) and 552(f).
Archivist means the Archivist of the United States or staff of the National Archives and Records Administration acting on behalf of the Archivist.
Presidential records has the meaning given by 44 U.S.C. 2201(2).

Subpart B—Custody and Control of Presidential Records

§ 1270.20 Presidential records in the physical custody of the Archivist.

During a President's term of office, the President may request that the Archivist maintain physical custody of Presidential records, including digital or electronic records. However, the President remains exclusively responsible for control and access to their records until their term of office concludes. During the President's terms of office, the Archivist does not disclose any of these records, except under the President's direction, until the President's term of office concludes. If a President serves consecutive terms, the Archivist does not disclose records without the President's direction until the end of the last term, or the end of another period if specified in 44 U.S.C. 2204 and subpart E of this part.

§ 1270.22 Designating a representative to act for a President.

(a) Title 44 U.S.C. chapter 22 grants the President certain discretion and authority over Presidential records. An incumbent or former President may designate one or more representatives to exercise this discretion and authority, including in the event of the President's death or disability.

(b) The designation under paragraph (a) of this section is effective only if the Archivist receives written notice of it, including the names of the representatives, before the President dies or is disabled.

§ 1270.24 When the Archivist may act for a President.

If a President specifies restrictions on access to Presidential records under 44 U.S.C. 2204(a), but has not made a designation under § 1270.22 at the time of their death or disability, the Archivist exercises the President's discretion or authority under 44 U.S.C. 2204, except as limited by 44 U.S.C. 2208 and § 1270.48.

Subpart C—Disposing of Presidential Records

§ 1270.30 Disposing of Presidential records by an incumbent President.

An incumbent President may dispose of any Presidential records of their administration that, in the President's opinion, lack administrative, historical, informational, or evidentiary value, if the President obtains the Archivist's written views about the proposed disposal and either—

(a) Those views state that the Archivist does not intend to request Congress's advice on the matter because the Archivist either does not consider the records proposed for disposal to be of special interest to Congress or does not consider it to be in the public interest to consult with Congress about the proposed disposal; or

(b)(1) Those views state that the Archivist considers either that the records proposed for disposal may be of special interest to Congress or that consulting with Congress about the proposed disposal is in the public interest; and

(2) The President submits copies of the proposed disposal schedule to the Senate and the House of Representatives at least 60 calendar days of continuous congressional session before the proposed disposal date. For the purpose of this section, a continuous congressional session breaks only when Congress adjourns *sine die* (with no date set to resume). If either House of Congress adjourns with a date set to

resume, and breaks for more than three days, the adjourned days do not count when computing the 60-day timeline. The President submits copies of the proposed disposal schedule to the Senate Committees on Rules and Administration and Homeland Security and Governmental Affairs, and to the House Committees on House Administration and Oversight and Government Reform.

§ 1270.32 Disposing of Presidential records in the Archivist's custody.

(a) The Archivist may dispose of Presidential records in the Archivist's legal custody that the Archivist appraises and determines to have insufficient administrative, historical, informational, or evidentiary value to warrant continuing to preserve them.

(b) If the Archivist determines that Presidential records have insufficient value under paragraph (a) of this section, the Archivist publishes a proposed disposal notice in the **Federal Register** with a public comment period of at least 45 days. The notice describes the records the Archivist proposes to dispose of, the reason for disposing of them, and the projected earliest disposal date.

(c) After the public comment period in paragraph (b) of this section, the Archivist publishes a final disposal notice in the **Federal Register** at least 60 calendar days before the earliest disposal date. The notice includes:

- (1) A reasonably specific description of the records scheduled for disposal;
- (2) The earliest disposal date; and
- (3) A concise statement of the reason for disposing of the records.

(d) Publishing the notice required by paragraph (c) of this section in the **Federal Register** constitutes a final agency action for purposes of review under 5 U.S.C. 701–706.

Subpart D—Accessing Presidential Records

§ 1270.38 Public access to Presidential records.

Public access to Presidential records generally begins five years after the President leaves office, and is administered through the Freedom of Information Act (5 U.S.C. 552), as modified by the Presidential Records Act (44 U.S.C. 2204(c)).

§ 1270.40 Restricting access to Presidential records.

(a) An incumbent President may, prior to the end of the President's term of office or last consecutive term of office, restrict access to certain information within Presidential records created during their administration, for

a period not to exceed 12 years after the President leaves office (in accordance with 44 U.S.C. 2204).

(b) If a President specifies such restrictions, the Archivist consults with that President or the President's designated representative to identify the affected records, or any reasonably segregable portion of them.

(c) The Archivist then restricts public access to the identified records or the restricted information contained in them until the earliest of following occurs:

- (1) The restricting President waives the restriction, in whole or in part;
- (2) The restriction period in paragraph (a) of this section expires for the category of information; or
- (3) The Archivist determines that the restricting President or an agent of that President has published the restricted record, a reasonably segregable portion of the record, or any significant element or aspect of the information contained in the record, in the public domain.

§ 1270.42 Appealing restricted access.

(a) If the Archivist denies a person access to a Presidential record or a reasonably segregable portion of it due to a restriction made under § 1270.40, that person may file an administrative appeal. To file an administrative appeal requesting access to Presidential records, send it to the director of the Presidential Library of the President during whose term of office the record was created, at the address listed in 36 CFR 1253.3. To file an administrative appeal requesting access to Vice Presidential records, send it to the director of the Presidential Materials Division at the address listed in 36 CFR 1253.1.

(b) An appeal must arrive to the director within 90 calendar days from the date on the access denial letter.

(c) Appeals must be in writing and must identify:

- (1) The specific records the requester is seeking; and
- (2) The reasons why the requester believes they should have access to the records.

(d) The director responds to the requester in writing and within 30 working days from the date they receive the appeal. The director's response states whether or not the director is granting access to the Presidential records and the basis for that decision. The director's decision to withhold release of Presidential records is final and is not subject to judicial review.

§ 1270.44 Exceptions to restricted access.

(a) Even when a President imposes restrictions on access under § 1270.40,

NARA still makes Presidential records of former Presidents available in the following instances, subject to any rights, defenses, or privileges which the United States or any agency or person may invoke:

(1) To a court of competent jurisdiction in response to a properly issued subpoena or other judicial process, for the purposes of any civil or criminal investigation or proceeding;

(2) To an incumbent President if the President seeks records that contain information they need to conduct current Presidential business and the information is not otherwise available;

(3) To either House of Congress, or to a congressional committee or subcommittee, if the congressional entity seeks records that contain information it needs to conduct business within its jurisdiction and the information is not otherwise available; or

(4) To a former President or their designated representative for access to the Presidential records of that President's administration, except that the Archivist does not make any original Presidential records available to a designated representative that has been convicted of a crime that involves reviewing, retaining, removing, or destroying NARA records.

(b) The President, either House of Congress, or a congressional committee or subcommittee must request the records they seek under paragraph (a) of this section from the Archivist in writing and, where practicable, identify the records with reasonable specificity.

(c) The Archivist promptly notifies the President (or their representative) during whose term of office the record was created, and the incumbent President (or their representative) of a request for records under paragraph (a) of this section.

(d) Once the Archivist notifies the former and incumbent Presidents of the Archivist's intent to disclose records under this section, either President may assert a claim of constitutionally based privilege against disclosing the record or a reasonably segregable portion of it within 30 calendar days after the date of the Archivist's notice. The incumbent or former President must personally make any decision to assert a claim of constitutionally based privilege against disclosing a Presidential record or a reasonably segregable portion of it.

(e) The Archivist does not disclose a Presidential record or reasonably segregable part of a record if it is subject to a privilege claim asserted by the incumbent President unless:

- (1) The incumbent President withdraws the privilege claim; or

(2) A court of competent jurisdiction directs the Archivist to release the record through a final court order that is not subject to appeal.

(f)(1) If a former President asserts the claim, the Archivist consults with the incumbent President, as soon as practicable and within 30 calendar days from the date that the Archivist receives notice of the claim, to determine whether the incumbent President will uphold the claim.

(2) If the incumbent President upholds the claim asserted by the former President, the Archivist does not disclose the Presidential record or a reasonably segregable portion of the record unless:

(i) The incumbent President withdraws the decision upholding the claim; or

(ii) A court of competent jurisdiction directs the Archivist to disclose the record through a final court order that is not subject to appeal.

(3) If the incumbent President does not uphold the claim asserted by the former President, fails to decide before the end of the 30-day period detailed in subparagraph (f)(1) of this section, or withdraws a decision upholding the claim, the Archivist discloses the Presidential record 60 calendar days after the Archivist received notification of the claim (or 60 days after the withdrawal) unless a court order in an action in any Federal court directs the Archivist to withhold the record, including an action initiated by the former President under 44 U.S.C. 2204(e).

(g) The Archivist may adjust any time period or deadline under this subpart, as appropriate, to accommodate records requested under this section.

§ 1270.46 Notice of intent to disclose Presidential records to the public.

When the Archivist determines it is in the public interest to make a Presidential record available to the public for the first time, the Archivist will:

(a) Promptly notify, in writing, the former President during whose term of office the record was created and the incumbent President, or their representatives, of the intended disclosure. This notice informs the Presidents of the 60-day period in which either President may make a claim of constitutionally based privilege under § 1270.48; and

(b) Notify the public. The notice includes the following information about the intended disclosure:

- (1) The number of pages;
- (2) A brief description of the records;
- (3) The NARA case number;

(4) The date on which the 60-working-day period set out in § 1270.48(a) expires; and

(5) Any other information the Archivist may decide.

§ 1270.48 Releasing records to the public and claiming privilege against disclosure.

(a) Once the Archivist notifies the former and incumbent Presidents of the Archivist's intent to disclose records under § 1270.46, either President may assert a claim of constitutionally based privilege against disclosing the record or a reasonably segregable portion of it. A President must assert their claim within 60 working days after the date of the Archivist's notice, and make the claim in accordance with paragraph (d) of this section.

(b) If neither President asserts a claim within the 60-working-day period, the Archivist discloses the Presidential record covered by the notice. If either President asserts a claim on a reasonably segregable part of the record, the Archivist may disclose only the portion of the record not subject to the claim.

(c)(1) The incumbent or former President may extend the period under paragraph (a) of this section once, for not more than 30 additional working days, by sending the Archivist a written statement asserting that the President needs the extension to adequately review the record.

(2) However, if the 60-day period under subparagraph (a) of this section, or any extension of that period under subparagraph (c)(1) of this section, would end during the first six months of the incumbent President's first term of office, then the 60-day period or extension automatically extends to the end of that six-month period.

(d)(1) The incumbent or former President must personally make any decision to assert a claim of constitutionally based privilege against disclosing a Presidential record or a reasonably segregable portion of it.

(2) The President must notify the Archivist, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate, of a privilege claim under paragraph (a) of this section on the same day that the President asserts such a claim.

(e)(1) If a former President asserts the claim, the Archivist consults with the incumbent President, as soon as practicable and within 30 calendar days from the date that the Archivist receives notice of the claim, to determine whether the incumbent President will uphold the claim.

(2) The Archivist notifies the former President and the public of the incumbent President's decision on the former President's claim no later than 30 calendar days after the Archivist receives notice of the claim.

(3) If the incumbent President upholds the claim asserted by the former President, the Archivist does not disclose the Presidential record or a reasonably segregable portion of the record unless:

(i) The incumbent President withdraws the decision upholding the claim; or

(ii) A court of competent jurisdiction directs the Archivist to disclose the record through a final court order that is not subject to appeal.

(4) If the incumbent President does not uphold the claim asserted by the former President, fails to decide before the end of the 30-day period detailed in subparagraph (e)(1) of this section, or withdraws a decision upholding the claim, the Archivist discloses the Presidential record 90 calendar days after the Archivist received notification of the claim (or 90 days after the withdrawal) unless a court order in an action in any Federal court directs the Archivist to withhold the record, including an action initiated by the former President under 44 U.S.C. 2204(e).

(f) The Archivist does not disclose a Presidential record or reasonably segregable part of a record if it is subject to a privilege claim asserted by the incumbent President unless:

(1) The incumbent President withdraws the privilege claim; or

(2) A court of competent jurisdiction directs the Archivist to release the record through a final court order that is not subject to appeal.

§ 1270.50 Consulting with law enforcement agencies.

(a) The Archivist requests specific guidance from the appropriate law enforcement agency when the Archivist is determining whether to release Presidential records compiled for law enforcement purposes that may be subject to 5 U.S.C. 552(b)(7). The Archivist requests guidance if:

(1) No general guidance applies;

(2) The record is particularly sensitive; or

(3) The type of record or information is widespread throughout the files.

(b) When the Archivist decides to release Presidential records compiled for law enforcement purposes, the Archivist notifies any agency that has provided guidance on those records under this section. The notice includes the following:

(1) A description of the records in question;

(2) A statement that the records described contain information compiled for law enforcement purposes and may be subject to the exemption provided by 5 U.S.C. 552(b)(7) for records of this type; and

(3) The name of a contact person at NARA.

(c) Any guidance an agency provides under paragraph (a) of this section is not binding on the Archivist. The Archivist decides whether Presidential records are subject to the exemption in 5 U.S.C. 552(b)(7).

Dated: December 15, 2016.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2016-31011 Filed 12-27-16; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of Government Information Services

36 CFR Chapter XII

[FDMS No. NARA-16-0004; NARA-2017-001]

RIN 3095-AB88

Office of Government Information Services

AGENCY: Office of Government Information Services, NARA.

ACTION: Proposed rule.

SUMMARY: The Open Government Act of 2007 created the Office of Government Information Services (OGIS) within the National Archives and Records Administration (NARA). OGIS has three statutorily defined functions: OGIS offers mediation services to help resolve FOIA disputes; reviews agency FOIA policies, procedures and compliance; and identifies procedures and methods for improving compliance under the FOIA. This proposed rule sets out the implementing guidance and procedures by which OGIS carries out its statutory mission, and explains OGIS's role in the FOIA process.

DATES: Submit comments on or before February 27, 2017.

ADDRESSES: You may submit comments on this rule, identified by RIN 3095-AB88, by any of the following methods:

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

- *Email:* Regulation_comments@nara.gov. Include RIN 3095-AB88 in the subject line of the message.

- *Mail (for paper, disk, or CD-ROM submissions):* Send comments to: Regulations Comments Desk (External Policy Program, Strategy & Performance Division (SP)); Suite 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740-6001.

- *Hand delivery or courier:* Deliver comments to front desk at 8601 Adelphi Road, College Park, MD, addressed to: Regulations Comments Desk, External Policy Program; Suite 4100.

FOR FURTHER INFORMATION CONTACT: For information or questions about the regulation and the comments process, contact Kimberly Keravuori, External Policy Program Manager, by email at regulation_comments@nara.gov, or by telephone at 301.837.3151. For information or questions on the OGIS program, contact Nikki Gramian, Deputy Director, OGIS, by telephone at 1-877-684-6448.

SUPPLEMENTARY INFORMATION:

Background

The OPEN Government Act of 2007 (Pub. L. 110-175, 121 Stat. 2524) amended the Freedom of Information Act, or FOIA (5 U.S.C. 552, as amended), and created the Office of Government Information Services (OGIS) within the National Archives and Records Administration. OGIS began receiving FOIA cases in September 2009.

This proposed regulation explains OGIS's statutory role in the FOIA process and sets out procedures for one of OGIS's primary functions: Assisting agencies and FOIA requesters with efforts to resolve FOIA disputes. In the future, this regulation will also include provisions on OGIS's other functional areas, which are currently under development.

OGIS's Mediation Function

Title 5, United State Code § 552(h)(3), states that "The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a non-exclusive alternative to litigation. . ." As a result, we offer dispute resolution services, which is an umbrella term encompassing formal mediation (where a mediator conducts formal sessions to assist in resolving a dispute), facilitation (an informal process in which a mediator aids communication among and between the parties to resolve a dispute), and other commonly recognized resolution methods. OGIS's dispute resolution services may also include OGIS's

ombuds services (which include providing information) when those services aid in resolving disputes. Our goal is to be an alternative to litigation by facilitating communication between a requester and the agency and by attempting to resolve disputes arising out of requests for information. We provide all our dispute resolution services in accordance with the Administrative Dispute Resolution Act (ADRA), 5 U.S.C. 571, *et seq.*

Both FOIA requesters and agencies may contact us to help resolve a dispute at any point in the FOIA process. We do not advocate on behalf of a requester or agency; the office promotes a fair FOIA process and works with parties to reach a mutually agreeable resolution. If the parties agree that the dispute has been resolved, we will close the case and may follow-up with the agency to confirm that any agreed-upon action was taken. However, if the parties cannot agree on a resolution, OGIS will issue a final response letter to the parties indicating that we are concluding the dispute resolution efforts.

Regulatory Analysis

Review Under Executive Orders 12866 and 13563

Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (September 30, 1993), and Executive Order 13563, Improving Regulation and Regulation Review, 76 FR 23821 (January 18, 2011), direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This proposed rule is "significant" under section 3(f) of Executive Order 12866 because it establishes OGIS implementing regulatory provisions for the first time. The Office of Management and Budget (OMB) has reviewed this proposed regulation.

Review Under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.)

This review requires an agency to prepare an initial regulatory flexibility analysis and publish it when the agency publishes the proposed rule. This requirement does not apply if the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 603). NARA certifies, after review and analysis, that this proposed rule will not have a significant adverse economic

impact on small entities. The proposed regulation interprets OGIS's mandate under its authorizing statute, and any requirements within the proposed regulation apply to Federal agencies subject to FOIA. The proposed rule also eases burdens on members of the public who encounter difficulty in accessing Federal information; and encourages the use of alternative dispute resolution methods as an additional means by which people or businesses may receive aid in resolving such difficulties.

Review Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.)

This proposed rule contains information collection activities that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. We refer to the following OMB-approved information collection in § 1291.12 of this regulation: OMB control No. 3095-0068, Request for Assistance and Consent (NA Form 10003), approved through December 31, 2016. We published the information collection notice in the **Federal Register** in June 2010 (75 FR 36122, June 24, 2010) for public comment, and the notice of OMB review in the **Federal Register** in September 2010 (75 FR 57819, September 22, 2010), providing a second opportunity for public comment.

Review Under Executive Order 13132, Federalism, 64 FR 43255 (August 4, 1999)

Review under Executive Order 13132 requires that agencies review regulations for Federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, prepare a Federal assessment to assist senior policy makers. This proposed rule will not have any direct effects on State and local governments within the meaning of the Executive Order. Therefore, this regulation does not require a Federalism assessment.

List of Subjects in 36 CFR Part 1291

Alternative dispute resolution, Freedom of Information Act, Information, Mediation, Record-keeping requirements.

For the reasons stated in the preamble, NARA proposes to amend by add Subchapter I of chapter XII, title 36 of the Code of Federal Regulations, to read as follows:

Chapter XII—National Archives and Records Administration

Subchapter I—Office of Government Information Services (OGIS)

PART 1291—OFFICE OF GOVERNMENT INFORMATION SERVICES (OGIS) PROGRAMS

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Authority: 5 U.S.C 552, as amended; Pub. L. 110-175, 121 Stat. 2524; 44 U.S.C. 2104(a)

Subpart A—General Information

§ 1291.1 Scope of this part.

This part establishes policies and procedures for Federal agencies and public requesters who wish to make use of OGIS's voluntary dispute resolution services.

§ 1291.2 Definitions.

The following definitions apply to this part:

Agency is any organization within the executive branch of the Federal Government that is subject to the FOIA. This includes any executive department, military department, independent regulatory agency, Government corporation, and other establishment within the executive branch (including the Executive Office of the President).

Agency records are records the agency (1) either creates or obtains, and (2) maintains under its control at the time of the FOIA request in any format, including electronic.

Administrative appeal is a request asking an agency to independently review determination(s) it made in response to an initial FOIA request. The FOIA grants requesters the right to appeal.

Chief FOIA officer is a designated high-level official within each agency who has overall responsibility for the agency's compliance with the FOIA.

Confidentiality means that OGIS and the parties participating in dispute resolution efforts will not disclose

information you provide in the course of dispute resolution discussions and sessions, unless an exception applies under the Administrative Dispute Resolution Act (ADRA), 5 U.S.C. 571-584.

Dispute resolution services are the formal and informal processes through which a neutral third party—a mediator—assists parties to reach a mutually agreeable resolution to FOIA disputes. Our dispute resolution services include formal mediation (where a mediator conducts formal sessions to assist in resolving a dispute), facilitation (an informal process in which a mediator aids communication among and between the parties to resolve a dispute), and other commonly recognized resolution methods. They may also include our ombuds services (which include providing information) when the ombuds services aid in resolving disputes.

Exhaustion of administrative remedies means that a requester sent an initial FOIA request to an agency, received a substantive response from the agency, filed a timely administrative appeal about the response, and received a final determination on that appeal. Constructive exhaustion of administrative remedies may also occur when the agency fails to meet applicable deadlines set out in 5 U.S.C. 552(a)(6)(C)(i).

FOIA is the Freedom of Information Act, 5 U.S.C. 552, as amended.

FOIA request is a request submitted to a Federal agency asking for agency records on any topic. A FOIA request can generally be made by any person and to any Federal agency. A request can be a first-party request (requester seeking documents on themselves) or a third-party request (requester seeking documents on other individuals, companies, or topics of interest.)

In confidence means a party provides information to the mediator and expressly requests that the mediator not disclose that information to the other party(ies) or others, except to the extent the information is publicly available.

Initial FOIA request is the FOIA request a person or organization first submitted to the agency, prior to any appeal.

Mediator is an OGIS staff member or an outside mediator who provides dispute resolution services through OGIS's program. See definition of *dispute resolution services* for more detail.

Requester or FOIA requester means any person or organization requesting records from a Federal agency under the FOIA.

§ 1291.4 OGIS functions and responsibilities.

Pursuant to 5 U.S.C. 552(h), OGIS:

(1) Reviews agency FOIA policies and procedures;

(2) Reviews agency compliance with the FOIA;

(3) Identifies procedures and methods for improving compliance under the FOIA; and

(4) Offers mediation services to help FOIA requesters and agencies resolve disputes, as a non-exclusive alternative to litigation.

§ 1291.6 Contact information.

You may contact OGIS by mail at Office of Government Information Services (OGIS); National Archives and Records Administration (NARA); 8601 Adelphi Road; College Park, MD 20740, by telephone at 202.741.5770 or toll-free at 1.877.684.6448, by fax at 202.741.5769, or by email at ogis@nara.gov. You may also find additional information about OGIS at www.archives.gov/ogis.

Subpart B—Dispute Resolution Services**§ 1291.10 Dispute resolution services, policies, and responsibilities.**

(a) OGIS dispute resolution services facilitate and promote dispute resolution through non-binding, voluntary actions aided by an unbiased third party, as a non-exclusive alternative to litigation.

(b) We perform all our dispute resolution services and responsibilities in accordance with the ADRA, 5 U.S.C. 571–584.

(c) We follow the ADRA's principles for confidentiality strictly and do not disclose any information parties share as part of OGIS's dispute resolution efforts, unless an exception applies under ADRA, 5 U.S.C. 574. Therefore, we will not disclose OGIS's dispute resolution discussions, materials, correspondence, notes, any draft resolutions, and any other material related to the dispute. This allows all parties in dispute resolution discussions to be forthcoming, candid, and without concern that either OGIS or the other party may later use any statements against them.

(d) We offer dispute resolution services only at the request of one or more of the parties to the dispute, but we may decline to offer dispute resolution services when:

(1) The requester seeks OGIS assistance concerning matters other than access to records under the FOIA;

(2) The requester fails to provide the necessary information under § 1291.12(a) of this part; or

(3) The requester files a request for assistance with OGIS six or more years after the agency's decision on their FOIA request (the statute of limitations period for filing a lawsuit challenging an adverse decision under FOIA is six years (see 28 U.S.C. 2401(a) and *Spannaus v. U.S. Dep't of Justice*, 824 F.2d 52 (D.C. Cir. 1987)).

(e) Dispute resolution services may occur only when all parties agree to participate.

(1) The parties must agree to OGIS's assistance, agree that dispute resolution services are a supplement to, not a substitute for, the agency's administrative FOIA process, agree to keep the content of dispute resolution discussions confidential, and agree that OGIS's services are a non-exclusive alternative to Federal court litigation.

(2) Agreeing to participate in dispute resolution services and to discuss a dispute and possible resolutions does not mean that an agency is admitting to noncompliance, and resolving a dispute does not constitute a finding that the agency did not comply with FOIA.

(f) Once the parties agree to engage in dispute resolution services, they should participate fully and promptly in any meetings or telephone discussions arranged by OGIS as part of the dispute resolution process. Either party can share information with OGIS in confidence to enable OGIS's dispute resolution process to work as intended.

§ 1291.12 Requesting dispute resolution services.

(a) To request OGIS dispute resolution services, either the agency or the FOIA requester must file a written request that includes:

(1) Your name (individual, or representative of an agency or other group);

(2) Contact information (mailing address, phone number, email address);

(3) Brief description of the nature of the dispute;

(4) Name of the agency; and

(5) Copies of the following documents: (i) The initial FOIA request; (ii) any agency responses to the initial request; (iii) the appeal, if any; (iv) any agency responses to the appeal; and (v) any other relevant correspondence between the FOIA requester and the agency about processing the initial FOIA request or appeal.

(b) In addition, if you are a FOIA requester, you may also need to submit a signed NA Form 10003, Consent to Make Inquiries and Release of Information and Records (available at <https://ogis.archives.gov/mediation-program/request-assistance/privacy-consent-statement.htm>), OMB control

No. 3095–0068. OMB Control No. 3095–0068 governs collection of the information in this section and the NA Form 10003. You need to submit this form to OGIS only if the agency you submitted your FOIA request to does not already have a FOIA routine use in place allowing them to release information about your FOIA request to us. You may find out if an agency has this kind of routine use in place on our Web site at <https://ogis.archives.gov/mediation-program/request-assistance/routine-uses.htm>.

(c) After we receive the request for dispute resolution services, we review the request and any enclosures, enter the request into our case tracking system, and assign a case number to the request.

(d)(1) We send you an acknowledgement letter in writing within ten business days after we receive your request for dispute resolution services. The acknowledgment letter does not mean that we have committed to offering dispute resolution services in your case.

(2) If your dispute resolution services request did not include sufficient information, the acknowledgment letter may request additional information or clarification. In such cases, you have 20 business days from the date on the acknowledgment letter in which to send us the additional information, initiate contact to discuss the request, or request additional time.

(e) If you don't provide the additional information or contact OGIS within 20 business days from the date on the acknowledgment letter requesting additional information, we may close the case. If you contact OGIS with additional information after the 20 business days expire, we will open a new case.

§ 1291.14 Dispute resolution process.

(a) When we receive a request for dispute resolution services from one or more parties to a dispute, we review the information to determine if we may appropriately offer such services. To make this determination, we review the dispute resolution request and make sure it meets the requirements for dispute resolution services contained in 36 CFR 1291.10 and 1291.12 of this part.

(b) Once we determine that we may appropriately offer dispute resolution services, the other party or parties must also agree to engage in the process before resolution efforts can occur. If they agree, we assign one or more mediators to the dispute. If we determine that we are unable to offer dispute resolution services, we notify the party who requested the services,

explain why we are unable to provide dispute resolution services, and advise them of other options.

(c) Mediators facilitate communication between the parties, including joint or separate discussions, to help them come to a mutually agreeable solution. The mediators may use all appropriate customary techniques associated with dispute resolution.

(d) We do not permit the parties to make any audio or video recordings of dispute resolution meetings. The mediator's notes are confidential and we do not disclose them. The parties also agree to keep the content of the dispute resolution discussions confidential.

(e) Proceedings with the mediator are informal, and the mediator has no authority to compel the parties to resolve the dispute. Either party may withdraw from the dispute resolution process at any point. If one of the parties initiates litigation during the course of the dispute resolution process, they must notify us.

(f) If the parties reach an impasse, the mediator may raise the dispute to the Deputy Director of OGIS. The Deputy Director may provide the parties with an assessment of the situation as an additional level of dispute resolution efforts to assist the parties with breaking the impasse. Any assessment the Deputy Director provides is confidential and the parties may not rely upon it in any subsequent proceedings.

(g) OGIS issues a final response letter to the parties when the dispute resolution process concludes. This letter documents the outcome of the process and any resolution the parties reach. No party may rely on the letter in subsequent proceedings and its contents are confidential unless both parties agree in writing to allow OGIS to disclose it publicly.

Subpart C—Reviews of Agency FOIA Policies, Procedures, and Compliance [Reserved]

Subpart D—Advisory Opinions [Reserved]

Dated: December 14, 2016.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2016-31010 Filed 12-27-16; 8:45 am]

BILLING CODE 7515-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2016-0502; FRL-9955-88-Region 5]

Air Plan Approval; Illinois; Volatile Organic Compounds Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Illinois State Implementation Plan (SIP). The revision amends the Illinois Administrative Code by updating the definition of volatile organic material or volatile organic compounds to exclude 2-amino-2-methyl-1-propanol. This revision is in response to an EPA rulemaking in 2014 which exempted this compound from the Federal definition of volatile organic compounds on the basis that the compound makes a negligible contribution to tropospheric ozone formation.

DATES: Comments must be received on or before January 27, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2016-0502 at <http://www.regulations.gov> or via email to aburano.douglas@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Michelle Becker, Life Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-3901, becker.michelle@epa.gov.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: November 18, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2016-31230 Filed 12-27-16; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2014-0513; FRL-9956-46-Region 6]

Approval and Promulgation of Implementation Plans; Louisiana; State Boards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is approving revisions to the Louisiana State Implementation Plan (SIP) that address requirements in CAA Section 128 regarding State Board composition

and Conflict of Interest and Disclosure requirements.

DATES: Written comments should be received on or before January 27, 2017.

ADDRESSES: Submit your comments, identified by EPA-R06-OAR-2014-0513, at <http://www.regulations.gov> or via email to Donaldson.tracie@epa.gov. For additional information on how to submit comments see the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tracie Donaldson, (214) 665-6633, Donaldson.tracie@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action no further activity is contemplated. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: December 21, 2016.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2016-31331 Filed 12-27-16; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2016-0544; FRL-9957-46-OAR]

Change the RFS Point of Obligation; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: On November 22, 2016, the U.S. Environmental Protection Agency ("EPA") published a Notice of its proposed denial of several petitions requesting that EPA initiate a rulemaking process to reconsider or

change its regulations that identify refiners and importers of gasoline and diesel fuel as the entities responsible for complying with the annual percentage standards adopted under the Renewable Fuel Standard (RFS) program. The Notice invited public comment on this proposal by January 23, 2017—60 days after publication of the Notice in the **Federal Register**. On December 13, 2016, the EPA received a request from the Small Retailers Coalition to extend the comment period by 30 days to allow its members to provide thorough comments and data. In light of the importance of this issue, the EPA is extending the deadline for written comments an additional 30 days to February 22, 2017.

DATES: Comments must be received on or before February 22, 2017.

ADDRESSES: Submit your comments on the EPA's proposed denial of the petitions referenced above, identified by Docket ID No. EPA-HQ-OAR-2016-0544, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734-214-4131; email address: macallister.julia@epa.gov.

SUPPLEMENTARY INFORMATION: The EPA proposal noted above was published on November 22, 2016, at 81 FR 83776. For the reasons noted above, the public comment period will now end on February 22, 2017.

Dated: December 20, 2016.

Christopher Grundler,

Director, Office of Transportation and Air Quality.

[FR Doc. 2016-31259 Filed 12-27-16; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Solicitation of New Safe Harbors and Special Fraud Alerts

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of intent to develop regulations.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), this annual notice solicits proposals and recommendations for developing new, and modifying existing, safe harbor provisions under the Federal anti-kickback statute (section 1128B(b) of the Social Security Act), as well as developing new OIG Special Fraud Alerts.

DATES: To ensure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 27, 2017.

ADDRESSES: In commenting, please refer to file code OIG-125-N. Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific recommendations and proposals through the Federal eRulemaking Portal at <http://www.regulations.gov>.

2. *By regular, express, or overnight mail.* You may send written comments to the following address: Patrice Drew, Office of Inspector General, Regulatory Affairs, Department of Health and Human Services, Attention: OIG-125-N, Room 5541C, Cohen Building, 330 Independence Avenue SW., Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver, by hand or courier, your written comments before the close of the comment period to Patrice Drew, Office of Inspector General, Department of Health and Human Services, Cohen Building, Room 5541C, 330

Independence Avenue SW., Washington, DC 20201. Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 619-1368.

For information on viewing public comments, please see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Patrice Drew, Regulatory Affairs Liaison, Office of Inspector General, (202) 619-1368.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on recommendations for developing new or revised safe harbors and Special Fraud Alerts. Please assist us by referencing the file code OIG-125-N.

Inspection of Public Comments: All comments received before the end of the comment period are available for viewing by the public. All comments will be posted on <http://www.regulations.gov> after the closing of the comment period. Comments received timely will also be available for public inspection as they are received at Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue SW., Washington, DC 20201, Monday through Friday from 10 a.m. to 5 p.m. To schedule an appointment to view public comments, phone (202) 619-1368.

I. Background

A. OIG Safe Harbor Provisions

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a-7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit, or receive remuneration to induce or reward business reimbursable under Federal health care programs. The offense is classified as a felony and is punishable by fines of up to \$25,000 and imprisonment for up to 5 years. OIG may also impose civil money penalties, in accordance with section 1128A(a)(7) of the Act (42 U.S.C. 1320a-7a(a)(7)), or exclusion from Federal health care programs, in accordance with section 1128(b)(7) of the Act (42 U.S.C. 1320a-7(b)(7)).

Because the statute, on its face, is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements may be subject to criminal prosecution or administrative sanction. In response to the above concern, section 14 of the Medicare and Medicaid Patient and

Program Protection Act of 1987, Public Law 100-93 section 14, specifically required the development and promulgation of regulations, the so-called “safe harbor” provisions, specifying various payment and business practices that, although potentially capable of inducing referrals of business reimbursable under Federal health care programs, would not be treated as criminal offenses under the anti-kickback statute and would not serve as a basis for administrative sanctions. OIG safe harbor provisions have been developed “to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements” (56 FR 35952, July 29, 1991). Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices will not be subject to liability under the anti-kickback statute or related administrative authorities. OIG safe harbor regulations are found at 42 CFR part 1001.

B. OIG Special Fraud Alerts

OIG has also periodically issued Special Fraud Alerts to give continuing guidance to health care providers with respect to practices OIG finds potentially fraudulent or abusive. The Special Fraud Alerts encourage industry compliance by giving providers guidance that can be applied to their own practices. OIG Special Fraud Alerts are published in the **Federal Register** and on our Web site and are intended for extensive distribution directly to the health care provider community, as well as to those charged with administering the Federal health care programs.

In developing Special Fraud Alerts, OIG has relied on a number of sources and has consulted directly with experts in the subject field, including those within OIG, other agencies of the Department, other Federal and State agencies, and those in the health care industry.

C. Section 205 of the Health Insurance Portability and Accountability Act of 1996

Section 205 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 section 205, the Act, section 1128D, 42 U.S.C. 1320a-7d, requires the Department to develop and publish an annual notice in the **Federal Register** formally soliciting proposals for modifying existing safe harbors to the anti-kickback statute and for developing new safe harbors and Special Fraud Alerts.

In developing safe harbors for a criminal statute, OIG thoroughly reviews the range of factual circumstances that may fall within the proposed safe harbor subject area so as to uncover potential opportunities for fraud and abuse. Only then can OIG determine, in consultation with the Department of Justice, whether it can effectively develop regulatory limitations and controls that will permit beneficial and innocuous arrangements within a subject area while, at the same time, protecting Federal health care programs and their beneficiaries from abusive practices.

II. Solicitation of Additional New Recommendations and Proposals

In accordance with the requirements of section 205 of HIPAA, OIG last published a **Federal Register** solicitation notice for developing new safe harbors and Special Fraud Alerts on December 23, 2015 (80 FR 79803). As required under section 205, a status report of the proposals OIG received for new and modified safe harbors in response to that solicitation notice is set forth in Appendix F of OIG’s Fall 2016 *Semiannual Report to Congress*.¹ OIG is not seeking additional public comment on the proposals listed in Appendix F at this time. Rather, this notice seeks additional recommendations regarding the development of new or modified safe harbor regulations and new Special Fraud Alerts beyond those summarized in Appendix F.

A detailed explanation of justifications for, or empirical data supporting, a suggestion for a safe harbor or Special Fraud Alert would be helpful and should, if possible, be included in any response to this solicitation.

A. Criteria for Modifying and Establishing Safe Harbor Provisions

In accordance with section 205 of HIPAA, we will consider a number of factors in reviewing proposals for new or modified safe harbor provisions, such as the extent to which the proposals would affect an increase or decrease in:

- Access to health care services,
- the quality of health care services,
- patient freedom of choice among health care providers,
- competition among health care providers,
- the cost to Federal health care programs,
- the potential overutilization of health care services, and

¹ The OIG *Semiannual Report to Congress* can be accessed through the OIG Web site at <http://oig.hhs.gov/publications/semiannual.asp>.

- the ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will also consider other factors, including, for example, the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may take into account their decisions whether to (1) order a health care item or service or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

B. Criteria for Developing Special Fraud Alerts

In determining whether to issue additional Special Fraud Alerts, we will consider whether, and to what extent, the practices that would be identified in a new Special Fraud Alert may result in any of the consequences set forth above, as well as the volume and frequency of the conduct that would be identified in the Special Fraud Alert.

Dated: December 21, 2016.

Daniel R. Levinson,
Inspector General.

[FR Doc. 2016-31170 Filed 12-27-16; 8:45 am]

BILLING CODE 4152-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 531, 533 and 536

[Docket No. NHTSA-2016-0135]

Corporate Average Fuel Economy Standards; Credits

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for rulemaking.

SUMMARY: This notice partially grants a petition for rulemaking submitted by the Alliance of Automobile Manufacturers and the Association of Global Automakers (hereinafter collectively referred to as “Petitioners”) on June 20, 2016, to consider amending various aspects of the light vehicle Corporate Average Fuel Economy (CAFE) regulations. The Petitioners requested that NHTSA issue a direct final rule to implement the requested changes, but NHTSA believes that the issues and questions raised by the Petitioners are worthy of notice and comment. NHTSA will address the changes requested in the Petition in the course of the rulemaking proceeding, in accordance with statutory criteria.

DATES: December 21, 2016.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may call Mr. James Tamm in the Fuel Economy Division of the Office of Rulemaking at (202) 493-0515. For legal issues, you may call Ms. Rebecca Yoon in the Office of Chief Counsel at (202) 366-2992. You may send mail to these officials at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On June 20, 2016, the Petitioners submitted a Petition to the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) requesting that the agencies issue a direct final rule to amend various aspects of the Corporate Average Fuel Economy (CAFE) and light-duty greenhouse gas (GHG) regulations. The Petitioners stated that these amendments are necessary to “address various inconsistencies between” NHTSA’s CAFE program and EPA’s GHG emissions program, and to “address additional inefficiencies” in the programs.

Specifically, Petitioners requested that NHTSA (and EPA) ¹ modify the CAFE regulations as follows:

(1) Include “off-cycle” credits in the calculation of manufacturers’ fleet fuel economy levels for model years 2010 through 2016;

(2) Include air conditioning efficiency credits in the calculation of manufacturers’ fleet fuel economy levels for model years 2010 through 2016;

(3) Apply the “fuel savings adjustment factor” for all uses of CAFE credits;

(4) Apply the same estimate of Vehicle Miles Traveled for model years 2011 through 2016 that the EPA GHG program uses;

(5) Change the definition of “credit transfer” in 49 CFR part 536 to state that the statutory cap on credit transfers applies at time of transfer rather than at time of use;

(6) Amend regulations to clarify that manufacturers may manage and apply their credits regardless of their origin;

(7) Amend 49 CFR 531(d) so that minimum domestic passenger car standards represent 92 percent of the overall passenger car CAFE standard for the fleet as a whole calculated at the end of each model year, rather than 92 percent of the overall standard as calculated at the time that the standards are/were originally issued;

¹ This decision addresses only those portions of the Petition that are within NHTSA’s jurisdiction and responsibility. It does not address aspects of the Petition that are exclusively under EPA’s jurisdiction.

(8) Adjust the “multiplier” for full electric vehicles, plug-in hybrid electric vehicles, fuel cell vehicles, and compressed natural gas vehicles; and
(9) “Improve” the off-cycle credit approval process and reaffirm several provisions.

Some aspects of the Petition were directed to NHTSA, some to both NHTSA and EPA, and other requests were directed exclusively to EPA. The sixth item, seeking clarification that manufacturers may manage and apply their credits regardless of their origin, requests a change in an EPA regulation (40 CFR 86.1865(k)(5)) that does not appear applicable or relevant to the CAFE program. Calculation procedures for CAFE compliance are located at 40 CFR 600.510-12. Credits for CAFE over-compliance are determined based on the difference between a manufacturer’s calculated “achieved” CAFE value and the manufacturer’s calculated “required” CAFE value. NHTSA believes that this request was not intended to be directed at the CAFE program, but NHTSA would welcome Petitioners’ clarification if this is incorrect.

Similarly, the eighth item, which addresses the “multiplier” for alternative fuel vehicles, applies exclusively to EPA’s GHG program. NHTSA does not speak for EPA in this decision, and will not address this item in the upcoming rulemaking.

The remaining items will be addressed in conjunction with the Agency’s upcoming proposal for setting future CAFE standards. NHTSA believes that these issues are best considered concurrently with that rulemaking for both procedural and substantive reasons. Procedurally, reducing the number of rulemaking actions increases administrative efficiency and improves the ability to evaluate cumulative program impacts comprehensively. Substantively, while Petitioners’ requests nominally focus on credit and flexibility issues, NHTSA believes that the underlying questions of whether and how to expand compliance flexibilities is closely related to the question of what CAFE standards are maximum feasible in future model years, which NHTSA will determine in the upcoming rulemaking as required by statute. The Petitioners appear to agree with this, as the Petition suggests that if a lack of compliance flexibilities leads manufacturers to pay civil penalties for CAFE non-compliance, the CAFE standards may be beyond maximum feasible levels. While NHTSA does not agree that the fact that *any* manufacturer would face civil penalties alone would suggest that CAFE standards would be

beyond maximum feasible, the Agency does agree that manufacturers' ability to comply with standards is a vital consideration in any CAFE rulemaking.

Thus, NHTSA finds that considering these questions concurrently, as part of the same action, will best allow the Agency to maintain a well-structured program that maximizes fuel economy gains in the most cost-effective way possible. NHTSA further concludes that a direct final rule would not be an appropriate mechanism for responding to Petitioners' requests, because: (i) The opportunity for notice and public comment on the Agency's response is important and valuable, particularly given (ii) the linkage between compliance flexibilities and the maximum feasible levels of CAFE standards. Moreover, NHTSA regulations do not allow for a direct final rule to be issued as such if the rule may be controversial or is likely to result in adverse comment. NHTSA is aware that various stakeholders have strong views for and against the expansion of compliance flexibilities in the CAFE program, and the Agency would expect those stakeholders to comment to a direct final rule

accordingly, which would require the Agency per its own regulations to initiate notice and comment. *See* 49 CFR 553.14. Thus, NHTSA denies the petition to the extent that it seeks a direct final rule.

NHTSA's fuel economy standards are final through 2021 and the upcoming rulemaking is required in order to set standards for 2022 and subsequent years. However, in streamlining consideration of the Petitioners' inquiry with the required NPRM, NHTSA will fully evaluate the items relevant to the CAFE program and standards, including their impacts on the program if applied prior to 2022. If in considering the Petitioner's inquiry, NHTSA finds it appropriate to initiate a separate rulemaking, NHTSA may do so. NHTSA is updating its analysis for the NPRM and welcomes input from all stakeholders, including in advance of developing its notice of proposed rulemaking. NHTSA encourages stakeholders to submit comments and to meet with the Agency to discuss their comments, concerns, and suggestions. NHTSA and EPA remain committed to working together to harmonize the CAFE and GHG program provisions to

the extent possible under the agencies' statutes.

Considering all of the information before the Agency, including but not limited to the information referenced in the petition, NHTSA grants the petition in part and denies it in part. The Agency expects to initiate a rulemaking proceeding in the coming months that will address those of the Petitioners' requests that are within the Agency's jurisdiction and power to address. The granting of the petition does not mean that the Agency will issue a final rule. The determination of whether to issue a rule will be made after study of the requested actions and the various alternatives in the course of the rulemaking proceeding, in accordance with statutory criteria.

Authority: 49 U.S.C. 32901, 32902, and 32903; delegation of authority at 49 CFR 1.95.

Issued on December 21, 2016, in Washington, DC, under authority delegated in 49 CFR 1.95, 501.5, and 501.7.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2016-31140 Filed 12-27-16; 8:45 am]

BILLING CODE 4910-59-P

Notices

Federal Register

Vol. 81, No. 249

Wednesday, December 28, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0096]

Notice of Request for Renewal and Revision of an Information Collection; Commercial Transportation of Equines for Slaughter

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Renewal and revision of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a renewal and revision of an information collection associated with the regulations for the commercial transportation of equines for slaughter.

DATES: We will consider all comments that we receive on or before February 27, 2017.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/>#!/docketDetail;D=APHIS-2016-0096.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2016–0096, 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-2016-0096 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: For information on the regulations for the commercial transportation of equines for slaughter, contact Dr. Rory Carolan, National Equine Programs, Surveillance, Preparedness and Response Services, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737; (301) 851–3558. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Commercial Transportation of Equines for Slaughter.

OMB Control Number: 0579–0160.

Type of Request: Renewal and revision of an information collection.

Abstract: Under the Federal Agriculture Improvement and Reform Act of 1996 (“the Farm Bill”), Congress gave responsibility to the Secretary of Agriculture to regulate the commercial transportation within the United States of equines for slaughter. Sections 901–905 of the Farm Bill (7 U.S.C. 1901 note) authorized the Secretary to issue guidelines for the regulation of commercial transportation of equines for slaughter by persons regularly engaged in that activity within the United States. As a result of that authority, the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS) established regulations in 9 CFR part 88, “Commercial Transportation of Equines for Slaughter.”

The minimum standards for transportation cover, among other things, the food, water, and rest provided to such equines. The regulations also require the owner/shipper of the equines to take certain actions in loading and transporting the equines and to certify that the commercial transportation meets certain requirements. In addition, the regulations prohibit the commercial transportation for slaughter of equines considered to be unfit for travel, the use of electric prods on such animals in commercial transportation to slaughter, and the use of double-deck trailers for commercial transportation of equines for slaughter.

These regulations require several information collection activities, including a USDA–APHIS Owner/

Shipper Certificate Fitness to Travel for Slaughter Form/Continuation Sheet, application of backtags, the collection of business information from any individual or other entity found to be transporting horses for slaughter, and recordkeeping.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.29 hours per response.

Respondents: Owners and shippers of equines for slaughter, drivers of the transport vehicles, and foreign officials.

Estimated annual number of respondents: 302.

Estimated annual number of responses per respondent: 40.7.

Estimated annual number of responses: 12,300.

Estimated total annual burden on respondents: 3,508 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.)

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

Done in Washington, DC, this 20th day of December 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016-31416 Filed 12-27-16; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket Number FSIS-2016-0050]

RIN 0583-AD65

2017 Rate Changes for the Basetime, Overtime, Holiday, and Laboratory Services Rates

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the 2017 rates it will charge meat and poultry establishments, egg products plants, and importers and exporters for providing voluntary, overtime, and holiday inspection and identification, certification, and laboratory services. The 2017 basetime, overtime, holiday, and laboratory services rates will be applied on February 5, 2017.

DATES: FSIS will charge the rates announced in this notice beginning February 5, 2017.

FOR FURTHER INFORMATION CONTACT: For further information contact Michael Toner, Director, Budget Division, Office of Management, FSIS, U.S. Department of Agriculture, Room 2159, South Building, 1400 Independence Avenue SW., Washington, DC 20250-3700; Telephone: (202) 690-8398, Fax: (202) 690-4155.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 2011, FSIS published a final rule amending its regulations to establish formulas for calculating the rates it charges meat and poultry establishments, egg products plants, and importers and exporters for providing voluntary, overtime, and holiday inspection and identification, certification, and laboratory services (76 FR 20220).

In the final rule, FSIS stated that it would use the formulas to calculate the annual rates, publish the rates in **Federal Register** notices prior to the start of each calendar year. This notice provides the 2017 rates, which will be applied starting on February 5, 2017.

2017 Rates and Calculations

The following table lists the 2017 Rates per hour, per employee, by type of service:

Service	2017 Rate (estimates rounded to reflect billable quarters)
Basetime	\$55.84
Overtime	70.28
Holiday	84.72
Laboratory	71.72

The regulations state that FSIS will calculate the rates using formulas that include the Office of Field Operations (OFO) inspection program personnel's previous fiscal year's regular direct pay and regular hours (9 CFR 391.2, 391.3, 391.4, 590.126, 590.128, 592.510, 592.520, and 592.530). In 2013, an Agency reorganization eliminated the OIA program office and transferred all of its inspection program personnel to OFO. Therefore, inspection program personnel's pay and hours are identified in the calculations as "OFO inspection program personnel's" pay and hours.

FSIS determined the 2017 rates using the following calculations:

Basetime Rate = The quotient of dividing the Office of Field Operations (OFO) inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2017 basetime rate per hour per program employee is:

[FY 2016 OFO Regular Direct Pay divided by the previous fiscal year's Regular Hours (\$474,751,934/16,702,093)] = \$28.42 + (\$28.42 * 1.60% (calendar year 2017 Cost of Living Increase)) = \$28.87 + \$9.81 (benefits rate) + \$0.97 (travel and operating rate) + \$16.19 (overhead rate) + \$0.02 (bad debt allowance rate) = \$55.86 rounded down to 55.84 so that it is divisible by 4.

Overtime Rate = The quotient of dividing the Office of Field Operations (OFO) inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus that quotient multiplied by the calendar year's percentage of cost of living increase, multiplied by 1.5 (for overtime), plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2017 overtime rate per hour per program employee is:

[FY 2016 OFO Regular Direct Pay divided by previous fiscal year's Regular

Hours (\$474,751,934/16,702,093)] = \$28.42 + (\$28.42 * 1.60% (calendar year 2017 Cost of Living Increase)) = \$28.87 * 1.5 = \$43.31 + \$9.81 (benefits rate) + \$0.97 (travel and operating rate) + \$16.19 (overhead rate) + \$0.02 (bad debt allowance rate) = \$70.30, rounded down to \$70.28 so that it is divisible by 4.

Holiday Rate = The quotient of dividing the Office of Field Operations (OFO) inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus that quotient multiplied by the calendar year's percentage of cost of living increase, multiplied by 2 (for holiday pay), plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2017 holiday rate per hour per program employee calculation is:

[FY 2016 OFO Regular Direct Pay divided by Regular Hours (\$474,751,934/16,702,093)] = \$28.42 + (\$28.42 * 1.60% (calendar year 2017 Cost of Living Increase)) = \$28.87 * 2 = \$57.74 + \$9.81 (benefits rate) + \$0.97 (travel and operating rate) + \$16.19 (overhead rate) + \$0.02 (bad debt allowance rate) = \$84.73, rounded down to \$84.72 so that it is divisible by 4.

Laboratory Services Rate = The quotient of dividing the Office of Public Health Science (OPHS) previous fiscal year's regular direct pay by the OPHS previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2017 laboratory services rate per hour per program employee is:

[FY 2016 OPHS Regular Direct Pay/OPHS Regular hours (\$24,143,108/548,338)] = \$44.03 + (\$44.03 * 1.60% (calendar year 2017 Cost of Living Increase)) = \$44.73 + \$9.81 (benefits rate) + \$0.97 (travel and operating rate) + \$16.19 (overhead rate) + \$0.02 (bad debt allowance rate) = \$71.72.

Calculations for the Benefits, Travel and Operating, Overhead, and Allowance for Bad Debt Rates

These rates are components of the basetime, overtime, holiday, and laboratory services rates formulas.

Benefits Rate: The quotient of dividing the previous fiscal year's direct benefits costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus that quotient multiplied by the calendar year's percentage cost of living increase. Some examples of direct

benefits are health insurance, retirement, life insurance, and Thrift Savings Plan basic and matching contributions.

The calculation for the 2017 benefits rate per hour per program employee is:

[FY 2016 Direct Benefits/(Total Regular hours + Total Overtime hours + Total Holiday hours) (\$190,215,190/19,693,587)] = \$9.66 + (\$9.66 * 1.60% (calendar year 2017 Cost of Living Increase)) = \$9.81.

Travel and Operating Rate: The quotient of dividing the previous fiscal year's total direct travel and operating costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus that quotient multiplied by the calendar year's percentage of inflation.

The calculation for the 2017 travel and operating rate per hour per program employee is:

[FY 2016 Total Direct Travel and Operating Costs/(Total Regular hours + Total Overtime hours + Total Holiday hours) (\$18,819,123/19,693,587)] = \$0.96 + (\$0.96 * 1.0% (2017 Inflation)) = \$0.97.

Overhead Rate: The quotient of dividing the previous fiscal year's indirect costs plus the previous fiscal year's information technology (IT) costs in the Public Health Data Communication Infrastructure System Fund plus the previous fiscal year's Office of Management Program cost in the Reimbursable and Voluntary Funds plus the provision for the operating balance less any Greenbook costs (*i.e.*, costs of USDA support services prorated to the service component for which fees are charged) that are not related to food inspection by the previous fiscal year's total hours (regular, overtime, and holiday) worked across all funds, plus the quotient multiplied by the calendar year's percentage of inflation.

The calculation for the 2017 overhead rate per hour per program employee is:

[FY 2016 Total Overhead/(Total Regular hours + Total Overtime hours + Total Holiday hours)(\$ 315,614,079/19,693,587)] = \$16.03 + (\$16.03 * 1.0% (2017 Inflation)) = \$16.19.

Allowance for Bad Debt Rate = Previous fiscal year's total allowance for bad debt (for example, debt owed that is not paid in full by plants and establishments that declare bankruptcy) divided by previous fiscal year's total hours (regular, overtime, and holiday) worked.

The 2017 calculation for bad debt rate per hour per program employee is:

[FY 2016 Total Bad Debt/(Total Regular hours + Total Overtime hours + Total Holiday hours) = (\$342,710/19,693,587)] = \$0.02.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at <http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register/federal-register-notices>.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Constituent Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at <http://www.fsis.usda.gov/wps/portal/fsis/programs-and-services/email-subscription-service>. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Non-Discrimination Statement

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How To File a Complaint of Discrimination

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

Send your completed complaint form or letter to USDA by mail, fax, or email: *Mail* U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250-9410.

Fax (202) 690-7442

Email: program.intake@usda.gov.

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

Done at Washington, DC on: December 21, 2016.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2016-31255 Filed 12-27-16; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agencies' intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 1942, subpart A, "Community Facility Loans."

DATES: Comments on this notice must be received by February 27, 2017 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT:

Aaron Morris, Community Programs Loan Specialist, Rural Housing Service, U.S. Department of Agriculture, STOP 0787, 1400 Independence Ave. SW., Washington, DC 20250-0787, telephone: (202) 720-1501.

SUPPLEMENTARY INFORMATION:

Title: Community Facility Loans.

OMB Number: 0575-0015.

Expiration Date of Approval: May 31, 2017.

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

Abstract: The Community Facilities loan program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of community facilities for public use in rural areas.

Community Facilities programs have been in existence for many years. These programs have financed a wide range of projects varying in size and complexity from large general hospitals to small day care centers. The facilities financed are designed to promote the development of rural communities by providing the

infrastructure necessary to attract residents and rural jobs.

Information will be collected by the field offices from applicants, borrowers, and consultants. This information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use funds for authorized purposes. Failure to collect proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Public bodies, not for profits, or Indian Tribes.

Estimated Number of Respondents: 2,769.

Estimated Number of Responses: 34,050.

Estimated Number of Responses per Respondent: 12.29.

Estimated Total Annual Burden on Respondents: 41,523 hours.

Copies of this information collection can be obtained from Kimble Brown, Regulations and Paperwork Management Branch, at (202) 692-0043.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' 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 Kimble Brown, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250.

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

Dated: December 20, 2016.

Tony Hernandez,

Administrator, Rural Housing Service.

[FR Doc. 2016-31409 Filed 12-27-16; 8:45 am]

BILLING CODE 3410-XV-P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Monday through Wednesday, January 9-11, 2017 at the times and location listed below.

DATES: The schedule of events is as follows:

Monday, January 9, 2017

10:30 a.m.-11:00 a.m.—Budget Committee

11:00-Noon—Planning and Evaluation

1:30 p.m.-3:00 p.m.—Ad Hoc Committee on Frontier Issues: Perspectives of Occupants with Mobility Impairments on Fire Evacuation and Elevators, Kathryn Butler, Ph.D., National Institute of Standards and Technology

3:00 p.m.-4:00 p.m.—Technical Programs Committee

Tuesday, January 10, 2017

9:30 a.m.-Noon—Public Briefing on Recent Access Board Final Rules

1:30 p.m.-2:30 p.m.—Update on Current Access Board Rulemaking (Closed)

2:30 p.m.-3:00 p.m.—Ad Hoc Committee on Design Guidance

Wednesday, January 11, 2017

1:30 p.m.-3:00 p.m.—Board Meeting

ADDRESSES: Meetings will be held at the Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272-0010 (voice); (202) 272-0054 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on the afternoon of Wednesday, January 11, 2017, the Access Board will consider the following agenda items:

- Approval of the draft November 9, 2016 meeting minutes (vote)
- Ad Hoc Committee Reports: Frontier Issues and Design Guidance
- Budget Committee
- Planning and Evaluation Committee
- Technical Programs Committee
- Election Assistance Commission Report
- Executive Director's Report

- Public Comment (final 15 minutes of the meeting)

Members of the public can provide comments either in-person or over the telephone during the final 15 minutes of the Board meeting on Wednesday, January 11, 2017. Any individual interested in providing comment is asked to pre-register by sending an email to bunales@access-board.gov with the subject line "Access Board meeting—Public Comment" with your name, organization, state, and topic of comment included in the body of your email. All emails to register for public comment must be received by Wednesday, January 4, 2017. Registered commenters will be provided with a call-in number and passcode before the meeting. Commenters will be called on in the order by which they pre-registered. Due to time constraints, each commenter is limited to two minutes. Commenters on the telephone will be in a listen-only capacity until they are called on.

All meetings are accessible to persons with disabilities. An assistive listening system, Communication Access Realtime Translation (CART), and sign language interpreters will be available at the Board meeting and committee meetings.

Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see www.access-board.gov/the-board/policies/fragrance-free-environment for more information).

You may view the Wednesday, January 11, 2017 meeting through a live webcast from 1:30 p.m. to 3:00 p.m. at: www.access-board.gov/webcast.

David M. Capozzi,

Executive Director.

[FR Doc. 2016-31407 Filed 12-27-16; 8:45 am]

BILLING CODE 8150-01-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

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 (FACA), that a planning meeting of the Colorado Advisory Committee to the Commission will convene at 3:00 p.m. (MST) on Friday, January 13, 2017, via teleconference. The purpose of the

meeting is to conduct orientation for the newly appointed Committee and discuss current civil rights issues of importance in the state.

DATES: Friday, January 13, 2017, at 3:00 p.m. (MST)

ADDRESSES: *To be held via teleconference:*

Conference Call Toll-Free Number: 1-888-899-5068, Conference ID: 7634583.

TDD: Dial Federal Relay Service 1-800-977-8339 and give the operator the above conference call number and conference ID.

FOR FURTHER INFORMATION CONTACT:

Malee V. Craft, DFO, mcraft@usccr.gov, 303-866-1040.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion by dialing the following Conference Call Toll-Free Number: 1-888-899-5068; Conference ID: 7634583. Please be advised that before being placed into the conference call, the operator will ask callers to provide their names, their organizational affiliations (if any), and an email address (if available) prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free phone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS) at 1-800-977-8339 and provide the FRS operator with the Conference Call Toll-Free Number: 1-888-899-5068, Conference ID: 7634583. Members of the public are invited to submit written comments; the comments must be received in the regional office by Monday, February 13, 2017. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13-201, Denver, CO 80294, faxed to (303) 866-1050, or emailed to Evelyn Bohor at ebohor@usccr.gov. Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866-1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at <http://www.facadatabase.gov/committee/meetings.aspx?cid=238> and clicking on the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become

available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, www.usccr.gov, or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

Agenda:

- Welcome and Roll-call
Malee V. Craft, Regional Director,
Rocky Mountain Regional Office
(RMRO)
- Introductions
Alvina L. Earnhart, Chair, Colorado
State Advisory Committee
- Orientation and brief update on
Commission and Region Activities
- Discuss current civil rights issues of
importance in the state
- Next Steps

Dated: December 21, 2016.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2016-31275 Filed 12-27-16; 8:45 am]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

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 (FACA), that a planning meeting of the New Mexico Advisory Committee to the Commission will convene at 11:00 a.m. (MST) on Wednesday, January 25, 2017, via teleconference. The purpose of the meeting is to conduct orientation for the newly appointed Committee and review progress of draft report on Elder Abuse.

DATES: Wednesday, January 25, 2017, at 11:00 a.m. (MST)

ADDRESSES: To be held via teleconference:

Conference Call Toll-Free Number: 1-888-515-2235, Conference ID: 3622450.

TDD: Dial Federal Relay Service 1-800-977-8339 and give the operator the above conference call number and conference ID.

FOR FURTHER INFORMATION CONTACT:

Malee V. Craft, DFO, mcraft@usccr.gov, 303-866-1040

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion by dialing the following Conference Call Toll-Free Number: 1-888-515-2235; Conference ID: 3622450.

Please be advised that before being placed into the conference call, the operator will ask callers to provide their names, their organizational affiliations (if any), and an email address (if available) prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free phone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS) at 1-800-977-8339 and provide the FRS operator with the Conference Call Toll-Free Number: 1-888-515-2235, Conference ID: 3622450. Members of the public are invited to submit written comments; the comments must be received in the regional office by Monday, February 27, 2017. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13-201, Denver, CO 80294, faxed to (303) 866-1050, or emailed to Evelyn Bohor at ebohor@usccr.gov. Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866-1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at <https://database.faca.gov/committee/meetings.aspx?cid=264> and clicking on the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, www.usccr.gov, or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

Agenda

- Welcome and Roll-call
Malee V. Craft, Regional Director,
Rocky Mountain Regional Office
(RMRO)
- Introductions
Sandra Rodriguez, Chair, New Mexico
Advisory Committee
- Orientation and brief update on
Commission and Region Activities
- Discuss progress of draft report on
Elder Abuse
- Next Steps

Dated: December 21, 2016.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2016-31276 Filed 12-27-16; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wyoming Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

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 (FACA), that a planning meeting of the Wyoming Advisory Committee to the Commission will convene at 11:00 a.m. (MST) on Thursday, January 19, 2017, via teleconference. The purpose of the meeting is to conduct orientation for the newly appointed Committee and review previous activities as part of planning for future activities.

DATES: Thursday, January 19, 2017, at 11:00 a.m. (MST)

ADDRESSES: To be held via teleconference:

Conference Call Toll-Free Number: 1-877-548-7901, Conference ID: 8439608.

TDD: Dial Federal Relay Service 1-800-977-8339 and give the operator the above conference call number and conference ID.

FOR FURTHER INFORMATION CONTACT: Malee V. Craft, DFO, *mcraft@usccr.gov*, 303-866-1040

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion by dialing the following Conference Call Toll-Free Number: 1-877-548-7901; Conference ID: 8439608. Please be advised that before being placed into the conference call, the operator will ask callers to provide their names, their organizational affiliations (if any), and an email address (if available) prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free phone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS) at 1-800-977-8339 and provide the FRS operator with the Conference Call Toll-Free Number: 1-877-548-7901, Conference ID: 8439608. Members of the public are invited to submit written

comments; the comments must be received in the regional office by Monday, February 20, 2017. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13-201, Denver, CO 80294, faxed to (303) 866-1050, or emailed to Evelyn Bohor at *ebohor@usccr.gov*. Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866-1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at <http://www.facadatabase.gov/committee/meetings.aspx?cid=283> and clicking on the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

Agenda

- Welcome and Roll-call
Malee V. Craft, Regional Director, Rocky Mountain Regional Office (RMRO)
- Introductions
Anetra D. E. Parks, Chair, Wyoming State Advisory Committee
- Orientation and brief update on Commission and Region Activities
- Review previous activities of SAC
- Next Steps

Dated: December 21, 2016.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2016-31277 Filed 12-27-16; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Minnesota Advisory Committee To Continue Preparations for a Public Hearing To Gather Testimony Regarding Civil Rights and Policing Practices in Minnesota

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement 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 Monday, January 9, 2017, at 2:00 p.m. CST for the purpose of preparing for a public hearing to gather testimony regarding civil rights and policing practices in Minnesota.

DATES: The meeting will be held on Monday, January 9, 2017, at 2:00 p.m. CST.

ADDRESSES: Public Call Information: Dial: 877-440-5787, Conference ID: 1262900.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnarowski, DFO, at *mwojnarowski@usccr.gov* or 312-353-8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 877-440-5787, conference ID: 1262900. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and conference ID number.

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 Regional Programs Unit Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. 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 Regional Programs Unit at (312) 353-8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit 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 (<http://www.facadatabase.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 Regional Programs Unit at the above email or street address.

Agenda

Welcome and Introductions
Discussion of Hearing Preparation: Civil Rights and Policing Practices in Minnesota
Public Comment
Future Plans and Actions
Adjournment

Dated: December 21, 2016.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2016–31274 Filed 12–27–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; 2018 End-to-End Census Test—Post-Enumeration Survey Independent Listing Operation

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

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

DATES: To ensure consideration, written comments must be submitted on or before February 27, 2017.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Beth Tyszka, U.S. Census Bureau, 4600 Silver Hill Road, Room 2K281J, Washington, DC 20233, 301–763–3066 (or via the Internet at Beth.Clarke.Tyszka@census.gov).

SUPPLEMENTARY INFORMATION

I. Abstract

During the years preceding the 2020 Census, the Census Bureau will pursue its commitment to reducing the costs of conducting a decennial census while maintaining our commitment to quality. In the 2018 Fiscal Year, the Census Bureau will be performing a 2018 End-to-End Census Test. This last major test before the 2020 Census has the stated purpose (1) to test and validate 2020 Census operations, procedures, systems, and field infrastructure together to ensure proper integration and conformance with functional and non-functional requirements, and (2) to produce a prototype of geographic and data products.

As in previous censuses, the Post-Enumeration Survey for the 2020 Census will be conducted to provide estimates of census net coverage error and components of census coverage (such as correct enumerations, omissions, and erroneous enumerations, including duplicates) for housing units and persons living in housing units (see Definition of Terms) for the United States (U.S.) and Puerto Rico, excluding remote Alaska. These coverage estimates provide insight into the quality and coverage of census results, which can be used to improve future censuses. Given that the Post-Enumeration Survey involves several field data collection activities on a sample basis and several matching activities between the survey and the 2020 Census during the 2020 Census timeline, these Post-Enumeration Survey operations will also require testing during the 2018 End-to-End Census Test. It is also important to note that for the Post-Enumeration Survey methods, we need to ensure independence between the survey and census operations to prevent any of the programs affecting each other results.

The Independent Listing operation, beginning in January of 2018, is the first Post-Enumeration Survey operation in the 2018 End-to-End Census Test. It will be conducted to obtain a complete inventory of all the housing unit addresses within the Post-Enumeration Survey sample of Basic Collection Units (BCUs) before the 2018 End-to-End Census Test enumeration commences.

The following objectives are crucial to a successful Independent Listing operation:

- Test the automated listing and mapping capabilities required.
- Validate the creation of the Independent Listing workload.

- Conduct a listing quality control operation during the Independent Listing operation.

The Post-Enumeration Survey Independent Listing operation for the 2018 End-to-End Census Test will be conducted in selected survey sample areas in the specified sites listed below in the U.S. (excluding remote Alaska). The primary sampling unit is a BCU. The currently determined test sites are Pierce County, Washington; Providence County, Rhode Island; and the Bluefield-Beckley-Oak Hill, West Virginia area. As in the past, the Post-Enumeration Survey operations and activities will be conducted separate from and independent of the other 2018 End-to-End Census Test operations to prevent any potential contamination of census or Post-Enumeration Survey results.

During the Independent Listing operation, field staff, referred to as listers, will canvass every street, road, or other place where people might live in their assigned BCUs and construct a list of housing units using an automated data collection instrument on a mobile device. The mobile device will contain the data collection instrument with digital maps of the area that needs to be canvassed. Listers will attempt to contact a member of each housing unit they encounter in their route. If someone answers, the lister will provide a Confidentiality Notice and ask about the address in order to collect the address information, as appropriate. To ensure all units at a multi-unit are properly listed, the lister will then ask if there are any additional vacant or occupied units in the structure or on the property. If there are additional units, the lister will collect and update that information. Multi-units are defined as apartment buildings or houses, condominiums, duplexes and triplexes, in addition to separate housing units with attached apartments, such as basement or garage, or similar apartments where people could be living on Census Day. To be classified as a separate unit, these must meet the housing unit definition requirement of having direct access from outside or through a common hallway, and must either have someone living there or be intended for occupancy, even if vacant at the time of the Independent Listing operation. Mobile homes and trailers, both in a park and not in a park, will also be listed, including any empty lots or pads in the parks in the BCU. Finally, any occupied camper, recreational vehicle, van, boat, tent or other location where people are living during the listing operation will also be listed as housing units.

If the lister does not find anyone at home after several attempts, they will try to collect the information from a proxy or update the address list as best they can by observation as a last resort. Listers will also identify the location of each housing unit by collecting map spots on digital maps (*i.e.*, Global Positioning System (GPS) coordinates). The lister will also collect information on the status of each housing unit, such as occupied, vacant, under construction, empty trailer park, etc., and collect the name and phone number of the respondent. Completed Independent Listing BCUs will be automatically reviewed for abnormal characteristics (such as GPS information indicating that the lister was far from the units they were listing). BCUs with unusual characteristics may be subject to a Dependent Quality Check (DQC) wherein DQC listers return to the field to check a portion of units to ensure that the work performed is of acceptable quality and to verify that the correct BCUs were visited. If the BCU fails the DQC, then the DQC lister reworks the entire BCU.

Following the completion of listing for each BCU, the addresses are computer and clerically matched, on a flow basis, against the list of addresses considered valid for the census at the time of the matching operation for the same BCU. The addresses that remain unmatched or have unresolved address status after matching will be sent to the field during the next field operation of the Post-Enumeration Survey (Initial Housing Unit Followup) to collect additional information that might allow a resolution of any differences between the Independent Listing and census address list results. Cases will also be sent to the field to resolve potential duplicates and unresolved housing unit status. The questions and procedures to be used in the Initial Housing Unit Followup phase of the Post-Enumeration Survey in the 2018 End-to-End Census Test and all subsequent Post-Enumeration Survey phases will be published in several separate **Federal Register** Notices.

II. Method of Collection

The Independent Listing operation will be conducted using in-field person-to-person interviews on an automated instrument on a mobile device. Listers will receive work assignments grouped by geography and in close proximity to the lister's residence (whenever possible). Field staff will use the Enterprise Census and Survey Enabling (ECaSE) platform's Listing and Mapping software.

Universe

The 2018 End-to-End Census Test occurs in three sites within the continental United States: Pierce County, Washington; Providence County, Rhode Island; and the Bluefield-Beckley-Oak Hill, West Virginia area. For the Post-Enumeration Survey operations, a sample of approximately 21,000 housing units will be selected and divided evenly across the three sites included in the test; allocating 7,000 units to each of the sites. Independent Listing listers are expected to knock on every door over several spaced visits in their assigned BCUs to try to find a resident or proxy to ask about the units to be listed. The quality control operation will consist of 1,050 housing units.

Definition of Terms

Components of Census Coverage—The components of census coverage includes Correct Enumerations, Erroneous Enumerations, Whole-Person Imputations, and Omissions. Correct enumerations are persons or housing units that were correctly enumerated in the census. Erroneous enumerations are persons or housing units that were enumerated in the census but should not have been. Examples of erroneous enumerations are duplicates, nonexistent housing units or persons, and persons or housing units that were enumerated in the wrong place. Omissions are persons and housing units that were not correctly enumerated in the census but should have been. Lastly, whole-person imputations are census records for which all of the demographic characteristics were imputed. Many of these imputations are persons for which we knew the count but did not obtain sufficient information.

Net Coverage Error—Reflects the difference between the true population and the census count. If the census count was less than the actual number of persons or housing units in the population, then we say there was an undercount. If the census count was more than the actual number of persons or housing units in the population, then we say there was an over count.

III. Data

OMB Control Number: 0607–XXXX.

Form Number: NA.

Type of Review: Regular submission.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 21,000 Housing Units (HUs) for Independent Listing and 1,050 HUs for Independent Listing Dependent Quality Control.

Estimated Time per Response: 5 min.
Estimated Total Annual Burden Hours: 1,840 hours.

Estimated Total Annual Cost: The only cost to respondents is that of their time to respond.

Respondent's Obligation: Mandatory.
Legal Authority: Title 13, U.S. Code, Section 141 and 193.

IV. Request for Comments

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

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

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2016–31410 Filed 12–27–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; 2017 National Survey of Children's Health

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the proposed 2017 National Survey of Children's Health, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before February 27, 2017.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616,

14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at jjessup@doc.gov).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jason Fields, U.S. Census Bureau, ADDP, HQ-7H153, 4600 Silver Hill Road, Washington, DC 20233-0001 (301-763-2465 or via the Internet at Jason.M.Fields@census.gov).

SUPPLEMENTARY INFORMATION

I. Abstract

Sponsored by the U.S. Department of Health and Human Services' (HHS') Health Resources Services Administration's Maternal and Child Health Bureau (HRSA MCHB), the National Survey of Children's Health (NSCH) is designed to produce data on the physical and emotional health of American children under 18 years of age. The NSCH collects information on factors related to the well-being of children, including access to health care, in-home medical care, family interactions, parental health, school and after-school experiences, and neighborhood characteristics. In 2011-2012, the NSCH also collected information to assess parents' awareness of, experience with, and interest in enrolling in Medicaid and the State Children's Health Insurance Program (CHIP).

The 2017 NSCH project includes plans to test incentive efficacy (the relative benefit for reducing survey non-response by providing \$0 or a \$2 incentive as a token of appreciation), contact materials, and modifications to data collection strategies based on modeled information about Internet access. Preliminary results from the 2016 NSCH production cycle (administered from June 2016-February 2017) were used to inform the decisions made regarding this second year 2017 NSCH production survey project. First, based on the results from the 2016 NSCH and available funds, a \$2 incentive will be administered with the initial mailing. For initial incentives, the evaluation of results from the 2016 NSCH showed that there was a statistically significant difference in the response rates when respondents were provided an incentive compared to those who were part of the control group that did not receive an incentive. The cost of incentives is balanced against the reduction in follow-up effort and cost required to collect the required data. There was a slightly larger increase in response for households mailed a \$5 incentive compared to those mailed a \$2

incentive with their initial survey invite, but due to budget limitations that amount is not being considered for the 2017 NSCH. A small group (10% or less) receiving no incentive will be included to monitor the effectiveness of the incentive in the initial mailing. Second, for respondents who answer a paper screener interview and are mailed their first paper topical questionnaire, incentives will be tested for their ability to reduce bias and gain cooperation for this critical second stage of paper questionnaire data collection.

In addition to testing incentives and developing materials, the 2017 NSCH will continue to serve as a platform to evaluate different non-response follow-up mailing strategies based on a household's likelihood to respond over the Internet. For the 2016 NSCH, every household within the sample was assigned an American Community Survey (ACS) tract level Internet response likelihood flag (from 2013-2014 ACS survey years) of either medium/high (approximately 70% of the sample) or low (approximately 30% of the sample). The results from the 2015 NSCH pretest showed that Internet was the mode of choice (>70% response rate); therefore, the 2016 NSCH planned solely for a web push mode of data collection. The web push mode included a combined screener and topical web instrument invite first, followed by a paper screener questionnaire in either their second or third non-response follow-up mailing. Households assigned to the low Internet likelihood group received their first paper screener questionnaire with their second non-response follow-up mailing and households assigned to the medium/high Internet likelihood group received their first paper screener invite with their third non-response follow-up mailing. For those households with children that responded to the screener questionnaire by paper, a follow-up topical paper questionnaire was mailed to that address.

In the 2016 NSCH, we observed response rates which were lower than the pretest and lower than our conservative estimates. While sample composition is still being evaluated, it is much closer to the expected nationally representative sample than the pretest was. We were able to learn considerably more about the production use of flags identifying the likelihood of responding by Internet and their usability to target mailed paper non-response follow-up. Since the 2016 NSCH sample was more representative of the general U.S. population than the prior year's pretest, we learned that response rates were actually lower across all characteristics

of the sample than originally anticipated. The indicator that we developed for differentiating households likely to respond by Internet versus paper was more successful at indicating the likelihood of overall survey response than the preference for Internet over paper (medium/high Internet group were more likely to respond in general than the low Internet group). Since there continues to be a significant potential for cost savings for web data collection over paper data collection, we are working to refine and retest an Internet response indicator for the 2017 NSCH based on the results from the 2016 data collection. The first mailing strategy is a web push. This treatment is structured to reduce cost and respondent burden, focused so that all households in this group will first be invited to complete the NSCH online, and only non-respondents or those who call in to request a hard copy will be mailed a paper questionnaire. The second mailing strategy is mixed-mode, where web invitations and paper questionnaires are mailed with their initial survey invitation. The web push data collection strategy will be applied to approximately 70% of the sample using the medium/high Internet group flag that was improved based on the results of the 2016 NSCH and updated input data, while the remaining 30% low Internet group sample cases will be included in the mixed-mode data collection plan. Based on final results of the 2016 NSCH and the finalized sampling plan for the 2017 NSCH, we expect to differentiate this mix of web push and mixed-mode mailings by sampling strata and the expected presence of children.

The second new data collection strategy being tested is a pressure-sealed reminder postcard scheduled to be mailed approximately one week after the initial survey invite mailing. This strategy is being implemented because the time gap used during the 2016 NSCH proved too long, and a significant dip in response flow was observed between mailings. The ability to send reminders enclosed with pressure-seal system allow them to contain username and password login information for the Centurion web instrument as well as specific information about the survey. The postcard will also allow for a paragraph in Spanish that will direct the respondent to the Spanish web survey or the Telephone Questionnaire Assistance (TQA) line for Spanish assistance.

Third, we will test for response improvements using different envelopes to deliver the survey materials, and the impact of adding supplemental fact

sheets with important statistics from prior NSCH administrations. The initial mailing and first follow-up mailing will utilize the standard BC-1328 or BC-1776 flat mail envelopes both of which are white. During the initial and first follow-up mailing, inserts with important NSCH facts will be tested. During the second follow-up mailing when all respondents are receiving the BC-1776 flat mail envelopes containing a paper questionnaire, we will test if there is a difference in color preference and wording on the outside of the envelope.

Finally, for respondents who experience technical problems with the web instrument, have questions about the survey, or need other forms of assistance, the 2017 NSCH will continue to have a TQA line available similar to what was used for 2016 NSCH. TQA staff will not only be able to answer respondent questions and concerns, but also they will have the ability to collect survey responses over the phone if the respondent calls in and would like to have interviewer assistance in completing the interview.

In both Internet and paper collection modes, the survey design for the 2017 NSCH focuses on first collecting information about the children in the household and basic special health care needs, and then selecting a child from the household for follow-up to collect additional detailed topical information. If there is more than one eligible child in a household, a single child will be selected based on a sampling algorithm that considers the age and number of children as well as the presence of children with special health care needs. We estimate that of the original 190,000 selected households, our target screener return rate of 40.5 percent will yield approximately 76,950 responses to the screener. We then estimate that 60 percent of households from the first phase of the screener will be eligible to receive a topical questionnaire (households with children), and 70 percent of these households with children will return the topical questionnaire, resulting in approximately 32,319 completed topical interviews.¹ A household could be selected for one of three age-based topical surveys: 0 to 5 year old children,

¹ The topical return rate was calculated using an average of the web topical return rate (95%) and the paper topical return rate (45%). The return rate includes fully complete topicals and sufficient partial topicals out of all completed screeners. The completion rate (31% for topicals) and response rate (40.4%) calculations on the following page additionally includes households in the denominator that are estimated to have eligible children, but who did not complete screeners.

6 to 11 year old children, or 12 to 17 year old children.

Census staff have developed a plan to select a production sample of approximately 190,000 households (addresses) from a Master Address File (MAF) based sampling frame, with split panels to test mode of administration (*i.e.*, high-web and low-web), and improvements to contact materials and strategies. Based on results of the 2016 incentive experiments and the availability of funds, we plan to use a \$2 initial incentive with a control group receiving no incentive to monitor the effectiveness of the incentive expenditures. For respondents who answer the paper screener and are mailed a paper topical questionnaire, an additional incentive is expected for that mailing. The recommendation for the amount of this secondary incentive will be based on the results of the 2016 NSCH and available funding. From the 2016 NSCH, using AAPOR definitions of response, we can expect an overall screener completion rate for the 2017 NSCH to be about 45% percent and a 31% percent overall topical completion rate.² This is different from the total overall response rate, which is expected to be about 40.4%.³

The goal of the 2017 NSCH is to provide HRSA MCHB with the necessary data to support the production of national estimates yearly and state-based estimates with pooled samples on the health and well-being of children, their families, and their communities as well as estimates of the prevalence and impact of children with special health care needs.

II. Methods of Collection

Web Push

The production 2017 NSCH plan for the web push data collection design includes 70% of the 190,000 households

² Screener Completion Rate is the proportion of screener-eligible households (*i.e.*, occupied residences) that completed a screener. It is equal to $(S+X)/(S+X+R+e(UR+UO))$, where S is the count of completed screeners with children, X is completed screeners without children, R is screener refusals, and $e(UR+UO)$ is the estimated count of screener eligible households among nonresponding addresses.

The Topical Completion Rate is the proportion of topical-eligible households (*i.e.*, occupied residences with children present) that completed a topical questionnaire. It is equal to I/HCT , where I is the count of completed topicals and HCT is the estimated count of households with children in the sample or $S+R+(S+R)/(S+X+R)*e(UR+UO)$.

³ Total Response Rate is the proportion of screener-eligible households that completed a screener or topical questionnaire. It is equal to $(X+I+P)/(X+I+P+RS+eUS)$, where I is the count of completed topicals, P is the count of sufficient partial completed topicals, RS is screener refusals, and eUS is the estimated count of screener eligible households among nonresponding addresses.

receiving an initial invite with instructions on how to complete an English or Spanish-language screening questionnaire via the web. Those households who decide to complete the web-based survey will be taken through the screening questionnaire to determine if they screen into one of the three topical instruments. If a household lists at least one child who is 0 to 17 years old in the screener, they are directed into a topical questionnaire immediately after the last screener question. The web push production sample of 133,000 is broken out into two incentive groups the majority, 119,700 households, receiving a \$2 incentive, and a small group, 13,300 households, receiving no incentive so that the effectiveness of the incentive can be monitored. No additional incentives are planned for subsequent screener follow-up reminders or screener paper questionnaire mailings. If a household in the web push treatment group decides to complete the paper screener, they may have a chance to receive an additional topical questionnaire incentive.

Mixed-Mode

The production 2017 NSCH plan for the mixed-mode data collection design includes approximately 30% of the 190,000 households receiving both an initial invite with a paper screening questionnaire and instructions on how to complete an English or Spanish language screening questionnaire via the web. Those households who decide to complete the web-based survey will follow the same screening and topical selection path as the web push. For households that choose to complete the paper screener questionnaire rather than completing the survey on the Internet, upon receipt of their completed paper screener at the Census processing center, households with eligible children will be mailed a paper topical questionnaire. The mixed-mode production sample of 57,000 will also receive incentives. Approximately 51,300 households will receive a \$2 incentive with the initial mailing. As in the web push group, a small sample of approximately 5,700 households will receive no incentive so that the incentive effectiveness may be monitored. No additional incentives are planned for subsequent screener follow-up reminders or screener paper questionnaire mailings. If a household in the mixed-mode group chooses to complete the paper screener instead of completing by Internet, they may receive an additional topical questionnaire incentive.

Follow-Up Reminder Design

The NSCH historically was conducted in a partnership between the Health Services Resources Administration's Maternal and Child Health Bureau and the National Center for Health Statistics. As such, the survey information was sent to respondents under letterhead from the Department of Health and Human Services and the Centers for Disease Control and Prevention, with the Director of NCHS signing the letters to the respondent.

In the 2016 NSCH, we tested both standard contact branding utilized for Census Bureau surveys, which included Census Bureau letterhead and the Census Director's signature, and an alternative sent with HRSA MCHB branding. The first follow-up mailing, sent to non-responding households approximately three-weeks after their initial invitation to respond to the survey by web, was split into two groups. The first group was sent a reminder to participate with their web login and password under standard Census Bureau letterhead. The second group was sent their reminder under a HRSA MCHB letterhead. The differential success of these reminder treatments continues to be evaluated. However, initial results lean toward the majority of respondents preferring Census Bureau letterhead. These results have aided in our decision to go with Census Bureau branding on all mailed materials.

Non-Response Follow-Up for the High-Internet Group and Low-Internet Group

The high-Internet group will receive two additional web survey invitation letters requesting their participation in the survey prior to receiving their first paper screener questionnaire in the third follow-up mailing. The low-Internet group will receive both a web survey invitation letter along with a mailed paper screener questionnaire with each follow-up mailing. Once a household in the high-Internet group receives a paper screener questionnaire, they will then have the option to either complete the web-based survey or complete the mailed paper screener similar to the low-Internet group. If the household chooses to complete the mailed paper questionnaire, then they would then be considered part of the mailout/mailback paper-and-pencil interviewing treatment group and would receive a paper topical questionnaire if there is at least one eligible child who is 0 to 17 years old listed on the screener. Non-response follow-up for the topical questionnaire will include

three more mailings, each including the paper topical questionnaire.

III. Data

OMB Control Number: 0607-0990.

Form Number(s): NSCH-P-S1 (English Screener), NSCH-P-T1 (English Topical for 0- to 5-year-old children), NSCH-P-T2 (English Topical for 6- to 11-year-old children), NSCH-P-T3 (English Topical for 12- to 17-year-old children), NSCH-PS-S1 (Spanish Screener), NSCH-PS-T1 (Spanish Topical for 0- to 5-year-old children), NSCH-PS-T2 (Spanish Topical for 6- to 11-year-old children), and NSCH-PS-T3 (Spanish Topical for 12- to 17-year-old children).

Type of Review: Regular submission.

Affected Public: Parents, researchers, policymakers, and family advocates.

Estimated Number of Respondents: 76,950 for the Screener and 32,319 for the Topical.

Estimated Time per Response: 5 minutes per screener response and 30 minutes per topical response.

Estimated Total Annual Burden Hours: 22,572 hours.

Estimated Total Annual Cost to Public: \$585,067.

Respondent's Obligation: Voluntary.

Legal Authority: *Census Authority:* 13 U.S.C. Section 8(b).

HRSA MCHB Authority: Section 501(a)(2) of the Social Security Act (42 U.S.C. 701).

USDA Authority: The Healthy, Hunger-Free Kids Act of 2010, Public Law 111-296. In particular, 42 U.S.C. 1769d(a) authorizes USDA to conduct research on the causes and consequences of childhood hunger included in 1769d(a)(4)(B), the geographic dispersion of childhood hunger and food insecurity.

CDC/NCBDDD Authority: Public Health Service Act, Section 301, 42 U.S.C. 241.

EPA Authority: *FIFRA:* Section 20(a); Toxic Substances Control Act: Section 10; 15 U.S.C. 2609.

Confidentiality: The data collected under this agreement are confidential under 13 U.S.C. Section 9. All access to Title 13 data from this survey is restricted to those holding Census Bureau Special Sworn Status pursuant to 13 U.S.C. Section 23(c).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2016-31414 Filed 12-27-16; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board**

[B-56-2016]

**Foreign-Trade Zone (FTZ) 279—
Terrebonne Parish, Louisiana;
Authorization of Production Activity;
Gulf Island Shipyards, LLC;
(Shipbuilding); Houma, Louisiana**

On August 19, 2016, Gulf Island Shipyards, LLC submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility within FTZ 279, in Houma, Louisiana.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (81 FR 60340-60341, September 1, 2016). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14, and subject to the following conditions:

(1) Any foreign steel mill products admitted to the zone for the Gulf Island Shipyards, LLC, activity, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to full customs duties in accordance with applicable law, unless the Executive Secretary determines that the same item is not then being produced by a domestic steel mill.

(2) Gulf Island Shipyards, LLC, shall meet its obligation under 15 CFR 400.13(b) by annually advising the FTZ

Board's Executive Secretary as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that the FTZ Board may consider whether any foreign dutiable items are being imported for manufacturing in the zone primarily because of FTZ procedures and whether the FTZ Board should consider requiring customs duties to be paid on such items.

Dated: December 19, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016-31402 Filed 12-27-16; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-970]

Multilayered Wood Flooring From the People's Republic of China; Preliminary Results and Partial Rescission of Antidumping Duty New Shipper Reviews; 2014-2015

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

SUMMARY: The Department of Commerce ("the Department") is conducting new shipper reviews ("NSR") of the antidumping duty order on multilayered wood flooring ("MLWF") from the People's Republic of China ("PRC"). The review covers two exporters of subject merchandise, Jiangsu Keri Wood Co., Ltd. ("Keri Wood") and Zhejiang Simite Wooden Co., Ltd. ("Simite Wooden"). The Department preliminarily determines that Keri Wood did not make sales of subject merchandise at less than normal value. The period of review ("POR") is December 1, 2014, through November 30, 2015. The Department also preliminarily determines that Simite Wooden's sale to the United States is not *bona fide*, as required by section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("the Act"). Therefore, we are preliminarily rescinding the NSR with respect to Simite Wooden. Interested parties are invited to comment on the preliminary results of these reviews.

DATES: Effective December 28, 2016.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor or Robert Bolling, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone:

(202) 482-5831 or (202) 482-3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 27, 2016, the Department published a notice of initiation of two new shipper reviews of the antidumping duty order on MLWF from the PRC.¹ The Department subsequently issued antidumping duty questionnaires, and supplemental questionnaires, to Keri Wood and Simite Wooden and received timely responses thereto. Also, Keri Wood and Simite Wooden submitted comments on surrogate country and surrogate value selection.² No other party submitted surrogate country or surrogate value comments. On June 23, 2016, the Department extended the time period for issuing the preliminary results of these reviews by 120 days, until November 20, 2016.³ On November 15, 2016, the Department aligned these NSRs with the fourth administrative review of MLWF from the PRC.⁴ On November 20, 2014, the Department extended the preliminary results until December 20, 2016, to align with the fourth administrative review of this proceeding.⁵

Scope of the Order

The merchandise covered by the order is multilayered wood flooring, which is

¹ See *Multilayered Wood Flooring from the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews*, 81 FR 4612 (January 27, 2016) ("Initiation Notice").

² See "See Simite Wooden's Letter to the Department, *Multilayered Wood Flooring from the People's Republic of China; A-570-970; Surrogate Values for the Preliminary Results*, dated May 10, 2016; see also Keri Wood's Letter to the Department, *Multilayered Wood Flooring from the People's Republic of China: Comments Regarding Surrogate Value Selection*, dated May 23, 2016.

³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Maisha Cryor, Office IV, Antidumping and Countervailing Duty Operations, entitled, "Multilayered Wood Flooring from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Reviews" dated June 23, 2016.

⁴ See Memorandum to the File, regarding "Alignment of the New Shipper Reviews of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China with the Concurrent Administrative Review of Multilayered Wood Flooring from the People's Republic of China" (November 15, 2016).

⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Maisha Cryor, Office IV, Antidumping and Countervailing Duty Operations, entitled, "Multilayered Wood Flooring from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Reviews" dated June 23, 2016; see also Memorandum to the File, regarding "Extension of Deadline for the Preliminary Results of the New Shipper Reviews of Multilayered Wood Flooring from the People's Republic of China" (November 20, 2016).

composed of an assembly of two or more layers or plies of wood veneers⁶ in combination with a core.⁷ Merchandise covered by this review is classifiable under subheadings

4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; and 9801.00.2500 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our

⁶ A "veneer" is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

⁷ For a complete description of the scope of the order, see Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled "Preliminary Rescission of the 2013-2014 Antidumping Duty New Shipper Review: Multilayered Wood Flooring from the People's Republic of China" issued concurrently with and hereby adopted by this notice ("Preliminary Decision Memorandum").

written description of the scope of the order is dispositive.

Methodology

The Department is conducting these reviews in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214. Export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a non-market economy within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) of the Act. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is in the attached Appendix to this notice.

The Preliminary Decision Memorandum is a public document and

is on file electronically via Enforcement and Compliance’s centralized electronic service system (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and it is available to all parties in the Department’s Central Records Unit, B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at <http://enforcement.trade.gov/frn/>. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of New Shipper Review

As discussed in *Bona Fide Sales Analysis Memorandum*,⁸ the Department preliminarily finds that the

sale made by Simite Wooden to the United States is not a *bona fide* sale.⁹ Because the non-*bona fide* sale was the only reported sale of subject merchandise by Simite Wooden during the POR, and thus there are no other reviewable transactions for Simite Wooden, we are preliminarily rescinding its NSR. Because much of the factual information used in our analysis of Simite Wooden’s sale involves business proprietary information, a full discussion of the basis for our preliminary determination regarding Simite Wooden is set forth in the *Bona Fide Sales Analysis Memoranda*, which is on the record of this proceeding.

The Department preliminarily determines that the following weighted-average dumping margin exists for Keri Wood for the POR from December 1, 2014, through November 30, 2015:

Exporter	Producer	Weighted-average dumping margin (percent)
Jiangsu Keri Wood Co., Ltd	Jiangsu Keri Wood Co., Ltd	0.00

Disclosure and Public Comment

The Department intends to disclose the analysis performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs by no later than 30 days after the date of publication of these preliminary results of review.¹⁰ Rebuttals, limited to issues raised in the case briefs, may be filed by no later than five days after the case briefs are filed.¹¹

Any interested party may request a hearing within 30 days of publication of this notice.¹² Hearing requests should contain the following information: (1) The party’s name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401

Constitution Avenue NW., Washington, DC 20230.¹³

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iii), the Department intends to issue the final results of this new shipper review, which will include the results of its analysis of all issues raised in the case and rebuttal briefs, within 90 days of publication of these preliminary results, pursuant to section 751(a)(2)(B)(iv) of the Act.

Assessment Rates

If the Department proceeds to a final rescission of Simite Wooden’s NSR, the assessment rate to which Simite Wooden shipments will be subject will remain unchanged. However, for Keri Wood, and if the Department continues to find that Keri Wood did not make sales of subject merchandise at less than normal value, upon issuance of the final results, pursuant to 19 CFR 351.212(b), the Department intends to determine, and the U.S. Customs and Border Protection (“CBP”) shall assess, antidumping duties on all appropriate

entries.¹⁴ The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this new shipper review.

If the respondent’s weighted average dumping margin is not zero or *de minimis* (i.e., less than 0.50 percent) in the final results, the Department intends to calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer’s examined sales to the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1). Where an importer-specific *ad valorem* rate is not zero or *de minimis*, the Department intends to instruct CBP to collect the appropriate antidumping duties at the time of liquidation.¹⁵ Where either a respondent’s weighted average dumping margin is zero or *de minimis*, or an importer-specific *ad valorem* rate is zero or *de minimis*, the Department intends to instruct CBP to liquidate appropriate

⁸ See Memorandum from Maisha Cryor, Office IV AD/CVD Operations, to Abdelali Elouaradia, Director, Enforcement and Compliance, Office IV entitled “Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People’s Republic of China: Preliminary *Bona Fide* Sale Analysis for Jiangsu Keri Wood Co., Ltd., dated concurrently with and hereby adopted by this notice; see also See Memorandum from Maisha Cryor, Office IV AD/CVD Operations, to Abdelali

Elouaradia, Director, Enforcement and Compliance, Office IV entitled “Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People’s Republic of China: Preliminary *Bona Fide* Sale Analysis for Zhejiang Simite Wooden Co., Ltd., dated concurrently with and hereby adopted by this notice (“*Bona Fide* Sales Analysis Memoranda”).

⁹ On February 24, 2016, the President of the United States signed into law the Trade Facilitation and Trade Enforcement Act of 2015, Public Law

114–125 (Feb. 24, 2016), which made amendments to section 751(a)(2)(B) of the Act. These amendments apply to this determination.

¹⁰ See 19 CFR 351.309(c).

¹¹ See 19 CFR 351.309(d).

¹² See 19 CFR 351.310(c).

¹³ See 19 CFR 351.310(d).

¹⁴ See 19 CFR 351.212(b)(1).

¹⁵ See 19 CFR 351.212(b)(1).

entries without regard to antidumping duties.¹⁶

For entries that were not reported in the U.S. sales data submitted by Keri Wood or Simate Wooden (if applicable), the Department intends to instruct CBP to liquidate such entries at the rate for the PRC-wide entity.¹⁷ The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future cash deposits of estimated antidumping duties, where applicable.

Cash Deposit Requirements

Effective upon publication of the final rescission of Simate Wooden's NSR, the Department will instruct CBP to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise by Simate Wooden. If the Department proceeds to a final rescission of Simate Wooden's new shipper review, the cash deposit rate will continue to be the PRC-wide rate because the Department will not have determined individual dumping margins of for Simate Wooden. If the Department issues final results for Simate Wooden's NSR, the Department intends to instruct CBP to collect cash deposits, effective upon the publication of the final results, at the rates established therein.

However, for Keri Wood, the following cash deposit requirements will be effective upon publication of the final results of the new shipper reviews for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Keri Wood, the cash deposit rate will be that rate established in the final results of this new shipper review (except, if the rate is zero or *de minimis*, then a zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific combination rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the

cash deposit rate will be the rate applicable to the PRC producer/exporter combination that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

Notification Regarding Administrative Protective Orders

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

Notification to Interested Parties

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.214 and 351.221(b)(4).

Dated: December 20, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Discussion of the Methodology
5. Bona Fide Sale Analysis
6. Non-Market Economy Country Status
7. Separate Rates
8. Absence of De Jure Control
9. Absence of De Facto Control
10. Surrogate Country
11. Economic Comparability
12. Significant Producer of Comparable Merchandise
13. Data Availability
14. Date of Sale
15. Determination of the Comparison Method
16. Results of the Differential Pricing Analysis
17. Fair Value Comparisons

18. U.S. Price
19. Value Added Tax
20. Normal Value
21. Factor Valuations
22. Currency Conversion
23. Section 777A(f) of the Act
24. Recommendation

[FR Doc. 2016-31354 Filed 12-27-16; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF112

Pacific Fishery Management Council; Public Meetings and Hearings

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

ACTION: Notice of availability of reports; public meetings, and hearings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) has begun its annual preseason management process for the 2017 ocean salmon fisheries. This document announces the availability of Pacific Council documents as well as the dates and locations of Pacific Council meetings and public hearings comprising the Pacific Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for the March and April 2017 Pacific Council meetings will be published in subsequent **Federal Register** documents prior to the actual meetings.

DATES: Written comments on the salmon management alternatives must be received by 5:00 p.m. Pacific Time, March 31, 2017.

ADDRESSES: Documents will be available from, and written comments should be sent to Mr. Herb Pollard, Chair, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384, telephone: (503) 820-2280 (voice) or (503) 820-2299 (fax). Comments can also be submitted via email at PFMC.comments@noaa.gov or through the internet at the Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments, and include the I.D. number in the subject line of the message. For specific meeting and hearing locations, see **SUPPLEMENTARY INFORMATION.**

Council address: Pacific Fishery Management Council, 7700 NE

¹⁶ See 19 CFR 351.106(c)(2).

¹⁷ For a full discussion of this practice, see *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Ehlke, telephone: (503) 820-2280.

SUPPLEMENTARY INFORMATION:

Tentative Schedule for Document Completion and Availability

February 17, 2017: "Review of 2016 Ocean Salmon Fisheries, Stock Assessment and Fishery Evaluation Document for the Pacific Coast Salmon Fishery Management Plan" is scheduled to be posted on the Pacific Council Web site at <http://www.pcouncil.org>.

March 3, 2017: "Preseason Report I—Stock Abundance Analysis and Environmental Assessment Part 1 for 2017 Ocean Salmon Fishery Regulations" is scheduled to be posted on the Pacific Council Web site at <http://www.pcouncil.org>.

March 22, 2017: "Preseason Report II—Proposed Alternatives and Environmental Assessment Part 2 for 2017 Ocean Salmon Fishery Regulations" and public hearing schedule is scheduled to be posted on the Pacific Council Web site at <http://www.pcouncil.org>. The report will include a description of the adopted salmon management alternatives and a summary of their biological and economic impacts.

April 21, 2017: "Preseason Report III—Council-Adopted Management Measures and Environmental Assessment Part 3 for 2017 Ocean Salmon Fishery Regulations" scheduled to be posted on the Pacific Council Web site at <http://www.pcouncil.org>.

May 1, 2016: Federal regulations for 2017 ocean salmon regulations will be published in the **Federal Register** and implemented.

Meetings and Hearings

January 17–20, 2017: The Salmon Technical Team (STT) will meet at the Pacific Council office in a public work session to draft "Review of 2016 Ocean Salmon Fisheries" and to consider any other estimation or methodology issues pertinent to the 2017 ocean salmon fisheries.

February 21–24, 2017: The STT will meet at the Pacific Council office in a public work session to draft "Preseason Report I—Stock Abundance Analysis and Environmental Assessment Part 1 for 2017 Ocean Salmon Fishery Regulations" and to consider any other estimation or methodology issues pertinent to the 2017 ocean salmon fisheries.

March 27–28, 2017: Public hearings will be held to receive comments on the proposed ocean salmon fishery

management alternatives adopted by the Pacific Council. Written comments received at the public hearings and a summary of oral comments at the hearings will be provided to the Pacific Council at its April meeting.

All public hearings begin at 7 p.m. at the following locations:

March 27, 2017: Chateau Westport, Beach Room, 710 West Hancock, Westport, WA 98595, telephone: (360) 268-9101.

March 27, 2017: Red Lion Hotel, South Umpqua Room, 1313 North Bayshore Drive, Coos Bay, OR 97420, telephone: (541) 267-4141.

March 28, 2017: City of Fort Bragg, Town Hall, 363 N. Main Street, Fort Bragg, CA 95437, telephone: (707) 961-2823.

Although nonemergency issues not contained in the STT meeting agendas may come before the STT for discussion, those issues may not be the subject of formal STT action during these meetings. STT action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this document requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STT's intent to take final action to address the emergency.

Special Accommodations

These public meetings and hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820-2280 (voice), or (503) 820-2299 (fax) at least 10 business days prior to the meeting date.

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

Dated: December 22, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016-31326 Filed 12-27-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF113

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, January 18, 2017 at 8:30 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, 5 Park Street, Freeport, ME 04032; telephone: (207) 865-1433.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel will discuss Framework Adjustment 56 pertaining to witch flounder specifications only. They will receive an overview of the recent benchmark assessment, Plan Development Team analysis, and Scientific and Statistical Committee recommendations for witch flounder. They will make recommendations to the Groundfish Committee on witch flounder specifications for Fishing Years (FY) 2017–FY 2019. The Panel also plans to receive an overview and discuss the Council's 2017 Groundfish Priorities and make recommendations to the Groundfish Committee, as appropriate. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: December 22, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016-31328 Filed 12-27-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF114

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, January 19, 2017 at 9 a.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, 5 Park Street, Freeport, ME 04032; telephone: (207) 865-1433.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Groundfish Committee will discuss Framework Adjustment 56 pertaining to witch flounder specifications only. They will receive an overview of the recent benchmark assessment, Plan Development Team analysis, Scientific and Statistical Committee, and Groundfish Advisory Panel recommendations for witch flounder. The Committee will make recommendations to the Council on witch flounder specifications for FY 2017-FY 2019. The Committee also plans to discuss FY 2017 Recreational Measures for Gulf of Maine cod and haddock. They will receive an overview of recent recreational catch and effort data and results from the bioeconomic model to evaluate options for

management measures in FY 2017. They will receive Recreational Advisory Panel recommendations on FY 2017 recreational measures for Gulf of Maine cod and haddock. They will make recommendations to the Council on FY 2017 recreational measures for Gulf of Maine cod and haddock. The Committee also plans to receive an overview and discuss the Council's 2017 Groundfish Priorities and make recommendations to the Groundfish Committee, as appropriate. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: December 22, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016-31327 Filed 12-27-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF091

Meeting of the Columbia Basin Partnership Task Force of the Marine Fisheries Advisory Committee

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

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the proposed schedule and agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee's (MAFAC) Columbia Basin Partnership Task Force. The Task Force will discuss the issues outlined under **SUPPLEMENTARY INFORMATION** below.

DATES: The meeting will be held January 24, 2017, from 1:00 p.m. to 5:00 p.m., and January 25, 2017, from 8:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Port of Portland Headquarters, Chinook Room, 8th Floor, 7200 NE Airport Way, Portland, OR 97218.

FOR FURTHER INFORMATION CONTACT: Katherine Cheney; NOAA Fisheries West Coast Region; (503) 231-6730; email: Katherine.Cheney@noaa.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a meeting of MAFAC's Columbia Basin Partnership Task Force (CBP Task Force). The MAFAC was established by the Secretary of Commerce (Secretary) and since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The complete MAFAC charter and summaries of prior MAFAC meetings are located online at <http://www.nmfs.noaa.gov/ocs/mafac/>. The CBP Task Force reports to MAFAC and is being convened to discuss and develop recommendations for long-term goals for Columbia Basin salmon and steelhead that address both conservation and harvest opportunities. These goals will be developed in the context of habitat capacity, climate change, and other factors that affect natural mortality. More information is available at the CBP Task Force Web page: http://www.westcoast.fisheries.noaa.gov/columbia_river/index.html.

Matters To Be Considered

This meeting time and agenda are subject to change.

The meeting is convened to provide an overview of the CBP Task Force and discuss a collective approach to the work ahead. The meeting is open to the public as observers, and a public comment period will be provided on January 25, 2017, from 1:30-2:00 p.m. to accept public input, limited to the time available.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Katherine Cheney; 503-231-6730 by January 10, 2017.

Dated: December 21, 2016.

Jennifer Lukens,

Director for the Office of Policy, National Marine Fisheries Service.

[FR Doc. 2016-31278 Filed 12-27-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN 0648–XF111

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, January 11, 2017 at 9 a.m.

ADDRESSES: The meeting will be held at the Four Points by Sheraton, 1 Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:**Agenda**

The Herring Committee will review alternatives and analyses prepared for Framework Adjustment 5 to the Atlantic Herring Fishery Management Plan (FMP), an action considering modification of accountability measures (AMs) that trigger if the sub-ACL of Georges Bank haddock is exceeded by the midwater trawl herring fishery. The committee may recommend preferred alternatives for the Council to consider for final action. The committee will review preliminary outcomes from the recent workshop held in December on Management Strategy Evaluation of Atlantic Herring Acceptable Biological Catch control rules being considered in Amendment 8 to the Atlantic Herring FMP. The committee may recommend a range of alternatives for the Committee to consider including in Amendment 8 related to harvest control rule alternatives. The committee will also review public comments on the herring related measures being considered in the Omnibus Industry Funded Monitoring (IFM) Amendment. The committee may recommend preferred

alternatives for the Committee to consider as well as address other business, as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: December 22, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–31325 Filed 12–27–16; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION**Consumer Advisory Board and Councils Solicitation of Applications for Membership**

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice.

SUMMARY: Pursuant to the authorities given to the Director of the Consumer Financial Protection Bureau (Bureau) under the Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) Director Richard Cordray invites the public to apply for membership for appointment to its Consumer Advisory Board (Board), Community Bank Advisory Council, and Credit Union Advisory Council (collectively, Advisory Councils). Membership of the Board and Councils includes representatives of consumers, communities, the financial services industry and academics. Appointments to the Board are typically for three years and appointments to the Councils are typically for two years. However, the Director may amend the respective Board and Council charters from time to time during the charter terms, as the Director deems necessary to accomplish

the purpose of the Board and Councils. The Bureau expects to announce the selection of new members in August 2017.

DATES: The application will be available on January 16, 2017 here: <https://goo.gl/u23CIY>. Complete application packets received on or before March 1, 2017, will be given consideration for membership on the Board and Councils.

ADDRESSES: If electronic submission is not feasible, the completed application packet can be mailed to Julian Alcazar, Outreach and Engagement Specialist, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

All applications for membership on the Board and Councils should be sent:

- *Electronically:* <https://goo.gl/u23CIY>. We strongly encourage electronic submissions.

Mail:

- Julian Alcazar, Outreach and Engagement Specialist, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552. Submissions must be postmarked on or before March 1, 2017.

- *Hand Delivery/Courier in Lieu of Mail:* Julian Alcazar, Outreach and Engagement Specialist, Consumer Financial Protection Bureau, 1275 First Street NE., 1223–C, Washington, DC 20002. Submissions must be received on or before 5 p.m. eastern standard time on March 1, 2017.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Julian Alcazar, Outreach and Engagement Specialist, Consumer Financial Protection Bureau, (202) 435–9885.

SUPPLEMENTARY INFORMATION:**I. Background**

The Bureau is charged with regulating “the offering and provision of consumer financial products or services under the Federal consumer financial laws,” so as to ensure that “all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.” Pursuant to section 1021(c) of the Wall Street Reform and Consumer Protection Act, Public Law 111–203, Dodd-Frank Act, the Bureau's primary functions are:

1. Conducting financial education programs;
2. Collecting, investigating, and responding to consumer complaints;
3. Collecting, researching, monitoring, and publishing information relevant to the function of markets for consumer financial products and services to

identify risks to consumers and the proper functioning of such markets;

4. Supervising persons covered under the Dodd-Frank Act for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;

5. Issuing rules, orders, and guidance implementing Federal consumer financial law; and

6. Performing such support activities as may be needed or useful to facilitate the other functions of the Bureau.

As described in more detail below, section 1014 of the Dodd-Frank Act calls for the Director of the Bureau to establish a Consumer Advisory Board to advise and consult with the Bureau regarding its functions, and to provide information on emerging trends and practices in the consumer financial markets.

II. Qualifications

Pursuant to section 1014(b) of the Dodd-Frank Act, in appointing members to the Board, “the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and seek representation of the interests of covered persons and consumers, without regard to party affiliation.” The determinants of “expertise” shall depend, in part, on the constituency, interests, or industry sector the nominee seeks to represent, and where appropriate, shall include significant experience as a direct service provider to consumers.

Pursuant to section 5 of the Community Bank Advisory Council Charter, in appointing members to the Council the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of community banks that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and shall strive to have diversity in terms of points of view. Only current bank or thrift employees (CEOs, compliance officers, government relations officials, etc.) will be considered for membership. Membership is limited to employees of banks and thrifts with total assets of \$10

billion or less that are not affiliates of depository institutions or credit unions with total assets of more than \$10 billion.

Pursuant to section 12 of the Credit Union Advisory Council Charter, in appointing members to the Council the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of credit unions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and shall strive to have diversity in terms of points of view. Only current credit union employees (CEOs, compliance officers, government relations officials, etc.) will be considered for membership. Membership is limited to employees of credit unions with total assets of \$10 billion or less that are not affiliates of depository institutions or credit unions with total assets of more than \$10 billion.

The Bureau has a special interest in ensuring that the perspectives of women and men, all racial and ethnic groups, and individuals with disabilities are adequately represented on the Board and Councils, and therefore, encourages applications from qualified candidates from these groups. The Bureau also has a special interest in establishing a Board that is represented by a diversity of viewpoints and constituencies, and therefore encourages applications from qualified candidates who:

1. Represent the United States’ geographic diversity; and
2. Represent the interests of special populations identified in the Dodd-Frank Act, including service members, older Americans, students, and traditionally underserved consumers and communities.

III. Application Procedures

Any interested person may apply for membership on the Board or Council.

A complete application packet must include:

1. A recommendation letter from a third party describing the applicant’s interests and qualifications to serve on the Board or Council;
2. A complete résumé or curriculum vitae for the applicant; and
3. A one-page cover letter, which summarizes the applicant’s expertise and provides reason(s) why he or she would like to join the Board or Council.
4. A complete application. <https://goo.gl/u23CIY>.

To evaluate potential sources of conflicts of interest, the Bureau will ask potential candidates to provide information related to financial holdings and/or professional affiliations, and to allow the Bureau to perform a background check. The Bureau will not review applications and will not answer questions from internal or external parties regarding applications until the application period has closed.

The Bureau will not entertain applications of federally registered lobbyists for a position on the Board and Councils.

Only complete applications will be given consideration for review of membership on the Board and Councils.

Dated: December 20, 2016.

Elizabeth Corbett,

Acting Chief of Staff, Bureau of Consumer Financial Protection

[FR Doc. 2016–31396 Filed 12–27–16; 8:45 am]

BILLING CODE 4810-AM-P

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

SES Performance Review Board

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of new members to the Court Services and Offender Supervision Agency (CSOSA) and the Pretrial Services Agency for the District of Columbia (PSA), Senior Executive Service Performance Review Board. PSA is an independent agency within CSOSA. The Performance Review Board assures consistency, stability, and objectivity in the appraisal process.

DATES: *Effective:* January 2, 2017

FOR FURTHER INFORMATION CONTACT:

William Layne, Assistant Director Human Capital Planning and Executive Resources, Court Services and Offender Supervision Agency, 800 North Capitol Street NW., Suite 700, Washington, DC 20005, (202) 220-5637.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5 of the United States Code, requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. Section 4314(c)(4) of Title 5 requires that notice of appointment of board members be published in the **Federal Register**. The Performance Review Board is responsible for making

recommendations to the appointing and awarding authority on the performance appraisal ratings and performance awards for the Senior Executive Service employees. Members of the board will serve a 12-month term that shall begin on January 2, 2017. The following executives have been designated as members of the Performance Review Board for CSOSA and PSA:

James Berry, Deputy Director for CSOSA
 Leslie Cooper, Deputy Director for PSA
 Catherine Terry-Crusor, Associate Director for the Office of Operations for PSA
 Mindy Ginsburg, Deputy Managing Director for the Federal Communications Commission
 Paul Girardo, Associate Director for the Office of Financial Management for CSOSA
 Cedric Hendricks, Associate Director of Office of Legislative, Intergovernmental and Public Affairs for CSOSA
 David Huffer, Associate Director for the Office of Research and Evaluation for CSOSA, Reginald James, Associate Director for Management and Administration for CSOSA
 Clifford Keenan, Director for PSA
 William Kirkendale, Chief Information Officer for CSOSA
 Linda Mays, Associate Director of the Office of Human Resources for CSOSA
 Keith Nakasone, Senior Procurement Executive for the Federal Communications Commission
 Jasper Ormond, Associate Director for the Community Justice Programs for CSOSA
 Lisa Rawlings, Chief of Staff for CSOSA
 Barry Socks, Chief Operating Officer for the National Capital Planning Commission
 Sheila Stokes, General Counsel for CSOSA and PSA
 Sheila Wright, Chief Learning Officer, U.S. Department of Housing and Urban Development

Authority: Section 4314(c)(1) through (5) of Title 5, United States Code.

Dated: December 21, 2016.

Diane Bradley,

Federal Register Liaison.

[FR Doc. 2016-31376 Filed 12-27-16; 8:45 am]

BILLING CODE 3129-04-P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA-2016-HQ-0037]

Proposed Collection; Comment Request

AGENCY: Assistant Secretary of the Army for Financial Management & Comptroller, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Assistant Secretary of the Army for Financial Management & Comptroller

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 February 27, 2017.

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, Regulatory and Advisory Committee Division, 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 ASA (FM&C), Attn: Mr. Roger A. Pillar, 2521 S. Clark St., Suite 7159, Arlington, VA 22202, or call Mr. Roger A. Pillar, GFEBs Functional Director at 703-545-8855.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Supplier Self-Services (SUS); OMB Control Number 0702-0126.

Needs and Uses: The information collection requirement via SUS is necessary to reduce the amount and complexity of required input by vendors that manually enter invoice data into Wide Area Workflow (WAWF) (not those utilizing Electronic Data Interchange (EDI)). By pre-populating fields with accurate and up-to-date contract information, vendors are required to input significantly less data. Additionally, SUS simultaneously performs a front-end validation of submitted data, thus ensuring less manual intervention and fewer interest penalties incurred by the government.

Affected Public: Business or Other-For-Profit.

Annual Burden Hours: 2600.
Number of Respondents: 2167.
Responses per Respondent: 12.
Annual Responses: 26,004.
Average Burden per Response: 6 minutes.

Frequency: On occasion.

SUS leverages a DoD portal developed by WAWF known as "OneStop" that facilitates WAWF's interaction with ERPs. Respondents are vendors that continue to utilize WAWF as the mandated single point of entry and for viewing historical records, but are routed seamlessly to the SUS module for invoice data entry referencing the ERP contract data.

Dated: December 21, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016-31254 Filed 12-27-16; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD-2016-OS-0120]

Proposed Collection; Comment Request

AGENCY: White House Communications Agency (WHCA), DISA, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the White House Communications Agency (WHCA) 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 February 27, 2017.

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, Regulatory and Advisory Committee Division, 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 White House Communications Agency (WHCA/WACC/ESB), ATTN: Kevin A. Gifford, 2743 Defense Boulevard, SW Washington, DC 20373-5815.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Basic Employee and Security Tracking Systems (BEAST); OMB Control Number 0704-0507.

Needs and Uses: The information collection requirement is necessary to obtain, track, and record the personnel security data, training information, and travel history within the White House Military Office (WHMO) and White

House Communications Agency (WHCA).

Affected Public: Individuals or Households.

Annual Burden Hours: 38.

Number of Respondents: 150.

Responses per Respondent: 1.

Annual Responses: 150.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Respondents are DoD contractors, retired military members who have departed the agency, and agency visitors. The data collected is used for security background checks, training records, and also to encompass the historical travel records of members of the agency. This data collection is essential in maintaining the integrity of the agency's personnel, training, and travel programs.

Dated: December 21, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016-31287 Filed 12-27-16; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

Applications for New Awards; Magnet Schools Assistance Program; Correction

[Catalog of Federal Domestic Assistance (CFDA) Number: 84.165A.]

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice; correction.

SUMMARY: On December 13, 2016, we published in the **Federal Register** a notice inviting applications for new awards under the Magnet Schools Assistance Program. This document corrects the total number of points possible for the competitive preference priorities and the total amount of points possible for the competitive preference priorities and selection criteria. All other requirements and conditions stated in the notice inviting applications remain the same.

DATES: Effective December 28, 2016.

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc. No. 2016-29907, in the **Federal Register** of December 13, 2016 (81 FR 89911), we make the following corrections:

(a) On page 89913, in the left column under the heading *Competitive Preference Priorities*, we remove “six” and “10,” and add in their place “seven” and “11,” respectively.

The revisions read as follows:

Competitive Preference Priorities: For FY 2017, these priorities are competitive preference priorities. Under 34 CFR 280.30(f), we will award up to seven additional points to an application, depending on how well the applicant addresses Competitive Preference Priorities 1, 2, and 3. Under 34 CFR 75.105(c)(2)(i) we will award up to an additional four points to an application, depending on how well the application addresses Competitive Preference Priority 4. Together, depending on how well the application meets these priorities, an application may be awarded up to a total of 11 additional points. Applicants may apply under any, all, or none of the competitive preference priorities. The maximum possible points for each competitive preference priority are indicated in parentheses following the name of the priority. These points are in addition to any points the application earns under the selection criteria in this notice.

(b) On page 89918, in the right column under the heading *V. Application Review Information*, we remove “110” and add in its place “111”.

The revision reads as follows:

Points awarded under these selection criteria are in addition to any points an applicant earns under the competitive preference priorities in this notice. The maximum score that an application may receive under the competitive preference priorities and the selection criteria is 111 points.

Program Authority: 20 U.S.C. 7231-7231j.

FOR FURTHER INFORMATION CONTACT:

Jennifer Todd, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W201, Washington, DC 20202-5970. Telephone: (202) 453-7200 or by email: msap.team@ed.gov.

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1-800-877-8339.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you

can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 22, 2016.

Nadya Chinoy Dabby,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2016–31418 Filed 12–27–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Certification Notice—244]

Notice of Filing of Self-Certification of Coal Capability Under the Powerplant and Industrial Fuel Use Act

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of filing.

SUMMARY: On December 6, 2016, Moxie Freedom LLC, as owner and operator of a new baseload electric generating powerplant, submitted a coal capability self-certification to the Department of Energy (DOE) pursuant to § 201(d) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended, and DOE regulations in 10 CFR 501.60, 61. The FUA and regulations thereunder require DOE to publish a notice of filing of self-certification in the **Federal Register**. 42 U.S.C. 8311(d) and 10 CFR 501.61(c).

ADDRESSES: Copies of coal capability self-certification filings are available for public inspection, upon request, in the Office of Electricity Delivery and Energy Reliability, Mail Code OE–20, Room 8G–024, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence at (202) 586–5260.

SUPPLEMENTARY INFORMATION: Title II of FUA, as amended (42 U.S.C. 8301 *et seq.*), provides that no new base load electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. Pursuant to the FUA, in order to meet the requirement of coal capability, the owner or operator

of such a facility proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary of Energy (Secretary) prior to construction, or prior to operation as a base load electric powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with FUA section 201(a) as of the date it is filed with the Secretary. 42 U.S.C. 8311.

The following owner of a proposed new baseload electric generating powerplant has filed a self-certification of coal-capability with DOE pursuant to FUA section 201(d) and in accordance with DOE regulations in 10 CFR 501.60, 61:

OWNER: Moxie Freedom LLC
CAPACITY: 1029 megawatts (MW)
PLANT LOCATION: 237 Mingle Inn Road, Berwick, PA 18603
IN-SERVICE DATE: May 2018

Issued in Washington, DC, on December 21, 2016.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2016–31336 Filed 12–27–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–6–000]

Texas Eastern Transmission, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Idle Line 1 Abandonment Project, and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Idle Line 1 Abandonment Project involving the abandonment of pipeline facilities by Texas Eastern Transmission, LP (Texas Eastern) in Fayette, Pickaway, Fairfield, Perry, Muskingum, Noble, and Monroe Counties, Ohio; Marshall County, West Virginia; and Greene County, Pennsylvania. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing

us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before January 20, 2017.

If you sent comments on this project to the Commission before the opening of this docket on October 28, 2016, you will need to file those comments in Docket No. CP17–6–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an agreement to conduct the abandonment activities. Texas Eastern provided landowners with a fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (www.ferc.gov).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or efiling@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (www.ferc.gov) under the link to *Documents and Filings*. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (www.ferc.gov) under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file

with your submission. New eFiling users must first create an account by clicking on “eRegister.” If you are filing a comment on a particular project, please select “Comment on a Filing” as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP17-6-000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Texas Eastern proposes to abandon in place and by removal approximately 165 miles of existing, idle Line 1 pipeline that runs from Fayette County, Ohio, to Greene County, Pennsylvania. Specifically, Texas Eastern is proposing to abandon portions of the Line 1 pipeline that were placed into idle service in 1989 including three segments of 24-inch pipeline, associated lateral lines 10-L and 10-M, metering and regulating facilities 70054 and 70005, and other related aboveground facilities.

The project would eliminate the need for future operating and maintenance expenditures on facilities that have been removed from service for many years. Texas Eastern has stated that abandonment of these idle facilities would not impact certificated parameters on Texas Eastern’s system or affect service to existing customers of Texas Eastern. Texas Eastern has also stated that it has no current or reasonably foreseeable plans to use the Line 1 pipeline within the project areas following abandonment.

Texas Eastern would abandon in place the following facilities:

- 5.03 miles of Texas Eastern’s 24-inch-diameter Line 1 from milepost 837.05 in Fayette County, OH to milepost 842.08 in Pickaway County, OH (Segment 1);
- 155.37 miles of Texas Eastern’s 24-inch-diameter Line 1 from milepost 848.33 in Pickaway County, OH to milepost 1003.7 in Green County, PA (Segment 2);
- 5.48 miles of Texas Eastern’s 24-inch-diameter Line 1 from milepost 1004.35 to 1009.83 in Greene County, PA (Segment 3);
- 0.5 miles of Texas Eastern’s 8-inch Line 10-M in Marshall County, WV;
- 0.07 miles of Texas Eastern’s 4.5-inch Line 10-L in Greene County, PA; and
- Metering and Regulation facilities 70054 and 70005, and related launcher/receiver barrels, mainline valves, and

other appurtenances would also be removed.

The general location of the Project is shown in appendix 1.¹

Land Requirements for Construction

Project construction activities would result in temporary disturbance of about 130 acres of land. This would consist of 40.4 acres associated with activities related to abandonment in place, 71.3 acres for activities associated with abandonment by removal, and 9.7 acres associated with use of a construction wareyard. Land disturbed by abandonment activities would primarily occur within Texas Eastern’s existing, previously disturbed right-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us² to discover and address concerns the public may have about proposals. This process is referred to as “scoping.” The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the abandonment of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be

¹ The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called “eLibrary” or from the Commission’s Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

² “We,” “us,” and “our” refer to the environmental staff of the Commission’s Office of Energy Projects.

available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.³ Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation’s implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office(s) (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project’s potential effects on historic properties.⁴ We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified some issues that we think deserve attention based on a preliminary review of the

³ The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

⁴ The Advisory Council on Historic Preservation’s regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

proposed facilities and the environmental information provided by Texas Eastern. This preliminary list of issues may be changed based on your comments and our analysis.

- *Water Quality and Fisheries*—A number of pipeline sections would be removed from beneath stream beds by excavation.

- *PCB Contamination*—Portions of the pipeline to be abandoned may contain polychlorinated biphenyls (PCBs).

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenor play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the "Document-less Intervention Guide" under the "e-filing" link on the Commission's Web site. Motions to intervene are more fully described at <http://www.ferc.gov/resources/guides/how-to/intervene.asp>.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC Web site at www.ferc.gov using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP17-6-000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to www.ferc.gov/docs-filing/esubscription.asp.

Finally, any public sessions or site visits will be posted on the Commission's calendar located at www.ferc.gov/EventCalendar/EventsList.aspx along with other related information.

Dated: December 21, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016-31341 Filed 12-27-16; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9543-012]

North Snake Ground Water District, Magic Valley Ground Water District, American Falls-Aberdeen Ground Water District, Bingham Ground Water District and Southwest Irrigation District (Districts); Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- Type of Proceeding:* Surrender of Exemption (Conduit).
- Project No.:* 9543-012.
- Date Filed:* November 25, 2016.

- Exemptee:* North Snake Ground Water District, Magic Valley Ground Water District, American Falls-Aberdeen Ground Water District, Bingham Ground Water District and Southwest Irrigation District (Districts).
- Name of Project:* Rim View Hydroelectric Project.

- Location:* The project is located At Rim View's fish hatchery in Gooding County, Idaho.

- Filed Pursuant to:* 18 CFR 4.95.

- Exemptee Contact:* Randall C. Budge, Joseph G. Ballstaedt, Racine Olson Nye Budge & Bailey, Chartered, 201 E. Center St./P.O. Box 1391, Pocatello, Idaho 83204, Telephone: (208) 232-6101, fax: (208) 232-6109, rcb@racinelaw.net and jgb@racinelaw.net.

- FERC Contact:* Mr. M. Joseph Fayyad, (202) 502-8759, mo.fayyad@ferc.gov.

- Deadline for filing comments, interventions and protests is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests and comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P-9543-012.

- Description of Project Facilities:* The project consists of: (1) A penstock intake; (2) a 300-foot-long, 60-inch-diameter, buried steel penstock; (3) an 18-inch-diameter steel pipe connecting the downstream end of the overflow bypass structure to the penstock; and (4) a powerhouse containing one 250-kW generating unit emptying into an existing distribution ditch for fish ponds.

- Description of Proceeding:* The Districts state they want to surrender the conduit exemption because the inoperable project would not be economical to restore and operate. On March 14, 2011, the Districts purchased the project from Rim View LLC, and under the purchase and sale agreement, Rim View LLC continued to operate the hydropower plant until around

September 15, 2012. The Districts then shut down the project. The Districts state that on June 16, 2013, the Districts terminated all hydropower purchase and production agreements with Idaho Power Company. Idaho Power Company disconnected the facility from the power grid and removed the interconnection equipment. By early 2014, the hydropower plant was sold for salvage and was removed from the Hatchery premises, including all remaining generators, motors, electrical panels, and other equipment. All that remains of the hydropower plant is its exterior shell, which is secured and now used for storage and maintenance purposes. The Districts are not proposing any further decommissioning work at the site.

m. *Locations of the Application:* This filing may be viewed on the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction in the Commission's Public Reference Room located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .212 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to

which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the exemption surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

q. *Agency Comments—Federal, state, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.*

Dated: December 21, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016-31346 Filed 12-27-16; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ17-9-000]

City of Azusa, California; Notice of Filing

Take notice that on December 21, 2016, the City of Azusa, California submitted its tariff filing: City of Azusa, California 2017 Transmission Revenue Balancing Account Adjustment/Existing Transmission Contracts Update to be effective 1/1/2017.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 p.m. Eastern Time on January 11, 2017.

Dated: December 21, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016-31347 Filed 12-27-16; 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 corporate filings:

Docket Numbers: EC17-51-000.

Applicants: MidAmerican Energy Company.

Description: Application for Approval of Acquisition of Assets Pursuant to Section 203 of Federal Power Act of MidAmerican Energy Company.

Filed Date: 12/20/16.

Accession Number: 20161220-5136.

Comments Due: 5 p.m. ET 1/10/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2578–002.
Applicants: North Lancaster Ranch LLC.

Description: Notice of Non-Material Change in Status of North Lancaster Ranch LLC.

Filed Date: 12/20/16.

Accession Number: 20161220–5385.

Comments Due: 5 p.m. ET 1/10/17.

Docket Numbers: ER16–2716–001.

Applicants: NextEra Energy Transmission MidAtlantic.

Description: Tariff Amendment: NextEra Energy MidAtlantic, LLC Response to Deficiency Letter to be effective 11/30/2016.

Filed Date: 12/21/16.

Accession Number: 20161221–5132.

Comments Due: 5 p.m. ET 1/11/17.

Docket Numbers: ER16–2717–001.

Applicants: NextEra Energy Transmission Midwest, LLC.

Description: Tariff Amendment: NextEra Energy Transmission Midwest, LLC Response to Deficiency Letter to be effective 11/30/2016.

Filed Date: 12/21/16.

Accession Number: 20161221–5130.

Comments Due: 5 p.m. ET 1/11/17.

Docket Numbers: ER16–2719–002.

Applicants: NextEra Energy Transmission New York, Inc.

Description: Tariff Amendment: NextEra Energy Transmission New York, Inc. Response to Deficiency Letter to be effective 11/30/2016.

Filed Date: 12/21/16.

Accession Number: 20161221–5134.

Comments Due: 5 p.m. ET 1/11/17.

Docket Numbers: ER16–2720–001.

Applicants: NextEra Energy Transmission Southwest, LLC.

Description: Tariff Amendment: NextEra Energy Transmission Southwest, LLC Response to Deficiency Letter to be effective 11/30/2016.

Filed Date: 12/21/16.

Accession Number: 20161221–5136.

Comments Due: 5 p.m. ET 1/11/17.

Docket Numbers: ER17–67–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2016–12–21. Compliance filing for the reorganization of section 40.3.3 to be effective 11/12/2016.

Filed Date: 12/21/16.

Accession Number: 20161221–5088.

Comments Due: 5 p.m. ET 1/11/17.

Docket Numbers: ER17–306–001.

Applicants: Beacon Solar 3, LLC.

Description: Compliance filing: Beacon Solar 3, LLC MBR Tariff to be effective 12/21/2016.

Filed Date: 12/20/16.

Accession Number: 20161220–5137.

Comments Due: 5 p.m. ET 1/10/17.

Docket Numbers: ER17–591–000.
Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2234R3 Osage Wind/PSO Facilities Construction Agreement to be effective 11/29/2016.

Filed Date: 12/20/16.

Accession Number: 20161220–5124.

Comments Due: 5 p.m. ET 1/10/17.

Docket Numbers: ER17–592–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: GIA & DSA 2MW Powin Bess, Irvine CA Project SA Nos. 925 & 926 to be effective 12/21/2016.

Filed Date: 12/20/16.

Accession Number: 20161220–5126.

Comments Due: 5 p.m. ET 1/10/17.

Docket Numbers: ER17–593–000.

Applicants: Michigan Electric Transmission Company, LLC.

Description: Notice of Cancellation of Facilities Agreement of Michigan Electric Transmission Company, LLC.

Filed Date: 12/19/16.

Accession Number: 20161219–5427.

Comments Due: 5 p.m. ET 1/9/17.

Docket Numbers: ER17–594–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2016–12–20 SA 2904 Cooperative Energy-MS Solar 3 1st Rev. (J473) to be effective 12/21/2016.

Filed Date: 12/20/16.

Accession Number: 20161220–5183.

Comments Due: 5 p.m. ET 1/10/17.

Docket Numbers: ER17–596–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA 31 16th Rev—NITSA with Phillips 66 to be effective 3/1/2017.

Filed Date: 12/21/16.

Accession Number: 20161221–5082.

Comments Due: 5 p.m. ET 1/11/17.

Docket Numbers: ER17–597–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA 32 7th Rev—NITSA with The Colstrip Steam Electric Station to be effective 3/1/2017.

Filed Date: 12/21/16.

Accession Number: 20161221–5084.

Comments Due: 5 p.m. ET 1/11/17.

Docket Numbers: ER17–598–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA 35 4th Rev—NITSA with The Town of Philipsburg to be effective 3/1/2017.

Filed Date: 12/21/16.

Accession Number: 20161221–5085.

Comments Due: 5 p.m. ET 1/11/17.

Docket Numbers: ER17–599–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA 245 7th Rev—NITSA with Ash Grove Cement to be effective 3/1/2017.

Filed Date: 12/21/16.

Accession Number: 20161221–5113.

Comments Due: 5 p.m. ET 1/11/17.

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: December 21, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–31338 Filed 12–27–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL17–19–000]

FPL Energy MH50, L.P.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On December 21, 2016, the Commission issued an order in Docket No. EL17–19–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether the rates for Reactive Supply and Voltage Control Service (Reactive Service) of FPL Energy MH50, L.P. may be unjust and unreasonable. *FPL Energy MH50, L.P.*, 157 FERC ¶ 61,225 (2016).

The refund effective date in Docket No. EL17–19–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL17–19–000 must file a notice of intervention or motion to intervene, as appropriate, with the

Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, within 21 days of the date of issuance of the order.

Dated: December 21, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016-31344 Filed 12-27-16; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17-22-000]

Kinder Morgan Louisiana Pipeline, LLC; Notice of Application

Take notice that on December 13, 2016, Kinder Morgan Louisiana Pipeline, LLC (KMLP), 3250 Lacey Road, Suite 700, Downers Grove, IL 60515, filed an application under sections 7(b) and 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations, requesting authorization to (1) construct and operate the system modifications necessary to enable KMLP to offer 600,000 dekatherms per day (Dth/d) of firm transportation service utilizing a north-to-south path on KMLP's system; and (2) for permission and approval to abandon and remove facilities at an existing meter station and the replacement thereof with a larger meter station on the same site.

The proposed facilities will provide for gas flow on a north-to-south path on KMLP's system to deliver natural gas from existing pipeline interconnects to the natural gas liquefaction and LNG export facility currently being expanded and operated by Sabine Pass Liquefaction, LLC (SPL) at Sabine Pass in Cameron Parish Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

The filing may also be viewed on the Web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC at FERCOnlineSupport@ferc.gov or toll free at (866) 208-3676, or TTY, (202) 502-8659.

Any questions regarding the proposed project should be directed to Bruce H. Newsome, Vice President, Kinder Morgan Louisiana Pipeline Company, LLC, 3250 Lacey Road, Suite 700, Downers Grove, IL 60515, or by calling

(630) 725-3070 (telephone) or email at bruce_newsome@kindermorgan.com.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to

the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on January 11, 2017.

Dated: December 21, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016-31342 Filed 12-27-16; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
Pioneer Wind Park I, LLC	EG16-144-000
Cimarron Bend Wind Project II, LLC	EG16-145-000
Indeck Niles, LLC	EG16-146-000
Grant Plains Wind, LLC	EG16-147-000
Sunflower Wind Project, LLC	EG16-148-000
North Lancaster Ranch LLC	EG16-149-000
Pavant Solar II LLC	EG16-150-000
Dermott Wind, LLC	EG16-151-000
Innovative Solar 46, LLC	EG16-152-000
Summit Farms Solar, LLC	EG16-153-000
Cimarron Bend Assets, LLC	EG16-154-000
FL Solar 1, LLC	EG16-155-000
AL Solar A, LLC	EG16-156-000
Deerfield Wind Energy, LLC	EG16-157-000

Take notice that during the month of November 2016, the status of the above-

captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: December 21, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016-31343 Filed 12-27-16; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD17-6-000]

Salt Lake City Corporation; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On December 20, 2016, Salt Lake City Corporation filed a notice of intent to

construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed 10th East 500 South PRV Station Hydropower Project would have an installed capacity of 225 kilowatts (kW) and would be located on Salt Lake City Corporation's existing 36-inch-diameter water distribution pipe, in a new pressure reducing valve (PRV) station. The project would be located in Salt Lake City, in Salt Lake County, Utah.

Applicant Contact: David Pearson, Salt Lake City Corporation, Department of Public Utilities, 1530 S. West Temple, Salt Lake City, UT 84115, Phone No. (801) 707-0777.

FERC Contact: Robert Bell, Phone No. (202) 502-6062, email: *robert.bell@ferc.gov*.

Qualifying Conduit Hydropower Facility Description: The proposed

project would consist of: (1) A proposed generating unit with an installed capacity of 225-kW on the 36-inch-diameter water distribution pipe, in a new 34-foot by 27-foot PRV station; and (2) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 810 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA ..	The conduit is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA.	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA.	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff has preliminarily determined that the proposal satisfies the requirements for a qualifying conduit hydropower facility under 16 U.S.C. 823a, and is exempted from the licensing requirements of the FPA.

Comments and Motions to Intervene: The deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

The deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in

all capital letters the "COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY" or "MOTION TO INTERVENE," as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.¹ All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior

¹ 18 CFR 385.2001-2005 (2015).

registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may

also be viewed on the Web at <http://www.ferc.gov/docs-filing/elibrary.asp> using the “eLibrary” link. Enter the docket number (e.g., CD17–6–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email FERCOnlineSupport@ferc.gov. For TTY, call (202) 502–8659.

Dated: December 21, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016–31339 Filed 12–27–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD16–6–000]

Proposed Consolidated Information Collection Activities [FERC–725A(1B) and FERC–725Z]; Comment Request

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is submitting FERC–725A(1B) (Mandatory Reliability Standards for the Bulk Power System) and FERC–725AZ (Mandatory Reliability Standards: IRO Reliability Standards), in Docket No. RD16–6 to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (81 FR 66952, 9/29/2016) requesting public comments. FERC received no comments in response to FERC–725A(1B) or FERC–725Z and is making this notation in the submittal to OMB.

DATES: Comments on the collection of information are due by January 27, 2017.

ADDRESSES: Comments filed with OMB, identified by RD16–6–000, FERC–725Z (OMB Control No. 1902–0276), and FERC–725A(1B) (OMB Control No. TBD), should be sent via email to the Office of Information and Regulatory Affairs: oira_submission@omb.gov. Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Commission, in Docket No. RD16–6, by either of the following methods:

- *eFiling at Commission’s Web site:* <http://www.ferc.gov/docs-filing/efiling.asp>.

- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: <http://www.ferc.gov/help/submission-guide.asp>. For user assistance contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <http://www.ferc.gov/docs-filing/docs-filing.asp>.

FOR FURTHER INFORMATION CONTACT:

Ellen Brown may be reached by email at DataClearance@FERC.gov, by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3507(a)(1)(D).

Title: FERC–725A(1B), (Mandatory Reliability Standards for the Bulk Power System).

OMB Control No.: TBD.

Type of Request: Three-year extension of FERC–725A(1B) information

collection requirement with no changes to the reporting requirements.

Abstract: Under section 215 of the Federal Power Act (FPA),¹ the Commission proposes to approve Reliability Standards TOP–010–1 (Real-time Reliability Monitoring and Analysis Capabilities) and IRO–018–1 (Reliability Coordinator Real-time Reliability Monitoring and Analysis Capabilities), submitted by North American Electric Corporation (NERC). In this order, the Reliability Standards build on monitoring, real-time assessments and support effective situational awareness. The Reliability Standards accomplish this by requiring applicable entities to: (1) Provide notification to operators of real-time monitoring alarm failures; (2) provide operators with indications of the quality of information being provided by their monitoring and analysis capabilities; and (3) address deficiencies in the quality of information being provided by their monitoring and analysis capabilities.

FERC–725A(1B) address situational awareness objectives by providing for operator awareness when key alarming tools are not performing as intended. These collections will improve real-time situational awareness capabilities and enhance reliable operations by requiring reliability coordinators, transmission operators, and balancing authorities to provide operators with an improved awareness of system conditions analysis capabilities, including alarm availability, so that operators may take appropriate steps to ensure reliability. These functions include planning, operations, data sharing, monitoring, and analysis.

Type of Respondents: Balancing Authority (BA), Transmission Operations (TOP) and Reliability Coordinators (RC).

*Estimate of Annual Burden*²: The Commission estimates the annual public reporting burden for the information collection as:

FERC–725A(1B), CHANGES DUE TO TOP–010–1 IN DOCKET NO. RD16–6–000

Entity	Requirements & period	Number of respondents ³	Annual number of responses per respondent	Total number of Responses	Average burden & cost per response ⁴	Total annual burden hours & total annual cost	Cost per respondent (\$)
		(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
BA ⁵	Year 1 Implementation (one-time reporting).	100	1	100	70 hrs.; \$4,494.00	7,000 hrs.; \$449,400.00.	\$4,494.00

¹ Section 215 was added by the Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594 (2005) (codified at 16 U.S.C. 824o).

² Burden is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation

of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

FERC-725A(1B), CHANGES DUE TO TOP-010-1 IN DOCKET NO. RD16-6-000—Continued

Entity	Requirements & period	Number of respondents ³	Annual number of responses per respondent	Total number of Responses	Average burden & cost per response ⁴	Total annual burden hours & total annual cost	Cost per respondent (\$)
		(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
TOP ⁶	Starting in Year 2 (annual reporting).	100	1	100	42 hrs.; \$2,696.40	4,200 hrs.; \$269,640.00.	2,696.40
	Year 1 implementation (one-time reporting).	171	1	171	70 hrs.; \$4,494.00	11,970 hrs.; \$768,474.00.	4,494.00
BA/TOP	Starting in Year 2 (annual reporting).	171	1	171	40 hrs. \$2,568.00	6,840 hrs.; \$439,128.00.	2,568.00
	Annual Record Retention.	271	1	271	2 hrs.; \$75.38	542 hrs.; \$20,427.98	75.38
Total burden hours per year.						19,512 hrs. \$1,238,301.98 (Year 1); 11,582 hrs. \$729,195.98 per year, (starting in Year 2).	

Title: FERC-725Z, Mandatory Reliability Standards: IRO Reliability Standards.

OMB Control No.: 1902-0276.

Type of Request: Three-year extension of FERC-725Z information collections requirement with no changes to the reporting requirements.

Abstract: FERC-725Z requires reliability coordinators to have an alarm process monitor that provides notification to system operators when the failure of a real-time monitoring

alarm processor has occurred. Proposed Reliability Standard TOP-010-1, Requirement R4 contains an identical requirement applicable to transmission operators and balancing authorities. This collection will improve real-time situational awareness capabilities and enhance reliable operations by requiring reliability coordinators, transmission operators, and balancing authorities to provide operators with an improved awareness of system conditions analysis

capabilities, including alarm availability, so that operators may take appropriate steps to ensure reliability. These functions include planning, operations, data sharing, monitoring, and analysis.

Type of Respondents: Balancing Authority and Transmission Operations.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden for the information collection as:

FERC-725Z, CHANGES DUE TO RELIABILITY STANDARD IRO-018-1

Entity	Requirements & period	Number of respondents ⁷	Annual number of responses per respondent	Total number of responses	Average burden & cost per response ⁸	Total annual burden hours & total annual cost	Cost per respondent (\$)
		(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
RC ⁹	Year 1 Implementation (reporting).	11	1	11	60 hrs.; \$3,852.00	660 hrs.; \$42,372.00	\$3,852.00

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the

Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection

of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection;

³ The number of respondents is the number of entities in which a change in burden from the current standards to the proposed exists, not the total number of entities from the current or proposed standards that are applicable.

⁴ The estimated hourly costs (salary plus benefits) are based on Bureau of Labor Statistics (BLS) information, as of May 2015 (at http://www.bls.gov/oes/current/naics2_22.htm, with updated benefits information for March 2016 at <http://www.bls.gov/news.release/ecec.nr0.htm>), for an electrical engineer (code 17-2071, \$64.20/hour), and for information and record clerks record keeper (code 43-4199, \$37.69/hour). The hourly figure for engineers is used for reporting; the hourly figure for information and record clerks is used for document retention.

⁵ Balancing Authority (BA). The following Requirements and associated measures apply to balancing authorities: Requirement R1: A revised data specification and writing the required

operating process/operating procedure; and Requirement R2: Quality monitoring logs and the data errors and corrective action logs.

⁶ Transmission Operations (TOP). The following Requirements and associated measures apply to transmission operators: Requirement R1: A revised data specification and writing the required operating process/operating procedure; and Requirement R3: Alarm process monitor performance logs to maintain performance logs and corrective action plans.

⁷ The number of respondents is the estimated number of entities for which there is a change in burden from the current standards to the proposed standards, not the total number of entities from the current or proposed standards that are applicable.

⁸ The estimated hourly costs (salary plus benefits) are based on Bureau of Labor Statistics (BLS) information, as of May 2015 (at http://www.bls.gov/oes/current/naics2_22.htm, with updated benefits information for March 2016 at [\[news.release/ecec.nr0.htm\]\(http://www.bls.gov/news.release/ecec.nr0.htm\)\), for an electrical engineer \(code 17-2071, \\$64.20/hour\), and for information and record clerks \(code 43-4199, \\$37.69/hour\). The hourly figure for engineers is used for reporting; the hourly figure for information and record clerks is used for document retention.](http://www.bls.gov/</p>
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⁹ Reliability Coordinator (RC). The following Requirements and the associated measures apply to RCs: Requirement R1: A revised data specification and writing the required operating Process/ Operating Procedure; Requirement R2: Quality monitoring logs and the data errors and corrective action logs; and Requirement R3: Alarm process monitor performance logs.

¹⁰ There is a DLO for Docket No. RD16-6-001, Revisions to the Violation Risk Factors for Reliability Standards, approving the directed changes to VRF designations in IRO-018-1 and TOP-010-1.

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

Dated: December 20, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016-31294 Filed 12-27-16; 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 corporate filings:

Docket Numbers: EC17-52-000.

Applicants: CPV Shore, LLC, Osaka Gas USA Corporation.

Description: Application For Authorization Under Section 203 Of The Federal Power Act, Request For Waivers, et al. of CPV Shore, LLC, et al.

Filed Date: 12/21/16.

Accession Number: 20161221-5246.

Comments Due: 5 p.m. ET 1/11/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13-1930-010.

Applicants: Louisville Gas and Electric Company.

Description: Compliance filing: Errata to Attach K Appendices Record Metadata Correction to be effective 1/24/2015.

Filed Date: 12/21/16.

Accession Number: 20161221-5320.

Comments Due: 5 p.m. ET 1/11/17.

Docket Numbers: ER16-1479-002.

Applicants: Kentucky Utilities Company.

Description: Compliance filing: Brown Solar Compliance Filing executed agreements to be effective 6/9/2016.

Filed Date: 12/21/16.

Accession Number: 20161221-5270.

Comments Due: 5 p.m. ET 1/11/17.

Docket Numbers: ER17-380-001.

Applicants: Stored Solar J&WE, LLC.

Description: Tariff Amendment: Amendment to pending 1 to be effective 12/1/2016.

Filed Date: 12/21/16.

Accession Number: 20161221-5278.

Comments Due: 5 p.m. ET 1/11/17.

Docket Numbers: ER17-600-000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA 290 8th Rev—NITSA with Oldcastle

Materials Cement Holdings to be effective 3/1/2017.

Filed Date: 12/21/16.

Accession Number: 20161221-5197.

Comments Due: 5 p.m. ET 1/11/17.

Docket Numbers: ER17-601-000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA 304 10th Rev—NITSA with Barretts Minerals to be effective 3/1/2017.

Filed Date: 12/21/16.

Accession Number: 20161221-5205.

Comments Due: 5 p.m. ET 1/11/17.

Docket Numbers: ER17-602-000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA 305 8th Rev—NITSA with Stillwater Mining Company to be effective 3/1/2017.

Filed Date: 12/21/16.

Accession Number: 20161221-5305.

Comments Due: 5 p.m. ET 1/11/17.

Docket Numbers: ER17-603-000.

Applicants: Bear Swamp Power Company LLC.

Description: § 205(d) Rate Filing: Bear Swamp Market-Based Rate Notice of Change in Status to be effective 7/15/2014.

Filed Date: 12/21/16.

Accession Number: 20161221-5317.

Comments Due: 5 p.m. ET 1/11/17.

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: December 21, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016-31340 Filed 12-27-16; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ17-8-000]

City of Colton, California; Notice of Filing

Take notice that on December 20, 2016, the City of Colton, California submitted its tariff filing: City of Colton, California 2017 Transmission Revenue Balancing Account Adjustment/Existing Transmission Contracts Update to be effective 1/1/2017.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 p.m. Eastern Time on January 10, 2017.

Dated: December 21, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016-31345 Filed 12-27-16; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9956-57-OECA]

Applicability Determination Index (ADI) Data System Recent Posting: Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and the Stratospheric Ozone Protection Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS); the National Emission Standards for Hazardous Air Pollutants (NESHAP); and/or the Stratospheric Ozone Protection Program.

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) data system is available on the Internet through the Resources and Guidance Documents for Compliance Assistance page of the Clean Air Act Compliance Monitoring Web site under “Air” at: <https://www2.epa.gov/compliance/resources-and-guidance-documents-compliance-assistance>. The letters and memoranda on the ADI may be located by date, office of issuance, subpart, citation, control number, or by string word searches. For questions about the ADI or this notice, contact Maria Malave at EPA by phone at: (202) 564-7027, or by email at: malave.maria@epa.gov. For technical questions about individual applicability determinations, monitoring decisions or regulatory interpretations, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background

The General Provisions of the NSPS in 40 Code of Federal Regulations (CFR) part 60 and the General Provisions of the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. The EPA’s written responses to these inquiries are commonly referred to as applicability determinations. See 40 CFR 60.5 and 61.06. Although the NESHAP part 63 regulations [which include Maximum Achievable Control Technology (MACT) standards and/or Generally Available Control Technology (GACT) standards] and Section 111(d) of the Clean Air Act (CAA) contain no specific regulatory provision providing that sources may request applicability determinations, the EPA also responds to written inquiries regarding applicability for the part 63 and Section 111(d) programs. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping that is different from the promulgated requirements. See 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). The EPA’s written responses to these inquiries are commonly referred to as alternative monitoring decisions. Furthermore, the EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping, or reporting requirements contained in the regulation. The EPA’s written responses to these inquiries are commonly referred to as regulatory interpretations.

The EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them to the ADI on a regular basis. In addition, the ADI contains EPA-issued responses to requests pursuant to the stratospheric

ozone regulations, contained in 40 CFR part 82. The ADI is a data system on the Internet with over three thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS, NESHAP, and stratospheric ozone regulations. Users can search for letters and memoranda by date, office of issuance, subpart, citation, control number, or by string word searches.

Today’s notice comprises a summary of 30 such documents added to the ADI on December 6, 2016. This notice lists the subject and header of each letter and memorandum, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI on the Internet through the Resources and Guidance Documents for Compliance Assistance page of the Clean Air Act Compliance Monitoring Web site under “Air” at: <https://www2.epa.gov/compliance/resources-and-guidance-documents-compliance-assistance>.

Summary of Headers and Abstracts

The following table identifies the control number for each document posted on the ADI data system on December 6, 2016; the applicable category; the section(s) and/or subpart(s) of 40 CFR part 60, 61, or 63 (as applicable) addressed in the document; and the title of the document, which provides a brief description of the subject matter.

We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents. This notice does not change the status of any document with respect to whether it is “of nationwide scope or effect” for purposes of CAA section 307(b)(1). For example, this notice does not convert an applicability determination for a particular source into a nationwide rule. Neither does it purport to make a previously non-binding document binding.

ADI DETERMINATIONS UPLOADED ON DECEMBER 6, 2016

Control No.	Categories	Subparts	Title
1500007	NSPS	Eb	Waiver of System Operational Limits During Performance Test.
1500050	MACT, NESHAP, NSPS.	A, Db, JJJJJ	Extension Request for Initial Performance Test at Coal-Fired Boiler.
1500053	NSPS	Ja	Alternative Monitoring Plan for Flares at a Petroleum Refinery.
1500061	NSPS	IIII	Regulatory Interpretation for Bi-fuel Engine Kits.
1500075	NSPS	KKK, OOOO, VV, VVa	Applicability Determination for a Natural Gas Processing Plant.
1500076	NSPS	Ja	Applicability Determination for a Condensate Splitter Processing Facility.
1500077	NSPS	CCCC, DDDD	Applicability Determination for Thermal Oxidizer.

ADI DETERMINATIONS UPLOADED ON DECEMBER 6, 2016—Continued

Control No.	Categories	Subparts	Title
1500078	NSPS	OOO	Applicability Determination for Equipment Replacement at Salt Recovery Production Line.
1500079	NSPS	DD	Applicability Determination for Wire Screen Column Dryers.
1500080	NSPS	JJJ	Applicability Determination for Closed Loop Dry to Dry Cleaning Equipment.
1500084	NSPS	KKK, NNN, OOOO, RRR.	Alternative Monitoring for Vent Streams Flow Monitoring and Pilot Light Monitoring.
1600001	GACT, MACT, NESHAP, NSPS.	CCCC, DDDDD, JJJJJJ	Applicability Determination for a Stoker Boiler.
1600002	NSPS	OOO	Extension Request for Performance Test at Sand Mine.
1600005	NSPS	LLLL	Alternative Monitoring for Granular Activated Carbon and Fugitive Ash Monitoring at Sewage Sludge Incinerator.
1600006	NSPS	LLLL	Alternative Monitoring for Wet Electrostatic Precipitator at Sewage Sludge Incinerator.
1600007	NSPS	Ja	Alternative Monitoring of Hydrogen Sulfide from Flares at Chemical Plant.
1600008	NSPS	J, Ja	Alternative Monitoring of Hydrogen Sulfide from Portable Temporary Thermal Oxidizer Units at Refinery Degassing Operations.
M150035	MACT, NESHAP	HHHHHHH	Alternative Monitoring for Scrubber at Polyvinyl Chloride Plant.
M150038	MACT, NESHAP	N	Alternative Monitoring Procedures for Air Pollution Control Device at Chrome Plating Facility.
M150039	MACT, NESHAP	DDDD	Alternative Monitoring for Wet Scrubbers at Pulp and Paper Mill.
M150040	MACT, NESHAP	DDDD	Alternative Monitoring for Wet Venturi Scrubber and Power Boiler.
M160001	MACT, NESHAP	RRR	Applicability Determination for an Aluminum Chip Dryer.
M160002	MACT, NESHAP	DDDD, DDDDD	Applicability Determination for Drying Kilns and Boilers.
M160003	MACT, NESHAP	DDDD	Applicability Determination for a Biomass Boiler Sub-Categorization.
M160004	MACT, NESHAP	BBBBB	Applicability Determination for Semiconductor Facility.
Z150003	MACT, NESHAP	BBBBBB	Alternative Monitoring for Internal Floating Roof Tanks.
Z150007	MACT, NESHAP	ZZZZ	Regulatory Interpretation of Duke Energy Emergency Generator Programs.
Z150008	MACT, NESHAP, NSPS.	IIII, JJJJ, ZZZZ	Regulatory Interpretation on Stack Testing for Reciprocating Internal Combustion Engines.
Z150012	GACT, MACT, NESHAP.	JJJJJJ	Regulatory Interpretation of Emissions Test Data for Wood-Fired Boilers.
Z160001	GACT, MACT, NESHAP.	DDDDDD	Clarification of Prepared Feeds Area Source Rule.

Abstracts*Abstract for [1500007]*

Q: Will the EPA grant a waiver to the large municipal waste combustor (MWC) at Covanta Marion, Inc. (CMI) in Brooks, Oregon, pursuant to its authority under 40 CFR 60.53b(b)(2) for the combustor unit load level limitations, under 40 CFR 60.53b(c)(1) for the particulate matter control device inlet temperature, and under 40 CFR 60.58b(m)(2)(ii) for the average mass carbon feed rate, for the two weeks preceding, and during the annual dioxin/furan and mercury performance tests for the purpose of evaluating system performance?

A: Yes. For the purpose of evaluating system performance, the EPA agrees to waive the following operational limits imposed to large municipal waste combustors under the Federal Plan at subpart FFF, part 62, pursuant to its authority under 40 CFR 60.53b(b)(2): (1) MWC load level (steam generation rate), (2) flue gas temperatures at the inlet to the particulate matter control device, and (3) activated carbon injection rate (mass carbon feed rate). These

requirements are waived for the two week period preceding, and during the annual dioxin/furan and mercury performance test which is scheduled to take place during the week of June 9, 2014 at the CMI MWC. This waiver is limited to the time frame and operational limits specifically identified above, and all otherwise applicable requirements continue to be in effect during this period.

Abstract for [1500050]

Q: May the Eielson Air Force Base (EAFB) in Alaska have an extension to the required initial performance test deadlines for a recently constructed Boiler 6A subject to 40 CFR part 60 subpart Db and 40 CFR part 63 subpart JJJJJ under the force majeure provisions in 40 CFR 60.2, 60.8(a)(1) through (4); 63.2, and 60.7(a)(4)(i) through (iii)?

A: No. The EPA determines that the event described in the request does not meet the definition of a “force majeure event”. The EPA cannot conclude that the delay in full operation of B6A in sufficient time to conduct the required initial performance tests was beyond the control of the EAFB; therefore, the EPA

is denying the EAFB’s request to extend the April 26, 2015, deadline for conducting the initial performance testing of B6A.

Abstract for [1500053]

Q: Will the EPA approve alternatives to the quality assurance testing requirements, required by 40 CFR 60.107a(e)(1), for the total reduced sulfur (TRS) flare analyzer at the CHS Inc. refinery in Laurel, Montana?

A: Yes. The EPA conditionally approves the alternative quality assurance testing requirements for the high range TRS portion of the analyzer under 40 CFR 60.13(i). The conditions for approval of the AMP request to address safety hazards concerns are established in the EPA response letter, which include a laboratory demonstration of linearity for the analyzer.

Abstract for [1500061]

Q1: Does the installation of the bi-fuel kit on new U.S. EPA-certified units at engines at the USR Corporation in Virginia subject to NSPS subpart IIII affect the manufacturer’s certification?

In other words, is the unit still a certified unit?

A1: No. The EPA determines that the engine is no longer certified after the conversion and the owner/operator must follow the requirements listed under 40 CFR 60.4211(g) to show compliance with emission standards in NSPS subpart IIII.

Q2: Does the installation and operation of the bi-fuel kit on a certified engine constitute tampering under the Clean Air Act, or is this action prohibited by other provisions of the Clean Air Act?

A2: No. The EPA determines this action is not prohibited for certified stationary compression ignition internal combustion engines (CI ICE), but after the installation and operation of the kit, the unit is no longer certified. The owner/operator must show compliance with emission standards by following requirements listed in 40 CFR 60.4211(g).

Q3: If a manufacturer's certification is affected for an engine, what specific requirements must be performed to ensure compliance with emission standards under NSPS subpart IIII? URS requests a determination as to the testing procedures required for a facility with a fleet of identical engines which have been installed with bi-fuel units. The engines are identical in size, horsepower, model year, etc. The test would determine compliance with NSPS subpart IIII and would represent compliance for all the identical engines for the client. It is URS' contention that since the engines are identical in every way, it would be unnecessary and cost prohibitive to test all of the engines. Can a representative engine test satisfy the testing requirements for a fleet of identical engines for the same client?

A3: No. The testing requirements are listed in 40 CFR 60.4211(g). An initial performance test must be conducted for stationary CI ICE less than or equal to 500 horsepower (HP). For stationary CI ICE greater than 500 horsepower, the owner/operator must conduct an initial test, and subsequent testing every 8,760 hours of operation or every 3 years, whichever comes first. The EPA determines that a representative engine test cannot satisfy the testing requirements for a fleet of identical engines for one client, unless the owner/operator has requested and received approval of a waiver of the performance testing requirements, listed under 40 CFR 60.8(b).

Abstract for [1500075]

Q1: Does the NSPS subpart OOOO apply to the storage facilities at the

Williams Four Corners LLC Ignacio Gas Plant located near Ignacio, Colorado?

A1: Yes. Based on the information provided, the EPA understands the storage facilities referred to are the portion of the plant which stores final product (propane, butane, etc.) prior to offsite transport. As such, the storage facilities at the Ignacio Gas Plant are a process unit and an affected facility under subpart OOOO.

Q2: What value should the Ignacio Gas Plant use for "B" in the equation for determining whether a "capital expenditure" has occurred, and thus a modification under subpart OOOO at the Ignacio Gas Plant?

A2: For determining whether a modification has occurred at the Ignacio Gas Plant under subpart OOOO, in the equation for capital expenditure in 40 CFR 60.481(a), the value to be used for "B" is 4.5 and the value to be used for "X" is 2011 minus the year of construction.

Abstract for [1500076]

Q1: Does the EPA determine that NSPS subpart Ja applies to the condensate splitter located at the Kinder Morgan Crude & Condensate LCC (KMCC) Facility, a petroleum refinery located in Galena Park, Texas?

A1: Yes. Based upon the information provided, the EPA determines that the KMCC condensate splitter facility is a refinery under subpart Ja because it receives and distills a crude oil and condensate hydrocarbon mixture into various refined petroleum products. Based on review of the company's information, the EPA concludes that the raw material feedstock, processes employed, and products generated meet the definition of a petroleum refinery provided at 40 CFR 60.101a.

Abstract for [1500077]

Q1: Does the EPA determine that the thermal oxidizer at the 3M Company (3M) facility in Cordova, Illinois is subject to the Standards of Performance for Commercial and Industrial Solid Waste Incineration (CISWI) Units, 40 CFR part 60 subpart CCCC?

A1: No. The EPA determines that the thermal oxidizer is not subject to subpart CCCC because 3M commenced construction of the thermal oxidizer before the threshold date for a new CISWI unit.

Q2: Does the EPA determine that a fluorinated liquid organic chemical byproduct from a chemical manufacturing process unit at the facility which is atomized in the thermal oxidizer is not a "solid waste" as defined in 40 CFR 60.2265?

A2: Yes. Based on the information provided, the byproduct liquid appears to meet the Non Hazardous Secondary Material (NHSM) criteria and would be considered a non-waste ingredient under the 40 CFR part 241 regulations.

Abstract for [1500078]

Q1: Does the EPA determine that the "like-for-like" replacement exemption in 40 CFR 60.670(d) is applicable to the replacement of affected facilities on production lines that were constructed after August 31, 1983 at the 3M Company salt recovery production line located in Elyria, Ohio?

A1: Yes. The EPA determines that the "like-for-like" replacement exemption in 40 CFR 60.670(d)(1) of subpart OOO is applicable to "affected facilities" (those constructed after August 31, 1983) with regards to the subpart OOO amendments promulgated on April 28, 2009 based on 3M's description that the Weigh Conveyors A and B are equal or smaller in size to and perform the same function as the original conveyors, and emissions at the conveyors did not increase, and as long as the remaining affected facilities in the salt recovery production line have not been replaced since April 22, 2008.

Q2: What emission standards apply to a production line constructed after August 31, 1983 that includes affected facilities constructed as a "like-for-like" replacement after April 22, 2008, assuming that all of the affected facilities on the production line have not been replaced as provided in 40 CFR 60.670(d)(3)?

A2: A production line constructed after August 31, 1983 that includes affected facilities constructed as a "like-for-like" replacement after April 22, 2008 is subject to the original subpart OOO rule standards promulgated on August 1, 1985, and not the 2009 subpart OOO rule standards, as long as all affected facilities on the production line have not been replaced.

Abstract for [1500079]

Q: Does the EPA determine that NSPS subpart DD applies to column dryers constructed of woven wire screen at the Riceland Foods facility in Stuttgart, Arkansas (Riceland)?

A: No. The EPA determines that although the Riceland facility is a grain terminal elevator subject to subpart DD, the column dryers in question are a new subcategory of grain dryers not subject to subpart DD due to its differences in size, type and class of column dryers. The EPA has stated this position in the July 9, 2014 proposed rule for subpart DD and in a new proposed subpart DDA

rule, which now includes a definition for “wire screen column dryers”.

Abstract for [1500080]

Q: Does the EPA determine that NSPS subpart JJJ for Petroleum Dry Cleaners applies to closed loop, dry to dry new hydrocarbon equipment at Parrot Cleaners facility in Louisville, Kentucky?

A: No. The EPA determines that the dry to dry closed loop machines installed at Parrot Cleaners do not meet the definition of a “petroleum dry cleaner,” in that they do not use solvent in a “combination of washers, dryers, filters, stills, and settling tanks” since these are single unit machines. The EPA intent to regulate dry cleaning machines with separate units (*i.e.*, transfer machines with separate washers and dryers) in subpart JJJ is evidenced by the equipment standard requiring separate “solvent recovery dryers” in section 60.622 and in the testing procedures in section 60.624, as well as in other EPA statements regarding the petroleum solvent drycleaning industry. Therefore, subpart JJJ does not apply to the dry to dry machines installed at the facility.

Abstract for [1500084]

Q1: Does the EPA approve the use of a lock and seal configuration in lieu of flow indicators to monitor VOC containing vent streams routed from distillation facilities to plant flares at the Aux Sable Liquid Products (ASLP) facility in Morris, Illinois to demonstrate compliance with requirements of 40 CFR 63 subpart NNN?

A1: Yes. The EPA approves locking or sealing leak-proof bypass valves in the closed position in lieu of flow indicators. ASLP will conduct monthly monitoring of the lock or seal valves to ensure that they function and are kept in the closed position. ASLP will maintain a log of each lock or seal inspection and comply with the monitoring requirements of 40 CFR 60.703(b)(2), 40 CFR 60.703(b)(2)(i), and 40 CFR 60.703 (b)(2)(ii) of NSPS subpart RRR for the purpose of complying with NSPS NNN. In addition, ASLP will need to comply with the monitoring and record keeping requirements of 40 CFR 60.705(d)(2) and (s).

Q2: Does the EPA approve the use of infrared cameras to monitor the continuous presence of a pilot light in lieu of a thermocouple or ultraviolet beam sensor, in the ASLP Morris, Illinois facility?

A2: No. The EPA does not approve the use of an infrared camera pilot monitor (PM) to meet the requirements of 40 CFR 60.663(b), 40 CFR 60.703(b)

and 40 CFR 60.18(e)(2) because ASLP is unable to prove that their pilot monitor can continuously monitor the presence of a pilot flame. The PM is able to detect the flare flame accurately and reliability when the vent gas is flowing, but it has not proven to have sufficient resolution for a situation where the pilot light is not present and a flare flame is present with vent gas flowing.

Abstract for [1600001]

Q1: Does the EPA determine that the stoker boiler at Fibrominn LLC (Fibrominn) in Benson, Minnesota is subject to the Standards of Performance for Commercial and Industrial Solid Waste Incineration (CISWI) Units, 40 CFR part 60 subpart CCCC (CISWI NSPS)?

A1: No. Although the EPA concludes that the boiler is a CISWI unit, Fibrominn commenced construction of its boiler on or before June 4, 2010 and there is no evidence that it has been modified or reconstructed after August 7, 2013. Therefore, the EPA concludes that Fibrominn’s boiler is not subject to the CISWI NSPS pursuant to 40 CFR 60.2010 and 60.2015.

Q2: Does the EPA determine that Fibrominn’s boiler is subject to the Federal Plan Requirements for CISWI Units That Commenced Construction On or Before November 30, 1999, 40 CFR part 62 subpart III (CISWI FIP)?

A2: No. Fibrominn’s boiler is not subject to the CISWI FIP because Fibrominn commenced construction between November 30, 1999, and June 4, 2010. The CISWI NSPS applies to each CISWI unit that commenced construction after June 4, 2010, or commenced reconstruction or modification after August 7, 2013.

Q3: Does the EPA determine that Fibrominn’s boiler is exempt from the requirements in the CISWI FIP?

A3: No. Fibrominn’s boiler is not subject to the CISWI FIP. Therefore, the question of whether Fibrominn’s boiler is exempt from the CISWI FIP is moot.

Q4: Does the EPA determine that Fibrominn can avoid being subject to the NESHAP for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, 40 CFR part 63 subpart DDDDD (Major Source Boiler MACT) by taking federally enforceable limits on its potential to emit prior to the compliance date, January 31, 2016?

A4: Yes. The EPA agrees that Fibrominn can take federally enforceable limits on its potential to emit to avoid being subject to the Major Source Boiler MACT. By doing so, Fibrominn would become subject to the NESHAP for Industrial, Commercial,

and Institutional Boilers Area Sources, 40 CFR part 63 subpart JJJJJ (Area Source Boiler MACT).

Q5: If Fibrominn submits a formal application to the Minnesota Pollution Control Agency (MPCA) to amend Fibrominn’s existing Title V permit in order to take a synthetic minor limit, and Fibrominn submits the application to the MPCA prior to January 31, 2016, the compliance date for the Major Source Boiler MACT, does this constitute Fibrominn’s “taking a synthetic minor limit” in terms of eligibility to avoid being subject to the Major Source Boiler MACT?

A5: No. Fibrominn’s submittal of its application for modification of its Title V permit does not constitute taking federally enforceable limits on its potential to emit.

Q6: Does the EPA determine that Fibrominn remain subject to the case-specific MACT in its 2002 Title V permit after the compliance date for the Major Source Boiler MACT?

A6: Yes. The EPA notes that more than one MACT standard can apply to the same equipment or operation. Unless the case specific MACT is removed from the permit, Fibrominn would remain subject to the case specific MACT and either the Major Source or Area Source Boiler MACT.

Abstract for [1600002]

Q: Does the EPA approve an extension of time to conduct a performance test required by NSPS subpart OOO based on a force majeure event at the Hi-Crush Augusta, LLC industrial sand mine and processing plant in August, Wisconsin?

A: No. The EPA determines that the event described in the request does not meet the definition of a “force majeure event” under 40 CFR 60.2.

Abstract for [1600005]

Q1: Does the EPA approve an alternative monitoring plan (AMP) for the granular activated carbon adsorption system used to control mercury emissions from the sewage sludge incinerator subject to 40 CFR part 60 subpart LLLL at the Mattabassett District Water Pollution Control Facility in Cromwell, Connecticut?

A1: Yes. The EPA approves Mattabassett’s AMP for the carbon bed under 40 CFR 60.13(i) for the granular activated carbon adsorption system (“carbon bed”) used to control mercury emissions from the sewage sludge incinerator subject to subpart LLLL. The alternative monitoring plan that Mattabassett has proposed, combined with the facilities construction permit, meets the requirement of a similar type of monitoring application for carbon

beds used to control mercury under 40 CFR part 63 subpart EEE.

Q2: Does the EPA approve Mattabassett's site-specific ash handling monitoring plan to meet the fugitive emission limits specified in 40 CFR part 60 subpart LLLL, considering that the ash at the facility is collected using an entirely wet system?

A2: Yes. The EPA approves Mattabassett's site-specific plan for fugitive ash monitoring that consists of daily observations of the ash lagoons.

Abstract for [1600006]

Q: Does the EPA approve an alternative monitoring plan (AMP) for the wet electrostatic precipitator (WESP) used to control air emissions from the sewage sludge incinerator subject to 40 CFR part 60 subpart LLLL located at the Mattabassett District Water Pollution Control Facility (Mattabassett) in Cromwell, Connecticut?

A: Yes. The EPA approves Mattabassett's AMP to monitor the total water flow rate of the influent to the WESP on an 8 hour block basis and to set the parameter limit at 90 percent of the 8 hour flow recorded during the initial performance test.

Abstract for [1600007]

Q: Does the EPA approve the alternative monitoring plan to use the same high level calibration gas for both the low range and high level range for two dual range hydrogen sulfide (H₂S) monitors installed on two flares subject to 40 CFR part 60 subpart Ja at the Shell Chemical LP plant in Saraland, Alabama?

A: Yes. The EPA responded to the Alabama Department of Environmental Management that based upon the expectation that the majority of H₂S readings will be made on the lower range of the dual range monitors, a demonstration that the monitors have a linear response across their entire range of operation, and the toxicity of H₂S, the proposal is acceptable.

Abstract for [1600008]

Q: Does the EPA approve an alternative hydrogen sulfide (H₂S) monitoring plan (AMP) for portable temporary thermal oxidizer units (TOUs) that control emissions during tank degassing and vapor control projects subject to 40 CFR part 60 subpart J and 40 CFR part 60 subpart Ja at Tristar Global Energy Solutions (Tristar) petroleum refineries located in EPA Region 4?

A: Yes. The EPA approves the AMP request since installing and operating an H₂S continuous emission monitoring system would be impractical due to the

short term nature of the degassing operations performed by Tristar. In addition, Tristar's proposed monitoring alternative is consistent with previously approved alternatives for other tank degassing service providers.

Abstract for [M150035]

Q1: Does the EPA approve an alternative monitoring request (AMR) for the purpose of monitoring pressure drop under requirements of 40 CFR part 63 subpart HHHHHHH Table 5, Polyvinyl Chloride (PVC) and Copolymer Production at Major Sources NESHAP at the Oxy Vinyls, LP Pasadena PVC plant in Pasadena, Texas?

A1: Yes. The EPA approves the AMR to substitute ambient pressure for the measured outlet pressure of the scrubber. Since the scrubber is a low pressure scrubber, the outlet of the scrubber system operates at ambient pressure. Any pressure changes in the scrubber would be indicated by changes to the inlet pressure, which will be directly monitored. Therefore, the calculation of pressure drop will be determined by the difference between inlet pressure and ambient pressure. The operating limit for pressure drop has been established using engineering assessments and manufacturer's recommendations, which is allowed by 40 CFR 63.11935(d)(2). Scrubber pressure drop will be recorded in accordance with the approved AMR during a performance test, along with other operating parameters required by Table 5 of subpart HHHHHHHH. The frequency and content of pressure drop monitoring, recording, and reporting will not change as a result of the approved AMR.

Abstract for [M150038]

Q: Does the EPA approve of alternative work practice and monitoring procedures for the three enclosed hard chromium plating tanks to be installed that will be subject to 40 CFR part 63 subpart N at the Har-Conn Chrome Company (Har-Conn) facility in West Hartford, Connecticut?

A: Yes. The EPA approves the Har-Conn alternative monitoring procedures to demonstrate ongoing compliance with the operation and maintenance ("O&M") practices and monitoring specified in Table 1 of 63.342 as they are not feasible for the application to the Palm Technology Emission Eliminating Devices (EEE) used by the enclosed hard chromium tanks. Har-Conn will use the operation and maintenance (O&M) practices and manual recommended by the manufacturer of the Palm Technology Emission Eliminating Devices (EEE), as well as daily, weekly,

monthly, quarterly, and annual compliance monitoring logs for the EED.

Abstract for [M150039]

Q: Does the EPA approve an alternative monitoring plan to the use of an alternative control device parameter other than one of the parameters required at 40 CFR 63.7525(f) and Tables 4, 7, and 8 in subpart DDDDD for wet scrubbers at the SAPPI Fine Paper North America (SAPPI) facility in Skowhegan, Maine?

A: Yes. The EPA approves SAPPI's alternative monitoring request for the wet scrubber to monitor scrubber liquid supply pressure in lieu of the pressure drop across the wet scrubber used to control emissions from the Number 2 Power Boiler. Based on the data provided showing strong correlation between spray tower liquid recirculation pressure and flow, as well as data that demonstrates a poor correlation between pressure drop of the scrubber and heat input to the boiler (an indicator of emissions), EPA agrees that this method may be used in this situation in lieu of monitoring pressure drop across the scrubber. In addition, this method is consistent with similar boiler monitoring applications.

Abstract for [M150040]

Q1: Does the EPA approve separate sets of parameter monitoring thresholds for the scrubber liquid flow rate and pressure drop of the wet venturi scrubber subject to 40 CFR part 63 subpart DDDDD at the Verso Corporation (Verso) facility in Jay, Maine under two operating scenarios: (1) Periods when the unit burns biomass and combined biomass/fossil-fuel burning at boiler capacities up to 480 MMBtu, and (2) periods when the unit burns only fossil fuel at boiler capacities equal to or less than 240 MMBtu, on a 30-day rolling average and on a daily block average when burning only fossil fuels?

A1: Yes. The EPA approves Verso's alternative monitoring request for both operating scenarios.

Q2: Does the EPA approve for Verso when burning exclusively natural gas to operate without engaging the wet venturi scrubber after startup and exclude periods when the wet scrubber is not engaged due to burning gas from the 30-day compliance averages?

A2: Yes. The EPA approves the request to allow the unit to operate without engaging the wet scrubber and to exclude parameter monitoring data during periods when only natural gas is fired, provided that Verso can demonstrate through existing data or emissions testing that the unit complies

with the PM, Hg, and HCl emissions standards while firing only natural gas.

Abstract for [M160001]

Q: Would an aluminum chip drying process at the Remelt Scientific facility (Remelt) in Port Charlotte, Florida, that is used to remove water meet the definition of “thermal chip dryer” in 40 CFR part 63 subpart RRR?

A: No. Remelt’s chip drying process does not meet the definition of “thermal chip dryer” and is therefore not subject to subpart RRR. Based on the description that the process operates at temperatures of 200F and 235F, and the oil that remains on the chips has an evaporation temperature of over 300F, we believe that the process would be used solely to remove water from the aluminum chips since it would not be operating at temperatures sufficient to remove the machining oil that remains on the chips.

Abstract for [M160002]

Q1: The ArborTech Forest Products, Inc. (ArborTech) facility in Blackstone, Virginia is planning to increase its lumber production such that the potential to emit for methanol would be greater than 10 tons per year. Does the EPA determine that the facility would be reclassified as a major source for hazardous air pollutants (HAPs)?

A1: Yes. The EPA determines that if ArborTech increases the air permit limit on production and potential methanol emissions would exceed 10 tons/year that the facility would qualify as a major source and would need to be reclassified as a major source in the State permit.

Q2: Does the EPA determine that ArborTech would be subject to 40 CFR part 63 subpart DDDD, Plywood and Composite Wood Products National Emission Standards for Hazardous Air Pollutants (PCWP MACT), and would the dry kilns be considered an affected source immediately upon issuance of the revised permit/reclassification to a major source of HAPs?

A2: Yes. The EPA determines that ArborTech would be subject to the subpart DDDD rule on the date of issuance of the revised permit when the facility would be reclassified as a major source of HAPs, and therefore the dry kilns would be an affected source under the rule.

Q3: Does the EPA determine that if the wood-fired boilers’ exhaust is routed to the lumber kiln(s) and used to dry lumber the boilers would be an “affected source” under the PCWP MACT and subject to the rule?

A3: The EPA determines that if ArborTech becomes a major source of

HAPs, and if ArborTech sent 100 percent of the exhaust from its wood-fired boilers to its lumber drying kiln(s) to help dry lumber, then the boilers would not be subject to 40 CFR part 63 subpart DDDDD (the Major Source Boiler MACT), but would instead be subject to the PCWP MACT.

Q4: When does the EPA determine that ArborTech would become subject to the Major Source Boiler MACT?

A4: The EPA determines that if ArborTech were to become a major source of HAPs after the Major Source Boiler MACT initial compliance date for existing sources of January 31, 2016, then ArborTech would be required to bring its existing boilers into compliance with the Major Source Boiler MACT within three years after ArborTech became a major source, unless ArborTech had previously sent 100% of the exhaust from its boiler(s) to its kiln(s), thus making the boiler(s) and their exhaust streams affected sources under the PCWP MACT. If ArborTech were to become a major source prior to the Major Source Boiler MACT initial compliance date for existing sources of January 31, 2016, then its existing boilers would be required to be in compliance as of January 31, 2016, unless ArborTech had previously sent 100% of the exhaust from its boiler(s) to its kiln(s), thus making the boiler(s) and their exhaust streams affected sources under the PCWP MACT.

Abstract for [M160003]

Q: Does the EPA approve the re-categorization of Boiler No. 9 at the Finch Paper, LLC (Finch) integrated pulp and paper manufacturing facility located in Glen Falls, New York from the wet biomass stoker subcategory to the hybrid suspension grate boiler subcategory pursuant to 40 CFR part 63 subpart DDDDD (the Major Source Boiler MACT)?

A: Yes. Based on the information submitted on the design and operation of the Boiler No. 9, the EPA determines that it meets the definition of “hybrid suspension grate boiler” found in 40 CFR 63.7575. Therefore, Boiler No. 9 will be subject to the rule as it pertains to existing hybrid suspension grate boilers.

Abstract for [M160004]

Q: Does the EPA determine that the Truesense Imaging, Inc. (Truesense) semiconductor fabrication business (Semiconductor Business) located at its microelectronics wafer fabrication facility (FAB facility) in Rochester, NY is subject to the National Emissions Standards for Hazardous Air Pollutants for Semiconductor Manufacturing, 40

CFR part 63 subpart BBBBB (Semiconductor MACT)?

A: Yes. The EPA determines that the FAB facility, currently owned and operated by Truesense, is and continues to be an existing source with compliance required as of 2006 and must continue to comply with the Semiconductor MACT, even after a sale, as long as the source otherwise continues to meet the definition of an affected facility (*i.e.*, major source status not withstanding) consistent with the “Once In Always In” policy.

Abstract for [Z150003]

Q: Does the EPA approve Monroe Interstate Pipeline Company (MIPC) alternative monitoring request for use of top-side in-service inspections in lieu of the out-of-service inspection requirements for specific types of internal floating roof (IFR) storage tanks subject to 40 CFR part 63 subpart BBBBBB (GD GACT) and/or 40 CFR part 60 subpart Kb, NSPS for Volatile Organic Liquid Storage Vessels), at the MIPC Chelsea Tank Farm in Aston, PA?

A: Yes. In accordance with 40 CFR 60.13 and 63.8(f), EPA approves MIPC alternative monitoring request for use of top-side in-service internal inspection methodology for the IFR storage tanks subject to NSPS Kb and GD GACT specified in the AMP request (tanks that have geodesic dome roofs equipped with skylights for enhanced natural lighting and aluminum honeycomb panel decks constructed decks with mechanical shoe primary and secondary seals liquid surface) to meet the internal out-of-service inspection required at intervals no greater than 10 years by the applicable regulations. MIPC will be able to have visual access to all of the requisite components (*i.e.*, the primary and secondary mechanical seals, gaskets, and slotted membranes) through the top side of the IFR for the specified storage tanks, as well as properly inspect and repair the requisite components while these tanks are still in-service, consistent with the inspection and repair requirements established under NSPS subpart Kb. In addition, MIPC internal inspection methodology includes identifying and addressing any gaps of more than 1/8 inch between any deck fitting gasket, seal, or wiper and any surface that it is intended to seal; complying with the fitting and deck seal requirements and the repair time frame requirement in NSPS subpart Kb for all tanks, including GACT tanks; and implementing a full top-side and bottom-side out-of-service inspection of the tank each time an IFR storage tank is emptied and degassed for

any reason, and keep records for at least five years.

Abstract for [Z150007]

Q: Does the EPA determine that the stationary reciprocating internal combustion engines (RICE) participating in two Duke Energy Carolinas nonresidential demand response programs meet the definition of “emergency stationary RICE” in the National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (“RICE NESHAP”)?

A: No. The EPA determines that the terms of Duke’s demand response programs do not meet all of the operational limits on emergency engines in the RICE NESHAP. The terms of the programs are consistent with the limitations on emergency demand response. However, an engine must also comply with the definition of “emergency stationary RICE” and all of the operational restrictions in 40 CFR 63.6640(f) to be considered RICE NESHAP emergency engines.

Abstract for [Z150008]

Q1: Has EPA Method 1 been removed from the reciprocating internal combustion engine (RICE) NESHAP subpart ZZZZ, or should the engines at Farabee Mechanical in Hickman, Nebraska (Farabee) be following Method 1 for test port locations.

A1: No. EPA Method 1 of 40 CFR part 60 Appendix A from the RICE NESHAP should be followed for test port locations. The EPA response letter provides guidance for numerous testing scenarios under NESHAP subpart ZZZZ sources including engines where Method 1 is required but the testing ports do not meet the minimum criteria of Method 1 and engines that are not required to use Method 1 procedures.

Q2: Is there any conflict with the RICE NESHAP subpart ZZZZ rule if utilizing test ports at engines for testing purposes?

A2: No. The Farabee Mechanical facility was approved to use single-point sampling at NSPS subpart JJJJ sources in lieu of Method 1 for their engines. Single point sampling without a stratification test for nitrogen oxide emissions using Alternative Test Method 87 is allowed under 40 CFR 60, Subparts IIII and JJJJ. However, single point sampling for carbon monoxide at NESHAP subpart ZZZZ sources have not yet been broadly approved. Therefore, when Method 1 is not met, a stratification test is to be conducted to show if the site is acceptable to perform the test.

Abstract for [Z150012]

Q: Does the EPA approve the use of the results of a particulate matter emission test conducted on December 2014 for two new wood-fired boilers at Norwich University in Northfield, Vermont that are subject to the requirements of 40 CFR part 63 subpart JJJJJ as being representative of “initial conditions” because the first test, conducted in February 2014, was not conducted under normal operating conditions?

A: Yes. The EPA approves the use of emissions test data from the second test as meeting the requirements of 40 CFR 63.11220(b) since it is representative of normal operating conditions, and therefore Norwich University may avoid the requirement to test particulate matter every three years.

Abstract for [Z160001]

Q: Does the EPA accept the proposal by Tyson Foods Inc. to use a louvered door system, where the louvers would only open inward and would only open when negative pressure is in place, to meet the work practice requirements in 40 CFR part 63 subpart DDDDDDD, National Emissions Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing (Prepared Feeds Area Source Rule), to keep exterior doors in the immediate affected areas shut except during normal ingress and egress, as practicable?

A: Yes. The EPA determines that the use of the louvered door system would meet the requirements of subpart DDDDDDD. The louvered door system described would maintain the function of the closed doors by only opening the louvers to the interior of the building when the doors are under negative pressure, drawing air into the building. Under these conditions the doors would be serving the purpose of minimizing the release of prepared feed dust emissions to the outside, which is the intent of the work practice standard in Section 63.11621(a)(1)(iii).

Dated: November 10, 2016.

David A. Hindin,

Director, Office of Compliance, Office of Enforcement and Compliance Assurance.
[FR Doc. 2016–31235 Filed 12–27–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Federal Accounting Standards Advisory Board 2017 Meeting Schedule

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will hold its meetings on the following dates throughout 2017, unless otherwise noted.

February 22–23, 2017

April 26–27, 2017

June 21–22, 2017

August 30–31, 2017

October 25–26, 2017

December 20–21, 2017

The purpose of the meetings is to discuss issues related to the following topics:

Accounting and Reporting of Government Land
Budget and Accrual Reconciliation Concepts—The Financial Report
DoD Implementation Guidance Request
Leases
Risk Assumed
Tax Expenditures
Any other topics as needed

Unless otherwise noted, FASAB meetings begin at 9 a.m. and conclude before 5 p.m. and are held at the Government Accountability Office (GAO) at 441 G Street NW. in Room 7C13. Agendas and briefing materials are available at <http://www.fasab.gov/briefing-materials/> approximately one week before the meetings.

Any interested person may attend the meetings as an observer. Board discussion and reviews are open to the public. GAO building security requires advance notice of your attendance. If you wish to attend a FASAB meeting, please pre-register on our Web site at <http://www.fasab.gov/pre-registration/> no later than 8 a.m. the Tuesday before the meeting to be observed.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy M. Payne, Executive Director, 441 G Street NW., Mailstop 6H19, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: December 21, 2016.

Wendy M. Payne,

Executive Director.

[FR Doc. 2016-31378 Filed 12-27-16; 8:45 am]

BILLING CODE 1610-02-P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on the Exposure Draft Titled Budget and Accrual Reconciliation: Amending Statement of Federal Financial Accounting Standards (SFFAS) 7, SFFAS 22, and SFFAS 24

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92-463), as amended, and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued an exposure draft of a proposed Statement of Federal Financial Accounting Standards (SFFAS) titled *Budget and Accrual Reconciliation: Amending Statement of Federal Financial Accounting Standards (SFFAS) 7, SFFAS 22, and SFFAS 24*.

The exposure draft is available on the FASAB Web site at <http://www.fasab.gov/documents-for-comment/>. Copies can be obtained by contacting FASAB at (202) 512-7350.

Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by March 14, 2017, and should be sent to fasab@fasab.gov or Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW., Suite 6814, Mailstop 6H19, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy M. Payne, Executive Director, 441 G Street NW., Mailstop 6H19, Washington, DC 20548, or call (202) 512-7350.

Authority: Federal Advisory Committee Act, Pub. L. 92-463.

Dated: December 21, 2016.

Wendy M. Payne,

Executive Director.

[FR Doc. 2016-31399 Filed 12-27-16; 8:45 am]

BILLING CODE 1610-02-P

FEDERAL HOUSING FINANCE AGENCY

[No. 2016-N-14]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 30-Day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA or the Agency) is seeking public comments concerning the information collection known as "Federal Home Loan Bank Capital Stock," which has been assigned control number 2590-0002 by the Office of Management and Budget (OMB) (the collection was previously known as "Capital Requirements for the Federal Home Loan Banks"). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on December 31, 2016.

DATES: Interested persons may submit comments on or before January 27, 2017.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: (202) 395-3047, Email: OIRA_submission@omb.eop.gov. Please also submit comments to FHFA, identified by "Proposed Collection; Comment Request: 'Federal Home Loan Bank Capital Stock (No. 2016-N-14)'" by any of the following methods:

- *Agency Web site:* www.fhfa.gov/open-for-comment-or-input.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by *email* to FHFA at RegComments@fhfa.gov to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: "Federal Home Loan Bank Capital Stock (No. 2016-N-14)."

• *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel,

Attention: Comments/2016-N-14, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA Web site at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649-3804.

FOR FURTHER INFORMATION CONTACT: Jonathan F. Curtis, Financial Analyst, Division of Federal Home Loan Bank Regulation, by email at Jonathan.Curtis@fhfa.gov or by telephone at (202) 649-3321; or Eric Raudenbush, Associate General Counsel, by email at Eric.Raudenbush@fhfa.gov or by telephone at (202) 649-3084 (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The Telecommunications Device for the Hearing Impaired is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

The Federal Home Loan Bank System consists of eleven regional Federal Home Loan Banks (Banks) and the Office of Finance (a joint office that issues and services the Banks' debt securities). The Banks are wholesale financial institutions, organized under authority of the Federal Home Loan Bank Act (Bank Act) to serve the public interest by enhancing the availability of residential housing finance and community lending credit through their member institutions and, to a limited extent, through certain eligible nonmembers. Each Bank is structured as a regional cooperative that is owned and controlled by member institutions located within its district, which are also its primary customers. An institution that is eligible for membership in a particular Bank must purchase and hold a prescribed minimum amount of the Bank's capital stock in order to become and remain a member of that Bank. With limited exceptions, only an institution that is a member of a Bank may obtain access to low cost secured loans, known as

advances, or other products provided by that Bank.

Section 6 of the Bank Act establishes capital requirements for the Banks and requires FHFA to issue regulations prescribing uniform capital standards applicable to all of the Banks.¹ Section 6 also establishes parameters relating to the Banks' capital structures and requires that each Bank adopt a "capital structure plan" (capital plan) to establish, within those statutory parameters, its own capital structure and to establish requirements for and govern transactions in, the Bank's capital stock.² FHFA has designated 12 CFR part 1277 as the location for its regulations on Bank Capital Requirements, Capital Stock, and Capital Plans. Part 1277 currently includes regulations establishing requirements for the Banks' capital stock (Subpart C; §§ 1277.20–1277.27) and for the Banks' capital plans (Subpart D; §§ 1277.28–1277.29). Regulations governing the Banks' capital requirements are currently located at 12 CFR parts 930 and 932 (in the regulations of the former Federal Housing Finance Board), but will be moved into part 1277 in the near future.

Both the Bank Act and FHFA's regulations state that a Bank's capital plan must require its members to maintain a minimum investment in the Bank's capital stock, but both permit each Bank to determine for itself what that minimum investment is and how each member's required minimum investment is to be calculated.³ Although each Bank's capital plan establishes a slightly different method for calculating the required minimum stock investment for its members, each Bank's method is tied to some degree to both the level of assets held by the member institution (typically referred to as a "membership stock purchase requirement") and the amount of advances or other business engaged in between the member and the Bank (typically referred to as an "activity-based stock purchase requirement").

A Bank must collect information from its members to determine the minimum capital stock investment each member is required to maintain at any point in time. Although the information needed to calculate a member's required minimum investment and the precise method through which it is collected differ somewhat from Bank to Bank, the Banks typically collect two types of information. First, in order to calculate

and monitor compliance with its membership stock purchase requirement, a Bank typically requires each member to provide and/or confirm an annual report on the amount and types of assets held by that institution. Second, each time a Bank engages in a business transaction with a member, the Bank typically confirms with the member the amount of additional Bank capital stock, if any, the member must acquire in order to satisfy the Bank's activity-based stock purchase requirement and the method through which the member will acquire that stock.

The OMB number for the information collection is 2590–0002, which is due to expire on December 31, 2016. The likely respondents include current and former Bank members and institutions applying for Bank membership.

B. Burden Estimate

FHFA has analyzed the time burden imposed on respondents by the two collections under this control number and estimates that the average total annual hour burden imposed on all respondents over the next three years will be 15,230 hours. The estimate for each collection was calculated as follows:

I. Membership Stock Purchase Requirement Submissions

FHFA estimates that the average annual number of current and former members and applicants for membership required to report information needed to calculate a membership stock purchase requirement will be 7,320, and that each institution will submit one report per year, resulting in an estimated total of 7,320 submissions annually. The estimate for the average time required to prepare, review, and submit each report is 0.5 hours. Accordingly, the estimate for the annual hour burden associated with membership stock purchase requirement submissions is (7,320 reports × 0.5 hours per report) = 3,660 hours.

II. Activity-Based Stock Purchase Requirement Submissions

FHFA estimates that the average number of daily transactions between Banks and members that will require the exchange of information to confirm the member's activity-based stock purchase requirement will be 341, and that there will be an average of 261 working days per year, resulting in an estimated 89,001 submissions annually. The estimate for the average preparation time per submission is 0.13 hours. Accordingly, the estimate for the annual

hour burden associated with activity-based stock purchase requirement submissions is (89,001 submissions × 0.13 hours per submission) = 11,570 hours.

C. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), FHFA published an initial notice requesting comments regarding this information collection in the **Federal Register** on October 7, 2016.⁴ The 60 day comment period closed on December 6, 2016. No comments were received. However, during the pendency of the comment period, FHFA consulted with several of the Banks regarding the burden estimates for this information collection. As a result of the Banks' input, FHFA has made some revisions to the burden estimates, so that those appearing above differ from those that appeared in the 60-day notice.

In accordance with the requirements of 5 CFR 1320.10(a), FHFA is publishing this second notice to request comments regarding the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on members and project sponsors, including through the use of automated collection techniques or other forms of information technology. Comments should be submitted in writing to both OMB and FHFA as instructed above in the Comments section.

Dated: December 22, 2016.

Kevin Winkler,
Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2016–31389 Filed 12–27–16; 8:45 am]

BILLING CODE 8070-01-P

FEDERAL HOUSING FINANCE AGENCY

[No. 2016–N–15]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 30-Day notice of submission of information collection for approval from Office of Management and Budget.

⁴ See 81 FR 69819 (Oct. 7, 2016).

¹ See 12 U.S.C. 1426(a).

² See 12 U.S.C. 1426(b), (c).

³ See 12 U.S.C. 1426(c)(1); 12 CFR 1277.22, 1277.28(a).

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA or the Agency) is seeking public comments concerning the information collection known as “Members of the Banks,” which has been assigned control number 2590–0003 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on December 31, 2016.

DATES: Interested persons may submit comments on or before January 27, 2017.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: (202) 395–3047, Email: *OIRA_submission@omb.eop.gov*. Please also submit comments to FHFA, identified by “Proposed Collection; Comment Request: ‘Members of the Banks, (No. 2016–N–##)’ ” by any of the following methods:

- *Agency Web site:* www.fhfa.gov/open-for-comment-or-input.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by *email* to FHFA at RegComments@fhfa.gov to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: “Members of the Banks, (No. 2016–N–15)”.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/2016–N–15, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA Web site at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh

Street SW., Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

FOR FURTHER INFORMATION CONTACT: Jonathan F. Curtis, Financial Analyst, Division of Federal Home Loan Bank Regulation, by email at Jonathan.Curtis@fhfa.gov or by telephone at (202) 649–3321; or Eric Raudenbush, Associate General Counsel, by email at Eric.Raudenbush@fhfa.gov or by telephone at (202) 649–3084, (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

The Federal Home Loan Bank System consists of eleven regional Federal Home Loan Banks (Banks) and the Office of Finance (a joint office that issues and services the Banks’ debt securities). The Banks are wholesale financial institutions, organized under the authority of the Federal Home Loan Bank Act (Bank Act) to serve the public interest by enhancing the availability of residential housing finance and community lending credit through their member institutions and, to a limited extent, through certain eligible nonmembers. Each Bank is structured as a regional cooperative that is owned and controlled by member institutions located within its district, which are also its primary customers. The Banks carry out their public policy functions primarily by providing low cost loans, known as advances, to their members. With limited exceptions, an institution may obtain advances and access other products and services provided by a Bank only if it is a member of that Bank.

The Bank Act limits membership in any Bank to specific types of financial institutions located within the Bank’s district that meet specific eligibility requirements. Section 4 of the Bank Act specifies the types of institutions that may be eligible for membership and establishes eligibility requirements that each type of applicant must meet in order to become a Bank member.¹ That provision also specifies that (with limited exceptions) an eligible institution may become a member only of the Bank of the district in which the institution’s “principal place of business” is located.² With respect to the termination of Bank membership,

section 6(d) of the Bank Act sets forth requirements pursuant to which an institution may voluntarily withdraw from membership or a Bank may terminate an institution’s membership for cause.³

FHFA’s regulation entitled “Members of the Banks,” located at 12 CFR part 1263, implements those statutory provisions and otherwise establishes substantive and procedural requirements relating to the initiation and termination of Bank membership. Many of the provisions in the membership regulation require that an institution submit information to a Bank or to FHFA, in most cases to demonstrate compliance with statutory or regulatory requirements or to request action by the Bank or Agency.

In total, there are four types of information collections that may occur under part 1263. First, the regulation provides that (with limited exceptions) no institution may become a member of a Bank unless it has submitted to that Bank an application that documents the applicant’s compliance with the statutory and regulatory membership eligibility requirements and that otherwise includes all required information and materials.⁴ Second, the regulation provides applicants that have been denied membership by a Bank the option of appealing the decision to FHFA. To file such an appeal, an applicant must submit to FHFA a copy of the Bank’s decision resolution denying its membership application and a statement of the basis for the appeal containing sufficient facts, information, and analysis to support the applicant’s position.⁵ Third, the regulation provides that, in order to initiate a voluntary withdrawal from Bank membership, a member submit to its Bank a written notice of intent to withdraw.⁶ Fourth, under certain circumstances, the regulation permits a member of one Bank to transfer its membership to a second Bank “automatically” without either initiating a voluntary withdrawal from the first Bank or submitting a membership application to the second Bank. Despite the regulatory reference to such a transfer as being “automatic,” a member meeting the criteria for an automatic transfer must initiate the transfer process by filing a request with its current Bank, which will then arrange the details of the transfer with the second Bank.⁷

³ See 12 U.S.C. 1426(d).

⁴ See 12 CFR 1263.2(a), 1263.6–1263.9, 1263.11–1263.18.

⁵ See 12 CFR 1263.5.

⁶ See 12 CFR 1263.26.

⁷ See 12 CFR 1263.4(b), 1263.18(d), (e).

¹ See 12 U.S.C. 1424(a).

² See 12 U.S.C. 1424(b).

The Banks use most of the information collected under part 1263 to determine whether an applicant satisfies the statutory and regulatory requirements for Bank membership and should be approved as a Bank member. The Banks may use some of the information collected under part 1263 as a means of learning that a member wishes to withdraw or to transfer its membership to a different Bank so that the Bank can begin to process those requests. In rare cases, FHFA may use the collected information to determine whether an institution that has been denied membership by a Bank should be permitted to become a member of that Bank.

The OMB control number for this information collection is 2590-0003, which is due to expire on December 31, 2016. The likely respondents are financial institutions that are, or are applying to become, Bank members.

B. Burden Estimate

FHFA has analyzed the time burden imposed on respondents by the four collections under this control number and estimates that the average annual burden imposed on all respondents by those collections over the next three years will be 2,351 hours. This estimate is derived from the following calculations:

I. Membership Applications

FHFA estimates that the average number of applications for Bank membership submitted annually will be 151 and that the average time to prepare and submit an application and supporting materials will be 15 hours. Accordingly, the estimate for the annual hour burden associated with preparation and submission of applications for Bank membership is (151 applications \times 15 hours per application) = 2,265 hours.

II. Appeals of Membership Denials

FHFA estimates that the average number of applicants that have been denied membership by a Bank that will appeal such a denial to FHFA will be 1 and that the average time to prepare and submit an application for appeal will be 10 hours. Accordingly, the estimate for the annual hour burden associated with the preparation and submission of membership appeals is (1 appellants \times 10 hours per application) = 10 hours.

III. Notices of Intent To Withdraw From Membership

FHFA estimates that the average number of Bank members submitting a notice of intent to withdraw from membership annually will be 4 and that

the average time to prepare and submit a notice will be 1.5 hours. Accordingly, the estimate for the annual hour burden associated with preparation and submission of notices of intent to withdraw is (4 withdrawing members \times 1.5 hours per application) = 6 hours.

IV. Requests for Transfer of Membership to Another Bank District

FHFA estimates that the average number of Bank members submitting a request for transfer to another Bank will be 35 and that the average time to prepare and submit a request will be 2 hours. Accordingly, the estimate for the annual hour burden associated with preparation and submission of requests for automatic transfer is (35 transferring members \times 2 hours per request) = 70 hours.

C. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), FHFA published an initial notice requesting comments regarding this information collection in the **Federal Register** on October 7, 2016.⁸ The 60-day comment period closed on December 6, 2016. No comments were received. However, during the pendency of the comment period, FHFA consulted with several of the Banks regarding the burden estimates for this information collection. As a result of the Banks' input, FHFA has made some revisions to the burden estimates, so that those appearing above are somewhat different than those that appeared in the 60-day notice.

In accordance with the requirements of 5 CFR 1320.10(a), FHFA is publishing this second notice to request comments regarding the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on members and project sponsors, including through the use of automated collection techniques or other forms of information technology. Comments should be submitted in writing to both OMB and FHFA as instructed above in the COMMENTS section.

Dated: December 22, 2016.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2016-31383 Filed 12-27-16; 8:45 am]

BILLING CODE 8070-01-P

FEDERAL HOUSING FINANCE AGENCY

[No. 2016-N-13]

Privacy Act of 1974; System of Records

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of revision to an existing system of records; request for comments.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a (Privacy Act), the Federal Housing Finance Agency (FHFA) is making a revision to an existing system of records entitled "National Mortgage Database Project" (FHFA-21). The system of records covers the National Mortgage Database Project which is comprised of the National Mortgage Database, the National Survey of Mortgage Originations (formerly known as the National Survey of Mortgage Borrowers), and the American Survey of Mortgage Borrowers. The National Mortgage Database Project is for monitoring, researching, analyzing, and reporting information relevant to the functioning of the mortgage markets.

DATES: To be assured of consideration, comments must be received on or before January 26, 2017. The revisions to the existing system will become effective on February 6, 2017 unless comments necessitate otherwise. FHFA will publish a new notice if, in order to review comments, the effective date is delayed or if changes are made based on comments received.

ADDRESSES: Submit comments, identified by "2016-N-13," using only one of the following methods:

- *Agency Web site:* www.fhfa.gov/open-for-comment-or-input.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at RegComments@fhfa.gov to ensure timely receipt by FHFA. Please include "2016-N-13" in the subject line of the message.

- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard,

⁸ See 81 FR 69820 (Oct. 7, 2016).

General Counsel, Attention: Comments/2016–N–13, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219. To ensure timely receipt of hand delivered package, please ensure that the package is delivered to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. to 5 p.m.

• *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/2016–N–13, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219. *Please note that all mail sent to FHFA via the U.S. Postal Service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.*

See **SUPPLEMENTARY INFORMATION** for additional information on submission and posting of comments.

FOR FURTHER INFORMATION CONTACT:

Forrest Pafenberg, Program Manager, National Mortgage Database Project, *Forrest.Pafenberg@fhfa.gov* or (202) 649–3129; Stacy Easter, Privacy Act Officer, *privacy@fhfa.gov* or (202) 649–3803; or David A. Lee, Senior Agency Official for Privacy, *privacy@fhfa.gov* or (202) 649–3803 (not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA seeks public comments on the revision to the system of records and will take all comments into consideration. See 5 U.S.C. 552a(e)(4) and (11). In addition to referencing “Comments/2016–N–13,” please reference the “National Mortgage Database Project” (FHFA–21).

All comments received will be posted without change on the FHFA Web site at <http://www.fhfa.gov>, and will include any personal information provided, such as name, address (mailing and email), and telephone numbers. In addition, copies of all comments received will be available without change for public inspection on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

II. Introduction

This notice satisfies the Privacy Act requirement that an agency publish a system of records notice in the **Federal Register** when there is an addition or change to an agency’s system of records. Congress has recognized that application of all requirements of the Privacy Act to certain categories of records may have an undesirable and often unacceptable effect upon agencies in the conduct of necessary public business. Consequently, Congress established general exemptions and specific exemptions that could be used to exempt records from provisions of the Privacy Act. Congress also required that exempting records from provisions of the Privacy Act would require the head of an agency to publish a determination to exempt a record from the Privacy Act as a rule in accordance with the Administrative Procedure Act. The Director of FHFA has determined that records and information in this system of records are not exempt from the requirements of the Privacy Act.

As required by the Privacy Act, 5 U.S.C. 552a(r), and pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, “Federal Agency Responsibilities for Maintaining Records About Individuals,” dated November 28, 2000, FHFA has submitted a report describing the system of records covered by this notice to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget.

III. Revised System of Records

The “National Mortgage Database Project” (FHFA–21) system of records is being revised to add data fields related to language, specifically information related to Limited English Proficiency or a Preferred Language. The information is being collected to identify obstacles for borrowers with Limited English Proficiency (LEP) or a Preferred Language (PL) in accessing mortgage credit, analyze potential solutions, and develop measures to improve access to credit. This information will assist FHFA in ensuring that its regulated entities appropriately support meaningful access to the mortgage market for mortgage ready LEP/PL borrowers, as well as support the overall goal of assuring that borrowers are able to understand and participate fully in the mortgage life cycle, including origination, servicing, and loss mitigation, regardless of the language spoken.

Information about LEP or PL will be collected as part of the National Survey of Mortgage Originations and the American Survey of Mortgage Borrowers. Responses to the survey will be maintained in anonymized form as part of the National Mortgage Database Project. A separate opt-out list from the Surveys will be maintained which will contain name, address, and Zip Code of those individuals who have opted out of receiving communications about the Surveys. FHFA employees will not have access to this list. This list is maintained in order to ensure that these individuals do not receive any future communications about the Surveys after opting out.

The revision to the system of records notice is described in detail below. All other aspects of the system of records notice, other than the changes described below, remain unchanged.

FHFA–21

SYSTEM NAME:

National Mortgage Database Project.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include information related to an individual’s language preference, including, but not limited to, information about the borrower’s or co-borrower’s Limited English Proficiency and/or Preferred Language.

Dated: December 21, 2016.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2016–31381 Filed 12–27–16; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2016–N–16]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 30-Day Notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA or the Agency) is seeking public comments concerning the information collection known as the “National Survey of Mortgage Originations” (NSMO), which has been assigned control number 2590–0012 by the Office of Management and Budget (OMB) (the collection was previously known as the “National Survey of Mortgage Borrowers”). FHFA

intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on December 31, 2016.

DATES: Interested persons may submit comments on or before January 27, 2017.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: (202) 395-3047, Email: OIRA_submission@omb.eop.gov. Please also submit comments to FHFA, identified by "Proposed Collection; Comment Request: 'National Survey of Mortgage Originations, (No. 2016-N-16)'" by any of the following methods:

- *Agency Web site:* www.fhfa.gov/for-comment-or-input.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by email to FHFA at RegComments@fhfa.gov to ensure timely receipt by the agency.

- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: "National Survey of Mortgage Originations, (No. 2016-N-16)."

- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/2016-N-16, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA Web site at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649-3804.

FOR FURTHER INFORMATION CONTACT: Forrest Pafenberg, Supervisory Economist, Office of the Chief Operating Officer, by email at Forrest.Pafenberg@fhfa.gov or by telephone at (202) 649-3129; or Eric Raudenbush, Associate

General Counsel, by email at Eric.Raudenbush@fhfa.gov or by telephone at (202) 649-3084, (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The Telecommunications Device for the Hearing Impaired is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

A. Background

The NSMO is a recurring quarterly survey of individuals who have recently obtained a loan secured by a first mortgage on single-family residential property. The survey questionnaire is sent to a representative sample of approximately 6,000 recent mortgage borrowers each calendar quarter and typically consists of between 90 and 95 multiple choice and short answer questions designed to obtain information about borrowers' experiences in choosing and in taking out a mortgage.¹ The questionnaire may be completed either on paper or electronically online, and is available in both English and Spanish. The NSMO is sponsored by FHFA and is one component of the National Mortgage Database Project, an ongoing joint effort of FHFA and the Consumer Financial Protection Bureau (CFPB).

Section 1324 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) requires that FHFA prepare annually a detailed report on the residential mortgage market activities of two of its regulated entities—the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, "the Enterprises")—and to submit that annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.² At a minimum, the report must: (1) Address the extent to which the Enterprises are fulfilling their statutory duties with respect to the residential mortgage markets, including their duty to serve underserved markets; (2) aggregate and analyze relevant data on income to assess the compliance of each Enterprise with statutory housing goals established under section 1331 of

the Safety and Soundness Act;³ (3) aggregate and analyze data on income, race, and gender by census tract and other relevant classifications, and compare such data with larger demographic, housing, and economic trends; (4) identify the extent to which each Enterprise is involved in mortgage purchases and secondary market activities involving subprime and nontraditional loans; (5) compare the characteristics of subprime and nontraditional loans purchased and securitized by each Enterprise to other loans purchased and securitized by each Enterprise; and (6) compare the characteristics of high-cost loans purchased and securitized, but not held in portfolio, by each Enterprise to such securitized loans that are retained in portfolio or repurchased by the Enterprise, including such characteristics as the purchase price of the property securing the mortgage, the loan-to-value ratio of the mortgage, the terms of the mortgage, the creditworthiness of the borrower, and any other relevant data, as determined by the Director of FHFA.⁴

Section 1324 further requires that FHFA conduct a monthly survey to collect data needed to adequately analyze the matters that must be addressed in the annual report.⁵ In particular, the survey must collect information on the characteristics of individual prime and subprime mortgages and the creditworthiness and other characteristics of the borrowers on those mortgages.⁶ It may also address such other matters as the Director of FHFA deems to be appropriate.⁷ The statute requires that FHFA compile a database of timely and otherwise unavailable residential mortgage market information obtained from the monthly survey and to make that information available to the public.⁸

As a means of fulfilling these and other statutory requirements, as well as to support policymaking and research regarding the residential mortgage markets, FHFA and CFPB jointly established the National Mortgage Database Project in 2012. The project is designed to provide comprehensive information about the U.S. mortgage market based on a five percent sample of residential mortgages. The project has three primary components: (1) The National Mortgage Database; (2) the quarterly NSMO; and (3) the annual

¹ A copy of the most recent NSMO questionnaire appears at the end of this document. In addition, copies of the questionnaire in both English and Spanish can be accessed online at: <http://www.fhfa.gov/Homeownersbuyer/Pages/National-Survey-of-Mortgage-Originations.aspx>.

² See 12 U.S.C. 4544(a). Congress added the requirements of section 1324 to the Safety and Soundness Act in 2008. See Housing and Economic Recovery Act of 2008, Public Law 110-289, sec. 1125, 122 Stat. 2654, 2693-95 (2008).

³ 12 U.S.C. 4561.

⁴ See 12 U.S.C. 4544(b).

⁵ See 12 U.S.C. 4544(c)(1).

⁶ See 12 U.S.C. 4544(c)(2)(A), (B).

⁷ See 12 U.S.C. 4544(c)(2)(C).

⁸ See 12 U.S.C. 4544(c)(3).

American Survey of Mortgage Borrowers (ASMB).⁹ When fully complete, the National Mortgage Database will be a de-identified loan-level database of closed-end first-lien residential mortgage loans that is representative of the market as a whole, contains detailed loan-level information on the terms and performance of the mortgages and the characteristics of the associated borrowers and properties, is continually updated, has an historical component dating back to 1998, and provides a sampling frame for surveys to collect additional information.

The core data in the National Mortgage Database are drawn from a random 1-in-20 sample of all closed-end first-lien mortgage loans outstanding at any time between January 1998 and the present from the files of Experian, one of the three nationwide credit reporting agencies. The National Mortgage Database currently contains data on approximately 11.6 million mortgage loans. Between 80,000 and 100,000 mortgages, drawn from a random 1-in-20 sample of loans newly reported to Experian, are added each quarter. Additional information on the mortgages in the datasets is drawn from other existing sources, including, but not limited to the Home Mortgage Disclosure Act (HMDA) data released by the Federal Financial Institutions Examination Council (FFIEC), property valuation models, transactional data maintained by local governments, and administrative data files maintained by the Enterprises and by federal agencies. Mortgages are followed in the National Mortgage Database until they terminate through prepayment (including refinancing), foreclosure, or maturity.

The NSMO was developed to complement the National Mortgage Database by providing critical and timely information—not available from existing sources—on the range of nontraditional and subprime mortgage products being offered, the methods by which these mortgages are being marketed, and the characteristics of borrowers for these types of loans. In particular, the survey questionnaire is designed to elicit directly from mortgage borrowers information on the characteristics of borrowers and on their experiences in finding and obtaining a mortgage loan, including: Their mortgage shopping behavior; their mortgage closing experiences; their

expectations regarding house price appreciation; and critical financial and other life events effecting their households, such as unemployment, large medical expenses, or divorce. The survey questions do not focus on the terms of the borrowers' mortgage loans because these fields are available in the Experian data. However, the NSMO collects a limited amount of information on each respondent's mortgage to verify that the Experian records and survey responses pertain to the same mortgage.

Each wave of the NSMO is sent to the primary borrowers on about 6,000 mortgage loans, which are drawn from a simple random sample of the 80,000 to 100,000 newly originated mortgage loans that are added to the National Mortgage Database from the Experian files each quarter (at present, this represents an approximately 1-in-15 sample of loans added to the National Mortgage Database and an approximately 1-in-300 sample of all mortgage loan originations). By contract with FHFA, the conduct of the NSMO is administered through Experian, which has subcontracted the survey administration through a competitive process to Westat, a nationally-recognized survey vendor.¹⁰ Westat also carries out the pre-testing of the survey materials. Wave 1 of the NSMO was mailed out in April 2014, and a new wave of the survey has been conducted each quarter since. To date, eleven quarterly waves of the survey have been completed.

B. Need For and Use of the Information Collection

FHFA views the National Mortgage Database Project as a whole, including the NSMO, as the monthly "survey" that is required by section 1324 of the Safety and Soundness Act. Core inputs to the National Mortgage Database, such as a regular refresh of the Experian data, occur monthly, though NSMO itself does not. In combination with the other information in the National Mortgage Database, the information obtained through the NSMO is used to prepare the report to Congress on the mortgage market activities of Fannie Mae and Freddie Mac that FHFA is required to submit under section 1324, as well as for research and analysis by FHFA and CFPB in support of their regulatory and supervisory responsibilities related to the residential mortgage markets. The NSMO is especially critical in ensuring

that the National Mortgage Database contains uniquely comprehensive information on the range of nontraditional and subprime mortgage products being offered, the methods by which these mortgages are being marketed and the characteristics—and particularly the creditworthiness—of borrowers for these types of loans. In the future, the information may be used to provide a resource for research and analysis by other federal agencies and by academics and other interested parties outside of the government.

FHFA is also seeking OMB approval to conduct cognitive pre-testing of the survey materials. The Agency will use information collected through that process to assist in drafting and modifying the survey questions and instructions, as well as the related communications, to read in the way that will be most readily understood by the survey respondents and that will be most likely to elicit usable responses. Such information will also be used help the Agency decide on how best to organize and format the survey questionnaires.

The OMB control number for this information collection is 2590–0012. The current clearance for the information collection expires on December 31, 2016.

C. Burden Estimate

FHFA has analyzed the hour burden on members of the public associated with conducting the survey (12,000 hours) and with pre-testing the survey materials (30 hours) and estimates the total annual hour burden imposed on the public by this information collection to be 12,030 hours. The estimate for each phase of the collection was calculated as follows:

I. Conducting the Survey

FHFA estimates that the NSMO questionnaire will be sent to 24,000 recipients annually (6,000 recipients per quarterly survey × 4 calendar quarters). Although, based on historical experience, the Agency expects that only 30 to 35 percent of those surveys will be returned, it has assumed that all of the surveys will be returned for purposes of this burden calculation. Based on the reported experience of respondents to prior NSMO questionnaires, FHFA estimates that it will take each respondent 30 minutes (0.5 hours) to complete the survey, including the gathering of necessary materials to respond to the questions. This results in a total annual burden estimate of 12,000 hours for the survey phase of this collection (24,000

⁹ While the NSMO solicits information about the experiences of borrowers who have recently obtained a mortgage, the ASMB solicits information on borrowers' experience with maintaining their existing mortgages. OMB has cleared the ASMB under the PRA and assigned it control no. 2590–0015, which expires on July 31, 2019.

¹⁰ The Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, requires that the survey process, because it utilizes borrower names and addresses drawn from credit reporting agency records, must be administered through Experian in order to maintain consumer privacy.

respondents × 0.5 hours per respondent = 12,000 hours annually).

II. Pre-Testing the Materials

FHFA estimates that it will pre-test the survey materials with 30 cognitive testing participants annually. The estimated participation time for each participant is one hour, resulting in a total annual burden estimate of 30 hours for the pre-testing phase of the collection (30 participants × 1 hour per participant = 30 hours annually).

D. Comments Received in Response to Initial Notice

In accordance with the requirements of 5 CFR 1320.8(d), FHFA published an initial notice requesting comments regarding this information collection in the **Federal Register** on September 13, 2016.¹¹ The 60 day comment period closed on November 14, 2016. FHFA received two comment letters, one of which recommended revisions to the content of the survey questionnaire and the other of which recommended measures to increase survey response rates. FHFA has carefully considered each of the suggested revisions, but, as explained below, has decided not to implement any of those suggestions at this time.

The first comment letter was from an individual who has served in various capacities with a community association trade group and who is the president of a company that provides online technology in support of the sale, resale, finance, and refinance of homes in community associations.¹² The letter asserts that certain questions in the NSMO questionnaire “fail to adequately and effectively recognize” the role of community associations in U.S. home ownership and that, as a result, data from the NSMO regarding community associations “has nominal heuristic and statistical value at best.” It suggests adding several questions to the NSMO questionnaire, and revising several existing questions, to elicit more information relevant to community associations.

Specifically, the letter first suggests revising Question 60 to elicit more specific information on the type of property that is associated with the respondent’s mortgage and adding two questions as to whether the respondent’s property is in a community association and, if so, the specific type of community association.

FHFA believes that, while such questions could be suitable for a survey that focuses on housing structure, they would not be appropriate for the NSMO, which focuses on consumers’ experience in seeking and obtaining a residential mortgage loan.¹³ The commenter also suggests adding a question to elicit information on the respondent’s level of familiarity with various types of community association fees. Again, such a question would be beyond the scope of the NSMO, which does not attempt to capture information on the cost of a mortgage or on fees paid at origination or over the life of the mortgage.

Finally the letter suggests revising the answer choices for Questions 7, 39, and 50 to allow respondents to indicate, respectively: Whether they used any of the proceeds from a refinance to pay community association fees; whether and to what extent community association documents or officials may have provided them with information about mortgages or mortgage lenders; and whether and to what extent they sought input about their mortgage loan closing documents from officials of a community association. FHFA notes that each of those questions permits a respondent to choose “other” and to write in a specific answer if none of the other answer choices are applicable. To date, none of the questions have elicited an “other” response in the vein of any of the answer choices that the commenter suggests adding. Accordingly, FHFA does not see a need to revise any of the questions in the manner suggested.

The second comment letter, from a law school professor, states that the NSMO is very important to understanding the health of the mortgage market and agrees that the collection is necessary for the proper performance of FHFA functions. However, it also expresses a concern that, given the length of the survey questionnaire, those recipients who ultimately decide to respond will not be representative of the typical borrower. It suggests two ways of encouraging a response from recipients who might otherwise be reluctant to take the time to complete the survey: (1) Providing a greater incentive; and (2) allowing recipients the option of completing a shorter version of the questionnaire.

FHFA agrees that non-response bias (the bias that results when respondents

differ systematically from non-respondents) is an important concern and the Agency has spent, and continues to spend, significant time considering ways to increase response rates and to mitigate the effects of non-response bias. In developing the NSMO, the Agency consulted with top experts on conducting consumer surveys, who recommended an up-front payment of five dollars as the most effective way of incentivizing survey recipients to respond. FHFA adopted this recommendation. In addition, based on the results of the first seven waves of the NSMO, these experts also evaluated the expected effect on the response rate of increasing or decreasing the number of questions and the length of the questionnaire. Both experts opined that shortening the questionnaire would not significantly increase the response rate.

With respect to the mitigation of non-response bias when analyzing survey responses, FHFA has followed best practices of survey sampling analysis. The availability in the National Mortgage Database of extensive credit and administrative data on both responding and non-responding borrowers gives FHFA the ability to construct non-response weights with more accuracy than is possible for most surveys.

E. Comment Request

In accordance with the requirements of 5 CFR 1320.10(a), FHFA is publishing this second notice to request comments regarding the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA’s estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on members and project sponsors, including through the use of automated collection techniques or other forms of information technology. Comments should be submitted in writing to both OMB and FHFA as instructed above in the Comments section.

Dated: December 22, 2016.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

American Community Survey (sponsored by the Census Bureau) would be more appropriate vehicles for eliciting such information.

¹¹ See 81 FR 62889 (Sept. 13, 2016).

¹² The letter explains that community associations are “housing management organizations that are an out-growth of traditional subdivision and zoning controls” and include

condominiums, cooperatives, and planned communities.

¹³ Both the American Housing Survey (sponsored jointly by the Department of Housing and Urban Development and the Census Bureau) and the

Tell us about your recent mortgage experience

A nationwide survey of mortgage borrowers throughout the United States



Learning directly from borrowers, like you, about your experiences will help us improve lending practices and the mortgage process for future borrowers.

Two Federal agencies, The Federal Housing Finance Agency and the Consumer Financial Protection Bureau are working together on your behalf to improve the safety of the U.S. housing finance system and ensure all consumers have access to financial products and services.

We want to make it as easy as possible for you to complete this survey. You can mail back the paper survey in the enclosed business reply envelope OR complete the survey online.

The online version of the questionnaire may be easier, and faster, to complete, because it automatically skips any questions that don't apply to you.

1 GO TO www.NSMOSurvey.com

2 LOG IN with your unique survey PIN # found in the accompanying letter

Esta encuesta está disponible en español en línea

1 Visite al sitio web www.NSMOSurvey.com

2 Inicie la sesión con su número PIN único de la encuesta que se encuentra en la carta adjunta.

Thanks so much for your help with this important national effort to improve people's experiences in financing home ownership.

We are interested in learning about your experience purchasing or refinancing either a personal home or a home for someone else, including rental property.

We look forward to hearing from you.

Privacy Act Notice: In accordance with the Privacy Act, as amended (5 U.S.C. § 552a), the following notice is provided. The information requested on this Survey is collected pursuant to 12 U.S.C. 4544 for the purposes of gathering information for the National Mortgage Database. Routine uses which may be made of the collected information can be found in the Federal Housing Finance Agency's System of Records Notice (SORN) FHFA-21 National Mortgage Database. Providing the requested information is voluntary. Submission of the survey authorizes FHFA to collect the information provided and to disclose it as set forth in the referenced SORN.

Paperwork Reduction Act Statement: Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

OMB No. 2590-0012
Expires 12/31/2016

Thank you for helping us to learn more about your experience in getting or refinancing a mortgage.

1. Within the past 18 months or so, did you take out or co-sign for a mortgage loan including any refinancing of an existing mortgage?

- Yes → If you took out or co-signed for more than one mortgage during this time, please refer to your experience with the most recent refinance or new mortgage.
- No → Please return the blank questionnaire so we know the survey does not apply to you. The money enclosed is yours to keep.

2. Did we mail this survey to the address of the house or property you financed with this mortgage?

- Yes No

3. Including you, who signed or co-signed for this mortgage? Mark all that apply.

- I signed
- Spouse/partner including a former spouse/partner
- Parents
- Children
- Other relatives
- Other (e.g. friend, business partner)

If this loan was co-signed by others, take into account all co-signers as best you can when answering the rest of the survey. Otherwise, it is your own situation that we want to know about.

4. When you began the process of getting this mortgage, how familiar were you (and any co-signers) with each of the following?

	Very	Somewhat	Not At All
The mortgage interest rates available at that time	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The different types of mortgages available	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The mortgage process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The down payment needed to qualify for a mortgage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The income needed to qualify for a mortgage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Your credit history or credit score	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The money needed at closing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5. When you began the process of getting this mortgage, how concerned were you about qualifying for a mortgage?

- Very Somewhat Not at all

6. How firm an idea did you (and any co-signers) have about the mortgage you wanted?

- Firm idea Some idea Little idea

7. How much did you use each of the following sources to get information about mortgages or mortgage lenders?

	A Lot	A Little	Not At All
Your lender or mortgage broker	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other lenders or brokers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Real estate agents or builders	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Material in the mail	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Websites that provide information on getting a mortgage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Newspaper/TV/Radio	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Friends/relatives/co-workers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bankers or financial planners	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Housing counselors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

8. Which of the following best describes your shopping process?

- I picked the loan type first, and then I picked the lender/mortgage broker
- I picked the lender/mortgage broker first, and then I picked the loan type

9. How did you apply for this mortgage? Mark one answer.

- Directly to a lender, such as a bank or credit union
- Through a mortgage broker (someone who works with multiple lenders to get a loan)
- Other (specify)

10. How many different lenders/mortgage brokers did you seriously consider before choosing where to apply for this mortgage?

- 1 2 3 4 5 or more



11. How many different lenders/mortgage brokers did you end up applying to?

- 1 2 3 4 5 or more

12. Did you apply to more than one lender/mortgage broker for any of the following reasons?

	Yes	No
Searching for better loan terms	<input type="checkbox"/>	<input type="checkbox"/>
Concern over qualifying for a loan	<input type="checkbox"/>	<input type="checkbox"/>
Information learned from the "Loan Estimate"	<input type="checkbox"/>	<input type="checkbox"/>
Turned down on earlier application	<input type="checkbox"/>	<input type="checkbox"/>

13. How important were each of the following in choosing the lender/mortgage broker you used for the mortgage you took out?

	Important	Not Important
Having an established banking relationship	<input type="checkbox"/>	<input type="checkbox"/>
Having a local office or branch nearby	<input type="checkbox"/>	<input type="checkbox"/>
Used previously to get a mortgage	<input type="checkbox"/>	<input type="checkbox"/>
Lender/mortgage broker is a personal friend or relative	<input type="checkbox"/>	<input type="checkbox"/>
Lender/mortgage broker operates online	<input type="checkbox"/>	<input type="checkbox"/>
Recommendation from a friend/relative/co-worker	<input type="checkbox"/>	<input type="checkbox"/>
Recommendation from a real estate agent/home builder	<input type="checkbox"/>	<input type="checkbox"/>
Reputation of the lender/mortgage broker	<input type="checkbox"/>	<input type="checkbox"/>
Spoke my primary language, which is not English	<input type="checkbox"/>	<input type="checkbox"/>

14. Who initiated the first contact between you and the lender/mortgage broker you used for the mortgage you took out?

- I (or one of my co-signers) did
 The lender/mortgage broker did
 We were put in contact by a third party (such as a real estate agent or home builder)

15. How open were you to suggestions from your lender/mortgage broker about mortgages with different features or terms?

- Very Somewhat Not at all

16. How important were each of the following in determining the mortgage you took out?

	Important	Not Important
Lower interest rate	<input type="checkbox"/>	<input type="checkbox"/>
Lower APR (Annual Percentage Rate)	<input type="checkbox"/>	<input type="checkbox"/>
Lower closing fees	<input type="checkbox"/>	<input type="checkbox"/>
Lower down payment	<input type="checkbox"/>	<input type="checkbox"/>
Lower monthly payment	<input type="checkbox"/>	<input type="checkbox"/>
An interest rate fixed for the life of the loan	<input type="checkbox"/>	<input type="checkbox"/>
A term of 30 years	<input type="checkbox"/>	<input type="checkbox"/>
No mortgage insurance	<input type="checkbox"/>	<input type="checkbox"/>

17. Was the "Loan Estimate" you received from your lender/mortgage broker...

	Yes	No
Easy to understand	<input type="checkbox"/>	<input type="checkbox"/>
Valuable information	<input type="checkbox"/>	<input type="checkbox"/>

18. Did the "Loan Estimate" lead you to...

	Yes	No
Ask questions of your lender/mortgage broker	<input type="checkbox"/>	<input type="checkbox"/>
Seek a change in your loan or closing	<input type="checkbox"/>	<input type="checkbox"/>
Apply to a different lender/mortgage broker	<input type="checkbox"/>	<input type="checkbox"/>

19. In the process of getting this mortgage from your lender/mortgage broker, did you...

	Yes	No
Have to add another co-signer to qualify	<input type="checkbox"/>	<input type="checkbox"/>
Resolve credit report errors or problems	<input type="checkbox"/>	<input type="checkbox"/>
Answer follow-up requests for more information about income or assets	<input type="checkbox"/>	<input type="checkbox"/>
Have more than one appraisal	<input type="checkbox"/>	<input type="checkbox"/>
Redo/refile paperwork due to processing delays	<input type="checkbox"/>	<input type="checkbox"/>
Delay or postpone closing date	<input type="checkbox"/>	<input type="checkbox"/>
Have your "Loan Estimate" revised to reflect changes in your loan terms	<input type="checkbox"/>	<input type="checkbox"/>
Check other sources to confirm that terms of this mortgage were reasonable	<input type="checkbox"/>	<input type="checkbox"/>

20. Your lender may have given you a booklet "Your home loan toolkit: A step-by-step guide", do you remember receiving a copy?

- Yes - Continue with Q21
 No - Skip to Q22
 Don't know - Skip to Q22



21. Did the "Your home loan toolkit" booklet lead you to ask additional questions about your mortgage terms?

- Yes No

22. During the application process were you told about mortgages with any of the following?

	Yes	No
An interest rate that is fixed for the life of the loan	<input type="checkbox"/>	<input type="checkbox"/>
An interest rate that could change over the life of the loan	<input type="checkbox"/>	<input type="checkbox"/>
A term of less than 30 years	<input type="checkbox"/>	<input type="checkbox"/>
A higher interest rate in return for lower closing costs	<input type="checkbox"/>	<input type="checkbox"/>
A lower interest rate in return for paying higher closing costs (<i>discount points</i>)	<input type="checkbox"/>	<input type="checkbox"/>
Interest-only monthly payments	<input type="checkbox"/>	<input type="checkbox"/>
An escrow account for taxes and/or homeowner insurance	<input type="checkbox"/>	<input type="checkbox"/>
A prepayment penalty (<i>fee if the mortgage is paid off early</i>)	<input type="checkbox"/>	<input type="checkbox"/>
Reduced documentation or "easy" approval	<input type="checkbox"/>	<input type="checkbox"/>
An FHA, VA, USDA or Rural Housing loan	<input type="checkbox"/>	<input type="checkbox"/>

23. In selecting your settlement/closing agent did you...

	Yes	No
Use an agent selected/recommended by the lender/mortgage broker	<input type="checkbox"/>	<input type="checkbox"/>
Use an agent you had used previously	<input type="checkbox"/>	<input type="checkbox"/>
Shop around	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Did not have a settlement/closing agent		

24. Do you have title insurance on this mortgage?

- Yes - *Continue with Q25*
 No - *Skip to Q26*
 Don't know - *Skip to Q26*

25. Which best describes how you picked the title insurance?

- Reissued previous title insurance
 Used title insurance recommended by lender/mortgage broker or settlement agent
 Shopped around

26. Overall, how satisfied are you that the mortgage you got was the one with the...

	Very	Somewhat	Not At All
Best terms to fit your needs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lowest interest rate for which you could qualify	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lowest closing costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

27. Overall, how satisfied are you with the...

	Very	Somewhat	Not At All
Lender/mortgage broker you used	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Application process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Documentation process required for the loan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Loan closing process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information in mortgage disclosure documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Timeliness of mortgage disclosure documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Settlement agent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

28. Did you take a course about home-buying or talk to a housing counselor?

- No - *Skip to Q32*
 Yes

29. How was the home-buying course or counseling provided?

	Yes	No
In person, one-on-one	<input type="checkbox"/>	<input type="checkbox"/>
In person, in a group	<input type="checkbox"/>	<input type="checkbox"/>
Over the phone	<input type="checkbox"/>	<input type="checkbox"/>
Online	<input type="checkbox"/>	<input type="checkbox"/>

30. How many hours was the home-buying course or counseling?

- Less than 3 hours
 3 - 6 hours
 7 - 12 hours
 More than 12 hours

31. Overall, how helpful was the home-buying course or counseling?

- Very Somewhat Not at all



32. What was the primary purpose for this most recent mortgage? If you refinanced an existing mortgage for any reason, please select refinance below. Mark one answer.

- Purchase of a property *Continue with Q33*
- Permanent financing on a construction loan
- Refinance or modification of an existing mortgage
- New loan on a mortgage-free property
- Some other purpose (specify)

Skip to Q36

33. Did you do the following before or after you made an offer on this house or property?

	Before Offer	After Offer	Did Not Do
Contacted a lender to explore mortgage options	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Got a pre-approval or pre-qualification from a lender	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decided on the type of loan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Made a decision on which lender to use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Submitted an official loan application	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

34. What percent down payment did you make on this property?

- 0%
- Less than 3%
- 3% to less than 5%
- 5% to less than 10%
- 10% to less than 20%
- 20% to less than 30%
- 30% or more

35. Did you use any of the following sources of funds to purchase this property?

	Used	Not Used
Proceeds from the sale of another property	<input type="checkbox"/>	<input type="checkbox"/>
Savings, retirement account, inheritance, or other assets	<input type="checkbox"/>	<input type="checkbox"/>
Assistance or loan from a nonprofit or government agency	<input type="checkbox"/>	<input type="checkbox"/>
A second lien, home equity loan, or home equity line of credit (HELOC)	<input type="checkbox"/>	<input type="checkbox"/>
Gift or loan from family or friend	<input type="checkbox"/>	<input type="checkbox"/>
Seller contribution	<input type="checkbox"/>	<input type="checkbox"/>

Skip to Q40

36. How important were the following in your decision to refinance, modify or obtain a new mortgage?

	Important	Not Important
Change to a fixed-rate loan	<input type="checkbox"/>	<input type="checkbox"/>
Get a lower interest rate	<input type="checkbox"/>	<input type="checkbox"/>
Get a lower monthly payment	<input type="checkbox"/>	<input type="checkbox"/>
Consolidate or pay down other debt	<input type="checkbox"/>	<input type="checkbox"/>
Repay the loan more quickly	<input type="checkbox"/>	<input type="checkbox"/>
Take out cash	<input type="checkbox"/>	<input type="checkbox"/>

37. Approximately how much was owed, in total, on the old mortgage(s) and loan(s) you refinanced?

\$.00

Zero (the property was mortgage-free)

38. How does the total amount of your new mortgage(s) compare to the total amount of the old mortgage(s) and loan(s) you paid off (include any new second liens, home equity loans, or a home equity line of credit (HELOC))?

- New amount is lower - Skip to Q40
- New amount is about the same - Skip to Q40
- New amount is higher
- Property was mortgage-free

39. Did you use the money you got from this new mortgage for any of the following?

	Yes	No
College expenses	<input type="checkbox"/>	<input type="checkbox"/>
Auto or other major purchase	<input type="checkbox"/>	<input type="checkbox"/>
Buy out co-borrower e.g. ex-spouse	<input type="checkbox"/>	<input type="checkbox"/>
Pay off other bills or debts	<input type="checkbox"/>	<input type="checkbox"/>
Home repairs or new construction	<input type="checkbox"/>	<input type="checkbox"/>
Savings	<input type="checkbox"/>	<input type="checkbox"/>
Closing costs of new mortgage	<input type="checkbox"/>	<input type="checkbox"/>
Business or investment	<input type="checkbox"/>	<input type="checkbox"/>
Other (specify)	<input type="checkbox"/>	<input type="checkbox"/>

This Mortgage

40. When you took out this most recent mortgage or refinance, what was the loan amount (the dollar amount you borrowed)?

\$.00 Don't know



41. What is the monthly payment, including the amount paid to escrow for taxes and insurance?

\$ _____ .00 Don't know

42. What is the interest rate on this mortgage?

_____ % Don't know

43. Is this an adjustable-rate mortgage (one that allows the interest rate to change over the life of the loan)?

- Yes
- No
- Don't know

44. At the time of application, did the lender give you the option to set/lock the interest rate so that it would not change before closing?

- Yes
- No
- Don't know

45. When was the interest rate set/locked on this loan?

- At application
- Between application and closing
- Around closing

46. Does this mortgage have any of the following features?

	Yes	No	Don't Know
A prepayment penalty (<i>fee if the mortgage is paid off early</i>)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
An escrow account for taxes and/or homeowner insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A balloon payment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Interest-only payments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Private mortgage insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

47. The Closing Disclosure statement you received at closing shows the loan closing costs and other closing costs separately. What were the loan closing costs you paid on this loan?

\$ _____ .00 Don't know

48. How were the total closing costs (loan costs and other costs) for this loan paid?

	Yes	No	Don't Know
By me or a co-signer (<i>check or wire transfer</i>)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
By lender/mortgage broker	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
By seller/builder	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Added to the mortgage amount	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Loan had no closing costs

49. Were the loan costs you paid similar to what you had expected to pay based on the Loan Estimates or Closing Disclosures you received?

- Yes
- No

50. Did you seek input about your closing documents from any of the following people?

	Yes	No
Lender/mortgage broker	<input type="checkbox"/>	<input type="checkbox"/>
Settlement agent	<input type="checkbox"/>	<input type="checkbox"/>
Real estate agent	<input type="checkbox"/>	<input type="checkbox"/>
Personal attorney	<input type="checkbox"/>	<input type="checkbox"/>
Title agent	<input type="checkbox"/>	<input type="checkbox"/>
Trusted friend or relative who is not a co-signer on the mortgage	<input type="checkbox"/>	<input type="checkbox"/>
Housing counselor	<input type="checkbox"/>	<input type="checkbox"/>
Other (specify)	<input type="checkbox"/>	<input type="checkbox"/>

51. At any time after you made your final loan application did any of the following change?

	Higher	Same	Lower
Monthly payment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Interest rate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Amount of money needed to close loan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



52. Did you face any unpleasant "surprises" at your loan closing?

No - Skip to Q54

Yes →

53. What unpleasant surprises did you face?

	Yes	No
Loan documents not ready	<input type="checkbox"/>	<input type="checkbox"/>
Closing did not occur as originally scheduled	<input type="checkbox"/>	<input type="checkbox"/>
Three day rule required re-disclosure	<input type="checkbox"/>	<input type="checkbox"/>
Mortgage terms different at closing e.g. interest rate, monthly payment	<input type="checkbox"/>	<input type="checkbox"/>
More cash needed at closing e.g. escrow, unexpected fees	<input type="checkbox"/>	<input type="checkbox"/>
Asked to sign blank documents	<input type="checkbox"/>	<input type="checkbox"/>
Rushed at closing or not given time to read documents	<input type="checkbox"/>	<input type="checkbox"/>
Other (specify)	<input type="checkbox"/>	<input type="checkbox"/>

54. At the same time you took out this mortgage, did you also take out another loan on the property you financed with this mortgage (a second lien, home equity loan, or a home equity line of credit (HELOC))?

No - Skip to Q56

Yes →

55. What was the amount of this loan?

\$ _____ .00

Don't know

56. How well could you explain to someone the...

	Very	Somewhat	Not At All
Process of taking out a mortgage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Difference between a fixed- and an adjustable-rate mortgage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Difference between a prime and subprime loan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Difference between a mortgage's interest rate and its APR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Amortization of a loan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Consequences of not making required mortgage payments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Difference between lender's and owner's title insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Relationship between discount points and interest rate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reason payments into an escrow account can change	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

This Mortgaged Property

57. When did you buy or get this property? If you refinanced, the date you originally bought or got the property?

____ / ____
month / year

58. What was the purchase price of this property, or if you built it, the construction and land cost?

\$ _____ .00 Don't know

59. How did you acquire this property?

Mark one answer.

- Purchased an existing home
- Purchased a newly-built home from a builder
- Had or purchased land and built a house
- Received as a gift or inheritance
- Other (specify) _____

60. Which of the following best describes this property? Mark one answer.

- Single-family detached house - Skip to Q62
- Mobile home or manufactured home - Skip to Q62
- Townhouse, row house, or villa
- 2-unit, 3-unit, or 4-unit dwelling
- Apartment (or condo/co-op) in apartment building
- Unit in a partly commercial structure
- Other (specify) _____

61. Does this mortgage cover more than one unit?

Yes No

62. About how much do you think this property is worth in terms of what you could sell it for now?

\$ _____ .00 Don't know

63. Do you rent out all or any portion of this property?

No - Skip to Q65

Yes →

64. How much rent do you receive annually?

\$ _____ .00 per year



65. Besides you, the mortgage co-signers, and renters, does anyone else help pay the expenses for this property?

- Yes No

66. Which of the following best describes how you use this property?

- Primary residence (where you spend the majority of your time)
 - It will be my primary residence soon
 - Seasonal or second home
 - Home for other relatives
 - Rental or investment property
 - Other (specify) _____
- } Skip to Q68

67. If primary residence, when did you move into this property?

____ / ____
month year

68. In the last couple years, how has the following changed in the neighborhood where this property is located?

	Significant Increase	Little/No Change	Significant Decrease
Number of homes for sale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Number of vacant homes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Number of homes for rent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Number of foreclosures or short sales	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
House prices	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall desirability of living there	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

69. What do you think will happen to the prices of homes in this neighborhood over the next couple of years?

- Increase a lot
- Increase a little
- Remain about the same
- Decrease a little
- Decrease a lot

70. In the next couple of years, how do you expect the overall desirability of living in this neighborhood to change?

- Become more desirable
- Stay about the same
- Become less desirable

71. How likely is it that in the next couple of years you will...

	Very	Somewhat	Not At All
Sell this property	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Move but keep this property	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Refinance the mortgage on this property	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pay off this mortgage and own the property mortgage-free	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Your Household

72. What is your current marital status?

- Married - Skip to Q74
- Separated
- Never married
- Divorced
- Widowed

73. Do you have a partner who shares the decision-making and responsibilities of running your household but is not your legal spouse?

- Yes No

Please answer the following questions for you and your spouse or partner, if applicable.

74. Age at last birthday:

You	Spouse/ Partner
____ years	____ years

75. Sex:

	You	Spouse/ Partner
Male	<input type="checkbox"/>	<input type="checkbox"/>
Female	<input type="checkbox"/>	<input type="checkbox"/>

76. Highest level of education achieved:

	You	Spouse/ Partner
Some schooling	<input type="checkbox"/>	<input type="checkbox"/>
High school graduate	<input type="checkbox"/>	<input type="checkbox"/>
Technical school	<input type="checkbox"/>	<input type="checkbox"/>
Some college	<input type="checkbox"/>	<input type="checkbox"/>
College graduate	<input type="checkbox"/>	<input type="checkbox"/>
Postgraduate studies	<input type="checkbox"/>	<input type="checkbox"/>



77. Hispanic or Latino:

	You	Spouse/ Partner
Yes	<input type="checkbox"/>	<input type="checkbox"/>
No	<input type="checkbox"/>	<input type="checkbox"/>

78. Race: Mark all that apply.

	You	Spouse/ Partner
White	<input type="checkbox"/>	<input type="checkbox"/>
Black or African American	<input type="checkbox"/>	<input type="checkbox"/>
American Indian or Alaska Native	<input type="checkbox"/>	<input type="checkbox"/>
Asian	<input type="checkbox"/>	<input type="checkbox"/>
Native Hawaiian or Pacific Islander	<input type="checkbox"/>	<input type="checkbox"/>

79. Current work status: Mark all that apply.

	You	Spouse/ Partner
Self-employed full time	<input type="checkbox"/>	<input type="checkbox"/>
Self-employed part time	<input type="checkbox"/>	<input type="checkbox"/>
Employed full time	<input type="checkbox"/>	<input type="checkbox"/>
Employed part time	<input type="checkbox"/>	<input type="checkbox"/>
Retired	<input type="checkbox"/>	<input type="checkbox"/>
Unemployed, temporarily laid-off or on leave	<input type="checkbox"/>	<input type="checkbox"/>
Not working for pay (<i>student, homemaker, disabled</i>)	<input type="checkbox"/>	<input type="checkbox"/>

80. Ever served on active duty in the U.S. Armed Forces: (Active duty includes serving in the U.S. Armed Forces as well as activation from the Reserves or National Guard).

	You	Spouse/ Partner
Yes, now on active duty	<input type="checkbox"/>	<input type="checkbox"/>
Yes, on active duty in the past, but not now	<input type="checkbox"/>	<input type="checkbox"/>
No, never on active duty except for initial/basic training	<input type="checkbox"/>	<input type="checkbox"/>
No, never served in the U.S. Armed Forces	<input type="checkbox"/>	<input type="checkbox"/>

81. Besides you (and your spouse/partner) who else lives in your household? Mark all that apply.

- Children/grandchildren under age 18
- Children/grandchildren age 18-22
- Children/grandchildren age 23 or older
- Parents of you or your spouse or partner
- Other relatives like siblings or cousins
- Non-relatives
- No one else

82. Approximately how much is your total annual household income from all sources (wages, salaries, tips, interest, child support, investment income, retirement, social security, and alimony)?

- Less than \$35,000
- \$35,000 to \$49,999
- \$50,000 to \$74,999
- \$75,000 to \$99,999
- \$100,000 to \$174,999
- \$175,000 or more

83. How does this total annual household income compare to what it is in a "normal" year?

- Higher than normal
- Normal
- Lower than normal

84. Does your total annual household income include any of the following sources?

	Yes	No
Wages or salary	<input type="checkbox"/>	<input type="checkbox"/>
Business or self-employment	<input type="checkbox"/>	<input type="checkbox"/>
Interest or dividends	<input type="checkbox"/>	<input type="checkbox"/>
Alimony or child support	<input type="checkbox"/>	<input type="checkbox"/>
Social Security, pension or other retirement benefits	<input type="checkbox"/>	<input type="checkbox"/>

85. Does anyone in your household have any of the following?

	Yes	No
401(k), 403(b), IRA, or pension plan	<input type="checkbox"/>	<input type="checkbox"/>
Stocks, bonds, or mutual funds (<i>not in retirement accounts or pension plans</i>)	<input type="checkbox"/>	<input type="checkbox"/>
Certificates of deposit	<input type="checkbox"/>	<input type="checkbox"/>
Investment real estate	<input type="checkbox"/>	<input type="checkbox"/>

86. Which one of the following statements best describes the amount of financial risk you are willing to take when you save or make investments?

- Take substantial financial risks expecting to earn substantial returns
- Take above-average financial risks expecting to earn above-average returns
- Take average financial risks expecting to earn average returns
- Not willing to take any financial risks



87. Do you agree or disagree with the following statements?

	Agree	Disagree
Owning a home is a good financial investment	<input type="checkbox"/>	<input type="checkbox"/>
Most mortgage lenders generally treat borrowers well	<input type="checkbox"/>	<input type="checkbox"/>
Most mortgage lenders would offer me roughly the same rates and fees	<input type="checkbox"/>	<input type="checkbox"/>
Late payments will lower my credit rating	<input type="checkbox"/>	<input type="checkbox"/>
Lenders shouldn't care about any late payments, only whether loans are fully repaid	<input type="checkbox"/>	<input type="checkbox"/>
It is okay to default or stop making mortgage payments if it is in the borrower's financial interest	<input type="checkbox"/>	<input type="checkbox"/>
I would consider counseling or taking a course about managing my finances if I faced financial difficulties	<input type="checkbox"/>	<input type="checkbox"/>

88. In the last couple of years, have any of the following happened to you?

	Yes	No
Separated, divorced or partner left	<input type="checkbox"/>	<input type="checkbox"/>
Married, remarried or new partner	<input type="checkbox"/>	<input type="checkbox"/>
Death of a household member	<input type="checkbox"/>	<input type="checkbox"/>
Addition to your household (not including spouse/partner)	<input type="checkbox"/>	<input type="checkbox"/>
Person leaving your household (not including spouse/partner)	<input type="checkbox"/>	<input type="checkbox"/>
Disability or serious illness of household member	<input type="checkbox"/>	<input type="checkbox"/>
Disaster affecting a property you own	<input type="checkbox"/>	<input type="checkbox"/>
Disaster affecting your (or your spouse/partner's) work	<input type="checkbox"/>	<input type="checkbox"/>
Moved within the area (less than 50 miles)	<input type="checkbox"/>	<input type="checkbox"/>
Moved to a new area (50 miles or more)	<input type="checkbox"/>	<input type="checkbox"/>

89. In the last couple of years, have any of the following happened to you (or your spouse/partner)?

	Yes	No
Layoff, unemployment, or reduced hours of work	<input type="checkbox"/>	<input type="checkbox"/>
Retirement	<input type="checkbox"/>	<input type="checkbox"/>
Promotion	<input type="checkbox"/>	<input type="checkbox"/>
Starting a new job	<input type="checkbox"/>	<input type="checkbox"/>
Starting a second job	<input type="checkbox"/>	<input type="checkbox"/>
Business failure	<input type="checkbox"/>	<input type="checkbox"/>
A personal financial crisis	<input type="checkbox"/>	<input type="checkbox"/>

90. In the last couple years, how have the following changed for you (and your spouse/partner)?

	Significant Increase	Little/No Change	Significant Decrease
Household income	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Housing expenses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Non-housing expenses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

91. In the next couple of years, how do you expect the following to change for you (and your spouse/partner)?

	Significant Increase	Little/No Change	Significant Decrease
Household income	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Housing expenses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Non-housing expenses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

92. How likely is it that in the next couple of years you (or your spouse/partner) will face...

	Very	Somewhat	Not At All
Retirement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Difficulties making your mortgage payments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A layoff, unemployment, or forced reduction in hours	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Some other personal financial crisis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

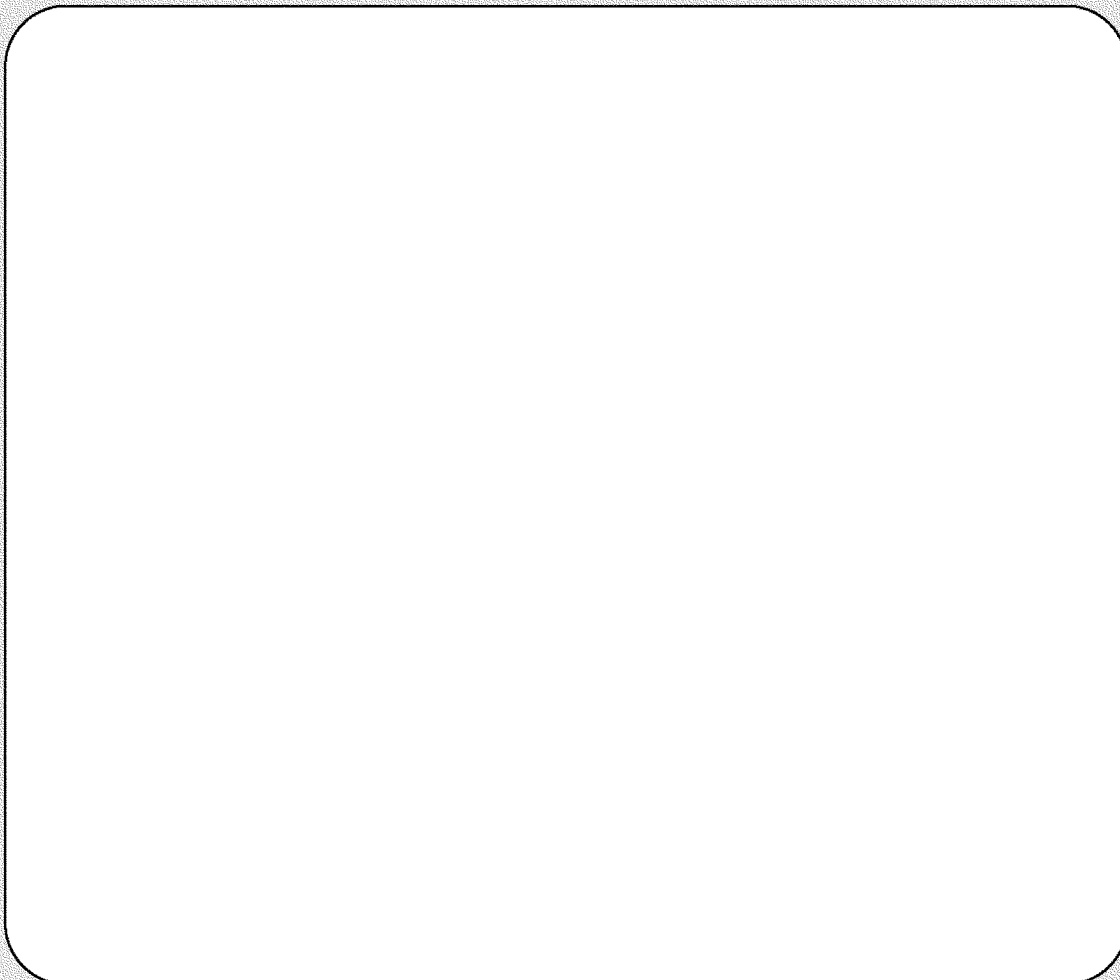
93. If your household faced an unexpected personal financial crisis in the next couple of years, how likely is it you could...

	Very	Somewhat	Not At All
Pay your bills for the next 3 months without borrowing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Get significant financial help from family or friends	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Borrow a significant amount from a bank or credit union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Significantly increase your income	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



The Federal Housing Finance Agency and the Consumer Financial Protection Bureau thank you for completing this survey.

*We have provided the space below if you wish to share additional comments or further explain any of your answers. **Please do not put your name or address on the questionnaire.***



Please use the enclosed business reply envelope to return your completed questionnaire.

FHFA

1600 Research Blvd, RC B16

Rockville, MD 20850

For any questions about the survey or online access you can call toll free 1-855-339-7877.

33029



[FR Doc. 2016-31386 Filed 12-27-16; 8:45 am]

BILLING CODE 8070-01-P

FEDERAL MARITIME COMMISSION

[Petition No. P4-16]

Petition of the Coalition for Fair Port Practices for Rulemaking; Notice of Filing and Request for Comments

Notice is hereby given that the Coalition for Fair Port Practices (hereinafter Petitioner), has petitioned the Commission pursuant to 46 CFR 502.51 of the Commission's Rules of Practice and Procedure, to initiate a rulemaking "to clarify what constitutes 'just and reasonable rules and practices' with respect to the assessment of demurrage, detention, and per diem charges by ocean common carriers and marine terminal operators when ports are congested or otherwise inaccessible."

Petitioner proposes and provides the text of a proposed rule and submits fifteen verified statements or supporting letters from its members which include "a broad cross-section of industry stakeholders, including shippers, receivers, motor carriers, port draymen, freight forwarders, 3PLs, and customs brokers."

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views or arguments in reply to the Petition no later than February 28, 2017. Replies shall consist of an original and 5 copies, be directed to the Assistant Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573-0001, and be served on Petitioner's counsel, Karyn A. Booth, Thompson Hine LLP, 1919 M Street NW., Suite 700, Washington, DC 20036. A PDF copy of the reply must also be sent to secretary@fmc.gov. Include in the email subject line "Petition No. P4-16."

Replies containing confidential information should not be submitted by email. The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. A reply containing confidential information must include:

- A transmittal letter requesting confidential treatment that identifies the specific information in the reply for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of the reply, clearly marked "Confidential-

Restricted", with the confidential material clearly marked on each page.

- A public version of your reply with the confidential information excluded or redacted, marked "Public Version—confidential materials excluded."

The Petition will be posted on the Commission's Web site at <http://www.fmc.gov/P4-16>. Replies filed in response to this Petition also will be posted on the Commission's Web site at this location.

Parties participating in this proceeding may elect to receive service of the Commission's issuances in this proceeding through email in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an email address where service can be made.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016-31356 Filed 12-27-16; 8:45 am]

BILLING CODE 6731-AA-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 January 11, 2017.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *James W. Mease*, Winterset, Iowa; *James W. Mease Profit Sharing & 401(k)*, Winterset, Iowa; *Justin Mease*, Ankeny, Iowa; *Sue A. Mease*, Winterset, Iowa; *Jane M. Reed Revocable Trust*, *Jane M. Reed Trustee*, Winterset, Iowa; *John B. Reed Revocable Trust*, *John B. Reed Trustee*, Winterset, Iowa; *April Schaefer*, Cedar Rapids, Iowa; *David Trask*, Winterset, Iowa; *Judith Trask*, Winterset, Iowa; *Mary Reed Alles*,

Chillicothe, Missouri; Fred H. Reed, Johnston, Iowa; *Honor Joel Sears*, Spokane, Washington; as a group acting in concert, to acquire more than 10 percent of the voting shares of Farmers and Merchants Bancorp, and thereby indirectly control Farmers & Merchants State Bank, both in Winterset, Iowa.

Board of Governors of the Federal Reserve System, December 22, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016-31360 Filed 12-27-16; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

[Docket No. 1530; RIN 7100 AE 44]

Regulation Q; Regulatory Capital Rules: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice.

SUMMARY: Under the rule of the Board regarding risk-based capital surcharges for global systemically important bank holding companies (GSIB surcharge rule), the Board is providing notice of the aggregate global indicator amounts for purposes of a calculation that is required under the GSIB surcharge rule for 2016.

DATES: *Effective:* December 28, 2016.

FOR FURTHER INFORMATION CONTACT: Juan C. Climent, Manager, (202) 872-7526, or Holly Kirkpatrick, Supervisory Financial Analyst, (202) 452-2796, Division of Supervision and Regulation; or Mark Buresh, Senior Attorney, (202) 452-5270, or Mary Watkins, Attorney, (202) 452-3722, Legal Division. Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869.

SUPPLEMENTARY INFORMATION: The Board's GSIB surcharge rule establishes a methodology to identify global systemically important bank holding companies in the United States (GSIBs) based on indicators that are correlated with systemic importance.¹ Under the GSIB surcharge rule, a firm must calculate its GSIB score using a specific formula (Method 1). Method 1 uses five equally weighted categories that are correlated with systemic importance—size, interconnectedness, cross-jurisdictional activity, substitutability,

¹ See 12 CFR 217.402, 217.404.

and complexity—and subdivided into twelve systemic indicators. For each indicator, a firm divides its own measure of each systemic indicator by an aggregate global indicator amount. The firm's Method 1 score is the sum of its weighted systemic indicator scores expressed in basis points. The GSIB surcharge for the firm is then the higher of the GSIB surcharge determined under Method 1 and a second method that weights size, interconnectedness, cross-jurisdictional activity, complexity, and a

measure of a firm's reliance on wholesale funding (instead of substitutability).²

The aggregate global indicator amounts used in the score calculation under Method 1 are based on data collected by the Basel Committee on Banking Supervision (BCBS). The BCBS amounts are determined based on the sum of the systemic indicator scores of the 75 largest U.S. and foreign banking organizations as measured by the BCBS, and any other banking organization that the BCBS includes in its sample total for

that year. The BCBS publicly releases these values, denominated in euros, each year. Pursuant to the GSIB surcharge rule, the Board publishes the aggregate global indicator amounts each year as denominated in U.S. dollars using the euro-dollar exchange rate provided by the BCBS.³

The aggregate global indicator amounts for purposes of the Method 1 score calculation for 2016 under § 217.404(b)(1)(i)(B) of the GSIB surcharge rule are:

AGGREGATE GLOBAL INDICATOR AMOUNTS IN U.S. DOLLARS (USD) FOR 2016

Category	Systemic indicator	Aggregate global indicator amount (in USD)
Size	Total exposures	\$79,320,039,989,625
Interconnectedness	Intra-financial system assets	8,816,910,460,396
	Intra-financial system liabilities	9,687,826,596,896
	Securities outstanding	13,608,077,367,510
Substitutability	Payments activity	2,463,117,556,410,060
	Assets under custody	139,725,689,815,229
	Underwritten transactions in debt and equity markets	6,479,589,781,461
Complexity	Notional amount of over-the-counter (OTC) derivatives	606,217,201,548,411
	Trading and available-for-sale (AFS) securities	3,543,254,277,404
	Level 3 assets	637,946,551,935
Cross-jurisdictional activity	Cross-jurisdictional claims	19,333,877,366,660
	Cross-jurisdictional liabilities	17,293,028,759,406

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Supervision and Regulation under delegated authority, December 22, 2016.

Robert deV. Frierson,
Secretary of the Board.

[FR Doc. 2016–31371 Filed 12–27–16; 8:45 am]

BILLING CODE 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 January 23, 2017.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice

President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Farmers State Bancshares, Inc.*, Dodge, Nebraska; to merge with Farmers State Bancshares II, Inc., parent of Farmers State Bank, both in Spencer, Nebraska.

B. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to Comments.applications@stls.frb.org:

1. *Reliable Community Bancshares, Inc.*, Perryville, Missouri; to acquire Mid America Banking Corporation, Rolla, Missouri, and thereby indirectly acquire Mid America Bank & Trust Company, Dixon, Missouri.

2. *MAB Acquisition Corp.*, Perryville, Missouri; to become a bank holding company by acquiring Mid America Banking Corporation, Rolla, Missouri, and thereby indirectly acquiring Mid America Bank & Trust Company, Dixon, Missouri.

² The second method (Method 2) uses similar inputs to those used in Method 1, but replaces the substitutability category with a measure of a firm's use of short-term wholesale funding. In addition, Method 2 is calibrated differently from Method 1.

³ 12 CFR 217.404(b)(1)(i)(B); 80 FR 49082, 49086–87 (August 14, 2015). See also 81 FR 1948 (January 14, 2016). The indicators provided by the BCBS were converted to U.S. dollars using a euro-dollar exchange rate of 1.0887, which was the daily euro

to U.S. dollar spot rate on December 31, 2015 as published by the European Central Bank (available at <http://www.ecb.europa.eu/stats/eurofxref/index.en.html>).

Board of Governors of the Federal Reserve System, December 22, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016-31361 Filed 12-27-16; 8:45 am]

BILLING CODE 6210-01-P

GENERAL SERVICES ADMINISTRATION

[Notice—MA—2016—09; Docket 2016—0002; Sequence No. 30]

2017 Privately Owned Vehicle (POV) Mileage Reimbursement Rates; 2017 Standard Mileage Rate for Moving Purposes

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of Federal Travel Regulation (FTR) Bulletin 17-02, Calendar Year (CY) 2017 Privately Owned Vehicle (POV) Mileage Reimbursement Rates and Standard Mileage Rate for Moving Purposes (Relocation Allowances).

SUMMARY: GSA is required by statute to set the mileage reimbursement rate for privately owned automobiles (POA) as the single standard mileage rate established by the Internal Revenue Service (IRS). In addition, the IRS' mileage rate for medical or moving purposes is used to determine the POA rate when a Government-furnished automobile is authorized. This IRS rate also establishes the standard mileage rate for moving purposes as it pertains to official relocation. Finally, GSA's annual privately owned airplane and motorcycle mileage reimbursement rate reviews have resulted in new CY 2017 rates. GSA conducts independent airplane and motorcycle studies that evaluate various factors, such as the cost of fuel, the depreciation of the original vehicles costs, maintenance and insurance, and/or by applying consumer price index data. FTR Bulletin 17-02 establishes and announces the new CY 2017 POV mileage reimbursement rates for official temporary duty and relocation travel (\$0.535 per mile for POAs, \$0.17 per mile for POAs when a Government furnished automobile is authorized, \$1.15 per mile for privately owned airplanes, \$0.505 per mile for privately owned motorcycles, and \$0.17 per mile for moving purposes), pursuant to the process discussed above. This notice of subject bulletin is the only notification to agencies of revisions to the POV mileage rates for official travel, and relocation, other than the changes posted on GSA's Web site.

DATES: *Effective:* January 1, 2017.

Applicability: This notice applies to travel and relocation performed on or after January 1, 2017 through December 31, 2017.

FOR FURTHER INFORMATION CONTACT: For clarification of content, please contact Mr. Cy Greenidge, Office of Government-wide Policy, Office of Asset and Transportation Management, at 202-219-2349, or by email at travelpolicy@gsa.gov. Please cite Notice of FTR Bulletin 17-02.

SUPPLEMENTARY INFORMATION:

Change in standard procedure

GSA posts the POV mileage reimbursement rates, formerly published in 41 CFR Chapter 301, solely on the internet at www.gsa.gov/mileage. Also, posted on this site is the standard mileage rate for moving purposes. This process, implemented in FTR Amendment 2010-07, 75 FR 72965 (November 29, 2010), FTR Amendment 2007-03, 72 FR 35187 (June 27, 2007), and FTR Amendment 2007-06, 72 FR 70234 (December 11, 2007), ensures more timely updates regarding mileage reimbursement rates by GSA for federal employees who are on official travel or relocating. Notices published periodically in the **Federal Register**, such as this one, and the changes posted on the GSA Web site, now constitute the only notification to federal agencies of revisions to the POV mileage reimbursement rates and the standard mileage reimbursement rate for moving purposes.

Troy Cribb,

Associate Administrator, Office of Government-wide Policy, General Services Administration.

[FR Doc. 2016-31264 Filed 12-27-16; 8:45 am]

BILLING CODE 6820-14-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10633]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the

Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by February 27, 2017.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov.

3. Call the Reports Clearance Office at (410) 786-1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786-1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS-10633 QIC Demonstration Evaluation Contractor (QDEC): Analyze Medicare Appeals To Conduct Formal Discussions and Reopenings With Suppliers

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. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New Collection (Request for a new OMB control number); *Title of Information Collection:* QIC Demonstration Evaluation Contractor (QDEC): Analyze Medicare Appeals to Conduct Formal Discussions and Reopenings with Suppliers; *Use:* The Formal Telephone Discussions Demonstration is designed to improve the efficiency of Medicare's five-level appeals system for fee-for-service (FFS) claims, which currently is experiencing a backlog. In the Demonstration, the Qualified Independent Contractor (QIC) provides education through a formal telephone discussion process to improve suppliers' understanding of the reasons for claim denials, and ultimately improve the quality of future claims submissions. CMS is interested in determining whether engagement between suppliers and the QIC will improve the understanding of the cause of Level 2 appeal denials, and over time, whether this results in increased submission of accurate and complete claims at the Medicare Administrative Contractor (MAC) level. The evaluation of the Demonstration will use both

quantitative and qualitative techniques to analyze the outcomes and impact of the Demonstration. Claims analysis, a web-based supplier survey, and supplier key informant interviews will inform the evaluation, and: (1) Focus specifically on outcomes including supplier satisfaction with the discussions, the rate of claims denials, and the number of claims that go through appeals Levels 2 and 3; (2) seek to determine whether further engagement between suppliers and the QIC improves understanding of the reasons for claim denials; and (3) support CMS in assessing the QIC's effectiveness in meeting a number of criteria established by CMS, including how satisfied participating suppliers were with the formal telephone discussion process. *Form Number:* CMS-10633 (OMB control number: 0938-NEW); *Frequency:* Monthly; *Affected Public:* Private Sector Business or other for-profits, Not-for-Profit Institutions; *Number of Respondents:* 10,560; *Total Annual Responses:* 2,640; *Total Annual Hours:* 473.3. (For policy questions regarding this collection contact Lynnsie Doty at 410-786-2175.)

Dated: December 21, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016-31183 Filed 12-27-16; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS-10180, CMS-R-138, CMS-10088, and CMS-10466]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested

persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by January 27, 2017.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395-5806 *OR* Email: OIRA_submission@omb.eop.gov.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov.

3. Call the Reports Clearance Office at (410) 786-1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786-1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the

collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Children's Health Insurance Program (CHIP) Report on Payables and Receivables; *Use:* Collection of CHIP data and the calculation of the CHIP Incurred But Not Reported (IBNR) estimate are pertinent to CMS' financial audit. Section 2105 of the Social Security Act (Title XXI) requires the Secretary to estimate the amount each State should be paid at the beginning of each quarter. This amount is based on a report filed by the State. Section 2105 of the Social Security Act authorizes the Secretary to pay the amount estimated, reduced or increased to the extent of any overpayment or underpayment for any prior quarter. Section 3515 of the CFO Act requires government agencies to produce auditable financial statements in accordance with Office of Management and Budget guidelines on Form and Content. The Government Management and Reform Act of 1994 requires that all offices, bureaus and associated activities of the 24 CFO Act agencies must be covered in an agency-wide, audited financial statement. Collection of CHIP data and the calculation of the CHIP Incurred But Not Reported (IBNR) estimate are pertinent to CMS' financial audit. The CHIP Report on Payables and Receivables will provide the information needed to calculate the CHIP IBNR. Failure to collect this information could result in non-compliance with the law. Program expenditures for the CHIP have increased since its inception; as such, CHIP receivables and payables may materially impact the financial statements. The CHIP Report on Payables and Receivables will provide the information needed to calculate the CHIP IBNR. *Form Number:* CMS-10180 (OMB control number: 0938-0988); *Frequency:* Reporting—Annually; *Affected Public:* State, Local or Tribal governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 392. (For policy questions regarding this collection contact Beverly Boher at 410-786-7806.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Geographic Classification Review Board Procedures and Criteria; *Use:* During the

first few years of IPPS, hospitals were paid strictly based on their physical geographic location concerning the wage index (Metropolitan Statistical Areas (MSAs)) and the standardized amount (rural, other urban, or large urban). However, a growing number of hospitals became concerned that their payment rates were not providing accurate compensation. The hospitals argued that they were not competing with the hospitals in their own geographic area, but instead that they were competing with hospitals in neighboring geographic areas. At that point, Congress enacted Section 1886(d)(10) of the Act which enabled hospitals to apply to be considered part of neighboring geographic areas for payment purposes based on certain criteria. The application and decision process is administered by the MGCRB which is not a part of CMS so that CMS could not be accused of any untoward action. However, CMS needs to remain apprised of any potential payment changes. Hospitals are required to provide CMS with copy of any applications that they made to the MGCRB. CMS also developed the guidelines for the MGCRB that were the interim final issue of the **Federal Register**, and must ensure that the MGCRB properly applied the guidelines. This check and balance process also contributes to limiting the number of hospitals that ultimately need to appeal their MGCRB decisions to the CMS Administrator. *Form Number:* CMS-R-138 (OMB control number: 0938-0573); *Frequency:* Occasionally; *Affected Public:* Businesses or other for-profits and Not-for-profit institutions; *Number of Respondents:* 300; *Total Annual Responses:* 300; *Total Annual Hours:* 300. (For policy questions regarding this collection contact Noel Manlove at 410-786-5161.)

3. *Type of Information Collection Request:* Reinstatement of a previously approved collection; *Title of Information Collection:* Notification of FIs and CMS of co-located Medicare providers; *Use:* Many long-term care hospitals (LTCHs) are co-located with other Medicare providers (acute care hospitals, IRFs, SNFs, psychiatric facilities), which leads to potential gaming of the Medicare system based on patient shifting. In regulations at 42 CFR 412.22(e)(3) and (h)(6) and 412.532(i), CMS is requiring LTCHs to notify Medicare Administrative Contractors (MACs) and CMS of co-located providers in order to establish policies to limit payment abuse that will be based on FIs tracking patient movement

among these co-located providers. *Form Number:* CMS-10088 (OMB control number: 0938-0897); *Frequency:* Annually; *Affected Public:* Businesses or other for-profits and Not-for-profit institutions; *Number of Respondents:* 25; *Total Annual Responses:* 25; *Total Annual Hours:* 6. (For policy questions regarding this collection contact Emily Lipkin at 410-786-3633.)

4. *Type of Information Collection Request:* Revision of a previously approved collection; *Title of Information Collection:* Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; *Use:* The data collection and reporting requirements in "Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions" (CMS-9958-F, 78 FR 39518), address federal requirements that states must meet with regard to the Exchange minimum function of performing eligibility determinations and issuing certificates of exemption from the shared responsibility payment. In the final regulation, CMS addresses standards related to eligibility, including the verification and eligibility determination process, eligibility redeterminations, options for states to rely on HHS to make eligibility determinations for certificates of exemption, and reporting. The data collection and reporting requirements included in this information collection request are critical to the basic ability of Exchanges to determine eligibility for and issue certificates of exemption, and will also assist Exchanges, HHS, and IRS in ensuring program integrity and quality improvement. *Form Number:* CMS-10466 (OMB control number: 0938-1190); *Frequency:* Monthly, Yearly; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 2,000,000; *Total Annual Responses:* 2,000,000; *Total Annual Hours:* 540,000. (For policy questions regarding this collection contact Kate Ficke at 301-492-4256).

Dated: December 21, 2016.

William N. Parham, III,
Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016-31185 Filed 12-27-16; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. FDA-2015-D-5105]

Postmarket Management of Cybersecurity in Medical Devices; Guidance for Industry and Food and Drug Administration; Availability**AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the guidance entitled “Postmarket Management of Cybersecurity in Medical Devices.” FDA is issuing this guidance to inform industry and FDA staff of the Agency’s recommendations for managing postmarket cybersecurity vulnerabilities for marketed medical devices. The guidance clarifies FDA’s postmarket recommendations with regards to addressing cybersecurity vulnerabilities and emphasizes that manufacturers should monitor, identify, and address cybersecurity vulnerabilities and exploits as part of the postmarket management of their medical devices.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

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-2015-D-5105 for “Postmarket Management of Cybersecurity in Medical Devices.” 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/>

www.regulations.gov/dockets/default.htm.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to [http://](http://www.regulations.gov)

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.

An electronic copy of the guidance document is available for download from the Internet. See the

SUPPLEMENTARY INFORMATION section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled “Postmarket Management of Cybersecurity in Medical Devices” to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993-0002 or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT:

Suzanne Schwartz, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5434, Silver Spring, MD 20993-0002, 301-796-6937 or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

SUPPLEMENTARY INFORMATION:**I. Background**

On February 19, 2013, the President issued Executive Order 13636—Improving Critical Infrastructure Cybersecurity, which recognized that resilient infrastructure is essential to preserving national security, economic stability, and public health and safety in the United States. Executive Order 13636 states that cyber threats to national security are among the most serious and that stakeholders must enhance the cybersecurity and resilience of critical infrastructure. This includes the Healthcare and Public Health Critical Infrastructure Sector.

Furthermore, Presidential Policy Directive 21—Critical Infrastructure Security and Resilience (PPD–21) issued on February 12, 2013 tasks Federal Government entities to strengthen the security and resilience of critical infrastructure against physical and cyber threats such that these efforts reduce vulnerabilities, minimize consequences, and identify and disrupt threats. PPD–21 encourages all public and private stakeholders to share responsibility in achieving these outcomes.

In recognition of the shared responsibility for cybersecurity, the security industry has established resources including standards, guidelines, best practices and frameworks for stakeholders to adopt a culture of cybersecurity risk management. Best practices include collaboratively assessing cybersecurity intelligence information for risks to device functionality and clinical risk. FDA believes that, in alignment with Executive Order 13636 and PPD–21, public and private stakeholders should collaborate to leverage available resources and tools to establish a common understanding that assesses risks for identified vulnerabilities in medical devices among the information technology community, healthcare delivery organizations, the clinical user community, and the medical device community. These collaborations can lead to the consistent assessment and mitigation of cybersecurity threats, and their impact on medical device safety and effectiveness, ultimately reducing potential risk of patient harm.

Part 806 (21 CFR part 806) requires device manufacturers or importers to report promptly to FDA certain actions concerning device corrections and removals. However, the majority of actions taken by manufacturers to address cybersecurity vulnerabilities and exploits, referred to as “cybersecurity routine updates and patches,” are generally considered to be a type of device enhancement for which the FDA does not require advance notification or reporting under part 806. For a small subset of actions taken by manufacturers to correct device cybersecurity vulnerabilities and exploits that may pose a risk to health, the FDA would require medical device manufacturers to notify the Agency.

This guidance clarifies changes to devices to be considered cybersecurity routine updates and patches (*e.g.*, certain actions to maintain a controlled risk to health). In addition, the guidance outlines circumstances in which FDA does not intend to enforce reporting requirements under part 806 for specific

vulnerabilities with uncontrolled risk. Specifically, FDA does not intend to enforce the reporting requirements when circumstances outlined in the guidance are met within the predefined periods of time (*e.g.*, communicate vulnerability to customers and user community and propose a timeline for remediation within 30 days after learning of the vulnerability; fix the vulnerability and validate the change within 60 days after learning of the vulnerability; actively participate in an Information Sharing Analysis Organization (ISAO)). The Agency considers voluntary participation in an Information ISAO a critical component of a medical device manufacturer’s comprehensive proactive approach to management of postmarket cybersecurity threats and vulnerabilities and a significant step towards assuring the ongoing safety and effectiveness of marketed medical devices.

II. Significance of Guidance

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on “Postmarket Management of Cybersecurity in Medical Devices.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at <http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm>. Guidance documents are also available at <http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <http://www.regulations.gov>. Persons unable to download an electronic copy of “Postmarket Management of Cybersecurity in Medical Devices” may send an email request to CDRH-Guidance@fda.hhs.gov to receive an electronic copy of the document. Please use the document number 1400044 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These

collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 803 (medical device reporting) have been approved under OMB control number 0910–0437; the collections of information in 21 CFR part 806 (reports of corrections and removals) have been approved under OMB control number 0910–0359; the collections of information in 21 CFR part 807, subpart E (premarket notification) have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 810 (medical device recall authority) have been approved under OMB control number 0910–0432; the collections of information in 21 CFR part 814 (premarket approval) have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 820 (quality system regulations) have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 822 (postmarket surveillance of medical devices) have been approved under OMB control number 0910–0449.

Dated: December 22, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–31406 Filed 12–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2016–E–1179; FDA–2016–E–1181; FDA–2016–E–1182]

Determination of Regulatory Review Period for Purposes of Patent Extension; IMLYGIC

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for IMLYGIC and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are

incorrect may submit either electronic or written comments and ask for a redetermination by February 27, 2017. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by June 26, 2017. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://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 <https://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-E-1179, FDA-2016-E-1181, and FDA-2016-E-1182 for “Determination of Regulatory Review Period for Purposes of Patent Extension; IMLYGIC.” Received comments will be

placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://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 <https://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 <https://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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term

Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product IMLYGIC (talimogene laherparepvec). IMLYGIC is indicated for the local treatment of unresectable cutaneous, subcutaneous, and nodal lesions in patients with melanoma recurrent after initial surgery. Subsequent to this approval, the USPTO received patent term restoration applications for IMLYGIC (U.S. Patent Nos. 7,063,835; 7,223,593; and 7,537,924) from BioVex Limited, and the USPTO requested FDA’s assistance in determining the patents’ eligibility for patent term restoration. In a letter dated July 12, 2016, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of IMLYGIC represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product’s regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for IMLYGIC is 3,809 days. Of this time, 3,352 days occurred during the testing

phase of the regulatory review period, while 457 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* May 25, 2005. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 25, 2005.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* July 28, 2014. FDA has verified the applicant's claim that the biologics license application (BLA) for IMLYGIC (BLA 125518) was initially submitted on July 28, 2014.

3. *The date the application was approved:* October 27, 2015. FDA has verified the applicant's claim that BLA 125518 was approved on October 27, 2015.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,826 days, 1,764 days, or 1400 days, respectively, of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: December 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–31322 Filed 12–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0067]

Pharmaceutical Science and Clinical Pharmacology Advisory Committee; Notice of Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice entitled “Pharmaceutical Science and Clinical Pharmacology Advisory Committee; Notice of Meeting” that appeared in the **Federal Register** of November 29, 2016 (81 FR 85978). The document announced the forthcoming public advisory committee meeting of the Pharmaceutical Science and Clinical Pharmacology Advisory Committee. The document was published with an error in the **DATES** section. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Jennifer Shepherd, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: ACPS-CP@fda.hhs.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at <http://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

In the **Federal Register** of Tuesday, November 29, 2016, in FR Doc. 2016–28723, the following correction is made:

On page 85978, in the third column, in the **DATES** section, the following sentence is to be inserted after the first sentence: “FDA is opening a docket for public comment on this meeting. The docket number is FDA–2010–N–0067. The docket will open for public comment on December 28, 2016. The docket will close on April 14, 2017.”

Dated: December 22, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–31391 Filed 12–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Evaluation and Assessment of HRSA Teaching Health Centers

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than January 27, 2017.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to OIRA_submission@omb.eop.gov or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at paperwork@hrsa.gov or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Evaluation and Assessment of HRSA Teaching Health Centers.

OMB No. 0915–0376—Extension.

Abstract: The Teaching Health Center Graduate Medical Education (THCGME) program supports new and the expansion of existing primary care residency training programs in community-based settings. The primary goals of the THCGME program are to increase the production of primary care doctors and dentists who are well prepared to practice in community settings, particularly with underserved populations, and to improve the overall number and geographic distribution of primary care providers.

Need and Proposed Use of the Information: To ensure these goals are achieved, the George Washington University (GW) is conducting an evaluation of the training, administrative and organizational structures, clinical service, challenges, innovations, costs associated with training, and outcomes of Teaching Health Centers (THCs). GW has developed questionnaires for implementation with all THC matriculating residents, graduating residents, and graduated residents at one year post-graduation. The matriculation questionnaire aims to collect background information on THC residents to better understand the characteristics of individuals who apply and are accepted to THC programs. The graduation questionnaire collects information on career plans. The alumni questionnaire collects information on career outcomes (including practice in primary care and in underserved settings) following graduation as well as feedback on the quality of training.

Statute requires that THCGME program award recipients report annually on the types of primary care resident approved training programs provided, the number of approved training positions, the number who completed their residency at the end of the prior academic year and care for vulnerable populations living in underserved areas, and any other information as deemed appropriate by the Secretary. The described data collection activities will serve to meet this statutory requirement for the THCGME program award recipients in a uniform and consistent manner and will allow comparisons of this group to other trainees in non-THC programs. HRSA seeks renewal of these measures with no changes.

Likely Respondents: This data collection includes documents that are completed separately by THC Program Directors and residents. THC Program Directors who have not already completed the program data collection tool will respond to the part of the data collection tool related to the

characteristics of the programs. Annual updates are made on an as-needed basis. THC matriculating residents, graduating residents and graduated residents at one year post-graduation will respond to the questionnaires related to characteristics of the residents.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Program Data Collection Tool	10	1	10	8	80
THC Alumni Survey	200	1	200	0.33	66
THC Matriculant Survey	200	1	200	0.25	50
THC Graduation Survey	200	1	200	0.25	50
Total	610	.....	610	.....	246

Jason E. Bennett,
 Director, Division of the Executive Secretariat.
 [FR Doc. 2016-31353 Filed 12-27-16; 8:45 am]
 BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Small Health Care Provider Quality Improvement Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the

Paperwork Reduction Act of 1995), HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR must be received no later than February 27, 2017.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N-39, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443-1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Small Health Care Provider Quality Improvement Program
 OMB No. 0915-0387—Extension

Abstract: This program is authorized by Title III, Public Health Service Act, Section 330A(g) (42 U.S.C. 254c(g)), as amended by Section 201, P.L. 107-251, and Section 4, P.L. 110-355. This authority directs the Federal Office of Rural Health Policy (FORHP) to support grants that expand access to, coordinate, contain the cost of, and improve the quality of essential health care services, including preventive and emergency services, through the development of health care networks in rural and frontier areas and regions. Across these various programs, the authority allows HRSA to provide funds to rural and

frontier communities to support the direct delivery of health care and related services, expand existing services, or enhance health service delivery through education, promotion, and prevention programs.

The purpose of the Small Health Care Provider Quality Improvement Grant (Rural Quality) Program is to provide support to rural primary care providers for implementation of quality improvement activities. The goal of the program is to promote the development of an evidence-based culture and delivery of coordinated care in the primary care setting. Additional objectives of the program include improved health outcomes for patients, enhanced chronic disease management, and better engagement of patients and their caregivers. Organizations participating in the program are required to use an evidence-based quality improvement model, perform

tests of change focused on improvement, and use health information technology (HIT) to collect and report data. HIT may include an electronic patient registry or an electronic health record, and is a critical component for improving quality and patient outcomes. With HIT it is possible to generate timely and meaningful data, which helps providers track and plan care.

Need and Proposed Use of the Information: FORHP collects this information to quantify the impact of grant funding on access to health care, quality of services, and improvement of health outcomes. FORHP uses the data for program improvement and grantees use the data for performance tracking. No changes are proposed from the current data collection effort.

Likely Respondents: Grantees of the Small Health Care Provider Quality Improvement Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form Name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total Burden Hours
Name of instrument	32	1	32	8	256
Total	32	.....	32	.....	256

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016-31253 Filed 12-27-16; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions and Delegations of Authority

AGENCY: Office for Civil Rights, Office of the Secretary, HHS.

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS) is being amended at Chapter AT, Office for Civil Rights

(OCR), as last amended at 190 FR 60757, dated October 1, 2010, is amended to reflect the restructuring of the Office for Civil Rights (OCR) as follows:

I. Under Part A, Chapter AT, "Office for Civil Rights (OCR)," delete "Section AT.10 Organization" in its entirety and replace with the following:

Section AT.10 Organization. The Office for Civil Rights (OCR) is under the direction of the Director of the Office for Civil Rights (Director) who reports to the Secretary. OCR consists of the following components:

- A. Office of the Director (AT)
- B. Operations and Resources Division (ATA)
- C. Civil Rights Division (ATB)
- D. Health Information Privacy Division (ATC)

II. Under Chapter AT, Office for Civil Rights (OCR) delete "Section AT.20 Functions" in its entirety and replace with the following:

A. Office of the Director (AT). As the Department's chief officer and adviser to the Secretary for implementation and enforcement of HHS civil rights and Health Insurance Portability, Accountability Act (HIPAA) privacy, security, and breach notification rules, the Director provides leadership, priorities, guidance and supervision to

and is responsible for overall policy, programs, and operations of OCR. The Director also is responsible for representing the Secretary and the Department, in coordination and consultation with the Assistant Secretary for Legislation, before Congress and the Executive Office of the President on matters relating to civil rights and the privacy, security, and breach rules and for liaising with other Federal departments and agencies charged with civil rights and privacy, security, and breach enforcement and compliance responsibilities.

B. Operations and Resources Division (ATA). The Operations and Resources Division (ORD) is headed by a Deputy Director who reports to the Director. Responsibilities of the Deputy Director for Operations and Resources include: Advising on all regional operations and the Centralized Case Management Operation (CCMO); resource management; and other staff functions that include management operations, budget, human resources, travel, information technology, support activities, management analysis, ethics, Continuity of Operations, property management, accountability, and performance metrics. Regional offices

are led by Regional Managers who report to the Deputy Director for ORD and are responsible for civil rights and HIPAA complaint investigations, enforcement, and outreach. ORD is responsible for responding to stakeholder calls and triaging civil rights and HIPAA complaints at intake.

C. Civil Rights Division (ATB). The Civil Rights Division is headed by the Deputy Director for Civil Rights, who reports to the Director. The Civil Rights Division oversees OCR's national civil rights program, including Section 1557 of the Affordable Care Act, as well as other federal civil rights statutes and regulations that prohibit non-discrimination on the basis of race, color, national origin, sex, disability, and age; the Division also enforces provider conscience laws. The Civil Rights Division provides national leadership in OCR's enforcement and compliance activities, including advising OCR staff nationwide on case development and quality and assisting in developing negotiation, enforcement, and litigation strategies; promulgates regulations, policies, and guidance and provides technical assistance to assist covered entities with compliance; and provides subject matter expertise for public education and outreach activities to stakeholders nationwide. The Civil Rights Division also leads national civil rights compliance reviews; identifies and designs civil rights specific training programs for OCR staff; reviews challenges to OCR's regional civil rights findings; coordinates OCR's government-wide responsibilities for implementation of Age Discrimination Act requirements; and liaises with and provides civil rights technical assistance and advisory services to HHS Operating Divisions, as well as national advocacy, beneficiary, and provider groups, and to other Federal departments and agencies, including serving on intra- and interagency workgroups.

D. Health Information Privacy Division (ATC). The Health Information Privacy Division is headed by the Deputy Director for Health Information Privacy, who reports to the Director. The Health Information Privacy Division oversees OCR's enforcement of the HIPAA Privacy, Security and Breach Notification Rules, as well as the confidentiality provisions of Section 922 of the Public Health Service Act, as amended by the Patient Safety and Quality Improvement Act of 2005 (PSQIA). The Health Information Privacy Division provides national leadership in OCR's enforcement and compliance activities, including advising OCR staff nationwide on case development and quality and assisting

in developing negotiation, enforcement, and litigation strategies; promulgates regulations, policies, and guidance and provides technical assistance to assist covered entities with compliance; and provides subject matter expertise for public education and outreach activities to stakeholders nationwide. The Division also identifies OCR training needs and designs HIPAA and PSQIA specific training programs for OCR staff; reviews challenges to OCR's regional offices' HIPAA investigative findings; leads national HIPAA compliance reviews, including audits; and liaises with and provides technical assistance and advisory services to HHS OPDIVS, as well as national advocacy, beneficiary, and provider groups, and to other Federal departments and agencies with respect to health information privacy, security, and breach initiatives and mandates, including serving on intra- and interagency workgroups.

III. Delegation of Authority. Pending further delegation, directives or orders by the Secretary or by the Director of the Office for Civil Rights, all delegations and re-delegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further re-delegations, provided they are consistent with this reorganization.

Dated: December 12, 2016.

Colleen Barros,

Acting Assistant Secretary for Administration.

[FR Doc. 2016-31394 Filed 12-27-16; 8:45 am]

BILLING CODE 4153-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket Number CDC-2016-0121; NIOSH-285]

Closed-Circuit Escape Respirators; Guidance for Industry; Availability

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Notice of availability.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH), within the Centers for Disease Control and Prevention, Department of Health and Human Services, announces publication of a guidance document which addresses the availability of closed-circuit escape respirators (CCERs) for purchase and the readiness of respirator manufacturers to comply with the provisions in Part 84, Subpart O, of Title 42 of the Code of Federal Regulations. Pursuant to a **Federal**

Register notice published on February 10, 2016, beginning on January 4, 2017, manufacturers are no longer authorized to manufacture, label, and sell 1-hour escape respirators, known in the mining community as self-contained self-rescuers (SCSRs), approved in accordance with the certification testing standards in Part 84, Subpart H (81 FR 7121). This guidance announces that NIOSH does not intend to revoke any certificate of approval for 1-hour escape respirators, approved in accordance with 42 CFR part 84, Subpart H, that are manufactured, labeled, or sold prior to January 4, 2018, provided that there is no cause for revocation under existing NIOSH regulation.

DATES: NIOSH is soliciting public comment, but is implementing this guidance immediately because NIOSH has determined that prior public participation is not feasible or appropriate. Comments must be received by February 27, 2017.

ADDRESSES: You may submit comments, identified by "CDC-2016-0121" by any of the following methods:

Internet: Access the Federal e-rulemaking portal at <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: NIOSH Docket Office, 1090 Tusculum Avenue, MS C-34, Cincinnati, OH 45226-1998.

Instructions: All submissions received must include the agency name and docket number for this guidance. All relevant comments will be posted without change to <http://www.regulations.gov> including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Maryann D'Alessandro, NIOSH National Personal Protective Technology Laboratory, 626 Cochran Mill Road, Pittsburgh, PA 15236; 1-888-654-2294 (this is a toll-free phone number); PPEconcerns@cdc.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Mine Safety and Health Act of 1977, at 30 U.S.C. 957, NIOSH is authorized to promulgate regulations to carry out its duties mandated by such Act. Under 42 CFR part 84—Approval of Respiratory Protective Devices, NIOSH approves respirators used by workers in mines and other workplaces for protection against hazardous atmospheres.¹ The Department of

¹ The cited statutory authorities for Part 84 are 29 U.S.C. 651 *et seq.* and 657(g), and 30 U.S.C. 3, 5, 7, 811, 842(h), 844.

Labor's Mine Safety and Health Administration (MSHA) requires U.S. mine operators to supply NIOSH/MSHA-approved respirators to miners whenever the use of escape respirators is required.

The self-contained self-rescuer (SCSR) approved under 42 CFR part 84, Subpart H, and closed-circuit escape respirator (CCER) approved under 42 CFR part 84, Subpart O reflect two generations of the same respirator used in certain industrial and other work settings during emergencies to enable users to escape from atmospheres that can be immediately dangerous to life and health. The SCSR/CCER is used by miners to escape dangerous atmospheres in mines.

Standards for the approval of CCERs were updated in a final rule published March 8, 2012, in which HHS codified a new Subpart O and removed only those technical requirements in 42 CFR part 84—Subpart H that were uniquely applicable to CCERs (77 FR 14168). All other applicable requirements of 42 CFR part 84 were unchanged. The purpose of these updated requirements is to enable NIOSH and MSHA to more effectively ensure the performance, reliability, and safety of CCERs used in underground coal mining. The March 2012 rulemaking was conducted in response to decades of reports from the field, particularly underground coal mines, documenting user concerns about the inability to inspect Subpart H-approved SCSRs for internal damage and the damage sustained to such devices in harsh underground environments. Furthermore, incidents in which wearers did not receive the expected duration of breathing air were common. The former Subpart H performance rating system classified SCSRs by the duration of breathing air, and was widely known to create confusion among users. Performance duration is not fixed and is dependent on a variety of factors which might result in less protection time than the wearer expects. As HHS said in the March 2012 final rule, “[t]he . . . duration rating is misleading and potentially dangerous to users” (77 FR 14168 at 14177). The disaster at the Sago Mine in 2006, in which 12 miners died and another was critically injured, accelerated the promulgation of the Subpart O standards with encouragement from the United Mine Workers of America;² with

improved respirator functionality and a better-applied rating system, the outcome might have been different. The need for the rulemaking is discussed in greater detail in the March 2012 final rule (see 77 FR 14168 at 14169–14182), and background documents, including public comments, are available in NIOSH Docket 005.

The Subpart O CCER standards established a classification system based on the quantity (capacity) of oxygen available in an escape respirator. For the purpose of comparing the SCSR to the CCER, a device classified as a “10-minute” SCSR under Subpart H may be approximately equivalent to a “Cap 1” CCER under Subpart O, delivering between 20 and 59 liters of oxygen. A “1-hour” SCSR under Subpart H may be approximately equivalent to a “Cap 3” CCER under Subpart O, delivering at least 80 liters of oxygen. CCERs of any capacity used in mining are still required to pass the Subpart H “man test 4.” This test is used to demonstrate that CCERs used in mining will continue to meet the criteria established by MSHA in 30 CFR part 75 by providing a minimum duration of breathing air.

Because NIOSH determined that the resulting advances in escape respirator performance and reliability warranted accelerated adoption of the enhanced standards, manufacturers were authorized to continue to manufacture, label, and sell Subpart H-approved SCSRs only until April 9, 2015. The three-year period between April 9, 2012, and April 9, 2015, was provided for manufacturers to obtain certificates of approval for CCER designs developed under the Subpart O standards. Beginning on April 10, 2012, no new applications for approval of Subpart H SCSRs have been accepted. However, manufacturers were unable to develop Cap 3 CCERs in time to meet the April 9, 2015 transition deadline and, as a result, NIOSH initiated a rulemaking to extend the deadline. On August 12, 2015, NIOSH issued a final rule extending the concluding date for the transition to the Subpart O standards to 1 year after the date that the first approval was granted to certain CCER models (80 FR 48268).³ On February 10,

and NIOSH, should actively pursue new SCSR technology. All stakeholders must be closely involved in the design, development and testing of these devices. The new generation of SCSRs must be longer-lasting, more reliable units . . .”

³ See 42 CFR 84.301(a), which states that “[t]he continued manufacturing, labeling, and sale of CCERs previously approved under subpart H is authorized for units intended to be used in mining applications with durations comparable to Cap 1 (all CCERs with a rated service time ≤20 minutes), and units intended to be used in mining and non-

2016, NIOSH issued a **Federal Register** notice announcing the first approval of a Cap 3 CCER on January 4, 2016, issued to Ocenco Incorporated (Ocenco) of Pleasant Prairie, Wisconsin. In accordance with the August 2015 final rule, respirator manufacturers were permitted to continue to manufacture, label, and sell, 1-hour Subpart H-approved escape respirators until January 4, 2017. The manufacturing, labeling, or sale of such devices subsequent to this date, however, could result in NIOSH revoking, for cause, the certificate of approval under 42 CFR 84.34 or 84.43(c). The deadline extensions have contributed to the availability of new escape respirator designs which conform to the Subpart O requirements, and have addressed the needs of certain broad segments of the market for such devices;⁴ however, MSHA has recently expressed concern that a market gap is imminent in the underground coal mining industry.⁵

In November 2016, the NIOSH National Personal Protective Technology Laboratory (NPPTL) had a series of communications with representatives from MSHA, the underground coal mine industry, and two respirator manufacturers concerning the ability of the current supply of person-wearable escape respirators to allow the mining industry to comply with MSHA regulations. Specifically, all but one of the manufacturers expressed concern that, without continued authorization to manufacture, label, and sell 1-hour, person-wearable SCSRs, manufacturers would be unable to fulfill the unmet needs of the underground coal mines that require the use of 1-hour person-wearable devices to satisfy MSHA regulatory requirements.⁶

MSHA regulations require that two “approved self-rescue device or

mining applications with durations comparable to Cap 3 (all CCERs with a rated service time ≥50 minutes), until 1 year after the date of the first NIOSH approval of a respirator model under each respective category specified.”

⁴ The maritime market, which includes the U.S. Navy, have been quick adopters of newly-approved Cap 1 CCERs (often referred to in that market as emergency escape breathing devices or EEBDs). Cap 1 CCERs which were available to replace Subpart H, 10-minute approved apparatus are being deployed in that market segment in great numbers.

⁵ Joe Main, Assistant Secretary of Labor, MSHA, letter to John Howard, Director, NIOSH, December 14, 2016. This letter is available in the docket for this notice and guidance.

⁶ NIOSH and MSHA received a letter on December 12, 2016 from Ocenco Incorporated stating its opposition to extension of the January 4, 2017 deadline for the sale of Subpart H-approved SCSR devices. Steven K. Berning, Ocenco Incorporated, letter to Mr. Joseph A. Main, Assistant Secretary of Labor, MSHA and [Dr.] John Howard, Director, NIOSH, December 12, 2016.

² See NIOSH Docket 005 for background materials related to the March 2012 rulemaking, <http://www.cdc.gov/niosh/docket/archive/docket005.html>. According to UMWA, in a January 2, 2006 publication, *Report on the Sago Mine Disaster*, “[c]urrent SCSR technology is almost 20 years old. The federal and state governments, through MSHA

devices” each sufficient to provide at least one hour of protection be available to every person underground in a coal mine;⁷ at least one escape respirator of any size must be “worn or carried at all times by each person when underground.”⁸ Mine operators are allowed the discretion to determine whether to require miners to carry a 1-hour respirator and cache at least one additional 1-hour respirator per miner, or carry a 10-minute respirator and cache two additional 1-hour units.⁹ MSHA and others argue that although both CSE Corporation, of Export, Pennsylvania, and Ocenco hold approvals for Cap 3 CCERs for mining, neither is person-wearable. Both Ocenco and Avon Polymer Products, Ltd., of Cadillac, Michigan offer approved Cap 1 mining CCERs which are person-wearable, but provide only 10 minutes of oxygen under the current approval requirements.

According to MSHA,¹⁰ in many underground coal mines, miners traveling to multiple stations underground during their shift may not presently have access to caches with 1-hour respirators (as required by MSHA regulations), and therefore must be provided with a 1-hour or Cap 3 person-wearable escape respirator to be in compliance and ensure their safety. MSHA also indicates that miners may have to search for a cache of escape respirators during an emergency, and if so, the lack of a person-worn, 1-hour SCSR or Cap 3 CCER would constitute a reduction in protection since they would have less time to find a cache. Accordingly, although the newly-approved Subpart O CCERs meet the higher performance requirements of the new standard, MSHA is concerned that the protection offered to miners currently wearing the 1-hour SRLD would be diminished if they were required to switch to a 10-minute person-wearable Subpart O CCER. MSHA further asserts that data on escape respirators deployed in underground coal mines indicate that in mines that rely on 1-hour person-wearable respirators, a substantial portion of their respirator inventory will reach the end of its service life in 2017 and 2018. According to MSHA, these will need to be replaced with additional belt-wearable 1-hour SRLDs since there are currently no available Cap 3 CCERs that are belt or person-wearable.

Accordingly, MSHA has asked that NIOSH extend the deadline.

In a letter to NPPTL, CSE Corporation, manufacturer of the 1-hour belt-wearable SCSR model SRLD, reported similar concerns among its mining industry customers.¹¹ According to CSE, [a] large portion of the previous generation SCSR population utilized by the mining industry will reach their Service Life Date (Expire) between 2017 through to 2019. Numerous individuals from the mining industry have expressed concerns that an adequate supply of Cap 3 CCERs will NOT be available to replace the expiring SCSRs.¹² [emphasis in original]

On behalf of its customers, CSE expressed two primary concerns: (1) “how to implement the new Cap 3 CCER technology under the current budgetary constraints,” and (2) “the Cap 3 CCER technology is so new that many in the mining industry have not had the opportunity to evaluate it as related to their operational needs let alone even see a new Cap 3 CCER.” CSE concluded that, “[a]s a result of these concerns, many in the mining industry have not fully issued purchase orders for either technology SCSR or Cap 3 CCER to replace the expiring SCSRs.” CSE received NIOSH approval for its Cap 3 mining CCER on March 28, 2016,¹³ and plans to be in full production in May 2017. CSE has since informed NIOSH that it has a backlog of orders for Subpart H SCSRs, which it is unable to fill before the January 4, 2017 manufacturing deadline.

Finally, a mining industry representative communicated with NPPTL to register similar concern about the availability of the SRLD.¹⁴

After consideration of the concerns described above, NIOSH agrees that allowing the continued manufacturing, labeling, and sale of 1-hour Subpart H SCSRs is important for the continued respiratory protection of certain underground coal miners and necessary until such time as a person-wearable Cap 3 CCER is developed to replace it. Accordingly, NIOSH has published a guidance document, entitled “Closed-Circuit Escape Respirators; 42 CFR part 84, Subpart O Compliance; Guidance for

Industry,” on the NIOSH National Personal Protective Technology Laboratory Web site, at www.cdc.gov/niosh/npptl. The guidance explains the conditions under which NIOSH does not intend to revoke any certificate of approval for 1-hour escape respirators, approved in accordance with 42 CFR part 84, Subpart H, that are manufactured, labeled, or sold prior to January 4, 2018, provided that there is no cause for revocation under 42 CFR 84.34 or 84.43(c), including misuse of approval labels and markings, misleading advertising, and failure to maintain or cause to be maintained the applicable quality control requirements.¹⁵

This policy does not extend to any other NIOSH regulatory requirement for respirator approval in 42 CFR part 84.

To ensure that underground coal miners have sufficient MSHA-required protection during escape from hazardous atmospheres, the guidance is effective immediately. The guidance represents the current thinking of NIOSH on this topic. It does not establish any rights for any person and is not binding on NIOSH or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. To discuss an alternative approach, contact the NIOSH staff responsible for this guidance.

Dated: December 21, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016–31393 Filed 12–27–16; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–1000]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0025

AGENCY: Coast Guard, DHS.

¹⁵ See 42 CFR 84.34, which states that “[t]he Institute reserves the right to revoke, for cause, any certificate of approval issued pursuant to the provisions of this part. Such causes include, but are not limited to, misuse of approval labels and markings, misleading advertising, and failure to maintain or cause to be maintained the quality control requirements of the certificate of approval.” See also 42 CFR 84.43(c), which states that “[t]he Institute reserves the right to revoke, for cause, any certificate of approval where it is found that the applicant’s quality control test methods, equipment, or records do not ensure effective quality control over the respirator for which the approval was issued.”

⁷ 30 CFR 75.1714(a), 75.1714–4.

⁸ 30 CFR 75.1714–2(b).

⁹ 30 CFR 75.1714–1(a) and (b).

¹⁰ *Supra* note 5.

¹¹ Scott Shearer, CSE Corporation, letter to Maryann D’Alessandro, Director, NPPTL, Subject: Cap 3 Closed-Circuit Escape Respirators Transition Plan, November 4, 2016. This letter is available in the docket for this notice and guidance.

¹² *Id.*

¹³ See NIOSH National Personal Protective Technology Laboratory Certified Equipment List, https://www2a.cdc.gov/drds/cel/cel_form_code.asp.

¹⁴ Allen Dupree, Contura Energy, letter to Maryann D’Alessandro, November 23, 2016, Subject: Concerns regarding SCSR Rule. This letter is available in the docket for this notice and guidance.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625-0025, Carriage of Bulk Solids Requiring Special Handling—without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before February 27, 2017.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG-2016-1000] to the Coast Guard using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public participation and request for comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: COMMANDANT (CG-612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR AVE SE., STOP 7710, WASHINGTON, DC 20593-7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202-475-3532, or fax 202-372-8405, for questions on these documents.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625-0025, Carriage of Bulk Solids Requiring Special Handling—46 CFR part 148 without change.

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information

(Collection). The ICR contains information describing the Collection’s purpose, the Collection’s likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG-2016-1000], and must be received by February 27, 2017.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site’s instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Carriage of Bulk Solids Requiring Special Handling—46 CFR part 148.

OMB Control Number: 1625-0025.

Summary: As specified in 46 CFR part 148, the petition for a Special Permit allows the Coast Guard to determine the manner of safe carriage for unlisted materials. The information required by Dangerous Cargo Manifests and Shipping Papers permit vessel crews and emergency personnel to properly and safely respond to accidents involving hazardous substances. See 46 CFR 148 Subpart B, 148.60 and 148.70.

Need: The Coast Guard administers and enforces statutes and rules for the safe transport and stowage of hazardous materials, including bulk solids.

Forms: N/A.

Respondents: Owners and operators of vessels that carry certain bulk solids.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 955 hours to 850 hours a year due to a decrease in the estimated annual number of responses for Special Permits.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: December 18, 2016.

Thomas P. Michelli,
Chief Information Officer, U.S. Coast Guard.

[FR Doc. 2016-31395 Filed 12-27-16; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-HQ-BHC-2016-N224;
FXMB12330900000-178-FF09M10000]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Electronic Duck Stamp Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on December 31, 2016. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to

conduct or sponsor this information collection while it is pending at OMB.
DATES: You must submit comments on or before January 27, 2017.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275

Leesburg Pike, Falls Church, VA 22041–3803 (mail), or *tina_campbell@fws.gov* (email). Please include “1018–0135” in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Tina Campbell at *tina_campbell@fws.gov* (email) or 703–358–2676 (telephone). You may review the ICR online at <http://www.reginfo.gov>. Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0135.
Title: Electronic Duck Stamp Program.
Service Form Number: 3–2341.
Type of Request: Extension of a currently approved information collection.

Description of Respondents: State fish and wildlife agencies.

Respondent’s Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time for applications, and an average of once every 9 days per respondent for fulfillment reports.

Activity	Number of respondents	Number of responses	Completion time per response (hours)	Total annual burden hours
Application	6	6	40	240
Fulfillment Report	33	1,353	1	1,353
Totals	39	1,359	.....	1,593

Abstract: On March 16, 1934, President Roosevelt signed the Migratory Bird Hunting Stamp Act (16 U.S.C. 718a *et seq.*), requiring all migratory waterfowl hunters 16 years of age or older to buy a Federal migratory bird hunting and conservation stamp (Federal Duck Stamp) annually. The stamps are a vital tool for wetland conservation. Ninety-eight cents out of every dollar generated by the sale of Federal Duck Stamps goes directly to purchase or lease wetland habitat for protection in the National Wildlife Refuge System. The Federal Duck Stamp is one of the most successful conservation programs ever initiated and is a highly effective way to conserve America’s natural resources. Besides serving as a hunting license and a conservation tool, a current year’s Federal Duck Stamp also serves as an entrance pass for national wildlife refuges where admission is charged. Duck Stamps and products that bear stamp images are also popular collector items.

The Electronic Duck Stamp Act of 2005 (Pub. L. 109–266) required the Secretary of the Interior to conduct a 3-year pilot program, under which States could issue electronic Federal Duck Stamps. This pilot program has now been made permanent with the passage of the Permanent Electronic Duck Stamp Act of 2013. The electronic stamp is valid for 45 days from the date of purchase and can be used immediately while customers wait to receive the actual stamp in the mail. After 45 days, customers must carry the actual Federal Duck Stamp while hunting or to gain free access to national wildlife refuges.

Eight States participated in the pilot. At the end of the pilot, we provided a report to Congress outlining the successes of the program. The program improved public participation by increasing the ability of the public to obtain required Federal Duck Stamps.

Under our authorities in 16 U.S.C. 718 *et seq.* we have continued the Electronic Duck Stamp Program in the eight States that participated in the pilot. In addition, we have expanded the program to include a total of 22 States. Several other States have indicated interest, and we plan to expand the program by inviting all State fish and wildlife agencies to participate. Anyone, regardless of State residence, may purchase an electronic Duck Stamp through any State that participates in the program. Interested States must submit an application (FWS Form 3–2341). We will use the information provided in the application to determine a State’s eligibility to participate in the program. Information includes, but is not limited to:

- Information verifying the current systems the State uses to sell hunting, fishing, and other associated licenses and products.
- Applicable State laws, regulations, or policies that authorize the use of electronic systems to issue licenses.
- Example and explanation of the codes the State proposes to use to create and endorse the unique identifier for the individual to whom each stamp is issued.
- Mockup copy of the printed version of the State’s proposed electronic stamp, including a description of the format

and identifying features of the licensee to be specified on the stamp.

- Description of any fee the State will charge for issuance of an electronic stamp.
- Description of the process the State will use to account for and transfer the amounts collected by the State that are required to be transferred under the program.
- Manner by which the State will transmit electronic stamp customer data.

Each State approved to participate in the program must provide the following information on a weekly basis:

- First name, last name, and complete mailing address of each individual that purchases an electronic stamp from the State.
- Face value amount of each electronic stamp sold by the State.
- Amount of the Federal portion of any fee required by the agreement for each stamp sold.

Comments: On September 20, 2016, we published in the **Federal Register** (81 FR 64498) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on November 21, 2016. We did not receive any comments.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;

- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB and us in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: December 21, 2016.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2016-31313 Filed 12-27-16; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-HQ-IA-2016-0147; FXIA1671090000-178-FF09A30000]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358-2281.

FOR FURTHER INFORMATION CONTACT:

Brenda Tapia, (703) 358-2104 (telephone); (703) 358-2281 (fax); DMAFR@fws.gov (email).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application Federal Register notice	Permit issuance date
00500C	Edwin Andrew	81 FR 51926; August 5, 2016	October 17, 2016.
00209C	Donald Bitz	81 FR 51926; August 5, 2016	October 17, 2016.
98815B	Christopher Sibert	81 FR 51926; August 5, 2016	September 30, 2016.
83954B	University of California, Santa Cruz	81 FR 51926; August 5, 2016	November 25, 2016.
00019C	Zoological Society of San Diego	81 FR 55223; August 18, 2016	September 30, 2016.
02160C	Freddy Valdez	81 FR 55223; August 18, 2016	October 4, 2016.
230539	Florida State University—Robert K. Godfrey Herbarium.	81 FR 59239; August 29, 2016	October 11, 2016.
03232C	Charles Butler	81 FR 59239; August 29, 2016	October 13, 2016.
02924C	Scott Rider	81 FR 63787; September 16, 2016	November 10, 2016.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application Federal Register notice	Permit issuance date
77245B	Anthony Pagano, USGS/Alaska Science Center	81 FR 72606; October 20, 2016	December 16, 2016.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike,

Falls Church, VA 22041; fax (703) 358-2281.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2016-31242 Filed 12-27-16; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-HQ-IA-2016-0148; FXIA1671090000-178-FF09A30000]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications

to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before January 27, 2017. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by January 27, 2017.

ADDRESSES: Submitting Comments: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-HQ-IA-2016-0148.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS-HQ-IA-2016-0148; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041-3803.

When submitting comments, please indicate the name of the applicant and the PRT# you are commenting on. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Viewing Comments: Comments and materials we receive will be available for public inspection on <http://www.regulations.gov>, or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the U.S. Fish and Wildlife Service, Division of Management Authority, 5275 Leesburg Pike, Falls Church, VA 22041-3803; telephone 703-358-2095.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358-2104 (telephone); (703) 358-2281 (fax); DMAFR@fws.gov (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent

to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), along with Executive Order 13576, “Delivering an Efficient, Effective, and Accountable Government,” and the President’s Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and

transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: NOAA/National Marine Fisheries Service, Miami, FL; PRT-045532

The applicant requests reissuance of their permit to import and/or introduce from the sea biological samples collected on the high seas and on land, from wild animals opportunistically salvaged and incidentally captured, and captive-held animals of loggerhead sea turtle (*Caretta caretta*), Kemp’s ridley sea turtle (*Lepidochelys kempii*), olive ridley sea turtle (*Lepidochelys olivacea*), hawksbill sea turtle (*Eretmochelys imbricata*), and leatherback sea turtle (*Dermochelys coriacea*) for the purpose of scientific research. This notification covers activities conducted by the applicant over a 5-year period.

Applicant: Wildlife Conservation Society, New York, NY; PRT-06738C

The applicant requests a permit to conduct interstate transport for one captive-bred Komodo dragon (*Varanus komodoensis*) for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: California Academy of Sciences, San Francisco, CA; PRT-07990C

The applicant requests a permit to export and reimport nonliving museum specimens of endangered and threatened species previously accessioned into the applicant’s collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

B. Endangered Marine Mammals and Marine Mammals

Applicant: North Slope Borough Department of Wildlife Management, Barrow, AK; PRT-80164B

The applicant requests a permit to conduct hair snare population surveys of wild polar bears (*Ursus maritimus*) and to opportunistically collect samples from beach-cast carcasses and

subsistence-harvested wild polar bears (*Ursus maritimus*) and Pacific walrus (*Odobenus rosmarus divergens*) for purposes of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2016-31241 Filed 12-27-16; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO300 L91310000 PP0000]

Renewal of Approved Information Collection; OMB Control No. 1004-0132

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) to continue the collection of information from those who wish to participate in the exploration, development, production, and utilization of geothermal resources on BLM-managed public lands, and on lands managed by other Federal agencies. The Office of Management and Budget (OMB) previously approved this information collection activity, and assigned it control number 1004-0132.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. For maximum consideration, written comments should be received on or before January 27, 2017.

ADDRESSES: Please submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004-0132), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202-395-5806, or by electronic mail at OIRA_

submission@omb.eop.gov. Please provide a copy of your comments to the BLM. You may do so via mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202-245-0050.

Electronic mail: jesonnem@blm.gov.

Please indicate "Attn: 1004-0132"

regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: John Kalish, at 202-912-7312. Persons who use a telecommunication device for the deaf may call the Federal Relay Service at 1-800-877-8339, to leave a message for Mr. Kalish. You may also review the information collection request online at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501-3521) and OMB regulations at 5 CFR part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)).

As required at 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on July 19, 2016 (81 FR 46954), and the comment period ended September 19, 2016. The BLM received no comments.

The BLM now requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments as directed under **ADDRESSES** and **DATES**. Please refer to OMB control number 1004-0132 in your correspondence. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information pertains to this request:

Title: Geothermal Resource Leasing and Geothermal Resource Unit Agreements (43 CFR parts 3200 and 3280).

OMB Control Number: 1004-0132.

Summary: The BLM collects the information in order to decide whether or not to approve geothermal resource leases and unit agreements, process nominations for geothermal lease sales, and monitor compliance with granted approvals.

Frequency of Collection: On occasion, except for Monthly Report of Geothermal Operations (Form 3260-5), which is required monthly.

Forms:

- Form 3200-9, Notice of Intent to Conduct Geothermal Resource Exploration Operations;
- Form 3203-1, Nomination of Lands for Competitive Geothermal Leasing;
- Form 3260-2, Geothermal Drilling Permit;
- Form 3260-3, Geothermal Sundry Notice; and
- Form 3260-4; Geothermal Well Completion Report; and
- Form 3260-5; Monthly Report of Geothermal Operations.

Description of Respondents: Those who wish to participate in the exploration, development, production, and utilization of geothermal resources on BLM-managed by other Federal agencies.

Estimated Annual Responses: 913.

Estimated Annual Burden Hours: 5,409.

Estimated Annual Non-Hour Costs: \$83,260.

The estimated burdens are itemized in the following table:

Type of response A	Number of responses B	Hours per response C	Total hours D
43 CFR subpart 3202—Lessee Qualifications	75	1	75
43 CFR subpart 3203—Nomination of Lands for Competitive Leasing, Form 3203-1	80	1	80
43 CFR subpart 3204—Noncompetitive Leasing Other Than Direct Use Leases	50	4	200
43 CFR subpart 3205—Direct Use Leasing	10	10	100
43 CFR subpart 3206—Lease Issuance	155	1	155
43 CFR subpart 3207—Lease Terms and Extensions	50	1	50
43 CFR subpart 3210—Lease Consolidation	50	1	50
43 CFR subpart 3212—Lease Suspensions and Royalty Rate Reductions	10	40	400
43 CFR subpart 3213—Lease Relinquishment, Termination, and Cancellation	10	40	400
43 CFR subpart 3213—Lease Reinstatement	5	1	5
43 CFR subpart 3217—Cooperative Agreements	10	40	400
43 CFR subpart 3251—Notice of Intent to Conduct Geothermal Exploration Activities, Form 3200-9	12	8	96
43 CFR subpart 3252—Geothermal Sundry Notice, Form 3260-3	100	8	800
43 CFR subpart 3253—Reports: Exploration Operations	12	8	96
43 CFR subpart 3256—Exploration Operations Relief and Appeals	10	8	80
43 CFR subpart 3261—Geothermal Drilling Permit, Form 3260-2	60	8	480
43 CFR subpart 3264—Geothermal Well Completion Report, Form 3260-4	12	10	120
43 CFR subpart 3272—Utilization Plans and Facility Construction Permits	10	10	100
43 CFR subpart 3273—Site License Application	10	10	100
43 CFR subpart 3273—Relinquishment, Assignment, or Transfer of a Site License	22	1	22
43 CFR subpart 3274—Commercial Use Permit	10	10	100
43 CFR subpart 3276—Monthly Report of Geothermal Operations, Form 3260-5	120	10	1200
43 CFR subpart 3281—Unit Agreements	10	10	100
43 CFR subpart 3282—Participating Area	10	10	100
43 CFR subpart 3283—Unit Agreement Modifications	10	10	100
Totals	913	.....	5,409

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2016-31419 Filed 12-27-16; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[17X LLIDB00100.LF1000000.HT0000.LXSS024D0000.241A00]

Notice Of Public Meeting: Resource Advisory Council (RAC) to the Boise District, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise District Resource Advisory Council (RAC), will hold a meeting as indicated below.

DATES: The meeting will be held January 25, 2017, at the Boise District Office, 3948 Development Avenue, Boise, Idaho 83705 beginning at 9:00 a.m. and adjourning by 4:00 p.m. Members of the public are invited to attend. A public

comment period will be held from 11:00 a.m. to 11:10 a.m.

FOR FURTHER INFORMATION CONTACT:

Michael Williamson, Public Affairs Specialist and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, Idaho 83705, telephone (208) 384-3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Idaho. During the January meeting the Boise District RAC will receive updates on the Bruneau-Owyhee Sage-grouse Habitat (BOSH) Project, Tri-State Fuel Break, Gateway West Final Supplemental Environmental Impact Statement, and Planning 2.0. Agenda items and location may be modified due to changing circumstances.

The public may present written or oral comments to members of the Council. At each full RAC meeting, time is provided in the agenda for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance should contact the BLM Coordinator as provided above. Persons who use a telecommunications device for the deaf

(TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact Mr. Williamson. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with Mr. Williamson. You will receive a reply during normal business hours.

Dated: December 20, 2016.

Andy Delmas,

Acting District Manager.

[FR Doc. 2016-31369 Filed 12-27-16; 8:45 am]

BILLING CODE 4310-GG-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON06000-L16100000-DR0000-17X]

Notice of Resource Advisory Council Meeting for the Dominguez-Escalante National Conservation Area Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Dominguez-Escalante National Conservation Area

(NCA) Advisory Council (Council) will meet as indicated below.

DATES: The meeting will be held February 22, 2017. Any adjustments to this meeting will be advertised on the Dominguez-Escalante NCA RMP Web site: <https://www.blm.gov/get-involved/resource-advisory-council/near-you/colorado/dominguez-escalante-nca-ac>.

ADDRESSES: The meeting will be held at the Mesa County Central Services Building, 200 S. Spruce St., Room 40, Grand Junction, CO 81501.

FOR FURTHER INFORMATION CONTACT: Collin Ewing, Advisory Council Designated Federal Official, 2815 H Road, Grand Junction, CO 81506. Phone: (970) 244-3049. Email: cewing@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the Resource Management Plan (RMP) process for the Dominguez-Escalante NCA and Dominguez Canyon Wilderness. Topics of discussion during the meeting may include priorities for the RMP and travel plan.

These meetings are open to the public. The public may present written comments to the Council. Time will be allocated at the middle and end of each meeting to hear public comments. Depending on the number of persons wishing to comment and time available, the time for individual, oral comments may be limited at the discretion of the chair.

Ruth Welch,

BLM Colorado State Director.

[FR Doc. 2016-31374 Filed 12-27-16; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-GRD-22583; GPO Deposit Account 4311-H2]

Notice of Proposed Addition of Thermal Features Within Valles Caldera National Preserve to the Geothermal Steam Act List of Significant Thermal Features Within Units of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Notice of proposal.

SUMMARY: The National Park Service (NPS) is publishing for public review and comment a proposal that the Department of the Interior (Department) designate the thermal features within Valles Caldera National Preserve (Preserve), New Mexico, as “significant thermal features,” and that they be added to the list of significant thermal features within units of the National Park System, in accordance with the Geothermal Steam Act (the Act), as amended. The Act requires that those thermal features in units of the National Park System that are determined to be significant, and included in or added to the list at 30 U.S.C. 1026, must be protected from any geothermal leasing, exploration, development or utilization that might adversely affect those features.

DATES: Comments must be received on or before January 27, 2017 to be assured of receiving consideration. After considering all comments received, the NPS will issue a final notice of the Department’s determination in the **Federal Register**. Copies of public comments received in response to this Notice will be available for public review according to the specifications of the final notice.

ADDRESSES: Submit comments to the PEPC Web site at <https://parkplanning.nps.gov/vallego>.

FOR FURTHER INFORMATION CONTACT: Ms. Julia F. Brunner, Policy and Regulatory Specialist, Geologic Resources Division, National Park Service, P.O. Box 25287, Lakewood CO 80225-0287; telephone 303-969-2012.

SUPPLEMENTARY INFORMATION: The Geothermal Steam Act (the Act), as amended, authorizes the Secretary of the Interior (Secretary) to issue geothermal leases for exploration, development and utilization of geothermal resources on available public lands administered by the Department of the Interior, as well as on federal lands administered by the Department of Agriculture, and on lands

that have been conveyed by the United States subject to a reservation to the United States of the geothermal resources in those lands. 30 U.S.C. 1002. The Bureau of Land Management (BLM) administers the geothermal program pursuant to its regulations at 43 CFR parts 3000, 3200, and 3280. On federal lands managed by the Agriculture Department or used for a federal water power project, the BLM must first obtain the consent of the Secretary of Agriculture or Secretary of Energy, respectively, before it may issue any leases for geothermal resources underlying those lands. See 30 U.S.C. 1014(b).

The Act does not make lands administered by the NPS subject to geothermal leasing, thereby prohibiting geothermal leasing in park units (30 U.S.C. 1002, 1014(c)). In addition, the Valles Caldera National Preserve has been expressly withdrawn from the operation of the geothermal leasing laws. 16 U.S.C. 698v-11(b)(9).

The Act requires the Secretary to maintain a list of significant thermal features within units of the National Park System (30 U.S.C. 1026(a)). For those listed significant thermal features, the Act requires:

(1) The Secretary to maintain a monitoring program, including a research program carried out by NPS in cooperation with the U.S. Geological Survey (30 U.S.C. 1026(b));

(2) the Secretary to determine, on the basis of scientific evidence, and subject to notice and public comment, whether exploration, development, or utilization of the land subject to a lease application would be reasonably likely to result in a significant adverse effect on any listed feature and, if so, not to issue the lease (30 U.S.C. 1026(c));

(3) the Secretary to determine, on the basis of scientific evidence, whether the exploration, development, or utilization of the land subject to a lease or drilling permit is reasonably likely to *adversely affect* any listed features and, if so, to include stipulations in the lease or drilling permit to protect those features (30 U.S.C. 1026(d));

(4) the Secretary of Agriculture to consider the effects on significant thermal features within units of the National Park System in determining whether to consent to leasing on national forest lands or other lands administered by the Department of Agriculture (30 U.S.C. 1026(e)).

The Act lists sixteen park units as having significant thermal features, and the Act also authorizes the Secretary to add significant thermal features within park units to the list after notice and public comment (see 30 U.S.C. 1026(a)).

With regard to the proposed designation of the thermal features within Valles Caldera, it is instructive to briefly review the earlier law and **Federal Register** notices on which the provisions of the Act, which are described above, were based.

In 1986, the Department of the Interior and Related Agencies Appropriations Act, Pub. L. 99–591, Section 115 paragraph 2(a) (the 1986 Act) directed the Secretary to collect and publish in the **Federal Register**, within 120 days, a proposed list of significant thermal features within park units, and provided a preliminary list of 22 park units. The 1986 Act required four criteria to be applied to each thermal feature when making an overall determination of significance. These four criteria were:

- (1) Size, extent, and uniqueness,
- (2) Scientific and geologic significance,
- (3) The extent to which such features remain in a natural, undisturbed condition, and
- (4) Significance of thermal features to the authorized purposes for which the park unit was created.

The Department designated the NPS as the lead agency to prepare and publish the list. On February 13, 1987, as directed by the 1986 Act, the NPS published a Notice of the Proposed List of Significant Thermal Features within Units of the National Park System (52 FR 4700). After receiving 23 comments on the February 1987 notice, the NPS published the final list on August 3, 1987 (52 FR 28790), concluding that 13 park units contained significant thermal features. The 1988 Act subsequently listed these 13 park units, as well as three additional park units, as containing significant thermal features (30 U.S.C. 1001(f)).

In the process of designating the significant thermal features pursuant to the 1986 Act, the NPS defined a “thermal feature” broadly as “surface manifestations of a subsurface heat source” (see 52 FR 29890, 28792 (Aug. 3, 1987)) or “subsurface thermal activity” (see 52 FR 4700, 4702 (Feb. 13, 1987)). The NPS’s 1987 definition of “thermal feature” encompassed not only the surface manifestations of underlying hydrothermal systems, but also surface manifestations of volcanic processes (see 52 FR 29890, 28792). When listing various thermal features, the NPS categorized them as “hydrothermal” or “volcanic” to indicate the surface manifestation resulting from differing types of subsurface thermal activity, systems or features, although this description did not affect the significance of any particular feature (see *id.*; 53 FR 4700, 4702).

More recently, the NPS has defined “thermal resources” as comprising a subsurface heat source, heat conduit rock formations, and air and/or water that circulates through the formation and may discharge at the surface; such resources create features such as geysers, hot springs, mudpots, fumaroles, unique/rare mineral precipitates and formations, and hydrophilic biotic communities (NPS Management Policies § 4.8.2.3)(2006)). To be consistent with both the 1987 and the 2006 definitions, the NPS proposes in this notice to define “thermal feature” as the surface manifestation of subsurface thermal resources, systems, or activity, and to use the words “hydrothermal” and “volcanic” as a simple description of the type of underlying thermal activity that resulted in how the feature appears on the earth’s surface.

For the purpose of this notice, the NPS also proposes to remain consistent

with both of its 1987 interpretations of the four significance criteria as follows:

(1) Size, extent, and uniqueness—NPS does not establish lower or upper limits on the size or extent of a feature. Each feature is identified according to its existing surface dimensions. For a feature to be considered significant under this criterion, it is identified as unique to the region, the nation, or, in some cases, the world.

(2) Scientific and geologic significance—NPS considers the feature “significant” when the feature has been identified as contributing to geologic, biological, or other scientific knowledge compared with similar features in other areas or makes a significant contribution to the understanding of similar systems.

(3) The extent to which such features remain in a natural, undisturbed condition—Under this criterion, no limits are established for amount or degree of development. The feature may be significant if it remains in a natural, relatively undisturbed condition. Modifications or improvements may be acceptable if: The alterations were necessary to preserve a developed feature; modifications intended to accommodate or improve public enjoyment of the feature are judged to be consistent or compatible with the intent of the enabling legislation; and so long as disturbances or developments, if any, have not affected the subsurface thermal regime.

(4) Significance of thermal features to the authorized purposes for which the park unit was created—NPS considers features significant if they were the basis for establishment of the unit (*i.e.*, the feature was specifically identified in the enabling legislation) or if they are consistent with the statutory purposes for which the area was set aside (see 52 FR at 28793).

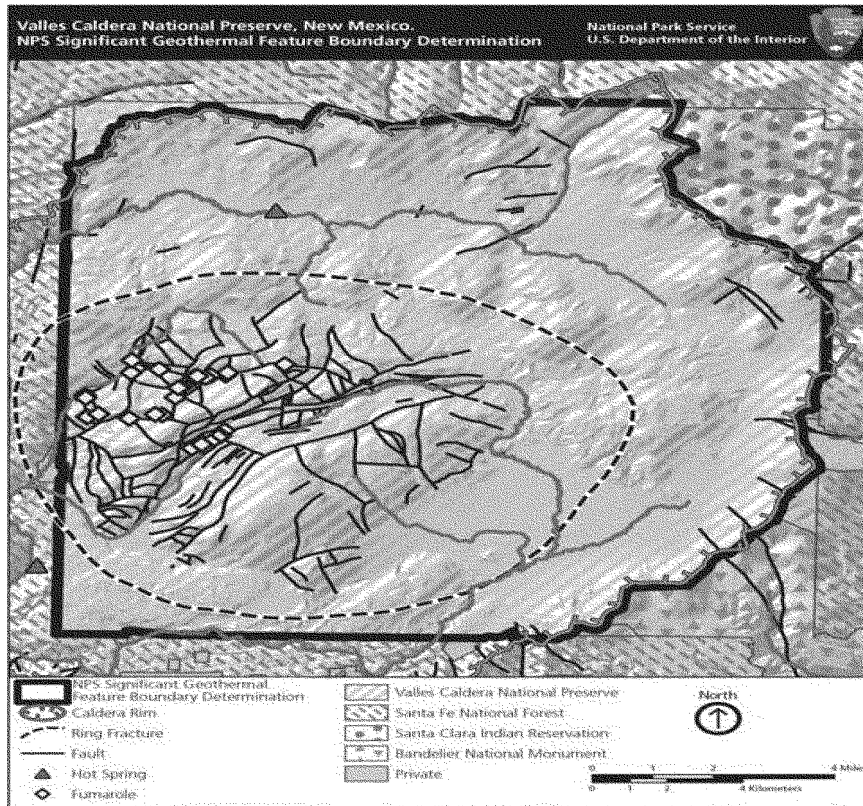


Figure 1. Map of the Valles Caldera National Preserve showing the boundary of the designated significant thermal feature.

Proposal

Valles Caldera National Preserve was added as a unit of the National Park System on December 19, 2014. This unit includes the vast majority of the caldera itself, which is hereby proposed for addition to the list of significant thermal features as a single volcanic feature. Excepted from this proposal is the portion of the caldera (10–15%) which

lies outside the Preserve's western and southern boundaries (see Figure 1). The subsurface heat that remains of this volcanic activity allows meteoric waters percolating down from the surface to become heated, which is expressed at the surface in several places within and in the vicinity of the caldera in the form of hydrologic hot springs or, in dry seasons, fumaroles or steam vents. The Preserve contains numerous thermal

features (single or grouped contiguous features such as hot spring pools) in four geographic areas containing surface waters (Redondo Creek, Alamo Canyon, Sulphur Creek Canyon, and San Antonio Creek), as well as seasonal fumaroles and acid ponds or springs. These thermal features are also separately proposed for inclusion to the list as significant thermal (hydrothermal) features.

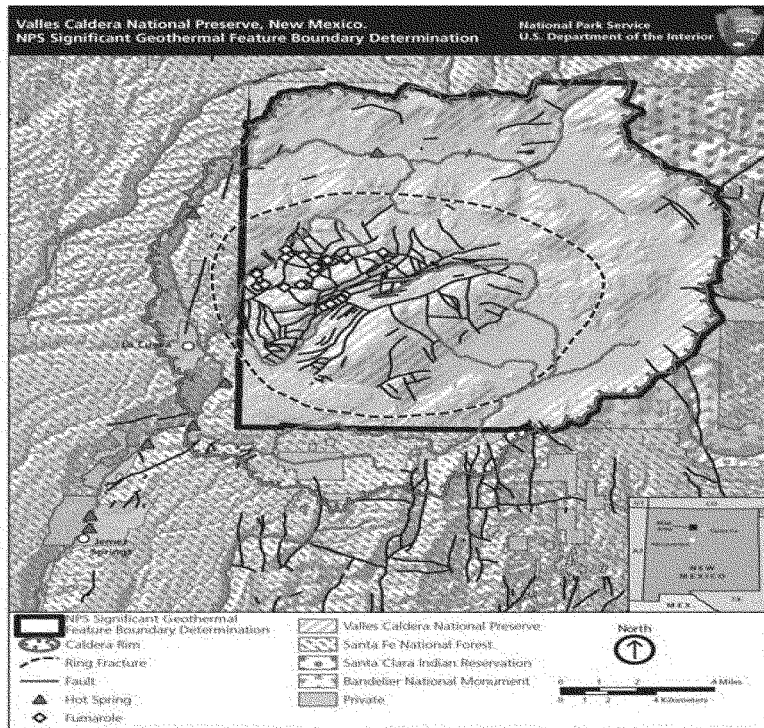


Figure 2. Map of the Valles Caldera National Preserve in relation to the entire caldera and the Jemez River Valley (San Diego Canyon), showing the boundary of the designated significant thermal volcanic feature.

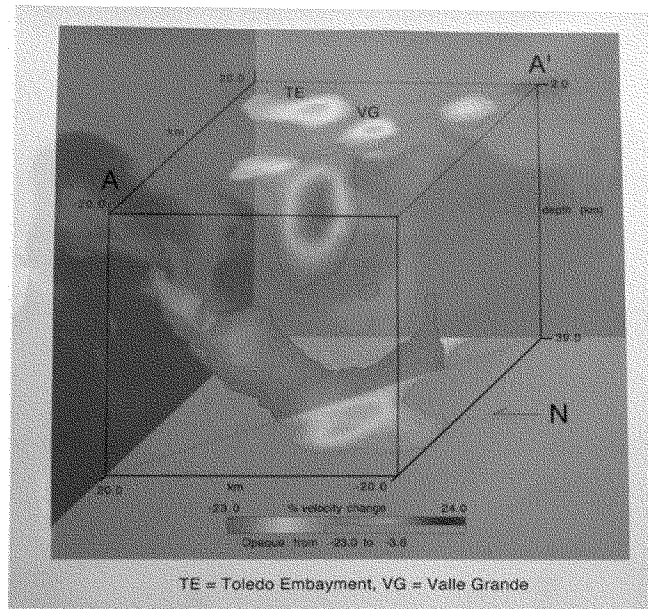


Figure 3. Block diagram showing three-dimensional low velocity seismic anomalies beneath Valles Caldera (modified from Steck et al., 1998). Note that north is to the left and the displayed depth is from 2.0 to 39.0 km. Warmer colors indicate increasing seismic delay (slower seismic velocity). A partially solidified magma body exists beneath the southwest sector of the caldera at 7 to 15 km depth (Aprea et al. 2002).

Caldera Thermal Feature

The Department proposes to list the entirety of the caldera that lies within Valles Caldera National Preserve as one significant thermal feature. The Preserve's thermal feature is part of a geothermal landscape that extends beyond the Preserve's perimeter boundary; thermal features located outside the Preserve's perimeter

boundary are not included in this proposed designation (Fig. 2). The magma chamber beneath the Preserve is located under the southwest portion of the caldera (Fig. 3), with surface expressions of thermal features primarily in the vicinity of Redondo Canyon, Sulphur Creek Canyon, and Alamo Canyon. A total of 29 geothermal fumaroles have been mapped in these

canyons (Fig. 4), and others may exist in other areas of the Preserve that have not yet been surveyed (Goff and Goff, 2017). Currently, approximately $\frac{1}{3}$ of the Preserve has been surveyed. In addition, a detailed geologic and hydrologic GIS map has been developed. See http://geoinfo.nmt.edu/repository/data/2011/20110002/GM-79_mapsheet.pdf. (Fig. 5).

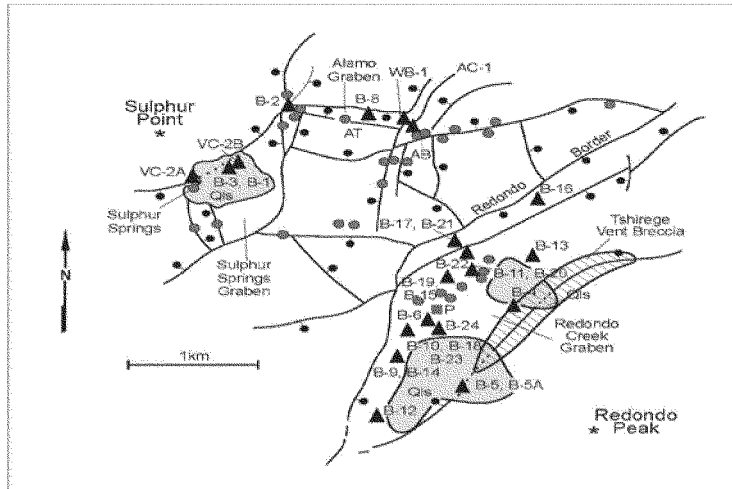


Figure 4. Simplified fault map of the southwestern resurgent dome area showing locations of H₂S-rich fumaroles and gas vents (red circles). Abbreviations : AB = Alamo Bog and AT = Alamo Tank. Locations of the majority of geothermal and scientific wells are shown as black triangles. Largest landslides (Q1s) are yellow, which disguise some of the larger faults. Small blue square by letter P shows proposed 1980 location of 50 MWe power plant. Most of the gas vents have not been sampled or studied.

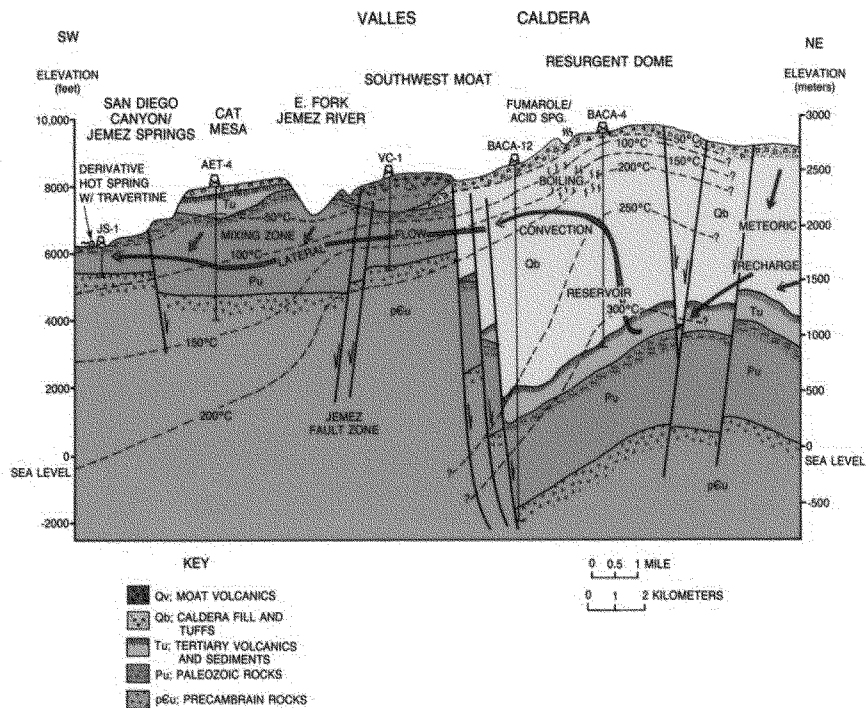


Figure 5. Schematic cross-section map of the Valles Caldera geothermal system, showing belowground formations and flow patterns of water and heat.

From Goff (2009). As stated by Goff (2009, Fig. 44, p. 76), "Rainwater and snowmelt ("meteoric water") percolate slowly into the caldera, where they are heated to 570° F (300° C) and form a reservoir. The hot reservoir fluid leaches minerals from the enclosing rocks. Because hot water is more buoyant than cold water, the reservoir fluids rise by convection and boil as they approach the surface. Steam from boiling makes fumaroles and acid springs at the surface. The residual water in the top of the reservoir leaks through the southwest caldera wall and flows down faults and other permeable pathways along San Diego Canyon. The residual water mixes with other groundwaters and eventually issues as hot springs at Soda Dam and Jemez Springs."

The following significance criteria have been analyzed and are applicable to every component of the caldera feature and volcanic system within the Preserve.

(1) *Size, extent, and uniqueness:*

The approximately 89,000-acre Preserve encompasses a 1.25 million year-old dormant volcanic caldera (13.7 miles in diameter) that lies in the center of the Jemez Mountains in northern New Mexico. The youngest post-caldera volcanic eruption (Banco Bonito Rhyolite lava flow) occurred about 68 thousand years ago. The Valles Caldera that formed 1.25 million years ago is the younger of two calderas within the Preserve, and lies to the southwest of the comparably sized but now nearly imperceptible Toledo Caldera (1.62 Ma; Fig. 6). Each caldera produced about 95 mi³ (400 km³) of ash flow tuff collectively known as the Bandelier Tuff. Numerous geothermal features occur throughout the Jemez Mountains. The Preserve does not encompass the entirety of the Valles Caldera depression

itself—a portion of the northwestern caldera lies outside the boundary of the park unit to the west and south of the Preserve, in the Santa Fe National Forest. The subsurface volcanic heat anomaly or thermal system similarly extends outside of the park unit to the west.

(2) *Scientific and geologic significance:*

Water, steam, and soil samples from these sites have been and continue to be collected by scientists conducting geothermal and planetary research, and by scientists searching for living organisms in extreme environments. Because of its geologic uniqueness, NPS staff will use this area for public education, as the site illustrates the exceptional geologic values of the Jemez Mountains—sulfuric acid fumaroles and mud pots, and chloride-bicarbonate hot springs and cold springs—all characteristics of geologically active volcanic formations.

(3) *The extent to which the feature remains in a natural, undisturbed condition:*

The San Antonio Warm Springs and the Sulphur Springs-Alamo Canyon areas have been moderately to significantly disturbed by development (recreational structures, containment ponds, and other improvements as well as several geothermal exploration wells (drilled between 1970–1984), most of which have been permanently capped and reclaimed) that occurred prior to federal acquisition of the Preserve in 2000; however, such alterations have not changed the thermal regime. Other features, such as acid ponds and fumaroles, are undisturbed in natural habitats. Despite some past geothermal exploration and drilling, the caldera itself as a volcanic feature remains unaffected in the operation of its volcanic thermal regime, and thus remains in a natural, undisturbed condition.

(4) *Significance of thermal features to the authorized purposes for which the park unit was created:*

Valles Caldera National Preserve was established “to protect, preserve, and restore the fish, wildlife, watershed, natural, scientific, scenic, geologic, historic, cultural, archaeological, and recreational values of the area” (Pub. L. 113–291, Sec. 3043(b)(1)). The caldera is an important natural and geologic resource, contributes to scientific understanding of the geology of the region, and also contributes to the other values for which this NPS unit was established.

Conclusion: Because the Valles Caldera appears to meet all four criteria as a volcanic feature, the Department proposes to add it to the list of significant thermal features within the National Park System.

Hydrothermal Features

Like Yellowstone National Park, which is also a caldera, Valles Caldera National Preserve contains multiple hydrothermal features that are related to the magma source. In addition, the dynamic nature of this area means that additional hydrothermal features may develop over time. The NPS therefore proposes to list these hydrothermal features as one significant thermal feature. The following significance criteria have been analyzed for each feature listed and has been found to be applicable to each feature within the system.

(1) Size, extent, and uniqueness:

Size—The hydrothermal features within the Preserve are located on approximately 500 acres.

Extent—(a) San Antonio Warm Spring is a single spring discharging potable hot water at 101 °F, over which 20th-century ranchers built an enclosed concrete bath adjacent to a nearby cabin. This spring is located in the north-central portion of the Preserve adjacent to the segment of the San Antonio Creek within the Valle San Antonio.

(b) In addition, the Preserve has numerous hot and cold sulfuric acid fumaroles, particularly in the Alamo Canyon and Redondo Canyon regions. There are at least 29 fumaroles mapped in the Redondo and Alamo canyon areas; see Fig 2 and the map at: http://geoinfo.nmt.edu/repository/data/2011/20110002/GM-79_mapsheet.pdf. Others may occur but have not been sampled or surveyed.

(c) The 40-acre private inholding of Sulphur Springs contains the highest temperature hot springs (189 °F) in the state of New Mexico; the Sulphur Springs area includes at least 7 significant named hot springs, mud pots

and fumaroles, all of which are thermally anomalous; several other acid springs and gas vents are cold. The springs include such colorful descriptive names as Kidney and Stomach Trouble Spring, Footbath Spring, Ladies’ Bathhouse Spring, Laxitive [sic] Spring, Turkey Spring, Lemonade Spring, and Electric Spring. Some of these were historically referred to as Main Bathhouse Spring, Sour Spring, and Alum Spring.

(d) Valle Grande spring: The easternmost named spring within the Preserve is the Valle Grande Spring (14 °C), although topographic maps indicate numerous other surrounding unnamed springs.

Uniqueness—These springs and fumaroles (some of which take the form of bubbling mudpots in wet seasons) are indicators of subsurface thermal processes, are unique to the region, and are easily accessible for study and research; there are no comparable features in the State of New Mexico. The only other places in the United States that have such systems are Yellowstone National Park in Wyoming, Montana, and Idaho; Lassen Volcano, the Long Valley Caldera, and The Geysers in California, the latter two having thermal regimes degraded by geothermal production; and a very small system at Dixie Valley, Nevada.

(2) Scientific and geologic

significance: Water, steam, and soil samples from these sites have been and continue to be collected by scientists conducting geothermal and planetary research, and by scientists searching for living organisms in extreme environments. Because of its geologic uniqueness, NPS staff will use this area for public education, as the site illustrates the exceptional geologic values of the Jemez Mountains—sulfuric acid fumaroles, mud pots, hot springs, cold springs—all characteristics of geologically active volcanic formations.

(3) *The extent to which the feature remains in a natural, undisturbed condition:* San Antonio Warm Spring has been slightly to moderately disturbed by construction of recreational structures such as a cabin and a containment ponds that occurred prior to federal acquisition of the Preserve in 2000, but these were constructed to support the recreational use of the feature. However, such alterations have not changed the thermal regime. The overall hydrothermal system activity and temperature thus remains unchanged and in a natural, undisturbed state. The Sulphur Springs-Alamo Canyon areas were moderately to significantly disturbed by development (recreational

structures, containment ponds, and other improvements as well as several geothermal exploration wells (drilled between 1970–1984); however, such alterations have not changed the thermal regime. Other features, including the Redondo Creek fumaroles (steam vents in dry season and mud pots or minor springs in wet seasons) are undisturbed in natural habitats. The overall hydrothermal system remains unchanged because it was never subjected to full-scale commercial development.

(4) *Significance of the feature to the authorized purposes for which the unit was created:* Valles Caldera National Preserve was established “to protect, preserve, and restore the fish, wildlife, watershed, natural, scientific, scenic, geologic, historic, cultural, archaeological, and recreational values of the area” (Pub. L. 113–291, Sec. 3043(b)(1) (emphasis added)). While the Act does not specifically refer to hydrothermal features or their use by the public among the criteria for which the park unit was created, the presence and preservation of such features as surface expressions of the subsurface volcanic activity is consistent with the purposes and uses of which the park was created. The hydrothermal features are important geologic resources associated with the Preserve and the Jemez Mountains, contribute to scientific understanding of the geology of the region, and also contribute to the other values for which this system unit was established.

Conclusion: Because the hydrothermal system at Valles Caldera appears to meet all four criteria, the Department proposes to add it to the list of significant thermal features within the National Park System.

Once designated, the NPS will continue to work closely with the BLM and the U.S. Forest Service to ensure that monitoring data and other scientific information regarding the significant thermal features of Valles Caldera National Preserve are incorporated into leasing and permitting decisions.

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Dated: December 19, 2016.

Michael Bean,

Principal Deputy Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 2016–31270 Filed 12–27–16; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–249 and 731–TA–262, 263, and 265 (Fourth Review)]

Iron Construction Castings From Brazil, Canada, and China

Determination

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that revocation of the countervailing duty order on heavy iron construction castings from Brazil, the antidumping duty order on heavy iron construction castings from Canada, and the antidumping duty orders on iron construction castings from Brazil and China would be likely to lead to continuation or recurrence of material injury to industries in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted these reviews on October 1, 2015 (80 FR 59192) and determined on January 4, 2016 that it would conduct full reviews (81 FR 1967, January 14, 2016). Notice of the scheduling of the Commission’s reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on June 23, 2016 (81 FR 40921). The hearing was held in Washington, DC, on October 20, 2016, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on December 21, 2016. The views of the Commission are contained in USITC Publication 4655 (December 2016), entitled *Iron Construction Castings from Brazil, Canada, and China: Investigation Nos. 701–TA–249 and 731–TA–262, 263, and 265 (Fourth Review)*.

By order of the Commission.

Issued: December 22, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–31335 Filed 12–27–16; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committee on the Federal Rules of Appellate Procedure

AGENCY: Advisory Committee on the Federal Rules of Appellate Procedure, Judicial Conference of the United States.
ACTION: Notice of cancellation of public hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Appellate Procedure has been canceled: Appellate Rules Hearing on January 20, 2017, in Denver, Colorado. Announcement for this meeting was previously published in 81 FR 52713.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Rules Committee Secretary, Rules Committee

Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 22, 2016.

Rebecca A. Womeldorf,

Rules Committee Secretary.

[FR Doc. 2016–31349 Filed 12–27–16; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: AMRI Rensselaer, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before February 27, 2017.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (“Deputy Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on September 26, 2016, AMRI Rensselaer, Inc., 33 Riverside Avenue, Rensselaer, New York 12144 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

¹ The record is defined in sec. 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

Controlled substance	Drug code	Schedule
Codeine	9050	II
Oxycodone	9143	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Morphine	9300	II

The company plans to manufacture bulk controlled substances for use in product development and for distribution to its customers.

Dated: December 20, 2016.

Louis J. Milione,
Assistant Administrator.

[FR Doc. 2016-31284 Filed 12-27-16; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-392]

Importer of Controlled Substances Application: Noramco, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on

or before January 27, 2017. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before January 27, 2017.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and request for hearing on applications to import narcotic raw material are not appropriate. 72 FR 3417 (January 25, 2007).

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers importers, and exporters of, controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (“Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on October 14, 2016, Noramco, Inc., 1440 Olympic Drive, Athens, Georgia 30601 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Phenylacetone	8501	II
Thebaine	9333	II
Poppy Straw Concentrate	9670	II
Tapentadol	9780	II

The company plans to import thebaine derivatives (9333) as reference standards. The company plans to import an intermediate form of tapentadol (9780) to bulk manufacture tapentadol for distribution to its customers. The company plans to import phenylacetone (8501) and poppy straw concentrate (9670) to manufacture other controlled substances.

Dated: December 19, 2016.

Louis J. Milione,
Assistant Administrator.

[FR Doc. 2016-31281 Filed 12-27-16; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-392]

Bulk Manufacturer of Controlled Substances Application: Navinta LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before February 27, 2017.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (“Deputy Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on September 19, 2016, Navinta LLC, 1499

Lower Ferry Road, Ewing, New Jersey 08618–1414 applied to be registered as a bulk manufacturer of the following basic classes controlled substances:

Controlled substance	Drug code	Schedule
Pentobarbital	2270	II
4-Anilino-N-phenethyl-4-piperidine (ANPP)	8333	II
Remifentanyl	9739	II
Fentanyl	9801	II

The company plans to initially to manufacture API quantities of the listed controlled substances for validation purposes and FDA approval, then eventually up FDA approval to produce commercial size batches for distribution to dosage form manufacturers.

Dated: December 19, 2016.

Louis J. Milione,

Assistant Administrator.

[FR Doc. 2016–31282 Filed 12–27–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: Registrants listed below have applied for and been granted registration by the Drug Enforcement

Administration (DEA) as bulk manufacturers of various classes of controlled substances.

SUPPLEMENTARY INFORMATION: The companies listed below applied to be registered as manufacturers of various basic classes of controlled substances. Information on previously published notices is listed in the table below. No comments or objections were submitted for these notices.

Company	FR docket	Published
National Center for Natural Products Research (NIDA MPROJECT)	80 FR 78766	December 17, 2015.
Cambrex Charles City	81 FR 46956	July 19, 2016.
Chemtos, LLC	81 FR 54604	August 16, 2016.
Stepan Company	81 FR 54849	August 17, 2016.
Chattem Chemicals	81 FR 57932	August 24, 2016.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of these registrants to manufacture the applicable basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated each of the company’s maintenance of effective controls against diversion by inspecting and testing each company’s physical security systems, verifying each company’s compliance with state and local laws, and reviewing each company’s background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the DEA has granted a registration as a bulk manufacturer to the above listed persons.

Dated: December 19, 2016.

Louis J. Milione,

Assistant Administrator.

[FR Doc. 2016–31280 Filed 12–27–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Synthcon, LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before February 27, 2017.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION:

The Attorney General has delegated her authority under the Controlled

Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (“Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on December 16, 2015, Synthcon, LLC, 770 Wooten Road, Unit 101, Colorado Springs, Colorado 80915 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
3-Fluoro-N-methylcathinone (3-FMC)	1233	I
Cathinone	1235	I
Methcathinone	1237	I
4-Fluoro-N-methylcathinone (4-FMC)	1238	I
Pentedrone (α-methylaminovalerophenone)	1246	I

Controlled substance	Drug code	Schedule
Mephedrone (4-Methyl-N-methylcathinone)	1248	I
4-Methyl-N-ethylcathinone (4-MEC)	1249	I
Naphyrone	1258	I
N-Ethylamphetamine	1475	I
N,N-Dimethylamphetamine	1480	I
Aminorex	1585	I
4-Methylaminorex (cis isomer)	1590	I
Gamma Hydroxybutyric Acid	2010	I
Methaqualone	2565	I
Mecloqualone	2572	I
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole)	6250	I
SR-18 (Also known as RCS-8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole)	7008	I
5-Fluoro-UR-144 and XLR11 [1-(5-Fluoro-pentyl)1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone	7011	I
AB-FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7012	I
JWH-019 (1-Hexyl-3-(1-naphthoyl)indole)	7019	I
AB-PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7023	I
THJ-2201 [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone	7024	I
AB-CHMINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7031	I
MAB-CHMINACA (N-(1-amino-3,3dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7032	I
ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7035	I
APINACA and AKB48 N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide	7048	I
JWH-081 (1-Pentyl-3-(1-(4-methoxynaphthoyl)indole)	7081	I
SR-19 (Also known as RCS-4) (1-Pentyl-3-[(4-methoxy)-benzoyl]	7104	I
JWH-018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole)	7118	I
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole)	7122	I
UR-144 (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	7144	I
JWH-073 (1-Butyl-3-(1-naphthoyl)indole)	7173	I
JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	7200	I
AM2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole)	7201	I
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole)	7203	I
PB-22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate)	7222	I
5F-PB-22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7225	I
Alpha-ethyltryptamine	7249	I
Ibogaine	7260	I
CP-47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol)	7297	I
CP-47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl]-phenol)	7298	I
Lysergic acid diethylamide	7315	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7)	7348	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Parahexyl	7374	I
Mescaline	7381	I
2-(4-Ethylthio-2,5-dimethoxyphenyl)ethanamine (2C-T-2)	7385	I
3,4,5-Trimethoxyamphetamine	7390	I
4-Bromo-2,5-dimethoxyamphetamine	7391	I
4-Bromo-2,5-dimethoxyphenethylamine	7392	I
4-Methyl-2,5-dimethoxyamphetamine	7395	I
2,5-Dimethoxyamphetamine	7396	I
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole)	7398	I
2,5-Dimethoxy-4-ethylamphetamine	7399	I
3,4-Methylenedioxyamphetamine	7400	I
5-Methoxy-3,4-methylenedioxyamphetamine	7401	I
N-Hydroxy-3,4-methylenedioxyamphetamine	7402	I
3,4-Methylenedioxy-N-ethylamphetamine	7404	I
3,4-Methylenedioxy-methamphetamine	7405	I
4-Methoxyamphetamine	7411	I
5-Methoxy-N-N-dimethyltryptamine	7431	I
Alpha-methyltryptamine	7432	I
Bufotenine	7433	I
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
N-Ethyl-1-phenylcyclohexylamine	7455	I
1-(1-Phenylcyclohexyl)pyrrolidine	7458	I
1-[1-(2-Thienyl)cyclohexyl]piperidine	7470	I
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine	7473	I
N-Ethyl-3-piperidyl benzilate	7482	I
N-Methyl-3-piperidyl benzilate	7484	I
N-Benzylpiperazine	7493	I
4-Methyl-alpha-pyrrolidinopropiophenone (4-MePPP)	7498	I
2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)	7508	I
2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E)	7509	I
2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)	7517	I

Controlled substance	Drug code	Schedule
2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)	7518	I
2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)	7519	I
2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N)	7521	I
2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine (2C-P)	7524	I
2-(4-Isopropylthio)-2,5-dimethoxyphenyl)ethanamine (2C-T-4)	7532	I
MDPV (3,4-Methylenedioxypropylvalerone)	7535	I
2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe)	7536	I
2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe)	7537	I
2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe)	7538	I
Methylone (3,4-Methylenedioxy-N-methylcathinone)	7540	I
Butylone	7541	I
Pentylone	7542	I
alpha-pyrrolidinopentiophenone (α -PVP)	7545	I
alpha-pyrrolidinobutiophenone (α -PBP)	7546	I
AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole)	7694	I
Etorphine (except HCl)	9056	I
Heroin	9200	I
Normorphine	9313	I
Alphacetylmethadol except levo-alphacetylmethadol	9603	I
Alphameprodine	9604	I
Alphamethadol	9605	I
Benzethidine	9606	I
Betacetylmethadol	9607	I
Clonitazene	9612	I
Diampromide	9615	I
Diethylthiambutene	9616	I
Dimethylthiambutene	9619	I
1-Methyl-4-phenyl-4-propionoxypiperidine	9661	I
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine	9663	I
Tilidine	9750	I
Para-Fluorofentanyl	9812	I
3-Methylfentanyl	9813	I
Alpha-methylfentanyl	9814	I
Acetyl-alpha-methylfentanyl	9815	I
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)	9821	I
Beta-hydroxyfentanyl	9830	I
Beta-hydroxy-3-methylfentanyl	9831	I
Alpha-methylthiofentanyl	9832	I
3-Methylthiofentanyl	9833	I
Thiofentanyl	9835	I
Amphetamine	1100	II
Methamphetamine	1105	II
Methylphenidate	1724	II
Amobarbital	2125	II
Pentobarbital	2270	II
Secobarbital	2315	II
1-Phenylcyclohexylamine	7460	II
Phencyclidine	7471	II
4-Anilino-N-phenethyl-4-piperidine (ANPP)	8333	II
Phenylacetone	8501	II
1-Piperidinocyclohexanecarbonitrile	8603	II
Alphaprodine	9010	II
Anileridine	9020	II
Cocaine	9041	II
Codeine	9050	II
Oxycodone	9143	II
Hydromorphone	9150	II
Diphenoxylate	9170	II
Ecgonine	9180	II
Hydrocodone	9193	II
Levorphanol	9220	II
Meperidine	9230	II
Meperidine intermediate-A	9232	II
Meperidine intermediate-B	9233	II
Meperidine intermediate-C	9234	II
Methadone	9250	II
Dextropropoxyphene, bulk (non-dosage forms)	9273	II
Morphine	9300	II
Opium, powdered	9639	II
Levo-alphacetylmethadol	9648	II
Oxymorphone	9652	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II

Controlled substance	Drug code	Schedule
Carfentanil	9743	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to manufacture the above-listed controlled substances in bulk for distribution to its customers. In reference to drug codes 7360 marihuana and 7370 tetrahydrocannabinols the company plans to bulk manufacture both as synthetic substances. No other activity for these drug codes is authorized for this registration.

Dated: December 19, 2016.

Louis J. Milione,
Assistant Administrator.

[FR Doc. 2016-31279 Filed 12-27-16; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

[Docket No. DEA-392]

Bulk Manufacturer of Controlled Substances Application: Cambridge Isotope Laboratories

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before February 27, 2017.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (“Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on

September 1, 2016, Cambridge Isotope Laboratories, Inc., 50 Frontage Road, Andover, Massachusetts 01810 applied to be registered as a bulk manufacturer of morphine (9300), a basic class of controlled substance listed in schedule II:

The company plans to utilize small quantities of the listed controlled substance for use in product development of analytical reference standards, for distribution to its customers.

Dated: December 19, 2016.

Louis J. Milione,
Assistant Administrator.

[FR Doc. 2016-31271 Filed 12-27-16; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-392]

Importer of Controlled Substances Application: Wildlife Laboratories, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before January 27, 2017. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before January 27, 2017.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her

authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (“Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on September 20, 2016, Wildlife Laboratories, Inc., 1230 W. Ash Street, Suite D, Windsor, Colorado 80550-8055 applied to be registered as an importer of the following basic class of controlled substances.

Controlled substance	Drug code	Schedule
Thiafentanil	9729	II

The company plans to import the listed controlled substance for sale to its customers.

Dated: December 20, 2016.

Louis J. Milione,
Assistant Administrator.

[FR Doc. 2016-31272 Filed 12-27-16; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-392]

Bulk Manufacturer of Controlled Substances Application: Cayman Chemical Company

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before February 27, 2017.

ADDRESSES: Written comments should be sent to: Drug Enforcement

Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to

exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion

Control Division ("Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on August 16, 2016, Cayman Chemical Company, 1180 East Ellsworth Road, Ann Arbor, Michigan 48108 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
3-Fluoro-N-methylcathinone (3-FMC)	1233	I.
Cathinone	1235	I.
Methcathinone	1237	I.
4-Fluoro-N-methylcathinone (4-FMC)	1238	I.
Pentedrone (α -methylaminovalerophenone)	1246	I.
Mephedrone (4-Methyl-N-methylcathinone)	1248	I.
4-Methyl-N-ethylcathinone (4-MEC)	1249	I.
Naphyrone	1258	I.
N-Ethylamphetamine	1475	I.
N,N-Dimethylamphetamine	1480	I.
Fenethylamine	1503	I.
Aminorex	1585	I.
4-Methylaminorex (cis isomer)	1590	I.
Gamma Hydroxybutyric Acid	2010	I.
Methaqualone	2565	I.
Mecloqualone	2572	I.
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole)	6250	I.
SR-18 (Also known as RCS-8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole)	7008	I.
5-Fluoro-UR-144 and XLR11 [1-(5-Fluoro-pentyl)1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone	7011	I.
AB-FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7012	I.
JWH-019 (1-Hexyl-3-(1-naphthoyl)indole)	7019	I.
AB-PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7023	I.
THJ-2201 [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone	7024	I.
AB-CHMINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7031	I.
MAB-CHMINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7032	I.
ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7035	I.
APINACA and AKB48 N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide	7048	I.
JWH-081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole)	7081	I.
SR-19 (Also known as RCS-4) (1-Pentyl-3-[(4-methoxy)-benzoyl] indole)	7104	I.
JWH-018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole)	7118	I.
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole)	7122	I.
UR-144 (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	7144	I.
JWH-073 (1-Butyl-3-(1-naphthoyl)indole)	7173	I.
JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	7200	I.
AM2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole)	7201	I.
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl) indole)	7203	I.
PB-22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate)	7222	I.
5F-PB-22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7225	I.
Alpha-ethyltryptamine	7249	I.
lbogaine	7260	I.
CP-47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol)	7297	I.
CP-47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol)	7298	I.
Lysergic acid diethylamide	7315	I.
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7)	7348	I.
Marihuana	7360	I.
Tetrahydrocannabinols	7370	I.
Mescaline	7381	I.
2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine (2C-T-2)	7385	I.
3,4,5-Trimethoxyamphetamine	7390	I.
4-Bromo-2,5-dimethoxyamphetamine	7391	I.
4-Bromo-2,5-dimethoxyphenethylamine	7392	I.
4-Methyl-2,5-dimethoxyamphetamine	7395	I.
2,5-Dimethoxyamphetamine	7396	I.
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole)	7398	I.
2,5-Dimethoxy-4-ethylamphetamine	7399	I.
3,4-Methylenedioxyamphetamine	7400	I.
5-Methoxy-3,4-methylenedioxyamphetamine	7401	I.
N-Hydroxy-3,4-methylenedioxyamphetamine	7402	I.

Controlled substance	Drug code	Schedule
3,4-Methylenedioxy-N-ethylamphetamine	7404	I.
3,4-Methylenedioxymethamphetamine	7405	I.
4-Methoxyamphetamine	7411	I.
5-Methoxy-N,N-dimethyltryptamine	7431	I.
Alpha-methyltryptamine	7432	I.
Bufotenine	7433	I.
Diethyltryptamine	7434	I.
Dimethyltryptamine	7435	I.
Psilocybin	7437	I.
Psilocyn	7438	I.
5-Methoxy-N,N-diisopropyltryptamine	7439	I.
N-Benzylpiperazine	7493	I.
2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C-D)	7508	I.
2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine (2C-E)	7509	I.
2-(2,5-Dimethoxyphenyl) ethanamine (2C-H)	7517	I.
2-(4-Iodo-2,5-dimethoxyphenyl) ethanamine (2C-I)	7518	I.
2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine (2C-C)	7519	I.
2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C-N)	7521	I.
2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine (2C-P)	7524	I.
2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine (2C-T-4)	7532	I.
MDPV (3,4-Methylenedioxypropyrovalerone)	7535	I.
2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25B-NBOMe)	7536	I.
2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C-NBOMe)	7537	I.
2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe)	7538	I.
Methylone (3,4-Methylenedioxy-N-methylcathinone)	7540	I.
Butylone	7541	I.
Pentylone	7542	I.
alpha-pyrrolidinopentiophenone (α -PVP)	7545	I.
alpha-pyrrolidinobutiophenone (α -PBP)	7546	I.
AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl) indole)	7694	I.
Acetyl dihydrocodeine	9051	I.
Benzylmorphine	9052	I.
Codeine-N-oxide	9053	I.
Desomorphine	9055	I.
Etorphine (except HCl)	9056	I.
Codeine methylbromide	9070	I.
Dihydromorphine	9145	I.
Heroin	9200	I.
Morphine-N-oxide	9307	I.
Normorphine	9313	I.
Tilidine	9750	I.
Para-Fluorofentanyl	9812	I.
3-Methylfentanyl	9813	I.
Alpha-methylfentanyl	9814	I.
Acetyl-alpha-methylfentanyl	9815	I.
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)	9821	I.
Butyryl Fentanyl	9822	I.
Beta-hydroxyfentanyl	9830	I.
Beta-hydroxy-3-methylfentanyl	9831	I.
3-Methylthiofentanyl	9833	I.
Thiofentanyl	9835	I.
Beta-hydroxythiofentanyl	9836	I.
Amphetamine	1100	II.
Methamphetamine	1105	II.
Lisdexamfetamine	1205	II.
Phenmetrazine	1631	II.
Methylphenidate	1724	II.
Amobarbital	2125	II.
Pentobarbital	2270	II.
Secobarbital	2315	II.
Phencyclidine	7471	II.
Phenylacetone	8501	II.
Cocaine	9041	II.
Codeine	9050	II.
Etorphine HCl	9059	II.
Dihydrocodeine	9120	II.
Oxycodone	9143	II.
Hydromorphone	9150	II.
Ecgonine	9180	II.
Ethylmorphine	9190	II.
Hydrocodone	9193	II.
Levomethorphan	9210	II.
Levorphanol	9220	II.
Isomethadone	9226	II.

Controlled substance	Drug code	Schedule
Meperidine	9230	II.
Meperidine intermediate-B	9233	II.
Methadone	9250	II.
Dextropropoxyphene, bulk (non-dosage forms)	9273	II.
Morphine	9300	II.
Thebaine	9333	II.
Oxymorphone	9652	II.
Alfentanil	9737	II.
Remifentanil	9739	II.
Sufentanil	9740	II.
Carfentanil	9743	II.
Tapentadol	9780	II.
Fentanyl	9801	II.

The company plans to manufacture bulk controlled substances for use in product development of analytical reference standards, for distribution to its customers.

Dated: December 20, 2016.

Louis J. Milione,

Assistant Administrator.

[FR Doc. 2016-31285 Filed 12-27-16; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-392]

Importer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: Registrants listed below have applied for and been granted registration by the Drug Enforcement

Administration (DEA) as importers of various classes of schedule I or II controlled substances.

SUPPLEMENTARY INFORMATION:

The companies listed below applied to be registered as importers of various basic classes of controlled substances. Information on previously published notices is listed in the table below. No comments or objections were submitted and no requests for hearing were submitted for these notices.

Company	FR docket	Published
Rhodes Technologies	81 FR 46956	July 19, 2016.
Bellwyck Clinical Services	81 FR 54603	August 16, 2016.
Cerilliant Corporation	81 FR 57933	August 24, 2016.
Noramco, Inc	81 FR 57932	August 24, 2016.
Cody Laboratories, Inc	81 FR 54602	August 16, 2016.
AMRI Rensselaer, Inc	81 FR 54603	August 16, 2016.
ALMAC Clinical Services Incorp (ACSI)	81 FR 54602	August 16, 2016.
Fresenius Kabi USA, LLC	81 FR 54601	August 16, 2016.
Akorn, Inc	81 FR 57935	August 24, 2016.
Actavis Laboratories FL, Inc	81 FR 54602	August 16, 2016.
Unither Manufacturing LLC	81 FR 61250	September 6, 2016.
Cambrex Charles City	81 FR 63222	September 14, 2016.
United States Pharmacopeial Convention	81 FR 63220	September 14, 2016.
R & D Systems, Inc	81 FR 64509	September 20, 2016.
Catalent CTS, LLC	81 FR 66081	September 26, 2016.

The DEA has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of the listed registrants to import the applicable basic classes of schedule I or II controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated each company's maintenance of effective controls against diversion by inspecting and testing each company's physical security systems, verifying each company's compliance with state and local laws, and reviewing each company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the DEA has

granted a registration as an importer for schedule I or II controlled substances to the above listed persons.

Dated: December 19, 2016.

Louis J. Milione,

Assistant Administrator.

[FR Doc. 2016-31273 Filed 12-27-16; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-392]

Bulk Manufacturer of Controlled Substances Application: Johnson Matthey Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before February 27, 2017.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with

respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or

revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (“Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R. In accordance with 21 CFR 1301.33(a), this is notice that on

September 5, 2016, Johnson Matthey Inc., Pharmaceuticals Materials, 900 River Road, Conshohocken, Pennsylvania 19428, applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
Amphetamine	1100	II
Methylphenidate	1724	II
Codeine	9050	II
Oxycodone	9143	II
Diphenoxylate	9170	II
Hydrocodone	9193	II
Meperidine	9230	II
Methadone	9250	II
Methadone intermediate	9254	II
Morphine	9300	II
Thebaine	9333	II
Opium tincture	9630	II

The company plans to manufacture the listed controlled substances in bulk for distribution and sale to its customers. Thebaine (9333) will be used to manufacture other controlled substances for sale in bulk to its customers.

Dated: December 20, 2016.

Louis J. Milione,
Assistant Administrator.

[FR Doc. 2016-31283 Filed 12-27-16; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Request for State or Federal Workers’ Compensation Information

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers’ Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, “Request for State or Federal Workers’ Compensation Information,” to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before January 27, 2017.

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=201607-1240-002 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202-395-6881 (this is not a toll-free number), email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210, email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Request for State or Federal Workers’ Compensation Information (Form CM-905) information collection. Form CM-905 collects information to process a claim under the Black Lung Benefits Act (30 U.S.C. 901

et seq.). The information collected helps determine compensation benefits awarded for pneumoconiosis. The information collection has been classified as a revision, because the OWCP proposes to make a series of cosmetic and minor changes to Form CM-905. The changes provide clearer language, so that Federal/State workers’ compensation officials clearly understand which portion of the form they should complete and what information to provide. Other changes update the form to reflect current organizational structure within the DOL. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 27, 2016 (81 FR 49270).

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 1240-0032. The current approval for this collection is scheduled to expire on December 31, 2016; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo

review. New requirements would only take effect upon OMB approval.

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 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0032. 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–OWCP.

Title of Collection: Request for State or Federal Workers' Compensation Information.

OMB Control Number: 1240–0032.

Affected Public: Federal Government; State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 2,000.

Total Estimated Number of Responses: 2,000.

Total Estimated Annual Burden Hours: 500.

Total Estimated Annual Other Costs Burden: \$1,000.

Dated: December 21, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–31387 Filed 12–27–16; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medical Travel Refund Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, "Medical Travel Refund Request," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before January 27, 2017.

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=201609-1240-001 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments to the U.S. Department of Labor–OASAM, Office of the Chief Information Officer, Attn: Information Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210, email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT:

Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION:

Respondents use Form OWCP–957 to request reimbursement for out-of-pocket expenses incurred when traveling to medical providers for covered medical testing or treatment. 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 1240–0037.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on December 31, 2016; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 24, 2016 (81 FR 73142).

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 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0037. 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–OWCP.

Title of Collection: Medical Travel Refund Request.

OMB Control Number: 1240–0037.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 342,462.

Total Estimated Number of Responses: 342,462.

Total Estimated Annual Burden Hours: 56,849.

Total Estimated Annual Other Costs Burden: \$171,123.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016-31385 Filed 12-27-16; 8:45 am]

BILLING CODE 4510-CR-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Survivor's Form for Benefits Under the Black Lung Benefits Act

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, "Survivor's Form for Benefits under the Black Lung Benefits Act," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: Submit comments on or before January 27, 2017.

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=2016-1240-001 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202-395-6881 (this is not a toll-free number), email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Information Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210, email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT:

Contact Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to maintain PRA authorization for the Survivor's Form for Benefits under the Black Lung Benefits Act, Form CM-912, information collection. A survivor of a deceased miner files Form CM-912 to apply for BLBA benefits. The OWCP, Division of Coal Mine Workers' Compensation uses the information in determining the survivor's entitlement to BLBA benefits. BLBA sections 411(a) and 422(a) authorize this information collection. *See* 30 U.S.C. 921(a), 832(a).

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 1240-0027.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on December 31, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL also 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 July 27, 2016 (81 FR 49270).

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 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240-0027. 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-OWCP.

Title of Collection: Survivor's Form for Benefits under the Black Lung Benefits Act.

OMB Control Number: 1240-0027.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 1,100.

Total Estimated Number of Responses: 1,100.

Total Estimated Annual Burden Hours: 147 hours.

Total Estimated Annual Other Costs Burden: \$450.

Dated: December 21, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016-31384 Filed 12-27-16; 8:45 am]

BILLING CODE 4510-CK-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2010-0007]

Nationally Recognized Testing Laboratory Program Regulation; Revision of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comments.

SUMMARY: OSHA requests comments concerning its proposed revision of the information collection requirements specified by its Program Regulation for Nationally Recognized Testing Laboratories, 29 CFR 1910.7 (the Regulation). The Regulation specifies procedures that organizations must follow to apply for, and to maintain,

OSHA's recognition to test and certify equipment, products, or material for safe use in the workplace.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before February 27, 2017.

ADDRESSES: Submit comments by any of the following methods:

Electronically: Submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Facsimile: If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693-1648.

Regular or express mail, hand delivery, or messenger (courier) service: Submit a copy of comments and any attachments to the OSHA Docket Office, Docket No. OSHA-2010-0007, Technical Data Center, Room N-3508, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693-2350 (TDY number: (877) 889-5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 10:00 a.m.—2:30 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA-2010-0007). OSHA will place all submissions, including any personal information provided, in the public docket without revision, and these submissions will be available online at <http://www.regulations.gov>.

Docket: To read or download submissions or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before February

27, 2017 to the 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, or by fax to (202) 693-1644.

FOR FURTHER INFORMATION CONTACT:

Theda Kenney (kenney.theda@dol.gov) or Todd Owen (owen.todd@dol.gov), Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3609, Washington, DC 20210; telephone (202) 693-2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA-95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection from employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

A number of standards issued by OSHA contain requirements that specify employers use only equipment, products, or material tested or approved by a Nationally Recognized Testing Laboratory (NRTL). These requirements ensure that employers use safe and efficacious equipment, products, or materials in complying with the standards. Accordingly, OSHA promulgated its Program Regulation for Nationally Recognized Testing Laboratories, 29 CFR 1910.7 (the Regulation). The Regulation specifies procedures that organizations must follow to apply for, and to maintain,

OSHA's recognition to test and certify equipment, products, or material for safe use in the workplace.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

1. Whether the proposed information collection requirements are necessary and useful for the proper performance of the Agency's functions;

2. The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information collected; and

4. Ways to minimize the burden on organizations that must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to revise the Office of Management and Budget's (OMB) approval of the collection of information requirements specified by the Regulation. In addition to extending its current approval by OMB, the Agency plans to implement a proposed fee schedule, see 80 FR 57222, Sept. 22, 2015. This proposed fee schedule would be based in part on proposed streamlined procedures for accepting and reviewing applications for NRTL recognition, expansion and renewal, and would contain revisions to the cost burden to respondents resulting from the collections of information required by the Regulation. The Agency also plans to obtain OMB approval for optional standardized forms to facilitate and simplify the information collection process as part of its information collection process. The optional forms correspond to the applications for initial, expansion of, and renewal of recognition procedures prescribed by the Regulation. Where practicable, the forms would provide for automations such as drop down lists to increase ease of use and reduce the information collection burden. The Agency expects the use of the optional standardized forms to marginally reduce the burden hours associated with these information collection requirements. The forms are included in a draft copy of the updated Directive on NRTL Program Policies, Procedures, and Guidelines, which has been attached to a Supporting Statement for the Information Collection Requirements of the Regulation. The Agency developed the Supporting Statement to outline the particulars of the collection of information proposed for approval by OMB. The Agency

requests a \$718,836 increase, resulting from a determination that the costs should be considered a cost to respondents rather than a cost to the Federal government, since respondents reimburse the Government for expenses related to this program. The Supporting Statement will be added to the docket (OSHA–2010–0007), and available at regulations.gov, once this Notice is published. The Agency will summarize the comments submitted in response to this Notice, and will include this summary in its request to OMB to revise the approval of these information collection requirements.

Type of Review: Revision of a currently approved information collection.

Title: Definition and Requirements of a Nationally Recognized Testing Laboratory (29 CFR 1910.7).

OMB Control Number: 1218–0147.

Affected Public: Business or other for-profit.

Number of Respondents: 20.

Frequency of Recordkeeping: On occasion.

Total Responses: 140.

Average Time per Response: 160 hours for initial recognition applications (3 responses per year); 10 hours for expansion of recognition applications, additional testing categories (5 responses per year); 24 hours for expansion of recognition applications, additional testing sites (2 responses per year); 5 hours for renewal of recognition applications (3 responses per year); .25 hours for electronic fee submission (63 responses per year); and 16 hours for assessments (57 responses per year).

Estimated Total Burden Hours: 1,523.

Estimated Cost (Operation and Maintenance): \$718,836.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

(1) Electronically in the Federal eRulemaking Portal at <http://www.regulations.gov> under Docket Number OSHA–2010–0007; (2) by facsimile (FAX); or (3) by hard copy. For further information on submitting comments by facsimile or in hard copy, please see the section of this notice entitled **ADDRESSES** above. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0007).

You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you

must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. The Agency is issuing this notice pursuant to Section 8(g)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), OSHA's Program Regulation for Nationally Recognized Testing Laboratories, 29 CFR 1910.7, and the Paperwork Reduction Act of 1995 (44 U.S.C 3506 *et seq.*).

Signed at Washington, DC, this 22nd day of December, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–31351 Filed 12–27–16; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 27, 2017 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at OIRA_Submission@OMB.EOP.gov and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Alexandria, VA 22314, Suite 5067, or email at PRAComments@ncua.gov.

FOR FURTHER INFORMATION CONTACT:

Copies of the submission may be obtained by emailing PRAComments@ncua.gov or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0004.

Type of Review: Revision of a previously approved collection.

Title: NCUA Call Report and Profile.

Abstract: Sections 106 and 202 of the Federal Credit Union Act require federally insured credit unions to make financial reports to the NCUA. Section 741.6 prescribes the method in which federally insured credit unions must submit this information to NCUA. NCUA Form 5300, Call Report, is used to file quarterly financial and statistical data and NCUA Form 4501A, Credit Union Profile, is used to obtain non-financial data relevant to regulation and supervision such as the names of senior management and volunteer officials, and are reported through NCUA's on-line portal, Credit Unions Online.

Revisions are being made to NCUA Forms 5300, Call Report, and 4501A, Credit Union Profile, to capture applicable data implemented by amendments to 12 CFR part 723,

Member Business Loans; Commercial Lending. Changes involve moving loan details to a separate page and revising the Call Report loans and business lending, and Credit Union Profile programs and services sections to reflect "commercial" lending terminology. The amount of data elements removed compared to those being added have negated any program differences in burden. Adjustments in the number respondents are due to the decline of federally-insured credit unions.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Annual Burden Hours: 142,896.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on December 21, 2016.

Dated: December 21, 2016.

Troy S. Hillier,

NCUA PRA Clearance Officer.

[FR Doc. 2016-31269 Filed 12-27-16; 8:45 am]

BILLING CODE 7535-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2016-0024]

Information Collection: Reporting of Defects and Noncompliance

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The information collection is entitled, "Reporting of Defects and Noncompliance."

DATES: Submit comments by January 27, 2017.

ADDRESSES: Submit comments directly to the OMB reviewer at: Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150-0035), NEOB-10202, Office of Management and Budget, Washington, DC 20503; telephone: 202-395-7315, email: *oira_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: *Infocollects.Resource@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2016-0024 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0024.
- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The supporting statement is available in ADAMS under Accession No. ML16307A057.
- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- **NRC's Clearance Officer:** A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <http://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment

submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, "Reporting of Defects and Noncompliance." The NRC 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.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on September 8, 2016 (81 FR 62184).

1. **The title of the information collection:** 10 CFR part 21, "Reporting of Defects and Noncompliance."
2. **OMB approval number:** 3150-0035.
3. **Type of submission:** Extension.
4. **The form number if applicable:** Not Applicable.

5. **How often the collection is required or requested:** On occasion. Defects and noncompliances are reportable as they occur.

6. **Who will be required or asked to respond:** Individual directors and responsible officers of firms constructing, owning, operating, or supplying the basic components of any facility or activity licensed under the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended, to report immediately to the NRC the discovery of defects in basic components or failures to comply that could create a substantial safety hazard.

7. **The estimated number of annual responses:** 531 (178 reporting responses + 3 third party disclosure responses + 350 recordkeepers).

8. **The estimated number of annual respondents:** 350.

9. **The total estimated number of hours needed annually to comply with the information collection requirement or request:** 43,565 hours (18,023 hours reporting + 25,257 hours recordkeeping + 285 hours third-party disclosure).

10. **Abstract:** Part 21 of title 10 of the *Code of Federal Regulations* (10 CFR), requires each individual, corporation, partnership, commercial grade dedicating entity, or other entity subject to the regulations in this part to adopt appropriate procedures to evaluate deviations and failures to comply to determine whether a defect exists that could result in a substantial safety hazard. Depending upon the outcome of the evaluation, a report of the defect

must be submitted to the NRC. Reports submitted under 10 CFR part 21 are reviewed by the NRC staff to determine whether the reported defects or failures to comply in basic components at the NRC licensed facilities or activities are potentially generic safety problems. These reports have been the basis for the issuance of numerous NRC Generic Communications that have contributed to the improved safety of the nuclear industry. The records required to be maintained in accordance with 10 CFR part 21 are subject to inspection by the NRC to determine compliance with the subject regulation.

Dated at Rockville, Maryland, this 22nd day of December, 2016.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2016-31404 Filed 12-27-16; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-295 and 50-304; NRC-2016-0271]

ZionSolutions, LLC; Zion Nuclear Power Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License Nos. DPR-39 and DPR-48, held by ZionSolutions, LLC for the operation of Zion Nuclear Power Station, Units 1 and 2 (ZNPS). The proposed action would revise the ZNPS Defueled Station Emergency Plan to reflect transfer of all spent nuclear fuel to a dry cask independent spent fuel storage installation (ISFSI).

DATES: December 28, 2016.

ADDRESSES: Please refer to Docket ID NRC-2016-0271 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0271. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER**

INFORMATION CONTACT section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John Hickman, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3017, email: John.Hickman@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of an amendment to Facility Operating License Nos. DPR-39 and DPR-48, held by ZionSolutions, LLC. (ZS) for the operation of Zion Nuclear Power Station, Units 1 and 2 (ZNPS) located in Lake County, Illinois. Therefore, as required by section 51.21 of title 10 of the *Code of Federal Regulations*, the NRC performed an environmental assessment (EA). Based on the results of the EA that follows, the NRC has determined not to prepare an environmental impact statement (EIS) for the amendment, and is issuing a finding of no significant impact (FONSI).

II. Environmental Assessment

Description of the Proposed Action

The proposed action would revise the ZNPS Defueled Station Emergency Plan (DSEP) and Permanently Defueled Emergency Action Level (EAL) Bases Document to reflect all spent fuel being transferred to an ISFSI at the site. The new emergency plan would be titled, "Zion Station ISFSI Emergency Plan" (ZS ISFSI EP).

The proposed action is requested by the licensee's application dated January 7, 2016, (ADAMS Accession No. ML16008B080), as supplemented by

letter dated June 22, 2016, (ADAMS Accession No. ML16176A208).

Need for the Proposed Action

The ZNPS is a permanently defueled nuclear power facility that has permanently ceased operations and is storing generated spent fuel onsite in an ISFSI. The licensee requested that the NRC review and approve the changes from the current ZNPS DSEP to the proposed Revision 0 to the ZS ISFSI EP. The major changes from the current ZNPS DSEP to the proposed Revision 0 to the ZS ISFSI EP include: Removal of non-ISFSI related emergency event types; transfer responsibility for implementing the emergency plan to ISFSI Management, a revision to the Emergency Response Organization to reflect a potential event impacting spent fuel stored in ISFSI at the site, and removal of EALs for the permanently defueled nuclear power plant.

Environmental Impacts of the Proposed Action

The NRC has completed its EA of the proposed amendment. The NRC has concluded that the proposed changes from the current ZNPS DSEP to the proposed Revision 0 to the ZS ISFSI EP to reflect the transfer of all the spent nuclear fuel to a dry cask ISFSI would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the Defueled Safety Analysis Report. There will be no change to radioactive effluents that effect radiation exposures to plant workers and members of the public. No changes will be made to plant buildings or the site property. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed amendment.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity or the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality. There are no impacts to historical and cultural resources. There would be no noticeable effect on socioeconomic conditions in the region. Therefore, no changes or different types of non-

radiological environmental impacts are expected as a result of the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the “no-action” alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the “Final Environmental Impact Statement related to the proposed Zion Nuclear Power Station, Units 1 and 2,” dated December 8, 1972 (ADAMS Accession No. ML15344A360).

Agencies and Persons Consulted

On October 6, 2016, the staff consulted with the Illinois State official, Ms. Kay Foster, regarding the proposed action. The state official had no comments on the conclusions in the EA and the FONSI.

III. Finding of No Significant Impact

The NRC has determined not to prepare an EIS for the proposed action. Amending the licenses to revise the current ZNPS DSEP to the proposed Revision 0 to the ZS ISFSI EP to reflect the transfer of all the spent nuclear fuel to a dry cask ISFSI will not result in any significant radiological or non-radiological environmental impacts. Therefore the proposed action will not have a significant effect on the quality of the human environment. Accordingly, on the basis of the EA in Section II above, which is incorporated by reference herein, the NRC has determined that a FONSI is appropriate.

Dated at Rockville, Maryland, this 15th day of December 2016.

For the Nuclear Regulatory Commission.

John R. Tappert,

Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016-31377 Filed 12-27-16; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2014-0256]

Aquatic Environmental Studies for Nuclear Power Stations

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Regulatory Guide (RG) 4.24, “Aquatic Environmental Studies for Nuclear Power Stations.” This RG provides technical guidance to applicants for the development of aquatic studies involving environmental reviews that are part of NRC licensing actions related to new nuclear power stations.

ADDRESSES: Please refer to Docket ID NRC-2014-0256 when contacting the NRC about the availability of information regarding this document. You may obtain publically-available information related to this document, using the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2014-0256. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Document collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 0 of Regulatory Guide 4.24, is available in ADAMS under Accession No. ML15309A219. The regulatory analysis may be found in ADAMS under Accession No. ML13186A086.

- *NRC’s PDR:* You may examine and purchase copies of public documents at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT:

Peyton Doub, Office of New Reactors, telephone: 301-415-6703, email: Peyton.doub@nrc.gov and Edward O’Donnell, Office of Nuclear Regulatory Research, telephone 301-415-3317, email: Edward.Odonnell@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a new guide in the NRC’s “Regulatory Guide” series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency’s regulations, techniques that the staff uses in evaluating specific issues or postulated events, and data that the staff needs in its review of applications for permits and licenses.

Revision 0 of RG 4.24 was issued with a temporary identification as Draft Regulatory Guide, DG-4023. This is the initial issuance of RG 4.24. The purpose of this RG is to offer technical guidance to applicants for aquatic environmental studies and analyses supporting decisions related to new nuclear power stations by the NRC. The results of aquatic studies provided by applicants are analyzed by the staff as a basis for the staff’s decisions related to nuclear power station siting, conducting baseline investigations, identifying important species and habitats, analyzing impacts and monitoring.

II. Additional Information

Draft regulatory guide, DG-4023 was published in the **Federal Register** (79 FR 73646) on December 11, 2014 for a 60-day public comment period. The public comment period was subsequently extended to March 11, 2015, to allow more time for comments. Public comments on DG-4023 and the staff responses to the public comments are available under ADAMS Accession Number ML15309A217.

III. Congressional Review Act

This regulatory guide is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting and Issue Finality

Issuance of this regulatory guide does not constitute backfitting as defined in section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR) (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. This regulatory guide does not apply to any construction permits, operating licenses, early site permits, limited work authorizations issued under 10 CFR 50.10 for which the NRC issued a final environmental impact statement (EIS) preceded by a draft EIS under 10 CFR 51.76 or 51.75, or combined licenses, any of which were issued by the NRC prior to issuance of the final regulatory guide. The NRC has already completed its siting determination for those construction permits, operating licenses, early site permits, limited work authorizations, and combined licenses. Therefore, no further NRC regulatory action on siting will occur for those licenses, permits, and authorizations, for which the guidance in this regulatory guide would be relevant.

The guidance in this regulatory guide may be applied to applications for early site permits, combined licenses, and limited work authorizations issued under 10 CFR 50.10 (including information under 10 CFR 51.49(b) or (f)), any of which are docketed and under review by the NRC. The guidance in this regulatory guide may also be applied to applications for construction permits, early site permits, combined licenses, and limited work authorizations (including information under 10 CFR 51.49(b) or (f)). Such action does not constitute backfitting as defined in 10 CFR 50.109(a)(1) and is not otherwise inconsistent with the applicable issue finality provisions in 10 CFR part 52. Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under part 52. Neither the Backfit Rule nor the issue finality provisions under Part 52—with certain exclusions discussed below—were intended to every NRC action which substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a Part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The staff does not, at this time, intend to impose the positions represented in this RG in a manner that is inconsistent with any of the issue finality provisions applicable to early

site permits (10 CFR 52.39) or combined license applications referencing an early site permit (10 CFR 52.83). If, in the future, the staff seeks to impose a position in this RG in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must make address the criteria for avoiding issue finality as described applicable issue finality provision.

Dated at Rockville, Maryland, this 20th day of December 2016.

For the Nuclear Regulatory Commission.

Edward O'Donnell,

Acting Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2016-31375 Filed 12-27-16; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2016-0064]

Information Collection: NRC Form 850A, "Request for NRC Contractor Building Access Authorization" NRC Form 850B, "Request for NRC Contractor Information Technology Access Authorization" NRC Form 850C, "Request for NRC Contractor Security Clearance"

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, "NRC Form 850A, "Request for NRC Contractor Building Access Authorization" NRC Form 850B, "Request for NRC Contractor Information Technology Access Authorization" NRC Form 850C, "Request for NRC Contractor Security Clearance."

DATES: Submit comments by January 27, 2017.

ADDRESSES: Submit comments directly to the OMB reviewer at: Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150-0218), NEOB-10202, Office of Management and Budget, Washington, DC 20503; telephone: 202-395-7315, email: oira_submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer,

U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: INFOCOLLECTS.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID: NRC-2016-0064 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal rulemaking Web site: Go to <http://www.regulations.gov> and search for Docket ID: NRC-2016-0064.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The supporting statement is available in ADAMS under Accession No. ML16355A312.

- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- NRC's Clearance Officer: A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: INFOCOLLECTS.Resource@NRC.GOV.

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <http://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be

publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, "NRC Form 850A, "Request for NRC Contractor Building Access Authorization" NRC Form 850B, "Request for NRC Contractor Information Technology Access Authorization" NRC Form 850C, "Request for NRC Contractor Security Clearance." The NRC 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.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on September 9, 2016 (81 FR 62546).

1. *The title of the information collection:* NRC Form 850A, "Request for NRC Contractor Building Access," NRC Form 850B, "Request for NRC Contractor Information Technology Access Authorization," and NRC Form 850C, "Request for NRC Contractor Security Clearance."

2. *OMB approval number:* 3150-0218.

3. *Type of submission:* Extension.

4. *The form number if applicable:* NRC Form 850A, NRC Form 850B, and NRC Form 850C.

5. *How often the collection is required or requested:* On occasion.

6. *Who will be required or asked to respond:* NRC contractors, subcontractors and other individuals who are not NRC employees.

7. *The estimated number of annual responses:* 500.

8. *The estimated number of annual respondents:* 500.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 85.

10. *Abstract:* 10 CFR part 10, "Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance," establishes requirements that individuals requiring an access authorization and/or employment clearance must have an investigation of their background. NRC Forms 850A, 850B, and 850C will be

used by the NRC to obtain information on NRC contractors, subcontractors, and other individuals who are not NRC employees and require access to NRC buildings, IT systems, sensitive information, sensitive unclassified information, or classified information.

Dated at Rockville, Maryland, this 21st day of December 2016.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2016-31324 Filed 12-27-16; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79635; File No. SR-Phlx-2016-124]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation of the Limit Order Protection for Members Accessing PSX

December 21, 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 December 20, 2016, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by 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 delay the implementation of the Limit Order Protection or "LOP" for members accessing PSX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to delay the implementation of the Exchange's mechanism to protect against erroneous Limit Orders, which are entered into PSX, at Rule 3307(f).³ The Exchange received approval to implement this mechanism on August 24, 2016.⁴ Within that rule change, the Exchanges proposed to implement LOP within ninety days of the approval of the proposal, which was November 22, 2016.⁵ The Exchange subsequently filed a modification to the original proposal and delayed the implementation an additional sixty (60) days from the original timeframe in order to implement the LOP, which was January 21, 2017.⁶

At this time the Exchange proposes to delay the implementation from January 21, 2017 until a date no later than March 31, 2017 in order to allow additional time to complete testing. The Exchange will announce the specific date in advance through an Equities Trader Alert. For more information regarding LOP see the previous LOP rule changes.⁷

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ 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

³ See Securities Exchange Act Release No. 78246 (August 24, 2016), 81 FR 59672 (August 30, 2016) (SR-Phlx-2016-58). See also Securities Exchange Act Release No. 83917 (November 16, 2016), 81 FR 83917 (November 22, 2016) (SR-Phlx-2016-113).

⁴ See Securities Exchange Act Release No. 78246 (August 24, 2016), 81 FR 59672 (August 30, 2016) (SR-Phlx-2016-58) (Notice of Filing of Amendments No. 1 and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments No. 1, To Adopt Limit Order Protections).

⁵ *Id.* at 45338.

⁶ See Securities Exchange Act Release No. 83917 (November 16, 2016), 81 FR 83917 (November 22, 2016) (SR-Phlx-2016-113) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Limit Order Protection).

⁷ See note 3 above.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

system, and, in general to protect investors and the public interest, by permitting the Exchange additional time to implement the LOP in accordance with the Exchange's processes. The Exchange's proposal does not significantly affect the protection of investors or the public interest because this proposal does not modify the manner in which LOP operates, only the implementation date is impacted. The Exchange will provide advance notice to members with respect to the new date.

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. The Exchange's proposal does not impose any significant burden on competition because LOP will apply to all PSX market participants in a uniform manner once implemented.

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)(iii) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-Phlx-2016-124 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-Phlx-2016-124. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2016-124 and should be submitted on or before January 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016-31297 Filed 12-27-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79638; File No. SR-NYSE-2016-85]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to (1) Change How Orders Would be Processed When the Protected Best Bid ("PBB") Is Higher Than the Protected Best Offer ("PBO") (The "PBBO") in Certain Circumstances, and (2) Adopt a Limit Order Price Protection Mechanism

December 21, 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 December 12, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) change how orders would be processed when the protected best bid ("PBB") is higher than the protected best offer ("PBO") (the "PBBO") in certain circumstances, and (2) adopt a limit order price protection mechanism. The proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 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.

statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (1) change how orders would be processed when the PBB is higher than the PBO in certain circumstances, and (2) adopt a limit order price protection mechanism.

Processing of Orders When the PBBO Is Crossed (Rules 13, 70, 76 and 1000)

Currently, when the PBB is priced higher than the PBO in a security (*i.e.*, the PBBO is crossed), buy and sell orders trade on the Exchange without regard to price and without routing, consistent with the exception to the Order Protection Rule enumerated in Rule 611(b)(4) of Regulation NMS ("Rule 611(b)(4)").⁴ In certain circumstances as described herein, the Exchange proposes to no longer avail itself of this exception to the Order Protection Rule.⁵ In those circumstances, rather than trading through a protected quotation when the PBBO is crossed, routable orders may instead be routed to protected quotations. In order to implement this change, the Exchange proposes to amend the following rules:

Rule 13

Market Order

Rule 13(a)(1) provides that a Market Order that is eligible for automatic executions is an unpriced order to buy or sell a stated amount of a security that is to be traded at the best price obtainable without trading through the NBBO. Rule 13(a)(1)(B)(i) provides that when the Exchange is open for continuous trading, a Market Order will

be rejected on arrival, or cancelled if resting, if there is no contra-side NBBO or if the best protected quotations are or become crossed.

The Exchange proposes to no longer reject or cancel Market Orders when the PBBO is crossed. To effectuate this change, the Exchange proposes to delete the phrase "or if the best protected quotations are or become crossed" in Rule 13(a)(1)(B)(i). As a result of this proposed change, if a Market Order arrives when the PBBO is crossed, the Exchange would process the Market Order in the same way as when the NBBO is crossed under the current rule.⁶

Routing to Protected Quotations

The Exchange proposes to amend the Rule 13 to specify circumstances when the Exchange would make order handling decisions based on a protected quotation. The Exchange proposes to make these changes because, in the circumstances described below, the Exchange would no longer avail itself of the exception to the Order Protection Rule specified in Rule 611(b)(4), and therefore the Exchange would include protected quotations for order handling purposes even when the PBBO is crossed.

First, the Exchange proposes to amend the definition of NYSE IOC Order to reflect that, when the PBBO is crossed, the Exchange would route such orders to other markets if an execution on the Exchange would trade through a protected quotation in compliance with Regulation NMS. Rule 13(b)(2)(B) defines an NYSE IOC Order as a Limit Order designated Immediate or Cancel ("IOC") that will be automatically executed against the displayed quotation up to its full size and sweep the Exchange book, as provided in Rule 1000 to the extent possible, with portions of the order routed to other markets if necessary in compliance with Regulation NMS and the portion not so executed will be immediately and automatically cancelled. As such, currently an NYSE IOC Order is only routed to a protected quotation unless the exception in Rule 611(b)(4) applies. Because the Exchange proposes to route an NYSE IOC Order to other markets if an execution on the Exchange would trade through a protected quotation, *i.e.*, in circumstances when the PBBO is crossed, the Exchange would revise the rule text to read "with portions of the order routed to other markets if an execution would trade through a protected quotation, in compliance with Regulation NMS. The portion of the

order not so executed will be immediately and automatically cancelled."

Second, the Exchange proposes to amend the definition of "best-priced sell interest" and "best-priced buy interest," which are terms used for purposes of determining where to display and rank a Limit Order designated with an Add Liquidity Only ("ALO") Modifier. Supplementary Material .10 of Rule 13 provides that, for purposes of the Rule, the term "best-priced sell interest" refers to the lowest priced sell interest against which incoming buy interest would be required to execute with and/or route to, including Exchange displayed offers, Non-Display Reserve Orders, Non-Display Reserve e-Quotes, odd-lot sized sell interest, unexecuted Market Orders, and protected offers on away markets and that the term "best-priced buy interest" refers to the highest priced buy interest against which incoming sell interest would be required to execute with and/or route to, including Exchange displayed bids, Non-Display Reserve Orders, Non-Display Reserve e-Quotes, odd-lot sized buy interest, unexecuted Market Orders, and protected bids on away markets, but does not include non-displayed buy interest that is priced based on the PBBO.

Because the Exchange currently avails itself of the exception in Rule 611(b)(4) when the PBBO is crossed, the Exchange does not include protected bids or offers in the determination of "best-priced sell interest" or "best-priced buy interest." With the proposed change, in the circumstances when the Exchange no longer avails itself of this exception, the Exchange would consider all protected quotations, including when the PBBO is crossed. To reflect this change, the Exchange proposes the following amendments to Supplementary Material .10 to Rule 13.⁷

- In the first clause defining "best-priced sell interest," the Exchange proposes to delete "with and/or route to" after "execute," add the word "and" before "unexecuted Market Orders" and add the phrase "the lowest-priced" before "protected offers on away markets." The proposed change would clarify that best-priced sell interest can mean either the lowest-priced sell interest against which incoming buy interest would execute with on the Exchange or the lowest-priced protected

⁴ 17 CFR 242.611(b)(4). See also Rule 15A (Order Protection Rule).

⁵ For example, assume if the Exchange has a displayed bid of \$10.00 and another market crosses that bid with a protected offer of \$9.99. Currently, if the Exchange receives a marketable order to buy, it will trade on the Exchange at prices higher than \$9.99. Once the Exchange no longer avails itself of the exception in Rule 611(b)(4), unless otherwise specified in Exchange rules as described in this proposed rule change, arriving routable interest to buy that is marketable on the Exchange would instead first route to that protected offer.

⁶ See Rule 13(a)(1)(B)(ii).

⁷ Since the terms defined in Supplementary Material .10 are only used for Limit Orders designated ALO, the Exchange proposes to replace "this Rule" after "For purposes of" with "displaying and ranking a Limit Order with an Add Liquidity Only (ALO) modifier".

offer, which can be a protected offer on an away market.

- In the second clause defining “best-priced buy interest,” the Exchange would delete “with and/or route” after “execute,” add the word “and” before “unexecuted Market Orders,” and add “the highest-priced” before “protected bids on away markets.”⁸ The proposed change would clarify that best-priced buy interest can mean either the lowest-priced buy interest against which incoming sell interest would execute with on the Exchange or the lowest-priced protected bid, which can be a protected bid on an away market.

Pegging Interest

Rule 13(f)(1) defines pegging interest and provides that pegging interest pegs to prices based on (i) a PBBO, which may be available on the Exchange or an away market, or (ii) interest that establishes a price on the Exchange. If the PBBO is not within the specified price range of the pegging interest, the pegging interest will instead peg to the next available best-priced displayable interest that is within the specified price range, which may be on the Exchange or the protected bid or offer of another market.⁹ Rule 13(f)(1)(B)(i) further provides that pegging interest to buy (sell) will not peg to a price that is locking or crossing the Exchange best offer (bid), but instead will peg to the next available best-priced displayable interest that would not lock or cross the Exchange best offer (bid).

To avoid routing pegging interest when the PBBO is locked or crossed, the Exchange proposes to specify that the Exchange would not peg to a locking or crossing PBBO and would instead peg to the next-available best-priced displayable interest that would not lock or cross either the Exchange’s BBO or the PBBO. To effect this change, the Exchange proposes to amend Rule 13(f)(1)(B)(i) to provide that pegging interest to buy (sell) will not peg to the PBB (PBO) if the PBBO is locked or crossed or to a price that is locking or crossing the Exchange best offer (bid), but instead would peg to the next available best-priced displayable interest that would not lock or cross the Exchange best offer (bid) or the PBO (PBB).

Rule 70

Rule 70 governs the execution of Floor broker interest, including g-

⁸ The Exchange also proposes two non-substantive changes to Supplementary Material .10 of Rule 13 to add spaces between “lowest” and “priced” and “highest” and “priced,” both of which currently appear as one word in the Rule.

⁹ See Rule 13(f)(1)(A)(iv)(a) & (f)(1)(A)(iii).

Quotes. G-Quotes are an electronic method for Floor brokers to represent orders that yield priority, parity and precedence based on size to displayed and non-displayed orders on the Exchange’s book, in compliance with Section 11(a)(1)(G) of the Act (the “G Rule”).¹⁰

Because the proposed change to how the Exchange would operate when the PBBO is crossed would result in routable orders being routed to a crossed PBBO, the Exchange proposes to revise the behavior of g-Quotes to limit the circumstances when such orders would route. While the G Rule only requires G orders to yield to orders on the Exchange, the Exchange does not believe that a G order should trade on another market before resting displayed interest on the Exchange trades and to which, absent routing of the G order, would be yielded priority by the G order under the G Rule. Accordingly, the Exchange proposes to restrict a g-Quote from routing to a protected quotation ahead of displayed orders on the Exchange at the same price. To effect this change, the Exchange proposes to add a new subsection (iii) to Rule 70(a) that would provide that a g-Quote to buy (sell) that would be required to route on arrival would be cancelled when there is resting displayable interest that is not a g-Quote or DMM interest to buy (sell) at the same or higher (lower) price as the g-Quote.

Further, the Exchange proposes to amend subsection (a)(ii) of Supplementary Material .25 to Rule 70 to specify that discretionary instructions for Floor broker d-Quotes¹¹ are unavailable when the PBBO is crossed. To effectuate this change, the Exchange proposes to delete the phrase “at all times” following “Discretionary instructions are active” and add the phrase “unless the PBBO is crossed” following “during the trading day.”¹²

¹⁰ Section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1), generally prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or any account over which it or an associated person exercises discretion. Subsection (G) of Section 11(a)(1) provides an exemption from this prohibition, allowing an exchange member to have its own floor broker execute a proprietary order, also known as a “G order,” provided such order yields priority, parity, and precedence. Under the G Rule, G orders are not required to yield to other orders that are for the account of a member, e.g., Designated Market Maker (“DMM”) interest or other g-Quotes.

¹¹ D-Quotes enable Floor brokers to enter discretionary instructions as to the price at which the d-Quote may trade and the number of shares to which the discretionary price instructions apply.

¹² The Exchange also proposes to add “reopening” after “at the opening” and before “and closing transactions” in Rule 70.25(a)(ii).

Finally, the Exchange proposes a technical amendment to correct a number sequence error in current subsections (iv) through (viii) of Rule 70.25(a). Subsection (iv) currently follows subsection (ii), which the Exchange proposes to re-number (iii). The remaining subsections (v) through (viii) would be re-numbered (iv) through (vii).

Rule 76

Rule 76 governs the execution of manual “cross” or “crossing” orders by Floor brokers on the Exchange trading Floor. Supplementary Material .10 of Rule 76 permits Floor Brokers to enter a cross transaction into their hand held device (“HHD”) and describes the operation by the Exchange of a quote minder function that monitors protected bids and offers to determine when the limit price assigned to the proposed crossed transaction is such that the orders may be executed consistent with Regulation NMS Rule 611.

The Exchange proposes to amend Supplementary Material .10 of Rule 76 to specify that quote minder would be unavailable to Floor brokers when the PBBO is crossed by adding the sentence “Quote minder will not monitor protected bids and offers when the PBBO is crossed” to the end of the Rule. The proposed change to Rule 76.10 is consistent with the proposed change, described above, that the Exchange would route orders even if the PBBO is crossed. Because Rule 76 governs crossing orders at a single price on the Exchange, the Exchange believes this proposed change makes clear that the Exchange would not permit a crossing order to be executed when the PBBO is crossed.

Rule 1000

Rule 1000 provides for automatic executions by Exchange systems. Supplementary Material .10 is currently marked “Reserved.” The Exchange proposes to delete the word “Reserved” and add new text to specify how DMM interest would be processed when the PBBO is crossed and there is same side resting displayable interest that is locking or crossing the contra-side PBBO. Similar to the proposed amendment described above relating to g-Quotes, the Exchange does not believe that DMM interest should have an opportunity to trade on another market ahead of displayed orders on the Exchange.

To effect this change, the proposed amendment would provide that DMM interest that would be required to route on arrival would be cancelled when there is same side resting displayable

buy (sell) interest (that is not a g-Quote or DMM interest to buy (sell)) that is locking or crossing the PBO (PBB). Similarly, the Exchange proposes to specify that certain DMM interest that would increase the displayed quantity of the similarly-entered resting DMM interest would be rejected when the resting DMM interest is locked or crossed by a protected away quote.¹³

Limit Order Price Protection (Rules 13 and 1000)

The Exchange proposes to amend Rule 13 to introduce limit order price protection, which would result in Limit Orders with prices too far away from the prevailing quote to be rejected on arrival. The proposed rule is based on NYSE Arca Equities, Inc. (“NYSE Arca Equities”) Rule 7.31(a)(2)(B).

As proposed, the Exchange would reject limit orders that are priced a specified percentage away from the contra side national best bid (“NBB”) or national best offer (“NBO”), as defined in Rule 600(b)(42) of Regulation NMS. As the Exchange receives limit orders, Exchange systems will check the price of the limit order against the contra-side NBB or NBO at the time of the order entry to determine whether the limit order is within the specified percentage. As proposed, the specified percentage would be equal to the corresponding “numerical guideline” percentages set forth in paragraph (c)(1) of Rule 1000 (Automatic Executions) that are used to calculate Trading Collars.¹⁴

Proposed Rule 13(a)(2)(A) would provide that a Limit Order to buy (sell) would be rejected if it is priced at or above (below) a specified percentage away from the NBO (NBB). Proposed Rule 13(a)(2)(A)(i) would further provide if the NBB or the NBO is greater than \$0.00 up to and including \$25.00, the specified percentage would be 10%; if the NBB or NBO is greater than \$25.00 up to and including \$50.00, the specified percentage would be 5%; and if the NBB or NBO is greater than \$50.00, the specified percentage would be 3%. For example, if the NBB is \$26.00, a sell order priced at or below \$24.70, which is 5% below the NBB, would be rejected. Likewise, if the NBO is \$55.00, a buy order priced at or above

\$56.65, which is 3% above the NBO, would be rejected.

Proposed Rule 13(a)(2)(A)(i) would further provide that if the NBBO is crossed, the Exchange would use the Exchange Best Offer (“BO”) instead of the NBO for buy orders and the Exchange Best Bid (“BB”) instead of the NBB for sell orders. The proposed Rule would further provide that if the NBBO is crossed and there is no BO (BB), Limit Order Price Protection will not be applied to an incoming Limit Order to buy (sell). Further, proposed Rule 13(a)(2)(A)(i) would provide, like current NYSE Arca Rule 7.31(a)(2)(B), that Limit Order Price Protection will not be applied to an incoming Limit Order to buy (sell) if there is no NBO (NBB). Further, if the specified percentage for both buy and sell orders are not in the minimum price variation (“MPV”) for the security, as defined in Supplemental Material .10 to Rule 62, they would be rounded down to the nearest price at the applicable MPV. This proposed rule text is based on current Rule 1000(c)(1), governing Trading Collars.

Proposed Rule 13(a)(2)(A)(ii) would provide that Limit Order Price Protection would be applicable only when automatic executions are in effect. This rule would further provide that Limit Order Price Protection would not be applicable (a) before a security opens for trading or during a halt or pause; (b) during a trading suspension; (c) to incoming Auction-Only Orders; and (d) to high-priced securities, as defined in Rule 1000(a)(iii).

Finally, in connection with the introduction of the proposed Limit Order Price Protection mechanism, the Exchange proposes to amend Rule 1000(c) and (c)(ii) to delete references to marketable limit orders. Accordingly, Trading Collars specified in Rule 1000(c) would be applicable to Market Orders only, and pricing protections in proposed Rule 13(a)(2)(A) would be applicable to Limit Orders.

The Exchange believes that the Limit Order Protection mechanism would prevent the entry of supermarketable limit orders, *i.e.*, limit orders that in essence act like market orders because they are priced so far away from the prevailing market price, that could cause significant price dislocation in the market. The Exchange also believes that the mechanism would further serve to mitigate the potential for clearly erroneous executions to occur. The Exchange believes that the proposed treatment of limit orders serves as an additional safeguard that could help limit potential harm from extreme price volatility by preventing executions that

could occur at a price significantly away from the contra side national best bid or national best offer.

* * * * *

Because of the technology changes associated with this rule proposal, the Exchange will announce the implementation date in a Trader Update. The Exchange currently anticipates implementing the proposed changes no later than March 31, 2017.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Specifically, while the Exchange is entitled to avail itself of the exception to Rule 611(b)(4) to the Order Protection Rule, the Exchange believes that trading or routing based on the PBBO, even when it is crossed, may result in additional order execution opportunities to trade at prevailing prices in the market. Accordingly, as a general matter, taking into consideration all protected quotations for purposes of the price at which to trade or route an order on the Exchange, even when the PBBO is crossed, would remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed changes to modify current order behavior that is based on Rule 611(b)(4) would remove impediments to and perfect the mechanism of a free and open market and a national market system because they are designed to reflect changes to how such orders would be processed when the PBBO is crossed in a manner consistent with the original intent of such orders.

- The Exchange believes the proposed amendment to Rule 13 governing Market Orders would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote transparency that a Market Order would be accepted when the PBBO is crossed, and thus may route when the PBBO is crossed.

- The Exchange believes the proposed amendments to the Rule 13 definition of an NYSE IOC Order

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹³ See Rule 104(b) & 1000.

¹⁴ The NYSE Arca Equities limit order price protection mechanism uses the “numerical guideline” percentage set forth in Rule 7.10(c)(1) (Clearly Erroneous Executions) for its Core Trading Session. See NYSE Arca Equities Rule 7.31(a)(2)(B). The Exchange’s proposal would use the same numerical guidelines, but rather than cross referencing another rule, the Exchange proposes to enumerate the specified percentages in proposed Rule 13(a)(2)(A).

clarifying that the Exchange would route to a protected quotation when the PBBO is crossed would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide specificity regarding the reason why an order may be routed, thereby promoting transparency in Exchange rules. The Exchange further believes that specifying that Supplementary Material .10 relates to the displaying and ranking of Limit Orders designated ALO would remove impediments to and perfect the mechanism of a free and open market and a national market system by adding clarity and transparency to the Exchange's rules.

- The proposed amendments to Rules 70 and 1000 to cancel g-Quotes that would otherwise be required to route to away markets ahead of resting displayable interest and reject DMM interest that would increase the displayed quantity of similarly-entered resting DMM interest when that resting interest is locked or crossed by a protected away quote would remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors and the public because it would provide priority to previously-displayed orders not only for execution opportunities on the Exchange, but also on other markets.

- The proposed amendment to Rule 76 relating to crossing orders would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide transparency that crossing orders, which are designed to trade on the Exchange as a single-priced transaction, would not be eligible to trade if the PBBO is crossed.

The Exchange believes that the proposed Limit Order Protection mechanism would remove impediments to and perfect the mechanism of a free and open market and a national market system by rejecting orders that are priced too far away from the prevailing market. The Exchange believes that the proposed rule would ensure that limit orders would not cause the price of a security to move beyond prices that could otherwise be determined to be a clearly erroneous execution, thereby protecting investors from receiving executions away from the prevailing prices at any given time.

Finally, the Exchange's proposal to make non-substantive changes to the text of Supplementary Material .10 of Rule 13 and to Rule 70.25(a) adds clarity and transparency to Exchange rules and reduces potential investor confusion,

which would remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change would not impose any burden on competition because it would align how the Exchange operates when the PBBO is crossed with how other equity exchanges function when the PBBO is crossed. Moreover, the proposed rule changes would specify how orders would be processed when the PBBO is crossed, thereby promoting transparency and efficiency to the benefit of all market participants, and the adoption of a limit order protection mechanism that is based on the rules of another exchange. The Exchange believes that the proposed rule change will serve to promote regulatory clarity and consistency, thereby reducing burdens on competition in the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁹ normally does not become operative prior to 30 days after

the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),²⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²¹ 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-NYSE-2016-85 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSE-2016-85. 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

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ 15 U.S.C. 78s(b)(2)(B).

Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2016-85 and should be submitted on or before January 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Eduardo A. Aleman

Assistant Secretary.

[FR Doc. 2016-31300 Filed 12-27-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32400; File No. 812-14676]

Transamerica Funds, et al.; Notice of Application

December 21, 2016.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice of an application for an order pursuant to: (a) Section 6(c) of the Investment Company Act of 1940 (“Act”) granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint arrangements and transactions. Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

Applicants: Transamerica Funds and Transamerica Series Trust, each a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series (each a “Trust” and collectively the “Trusts”), and Transamerica Asset Management, Inc. (the “Initial Adviser”), a Florida corporation registered as an investment adviser under the Investment Advisers Act of 1940.

Filing Dates: The application was filed on July 20, 2016 and amended on October 26, 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 January 16, 2017 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: 1801 California Street, Suite 5200, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551-6819 or David J. Marcinkus, 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. Applicants request an order that would permit the applicants to participate in an interfund lending facility where each Fund could lend money directly to and borrow money directly from other Funds to cover unanticipated cash shortfalls, such as unanticipated redemptions or trade fails.¹ The Funds will not borrow under the facility for leverage purposes and

¹ Applicants request that the order also apply to any existing or future series of the Trusts and to any other registered open-end management investment company or series thereof for which the Initial Adviser and each successor thereto or a person controlling, controlled by, or under common control with the Initial Adviser serves as investment adviser (each a “Fund” and collectively the “Funds,” and each such investment adviser an “Adviser”). For purposes of the requested order, “successor” is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of a business organization.

the loans’ duration will be no more than 7 days.²

2. Applicants anticipate that the proposed facility would provide a borrowing Fund with significant savings at times when the cash position of the Fund is insufficient to meet temporary cash requirements. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or certain other short term money market instruments. Thus, applicants assert that the facility would benefit both borrowing and lending Funds.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the Application. Among others, the Adviser, through a designated committee, would administer the facility as a disinterested fiduciary as part of its duties under the investment management agreements with the Funds and would receive no additional fee as compensation for its services in connection with the administration of the facility. The facility would be subject to oversight and certain approvals by the Funds’ Board, including, among others, approval of the interest rate formula and of the method for allocating loans across Funds, as well as review of the process in place to evaluate the liquidity implications for the Funds. A Fund’s aggregate outstanding interfund loans will not exceed 15% of its net assets, and the Fund’s loans to any one Fund will not exceed 5% of the lending Fund’s net assets.³

4. Applicants assert that the facility does not raise the concerns underlying section 12(d)(1) of the Act given that the Funds are part of the same group of investment companies and there will be no duplicative costs or fees to the Funds.⁴ Applicants also assert that the proposed transactions do not raise the concerns underlying sections 17(a)(1), 17(a)(3), 17(d) and 21(b) of the Act as the Funds would not engage in lending transactions that unfairly benefit insiders or are detrimental to the Funds. Applicants state that the facility will offer both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and each Fund

² Any Fund, however, will be able to call a loan on one business day’s notice.

³ Under certain circumstances, a borrowing Fund will be required to pledge collateral to secure the loan.

⁴ Applicants state that the obligation to repay an interfund loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1) of the Act.

²² 17 CFR 200.30-3(a)(12).

would have an equal opportunity to borrow and lend on equal terms based on an interest rate formula that is objective and verifiable. With respect to the relief from section 17(a)(2) of the Act, applicants note that any collateral pledged to secure an interfund loan would be subject to the same conditions imposed by any other lender to a Fund that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or better conditions (in any other circumstance).⁵

5. Applicants also believe that the limited relief from section 18(f)(1) of the Act that is necessary to implement the facility (because the lending Funds are not banks) is appropriate in light of the conditions and safeguards described in the application and because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including combined interfund loans and bank borrowings, have at least 300% asset coverage.

6. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) 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 provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Rule 17d-1(b) under the Act provides that in passing upon an application filed under the rule, the Commission will consider whether the participation of the registered investment company in a joint enterprise, joint arrangement or profit sharing plan on the basis proposed 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 the other participants.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-31290 Filed 12-27-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79652; File No. SR-IEX-2016-21]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Require That an Issuer of Securities Listed Under Chapter 16 Notify IEX About Certain Changes to the Index, Portfolio, or Reference Asset Underlying the Security

December 21, 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 December 15, 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” or “SEC”) proposed rule changes to require that, among other things, an issuer of an ETP listed under Chapter 16 notify IEX about certain changes to the index, portfolio, or reference asset underlying the security. The Exchange has designated this proposal as non-controversial and provided the Commission with the

notice required by Rule 19b-4(f)(6)(iii) under the Act.⁶

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.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements [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

IEX listing rules require issuers to notify IEX about substitution listing events. Specifically, Rule 14.002(a)(32) defines a “Substitution Listing Event”⁷ as certain changes in the equity or legal structure of a company and Rule 14.207(e)(4) requires a listed company to provide notification to IEX about these events no later than 15 days before implementation of the event. These events generally would require IEX to review the entity for compliance with the applicable listing requirements.

IEX proposes to expand the definition of a Substitution Listing Event to include cases where an issuer of securities listed under Chapter 16 replaces, or significantly modifies, the index, portfolio, or reference asset underlying its security (including, but not limited to, a significant modification to the index methodology, a change in the index provider, or a change in control of the index provider). This type of change would require IEX to review the changes to the index, portfolio, or

⁶ 17 CFR 240.19b-4(f)(6)(iii).

⁷ A “Substitution Listing Event” means: A reverse stock split, re-incorporation or a change in the Company’s place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company’s listed shares for another security, the listing of a new class of securities in substitution for a previously-listed class of securities or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights.

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.

⁵ Applicants state that any pledge of securities to secure an interfund loan could constitute a purchase of securities for purposes of section 17(a)(2) of the Act.

reference asset for compliance with the applicable listing requirements and may require IEX to make a rule filing with the Commission to continue listing the product with the revised index, portfolio, or reference asset.⁸

IEX believes it is appropriate to require notification of these changes in the same manner as other Substitution Listing Events,⁹ which will increase to 15 days the time available to IEX to conduct its initial review of the revised index, portfolio, or reference asset underlying the security, evaluate compliance with the listing requirements, and determine if a rule filing is required.¹⁰

IEX also proposes to modify Rule 16.101 to highlight that certain changes to the index, portfolio, or reference asset underlying a security is a Substitution Listing Event that requires 15 calendar days' notice. The new language also emphasizes that such a change may affect the company's compliance with the listing requirements and may require IEX to file a new rule filing pursuant to Section 19(b)(1) of the Act¹¹ and for such rule filing to be approved by the SEC or otherwise take effect (as applicable), before the product can be listed or traded. The new rule language also indicates that IEX will halt trading if a company effectuates a change that requires such a filing before it is approved by the SEC or otherwise takes effect (as applicable). The new rule language would also indicate that IEX will commence delisting proceedings if a company effectuates a change in the case where IEX determines not to submit a rule filing or withdraws a rule filing, or where the SEC disapproves a rule filing.¹² The proposed rule changes are substantially identical to recent

changes to Nasdaq Stock Market LLC ("Nasdaq") rules.¹³

The Exchange does not currently list any ETPs. The proposed rule changes would be applicable in the event IEX lists ETPs.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with Section 6(b)¹⁴ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

IEX believes that the proposed requirement that an issuer of securities that would be listed under Chapter 16 notify IEX 15 calendar days in advance of certain changes to the index, portfolio, or reference asset underlying the security is consistent with the investor protection objectives of Section 6(b)(5) of the Act. Specifically, the proposed change will help to ensure that IEX has sufficient time to review the revised index, portfolio, or reference asset and determine whether the product complies with IEX's listing requirements and whether a rule filing must be filed by IEX pursuant to Section 19(b)(1) of the Act and approved by the Commission or otherwise take effect (as applicable), which will help protect investors. Similarly, the provisions that provide that IEX will (i) halt trading if a company effectuates a change that requires such a filing before it is approved by the SEC or otherwise takes effect (as applicable); and (ii) commence delisting proceedings if a company effectuates a change in the case where IEX determines not to submit a rule filing or withdraws a rule filing, or where the SEC disapproves a rule filing are consistent with the public interest and the protection of investors because they is [sic] designed to enable the Exchange to ensure that the necessary rule filings regarding IEX listed ETPs are approved or otherwise take effect (as applicable).

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

The proposed rule change is not based on competitive factors, but rather is designed to ensure that IEX staff would have adequate time to review a change to an index, portfolio, or reference asset for compliance with the listing requirements and to file and obtain approval or effectiveness of a rule change, if necessary. As such, the Exchange believes that the proposed change will have no impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹⁶

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

¹⁶ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

⁸ Other types of changes may also require IEX to make a rule filing with the Commission to continue listing the changed product.

⁹ Listed companies would be required to provide notification of a Substitution Listing Event by filing the appropriate form as designated by the Exchange. See Rule 14.207(e)(4).

¹⁰ Currently, at a minimum, IEX believes that an issuer must disclose such changes under Rule 14.207(b)(1), which requires public disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions, and must notify the Exchange's Regulation Department at least 10 minutes prior to such announcement.

¹¹ 15 U.S.C. 78s(b)(1).

¹² The proposed rule change would also add language to Rule 16.101 to encourage companies to consult with IEX staff sufficiently in advance of such changes to allow review and preparation of a rule filing and SEC approval, if necessary, and to clarify that IEX has sole discretion as to whether it chooses to submit a rule filing and, if submitted, whether to withdraw such rule filing.

¹³ See Securities Exchange Act Release No. 77706 (April 26, 2016), 81 FR 26275 (May 2, 2016) (SR-NASDAQ-2016-059).

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(5).

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-2016-21 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-2016-21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2016-21 and should be submitted on or before January 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2016-31311 Filed 12-27-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79649; File No. SR-NASDAQ-2016-172]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Administrative Charges for Distributors of Proprietary Data Feed Products

December 21, 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 December 14, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's data fees at Rule 7035 to change the billing cycle for administrative fees paid by distributors of Nasdaq market data from annual to monthly, and to: (1) Replace the current \$500 annual administrative fee assessed to distributors of delayed market data with a \$50 monthly administrative fee, and (2) replace the current \$1,000 annual administrative fee assessed to distributors of real-time market data with a \$100 monthly administrative fee. The proposal is described further below.³

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2017.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NASDAQ BX, Inc. and NASDAQ PHLX LLC are filing companion proposals similar to this one. All three proposals will change the billing cycle for administrative fees paid by distributors of market data from annual to monthly, and will: (1) replace the current \$500 annual administrative fee assessed to distributors of delayed market data with a \$50 monthly administrative fee, and (2) replace the current \$1,000 annual administrative fee assessed to distributors of real-time market data with a \$100 monthly administrative fee.

at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to change the billing cycle for administrative fees paid by distributors of Nasdaq market data from annual to monthly, and to: (1) Replace the current \$500 annual administrative fee assessed to distributors of delayed market data with a \$50 monthly administrative fee, and (2) replace the current \$1,000 annual administrative fee assessed to distributors of real-time market data with a \$100 monthly administrative fee.

Annual Administrative Fee

Nasdaq assesses an annual administrative fee to any market data distributor that receives a proprietary market data product. The amount of that fee is \$500 for delayed market data and \$1,000 for real-time market data. Distributors of both delayed and real-time market data are not required to pay both fees; they are charged only the higher fee. The time difference between "delayed" and "real-time" data varies by product. Nasdaq Basic data, for example, is considered delayed after 15 minutes, while data from the Nasdaq Market Pathfinders Service is considered delayed after 24 hours. The specific delay interval applicable to each product is published on the Nasdaq Trader Web site. The fee is not prorated if the distributor receives the data feed for less than a year.

Proposed Changes

The Exchange proposes to change the billing cycle for administrative fees paid by distributors of Nasdaq market data from annual to monthly, and to: (1) replace the current \$500 annual administrative fee assessed to distributors of delayed market data with

¹⁷ 17 CFR 200.30-3(a)(12).

a \$50 monthly administrative fee, and (2) replace the current \$1,000 annual administrative fee assessed to distributors of real-time market data with a \$100 monthly administrative fee.

The purposes of the proposal are to: (1) facilitate billing by aligning the current annual administrative fee billing cycle with Nasdaq's standard monthly billing cycle; (2) allocate the fee more equitably by charging distributors that receive less than a year of market data an administrative fee only for those months that they receive market data; (3) bring the Exchange's administrative fee into alignment with the PSX and BX market data administrative fees, which, after current proposals take effect, will be charged the same administrative fees on the same billing cycle; and (4) offset cost increases caused by general price inflation.

The complexity of administering Nasdaq's market data program has increased significantly since the current fee was set in July of 2006. New, more complex products and services require Nasdaq to expend more resources in administration and monitoring. For example, the introduction of Enhanced Display Solutions—which allow subscribers to view Nasdaq market data on computer monitors and export it to applications—required Nasdaq to create new reporting systems and review mechanisms for the use of market data. New reporting and review mechanisms also had to be created to implement Managed Data Solutions, which allow electronic systems access to Nasdaq market data without human intervention. The Nasdaq Basic Net Reporting Program—a service that allows distributors to lower the cost of Nasdaq Basic by reporting the number of natural persons using the data rather than the number of electronic devices able to display that data—also required Nasdaq to develop new reporting systems. All of these programs were created in response to customer demand, and all require administrative expenditures that had not been necessary when the amount of the administrative fee was set in 2006.

The administrative fee is entirely optional in that it applies only to firms that elect to distribute Nasdaq proprietary data.

The proposed changes do not raise the cost of any other Nasdaq product, except to the extent that they increase the total cost of purchasing market data.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

of the Act,⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the national market system, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁶

Likewise, in *NetCoalition v. Securities and Exchange Commission*⁷ (“NetCoalition”) the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.⁸ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”⁹

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹⁰

The Exchange believes that the proposal to replace the current \$500 annual administrative fee assessed to

distributors of delayed market data with a \$50 monthly administrative fee, and the current \$1,000 annual administrative fee assessed to distributors of real-time data with a \$100 monthly administrative fee, is fair and equitable in accordance with Section 6(b)(4) of the Act, and not unreasonably discriminatory in accordance with Section 6(b)(5) of the Act. As described above, the proposed fee change is reasonable and necessary to facilitate billing, allocate fees more equitably, align administrative fees with those of the PSX and BX exchanges, and to offset general price inflation. Moreover, administrative fees are constrained by the Exchange's need to compete for order flow.

The Exchange believes that the proposed change is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly-situated distributors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposal is to replace the current \$500 annual administrative fee assessed to distributors of delayed market data with a \$50 monthly administrative fee, and the current \$1,000 annual administrative fee assessed to distributors of real-time market data with a \$100 monthly administrative fee. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result.

Specifically, market forces constrain administrative fees in three respects. First, all fees associated with

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

⁶ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁷ *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

⁸ See *NetCoalition*, at 534–535.

⁹ *Id.* at 537.

¹⁰ *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

proprietary data are constrained by competition among exchanges and other entities attracting order flow. Second, administrative fees impact the total cost of market data, and are constrained by the total cost of the market data offered by other entities. Third, competition among distributors constrains the total cost of market data, including administrative fees.

Competition for Order Flow

Administrative fees are constrained by competition among exchanges and other entities seeking to attract order flow. Order flow is the “life blood” of the exchanges. Broker-dealers currently have numerous alternative venues for their order flow, including self-regulatory organization (“SRO”) markets, as well as internalizing broker-dealers (“BDs”) and various forms of alternative trading systems (“ATs”), including dark pools and electronic communication networks (“ECNs”). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (“TRFs”) compete to attract internalized transaction reports. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs, which may readily reduce costs by directing orders toward the lowest-cost trading venues.

The level of competition and contestability in the market for order flow is demonstrated by the numerous examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and BATS/Direct Edge. A proliferation of dark pools and other ATs operate profitably with fragmentary shares of consolidated market volume. For a variety of reasons, competition from new entrants, especially for order execution, has increased dramatically over the last decade.

Each SRO, TRF, ATs, and BD that competes for order flow is permitted to produce proprietary data products. Many currently do or have announced plans to do so, including NYSE, NYSE Amex, NYSE Arca, BATS, and IEX. This is because Regulation NMS deregulated the market for proprietary data. While BDs had previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce market data products cooperatively in a manner never before possible. Order routers and market data vendors can facilitate production of proprietary data products

for single or multiple BDs. The potential sources of proprietary products are virtually limitless.

The markets for order flow and market data are inextricably linked: a trading platform cannot generate market information unless it receives trade orders. As a result, the competition for order flow constrains the prices that platforms can charge for proprietary data products. Firms make decisions on how much and what types of data to consume based on the total cost of interacting with Nasdaq and other exchanges. Administrative fees are part of the total cost of proprietary data. A supracompetitive increase in the fees charged for either transactions or market data has the potential to impair revenues from both products.

Competition From Market Data Providers

Administrative fees are constrained by competition from other exchanges that sell market data, such as NYSE and BATS. If administrative fees were to become excessive, distributors may elect to discontinue one or two products or services purchased from Nasdaq, or reduce the level of their purchases, to signal that the overall cost of market data had become excessive. Such a reduction in purchases would act as a discipline to Nasdaq’s administrative fees, and would constrain the Exchange in its pricing decisions.

Competition Among Distributors

Distributors provide another form of price discipline for market data products. Distributors are in competition for users, and can curtail their purchases of market data if the total price of market data, including administrative fees, were set above competitive levels.

In summary, market forces constrain the level of administrative fees through competition for order flow, competition from other sources of proprietary data, and in the competition among distributors for customers. For these reasons, the Exchange has provided a substantial basis demonstrating that the fee is equitable, fair, reasonable, and not unreasonably discriminatory, and therefore consistent with and in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹¹

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2016-172 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2016-172. 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

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–172, and should be submitted on or before January 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2016–31309 Filed 12–27–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79643; File No. SR–FICC–2016–801]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of an Advance Notice To Implement a Change to the Methodology Used in the MBSD VaR Model

December 21, 2016.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act” or “Payment, Clearing and Settlement Supervision Act”) ¹ and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 (“Act”),² notice is hereby given that on November 23, 2016, the Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the advance notice as described in Items I, II and III below, which Items have been prepared primarily by FICC (“Advance Notice”).³ The Commission is publishing this notice to solicit

comments on the Advance Notice from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Advance Notice

The proposed change would change the methodology that FICC uses in the Mortgage-Backed Securities Division’s (“MBSD”) value-at-risk (“VaR”) model from one that employs a full revaluation approach to one that would employ a sensitivity approach, as described in greater detail below.⁴

The proposed change would also amend the MBSD Rules to (1) revise the definition of VaR Charge to reference an alternative volatility calculation (referred to herein as the Margin Proxy (as defined in Item II(B) below)), which would be employed in the event that the requisite data used to employ the sensitivity approach is unavailable for an extended period of time, (2) revise the definition of VaR Charge to include a minimum amount (the “VaR Floor”) that FICC would employ as an alternative to the amount calculated by the proposed VaR model for portfolios where the VaR Floor would be greater than the model-based charge amount, (3) eliminate two components from the Required Fund Deposit calculation that would no longer be necessary following implementation of the proposed VaR model, and (4) change the margining approach that FICC may employ for certain securities with inadequate historical pricing data from one that calculates charges using a historic index volatility model to one that would employ a simple haircut method, as described in greater detail below.

The proposed sensitivity approach and Margin Proxy methodologies would be reflected in the Methodology and Model Operations Document—MBSD Quantitative Risk Model (the “QRM Methodology”). FICC is requesting confidential treatment of this document and has filed it separately with the Secretary of the Commission.⁵

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has

prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments relating to the proposed change have not been solicited or received. FICC will notify the Commission of any written comments received by FICC

(B) Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Description of the Change

FICC is proposing to change the methodology that is currently used in MBSD’s VaR model from one that employs a full revaluation approach to one that would employ a sensitivity approach. In connection with this change, FICC is also proposing to (1) amend the definition of VaR Charge to reference that an alternative volatility calculation (referred to herein as the Margin Proxy (as defined in section B below)) would be employed in the event that the requisite data used to employ the sensitivity approach is unavailable for an extended period of time, (2) revise the definition of VaR Charge to include a VaR Floor that FICC would employ as an alternative to the amount calculated by the proposed VaR model for portfolios where the VaR Floor would be greater than the model-based charge amount, (3) eliminate two components from the Required Fund Deposit calculation that would no longer be necessary following implementation of the proposed VaR model, and (4) change the margining approach that FICC may employ for certain securities with inadequate historical pricing data from one that calculates charges using a historic index volatility model to one that would employ a simple haircut method. These changes are described in more detail below.

A. The Required Fund Deposit and Clearing Fund Calculation Overview

A key tool that FICC uses to manage market risk is the daily calculation and collection of Required Fund Deposits from Clearing Members. The Required Fund Deposit serves as each Clearing Member’s margin. The aggregate of all Clearing Members’ Required Fund Deposits constitutes the Clearing Fund of MBSD, which FICC would access should a defaulting Clearing Member’s own Required Fund Deposit be insufficient to satisfy losses to FICC

¹² 17 CFR 200.30–3(a)(12).

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b–4(n)(1)(i).

³ FICC also filed a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 and Rule 19b–4 thereunder, seeking approval of changes to its rules necessary to implement the proposal. 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4. See File No. SR–FICC–2016–007.

⁴ Capitalized terms used herein and not defined shall have the meaning assigned to such terms in the MBSD Clearing Rules (“MBSD Rules”) available at www.dtcc.com/legal/rules-and-procedures.aspx.

⁵ See 17 CFR 240.24b–2.

caused by the liquidation of that Clearing Member's portfolio.

The objective of a Clearing Member's Required Fund Deposit is to mitigate potential losses to FICC associated with liquidation of such Member's portfolio in the event that FICC ceases to act for such Member (hereinafter referred to as a "default"). Pursuant to the MBSD Rules, each Clearing Member's Required Fund Deposit amount currently consists of the following components: the VaR Charge, the Coverage Charge, the Deterministic Risk Component, the margin requirement differential ("MRD") and, to the extent appropriate, a special charge.⁶ Of these components, the VaR Charge comprises the largest portion of a Clearing Member's Required Fund Deposit amount.

The VaR Charge is calculated using a risk-based margin methodology that is intended to capture the market price risk associated with the securities in a Clearing Member's portfolio. The methodology uses historical market moves to project the potential gains or losses that could occur in connection with the liquidation of a defaulting Clearing Member's portfolio. The methodology assumes that a portfolio would take three days to hedge or liquidate in normal market conditions. The projected liquidation gains or losses are used to determine the amount of the VaR Charge, which is calculated to cover projected liquidation losses at a 99 percent confidence level.⁷

FICC employs daily backtesting to determine the adequacy of each Clearing Member's Required Fund Deposit. The backtesting compares the Required Fund Deposit for each Clearing Member with actual price changes in the Clearing Member's portfolio. The portfolio values are calculated by using the actual positions in such Member's portfolio on a given day and the observed security price changes over the following three days. These backtesting results are reviewed as part of FICC's VaR model performance monitoring and assessment of the adequacy of each Clearing Member's Required Fund Deposit.

FICC currently calculates the VaR Charge using a methodology referred to as the "full revaluation" approach. The full revaluation approach employs a historical simulation method to fully reprice each security in a Clearing Member's portfolio using valuation algorithms with prevailing and

historical market data. VaR provides an estimate of the possible losses for a given portfolio based on a given confidence level over a particular time horizon. The VaR Charge is calibrated at a 99 percent confidence level based on a 1-year look-back period assuming a three-day liquidation/hedge period. If FICC determines that a security's price history is incomplete and the market price risk cannot be calculated by the VaR model, then FICC applies an index volatility model until such security's trading history and pricing reflects market risk factors that can be appropriately calibrated from the security's historical data.⁸

B. Proposed Change To Replace the Methodology Used in the Existing VaR Charge Calculation

During the volatile market period that occurred during the second and third quarters of 2013, FICC's full revaluation approach did not respond effectively to the levels of market volatility at that time, and the VaR Charge amounts that were calculated using the profit and loss scenarios generated by FICC's full revaluation model did not achieve a 99 percent confidence level. Thus, the VaR Charge and the Required Fund Deposit yielded backtesting deficiencies beyond FICC's risk tolerance, which prompted FICC to employ a supplemental risk charge to ensure that each Clearing Member's VaR Charge would achieve a minimum 99 percent confidence level. This supplemental charge, referred to as the margin proxy (the "Margin Proxy"), ensured that each Clearing Member's VaR Charge was adequate and, at the minimum, mirrored historical price moves.⁹ Shortly thereafter, the annual model validation exercise revealed that FICC's prepayment model,¹⁰ which is a component of the full revaluation approach, had failed to perform as expected due to shifting market

dynamics that were not accurately captured by the model.

In connection with the above, FICC performed a review of the existing model deficiencies, examined the root causes of such deficiencies and considered options that would remediate the observed model weaknesses. As a result of this review, FICC is proposing to change MBSD's methodology for calculating the VaR Charge by: (1) Replacing the full revaluation approach with the sensitivity approach,¹¹ (2) employing the Margin Proxy as an alternative volatility calculation in the event that the requisite data used to employ the sensitivity approach is unavailable for an extended period of time and (3) establishing a VaR Floor as the VaR Charge to address a circumstance where the proposed VaR model yields a VaR Charge amount that is lower than 5 basis points of the market value of a Clearing Member's gross unsettled positions.¹²

The current full revaluation method uses valuation algorithms, one component of which is FICC's prepayment model, to fully reprice each security in a Clearing Member's portfolio over a range of historically simulated scenarios. While there are benefits to this method, some of its deficiencies are that it requires significant historical market data inputs, calibration of various model parameters and extensive quantitative support for price simulations. FICC believes that the proposed sensitivity approach would address these deficiencies because it would leverage external vendor expertise in supplying the market risk attributes, which would then be incorporated by FICC into its model to calculate the VaR Charge. FICC would source security-level risk sensitivity data and relevant historical risk factor time series data from an external vendor for all Eligible Securities.¹³ The

¹¹ Two key choices in designing a VaR model are (1) the approach used to generate simulation scenarios (e.g., historical simulation or Monte Carlo) and (2) the approach used to value the portfolio change under the simulated scenarios (e.g., full revaluation approach or sensitivity approach).

¹² Assuming the market value of gross unsettled positions of \$500,000,000, the VaR Floor calculation would be .0005 multiplied by \$500,000,000 = \$250,000. If the VaR model charge is less than \$250,000, then the VaR Floor calculation of \$250,000 would be set as the VaR Charge.

¹³ Specified pool trades are mapped to the corresponding positions in to-be-announced securities ("TBAs"). For options on TBAs, it should be noted that FICC's guarantee for options is limited to the intrinsic value of option positions (that is, when the underlying price of the TBA position is above the call price, the option is considered in-the-money and FICC's guarantee reflects this portion of the option's positive value) at the time of a Clearing

⁶ MBSD Rule 4 Section 2.

⁷ Unregistered Investment Pool Clearing Members are subject to a VaR Charge with a minimum targeted confidence level assumption of 99.5 percent.

⁸ MBSD Rule 4 Section 2(c).

⁹ The Margin Proxy is currently employed to provide supplemental coverage to the VaR Charge, however, under this proposed change, the Margin Proxy would only be employed as an alternative volatility calculation in the event that the requisite data used to employ the sensitivity approach is unavailable for an extended period of time.

¹⁰ Cash flow uncertainty as a result of unscheduled payments of principal (prepayments) is a key investment characteristic of most mortgage-backed securities. The existing VaR model uses a full revaluation approach that fully reprices each instrument under each historically simulated scenario. One component of this pricing model is FICC's prepayment model. This model was implemented during the first quarter of 2013 and it is described in AN-FICC-2012-09. Securities Exchange Act Release No. 34-68498 (December 20, 2012) 77 FR 76311 (December 27, 2012) (AN-FICC-2012-09).

sensitivity data is generated by the vendor based on its econometric, risk and pricing models. Because the quality of this data is an important component of calculating the VaR Charge, FICC would conduct independent data checks to verify the accuracy and consistency of the data feed received from the vendor. With respect to the historical risk factor time series data, FICC has evaluated the historical price moves and determined which risk factors primarily explain those price changes, a practice commonly referred to as risk attribution. The following risk factors have been incorporated into MBS's proposed VaR methodology: key rate, convexity, spread, volatility, mortgage basis and time.¹⁴

FICC's proposal to use third-party risk factor data requires that FICC take steps to mitigate potential model risk. FICC has reviewed a description of the vendor's calculation methodology and the manner in which the market data is used to calibrate the vendor's models. FICC understands and is comfortable with the vendor's controls, governance process and data quality standards. Additionally, FICC would conduct an independent review of the vendor's release of a new version of the model. As described in the QRM Methodology, to the extent that the vendor changes its model and methodologies that produce the risk factors and risk sensitivities, the effect of these changes to FICC's proposed sensitivity approach would be reviewed by FICC. Future changes to the QRM Methodology would be subject to a proposed rule change pursuant to the Act Rule 19b-4 ("Rule 19b-4").¹⁵ Modifications to the proposed VaR model may be subject to a proposed rule change pursuant to Rule 19b-4¹⁶ and/

Member's insolvency. As such, the value change of an option position would be simulated as the change in intrinsic values over the period of risk.

¹⁴ These risk factors are defined as follows:

- Key rate measures the sensitivity of a price change to changes in interest rates;
- convexity measures the degree of curvature in the price/yield relationship of key interest rates;
- spread is the yield spread that is added to a benchmark yield curve to discount a TBA's cash flows to match its market price, which takes into account a credit premium and the option-like feature of mortgage-backed-securities due to prepayment;
- volatility reflects the implied volatility observed from the swaption market to estimate fluctuations in interest rates, which impact the prepayment assumptions;
- mortgage basis captures the basis risk between the prevailing mortgage rate and a blended Treasury rate, which impacts borrowers' refinancing incentives and the model prepayment assumptions; and
- time risk factor accounts for the time value change (or carry adjustment) over the assumed liquidation period.

¹⁵ See 17 CFR 240.19b-4.

¹⁶ *Id.*

or an advance notice filing pursuant to the Clearing Supervision Act,¹⁷ and Rule 19b-4(n)(1)(i) under the Act.¹⁸

Under the proposed approach, a Clearing Member's portfolio risk sensitivities would be calculated by FICC as the aggregate of the security level risk sensitivities weighted by the corresponding position market values. The portfolio risk sensitivities and the vendor supplied historical risk factor time series data would then be used by FICC's risk model to calculate the VaR Charge for each Clearing Member. More specifically, FICC would look at the historical changes of the chosen risk factors during the look-back period in order to generate risk scenarios to arrive at the market value changes for a given portfolio. A statistical probability distribution would be formed from the portfolio's market value changes.

The proposed sensitivity approach differs from the current full revaluation method mainly in how the market value changes are calculated. The full revaluation method accounts for changes in properties of mortgage-backed securities that change over time by incorporating certain historical data¹⁹ to calibrate the model that generates a simulated interest rate curve. This data is used to create a distribution of returns per TBA. The proposed sensitivity approach, by comparison, would simulate the market value changes of a Clearing Member's portfolio under a given market scenario as the sum of the portfolio risk factor exposure multiplied by the corresponding risk factor movements.

The sensitivity approach would provide three key benefits. First, the sensitivity approach incorporates both historical data and current risk factor sensitivities while the full revaluation approach is calibrated with only historical data. The proposed sensitivity approach integrates both observed risk factor changes and current market conditions to more effectively respond to current market price moves that may not be reflected in the historical price moves. This is evidenced in FICC's independent validation of the proposed model and the backtesting results. The risk factor data is sourced from an industry-leading vendor risk model with trading quality accuracy. As part of the assessment of the proposed VaR model, the independent validation of the proposed model indicated that the proposed sensitivity approach would

¹⁷ See 12 U.S.C. 5465(e)(1).

¹⁸ See 17 CFR 240.19b-4(n)(1)(i).

¹⁹ Such historical data may include TBA prices, 3-day movements of interest, option-adjusted spreads, current interest term structure and swaption volatilities.

address deficiencies observed in the existing model by leveraging external vendor expertise, which FICC does not need to develop in-house, in supplying the market risk attributes that would then be incorporated by FICC into its model to calculate the VaR Charge. FICC has also performed backtesting to validate the performance of the proposed model and determine the impact on the VaR Charge. Based on FICC's review of the backtesting results and the impact study, the sensitivity approach provides better coverage on volatile days and a material improvement in margin coverage, while not significantly increasing the overall Clearing Fund. Results of the analysis indicate that the proposed sensitivity approach would be more responsive to changing market dynamics and that it would not negatively impact FICC or its Clearing Members.

The second benefit of the proposed sensitivity approach is that it would provide more transparency to Clearing Members. Since Clearing Members typically use risk factor analysis for their own risk and financial reporting such Members would have comparable data and analysis to assess the variation in their VaR Charge based on changes in the market value of their portfolios. Thus, Clearing Members would be able to simulate the VaR Charge to a closer degree than under the existing VaR model.

The third benefit of the proposed sensitivity approach is that it provides FICC with the ability to increase the look-back period used to generate the risk scenarios from 1 year to 10 years plus, to the extent applicable, an additional stressed period.²⁰ The extended look-back period would be used to ensure that the historical simulation is inclusive of stressed market periods.

FICC would have the ability to include an additional period of historically observed stressed market conditions to a 10-year look-back period if FICC observes that (1) the results of the model performance monitoring are not within FICC's 99th percentile confidence level or (2) the 10-year look-back period does not contain sufficient

²⁰ Under the proposed model, the 10-year look-back period would include the 2008/2009 financial crisis scenario. To the extent that an equally or more stressed market period does not occur when the 2008/2009 financial crisis period is phased out from the 10-year look-back period (e.g., from September 2018 onward), FICC would continue to include the 2008/2009 financial crisis scenario in its historical scenarios. However, if an equally or more stressed market period emerges in the future, FICC may choose not to augment its 10-year historical scenarios with those from the 2008/2009 financial crisis.

stressed market conditions. While FICC could extend the 1-year look-back period in the existing full revaluation approach to a 10-year look-back period, the performance of the model could deteriorate if current market conditions are materially different than indicated in the historical data. Additionally, since the full revaluation method requires FICC to maintain in-house complex pricing models and mortgage prepayment models, enhancing these models to extend the look-back period to include 10-years of historical data involves significant model development. The sensitivity approach, on the other hand, would incorporate a longer look-back period of 10 years, which would allow the proposed model to capture periods of historical volatility.

On an annual basis, FICC would assess whether an additional stressed period should be included. This assessment would include a review of (1) the largest moves in the dominating market risk factor of the proposed VaR model, (2) the impact analyses resulting from the removal and/or addition of a stressed period and (3) the backtesting results of the proposed look-back period. As described in the QRM Methodology, approval by FICC's Model Risk Governance Committee ("MRGC") and, to the extent necessary, the Management Risk Committee ("MRC") would be required to determine when to apply an additional period of stressed market conditions to the look-back period and the appropriate historical stressed period to utilize if it is not within the current 10-year period.

Finally, FICC does not believe that its engagement of the vendor would present a conflict of interest to FICC because the vendor is not an existing Clearing Member nor are any of the vendor's affiliates existing Clearing Members. To the extent that the vendor or any of its affiliates submit an application to become a Clearing Member, FICC will negotiate an appropriate information barrier with the applicant in an effort to prevent a conflict of interest from arising. An affiliate of the vendor currently provides an existing service to FICC, however, this arrangement does not present a conflict of interest because the existing agreement between FICC and the vendor, and the existing agreement between FICC and the vendor's affiliate each contain provisions which limit the sharing of confidential information.

C. Proposed Change To Establish a VaR Floor

FICC is proposing to amend the definition of VaR Charge to include a

VaR Floor. The VaR Floor would be employed as an alternative to the amount calculated by the proposed model for portfolios where the VaR Floor would be greater than the model-based charge amount. FICC's proposal to establish a VaR Floor seeks to address the risk that the proposed VaR model may calculate too low a VaR Charge for certain portfolios where the VaR model applies substantial risk offsets among long and short positions in different classes of mortgage-backed securities that have a high degree of historical price correlation. Because this high degree of historical price correlation may not apply in future changing market conditions,²¹ FICC believes that it is prudent to apply a VaR Floor that is based upon the market value of the gross unsettled positions in the Clearing Member's portfolio in order to protect FICC against such risk in the event that FICC is required to liquidate a large mortgage-backed securities portfolio in stressed market conditions.

D. Vendor Data Disruption

As noted above, FICC intends to source certain sensitivity data and risk factor data from a vendor. FICC's Quantitative Risk Management, Vendor Risk Management, and Information Technology teams have conducted due diligence of the vendor in order to evaluate its control framework for managing key risks. FICC's due diligence included an assessment of the vendor's technology risk, business continuity, regulatory compliance, and privacy controls. FICC has existing policy and procedures for data management that includes market data and analytical data provided by vendors. These policies and procedures do not have to be amended in connection with this proposed rules change. FICC also has tools in place to assess the quality of the data that it receives from vendors.

Rule 1001(c)(1) of Regulation Systems Compliance and Integrity ("SCI") requires FICC to establish, maintain, and enforce reasonably designed written policies and procedures that include the criteria for identifying responsible SCI personnel, the designation and documentation of responsible SCI personnel, and escalation procedures to quickly inform responsible SCI

²¹ For example, and without limitation, certain classes of mortgage-backed securities may have highly correlated historical price returns despite having different coupons. However, if future mortgage market conditions were to generate substantially greater prepayment activity for some but not all such classes, these historical correlations could break down, leading to model-generated offsets that would not adequately capture a portfolio's risk.

personnel of potential SCI events.²² Further, pursuant to Rule 1002 of Regulation SCI, each responsible SCI personnel is responsible for determining when there is a reasonable basis to conclude that a SCI event has occurred, which will trigger certain obligations of an SCI entity with respect to such SCI events.²³ FICC has existing policies and procedures which reflect established criteria that must be used by responsible SCI personnel to determine whether a disruption to, or significant downgrade of, the normal operation of FICC's risk management system has occurred as defined under Regulation SCI. These policies and procedures do not have to be amended in connection with this proposed rule change. In the event that the vendor fails to provide the requisite sensitivity data and risk factor data, the responsible SCI personnel would determine whether a SCI event has occurred and FICC would fulfill its obligations with respect to the SCI event.

In connection with FICC's proposal to source data for the proposed sensitivity approach, FICC is also proposing procedures that would govern in the event that the vendor fails to provide sensitivity data and risk factor data. If the vendor fails to provide any data or a significant portion of the data timely, FICC would use the most recently available data on the first day that such data disruption occurs. If it is determined that the vendor will resume providing data within five (5) business days, management would determine whether the VaR Charge should continue to be calculated by using the most recently available data along with an extended look-back period or whether the Margin Proxy should be invoked, subject to the approval of DTCC's Group Chief Risk Officer or his/her designee. If it is determined that the data disruption will extend beyond five (5) business days, the Margin Proxy would be applied, subject to the approval of the MRC followed by notification to FICC's Board Risk Committee.

The Margin Proxy would be calculated as follows: (i) Risk factors would be calculated using historical market prices of benchmark TBA securities and (ii) each Clearing Member's portfolio exposure would be calculated on a net position across all products and for each securitization program (*i.e.*, Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie Mac") conventional 30-year

²² See 17 CFR 242.1001(c)(1).

²³ See 17 CFR 242.1002.

mortgage-backed securities, Government National Mortgage Association (“Ginnie Mae”) 30-year mortgage-backed securities, Fannie Mae and Freddie Mac conventional 15-year mortgage-backed securities, and Ginnie Mae 15-year mortgage-backed securities). The Margin Proxy would be used to calculate the VaR Charge by multiplying the risk factor for the Fannie Mae and Freddie Mac conventional 30-year mortgage-backed securities (“base risk factor”), which is the dominant and most liquid portion of the products cleared by FICC, by the absolute value of the Clearing Member’s net position across all products, plus the sum of each risk factor spread to the base risk factor multiplied by the absolute value of its corresponding position.²⁴

FICC would calculate the Margin Proxy on a daily basis and the Margin Proxy method would be subject to monthly performance review by the MRGC. FICC would monitor the performance of the calculation on a monthly basis to ensure that it could be used in the circumstance described above. Specifically, FICC would monitor each Clearing Member’s Required Fund Deposit and the aggregate Clearing Fund requirements versus the requirements calculated by Margin Proxy. FICC would also backtest the Margin Proxy results versus the three-day profit and loss based on actual market price moves. If FICC observes material differences between the Margin Proxy calculations and the aggregate Clearing Fund requirement calculated using the proposed VaR model, or if the Margin Proxy’s backtesting results do not meet FICC’s 99 percent confidence level, management may recommend remedial actions to the MRGC, and to the extent necessary the MRC, such as increasing

²⁴ To illustrate the Margin Proxy calculation, consider an example where a Clearing Member has a portfolio with a net long position across all products of \$2 billion, and the base risk factor is 0.015. Further assume the Clearing Member has a net short position of \$30 million in Fannie Mae and Freddie Mac conventional 15-year mortgage-backed securities, and the corresponding risk factor spread to the base risk factor is 0.006; a net short position of \$500 million in Ginnie Mae 30-year mortgage-backed securities, and the corresponding risk factor spread is 0.005; and a net long position of \$120 million in Ginnie Mae 15-year mortgage-backed securities, and the corresponding risk factor spread is 0.007. In order to generate the Margin Proxy calculation, FICC would multiply the base risk factor by the absolute value of the Clearing Member’s net position across all products, plus the sum of each risk factor spread of the subsequent products multiplied by absolute value of the position for the respective product (*i.e.*, [(base risk factor)*ABS[portfolio net position]] + [(CONV15 spread risk factor) * ABS(CONV15 net position)] + [(GNMA30 spread risk factor) * ABS(GNMA30 net position)] + [(GNMA15 Spread Risk Factor) * ABS(GNMA15 Net Position)]). The resulting Margin Proxy amount would be \$33.52 million.

the look-back period and/or applying an appropriate historical stressed period to the Margin Proxy calibration.

E. Proposed Change To Replace the Historic Index Volatility Model With a Haircut Method To Measure the Risk Exposure of Securities That Lack Historical Data

Occasionally, portfolios contain classes of securities that reflect market price changes not consistently related to historical risk factors. The value of these securities is often uncertain because the securities’ market volume varies widely, thus the price histories are limited. Since the volume and price information for such securities is not robust, a historical simulation approach would not generate VaR Charge amounts that adequately reflect the risk profile of such securities. Currently, MBS Rule 4 provides that FICC may use a historic index volatility model to calculate the VaR component of the Required Fund Deposit for these classes of securities. FICC is proposing to amend Rule 4 to replace the historic index volatility model with a haircut method.

FICC believes that the haircut method would better capture the risk profile of these securities because the lack of adequate historical data makes it difficult to map such securities to a historic index volatility model. FICC is proposing to calculate the component of the Required Fund Deposit applicable to these securities by applying a fixed haircut level to the gross market value of the positions. FICC has selected an initial haircut of 1 percent based on its analysis of a five-year historical study of three-day returns during a period that such securities were traded. This percentage would be reviewed annually or more frequently if market conditions warrant and updated, if necessary, to ensure sufficient coverage.

Currently, the classes of securities that lack adequate historical data include balloon Fannie Mae 7-year securities, balloon Freddie Mac 5-year securities and balloon Freddie Mac 7-year securities. FICC has no exposure to these security classes as of the filing date of this proposed change and has had negligible exposure over the last several years. However, prudent risk management dictates that FICC maintain appropriate rules to cover potential future exposures.

F. Proposed Change To Eliminate the Coverage Charge Component and the Margin Requirement Differential Component

FICC is also proposing to eliminate the Coverage Charge and MRD components from MBS Rule 4’s Required

Fund Deposit calculation. Both components are based on historical portfolio activity, which may not be indicative of a Clearing Member’s current risk profile, but were determined by FICC to be appropriate to address potential shortfalls in margin charges under the existing VaR model.

As part of the development and assessment of the sensitivity approach for MBS Rule 4’s proposed VaR model, FICC obtained an independent validation of the proposed model by an external party, backtested the model’s performance and analyzed the impact of the margin changes. Results of the analysis indicated that the proposed sensitivity approach would be more responsive to changing market dynamics and a Clearing Member’s portfolio composition coverage than the existing model. The model validation and backtesting analysis also demonstrated that the proposed sensitivity model would provide sufficient margin coverage on a standalone basis. Because testing and validation of MBS Rule 4’s proposed VaR model show a material improvement in margin coverage, FICC believes that the Coverage Charge and MRD components are no longer necessary.

G. Description of the Proposed Changes to the Text of the MBS Rule 4

The proposed changes to the MBS Rule 4 are as follows:

- Delete the term “Coverage Charge” from Rule 4 because FICC is proposing to eliminate this component from the Clearing Fund calculation.
- Delete the references to the Coverage Charge and the MRD in Rule 4 Section 2(c) because FICC is proposing to eliminate these components from the Clearing Fund calculation.
- Amend the term “VaR Charge” to reflect that (x) an alternative volatility calculation would be employed in the event that the requisite data used to employ the sensitivity approach is unavailable for an extended period of time and (y) the VaR Floor would be utilized as the VaR Charge if the proposed VaR methodology yields an amount that is lower than 5 basis points of the market value of a Clearing Member’s gross unsettled positions.
- Replace the reference to the “historic index volatility model” with “haircut method” in Rule 4 Section 2 to reflect the method that would be used for classes of securities where the volatility is less amendable to statistical analysis.

H. Description of the QRM Methodology

The QRM Methodology document provides the methodology by which

FICC would calculate the VaR Charge with the proposed sensitivity approach as well as other components of the Required Fund Deposit calculation. The document specifies (i) the model inputs, parameters, assumptions and qualitative adjustments, (ii) the calculation used to generate Required Fund Deposit amounts, (iii) additional calculations used for benchmarking and monitoring purposes, (iv) theoretical analysis, (v) the process by which the VaR methodology was developed as well as its application and limitations, (vi) internal business requirements associated with the implementation and ongoing monitoring of the VaR methodology, (vii) the model change management process and governance framework (which includes the escalation process for adding a stressed period to the VaR calculation), and (viii) the Margin Proxy calculation.

Anticipated Effect on and Management of Risks

FICC believes that the proposed change, which consists of proposals to (1) implement the sensitivity approach in order to correct the existing deficiencies in the existing VaR methodology, (2) establish the Margin Proxy as a back-up to the sensitivity approach, (3) establish a VaR Floor as the minimum VaR Charge, (4) apply a haircut to securities that have market price changes that are not consistently related to historical risk factors and (5) remove the Coverage Charge component and the MRD component from the Required Fund Deposit calculation, would enable FICC to better limit its exposure to Clearing Members arising out of the activity in their portfolios.

FICC's proposal to change the existing VaR methodology from one that employs a full revaluation approach to one that employs a sensitivity approach would affect FICC's management of risk because it would help to address the deficiencies observed in the current model by leveraging external vendor expertise in supplying the market risk attributes that would then be incorporated by FICC into its model to calculate the VaR Charge. The proposed methodology would enhance FICC's risk management capabilities because it would enable sensitivity analysis of key model parameters and assumptions. The sensitivity approach would allow FICC to attribute market price moves to various risk factors (such as key rates, option adjusted spread, and mortgage basis) that would enable FICC to view and respond more effectively to market volatility.

As noted above, the proposed sensitivity approach would leverage

external vendor expertise in supplying the market risk attributes. FICC would manage the risks associated with a potential data disruption by using the most recently available data on the first day that a data disruption occurs. If it is determined that the vendor will resume providing data within five (5) business days, management would determine whether the VaR Charge should continue to be calculated by using the most recently available data along with an extended look-back period or whether the Margin Proxy should be invoked subject to the approval of DTCC's Group Chief Risk Officer or his/her designee. If it is determined that the data disruption will extend beyond five (5) business days, the Margin Proxy would be applied, subject to the approval of the MRC followed by notification to FICC's Board Risk Committee.

FICC's proposal to implement the Margin Proxy as a back-up methodology to the sensitivity approach would affect FICC's management of risk because the Margin Proxy would help ensure that FICC could continue to calculate each Clearing Member's VaR Charge in the event that FICC experiences a data disruption that is expected to last beyond five (5) business days.

FICC's proposal to implement the VaR Floor would affect FICC's management of risk because it addresses the risk that the proposed VaR model may calculate too low a VaR Charge for certain portfolios where the VaR model applies substantial risk offsets among long and short positions in different classes of mortgage-backed securities that have a high degree of historical price correlation. Because this high degree of historical price correlation may not apply in future changing market conditions, FICC would manage this risk by applying a VaR Floor that would be based upon the market value of the gross unsettled positions in the Clearing Member's portfolio. This would protect FICC in the event that it is required to liquidate a large mortgage-backed securities portfolio in stressed market conditions.

FICC's proposal to implement a simple haircut method for securities with inadequate historical pricing data would affect FICC's management of risk because the proposed change would better capture the risk profile of these securities thus helping to ensure that sufficient margin would be calculated for portfolios that contain these securities. FICC would continue to manage the market risk of clearing these securities by conducting analysis on the type of securities that cannot be processed by the proposed VaR model

and engaging in periodic reviews of the haircut used for calculating margin for these types of securities.

FICC's proposal to remove the Coverage Charge and MRD components would affect FICC's management of risk because the proposed changes would remove unnecessary components from the Clearing Fund calculation. As described above, both components are based on historical portfolio activity, which may not be indicative of a Clearing Member's current risk profile. As part of FICC's development of the sensitivity VaR model, FICC pursued a validation of the proposed model by an external party, performed back testing to validate model performance, and conducted analysis to determine the impact of the changes to the Clearing Members. Results of the analysis indicate that the proposed sensitivity approach would be more responsive to changing market dynamics and provide better coverage than the existing model. Given the improvement in model coverage, FICC believes that the Coverage Charge and MRD components would no longer be necessary.

FICC has also managed the effect of the overall proposal by conducting extensive outreach with Clearing Members regarding the proposed changes, educating such Members on reasons for these proposed changes, and explaining the related risk management improvements. FICC has invited all Clearing Members to customer forums in an effort to provide transparency regarding the changes and the expected macro impact across the membership, and has provided each Clearing Member with an individual impact study. In addition, FICC's Enterprise Risk Management team and Relationship Management team have been available to answer all questions. Such communication gives Clearing Members the opportunity to manage any impact to their own risk profile.

Consistency With the Clearing Supervision Act

The proposed changes, which have been described in detail above, consist of proposals to (1) implement the sensitivity approach in order to correct the existing deficiencies in the existing VaR methodology, (2) establish the Margin Proxy as a back-up to the sensitivity approach, (3) establish a VaR Floor as the minimum VaR Charge, (4) apply a haircut to securities that have market price changes that are not consistently related to historical risk factors and (5) remove the Coverage Charge component and the MRD component from the Required Fund Deposit calculation, would be consistent

with Section 805(b) of the Clearing Supervision Act.²⁵ The objectives and principles of Section 805(b) include, among other things, the promotion of robust risk management.²⁶ FICC believes the proposed changes would promote this objective because they would give MBSB the ability to better cover its exposure to Clearing Members arising out of the activity of such Members' portfolios.

FICC believes that the proposed changes are also consistent with Rules 17Ad-22(b)(1) and (b)(2) under the Act.²⁷ Rule 17Ad-22(b)(1) requires a registered clearing agency that performs central counterparty services to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants under normal market conditions so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control.²⁸ Taken together, the proposed changes referenced in the previous paragraph would continue FICC's practice of measuring its credit exposures at least once a day and would collectively enhance the risk-based margining framework whose objective would be to calculate each Clearing Member's Required Fund Deposit such that in the event of a Clearing Member's default, its own Required Fund Deposit would be sufficient to mitigate potential losses to FICC associated with the liquidation of such defaulted Clearing Member's portfolio.

Rule 17Ad-22(b)(2) under the Act requires a registered clearing agency that performs central counterparty services to establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.²⁹ The proposed changes referenced above in the second paragraph of this section would collectively constitute a risk-based model and parameters that would establish margin requirements for

Clearing Members. This risk-based model and parameters would use margin requirements to limit FICC's credit exposure to its Clearing Members by enabling FICC to identify the risk posed by a Clearing Member's unsettled portfolio and to quickly adjust and collect additional deposits as needed to cover those risks. In order to mitigate counterparty exposure to each Clearing Member, under the proposed changes, FICC would calculate the VaR of the unsettled obligations of each Member to a 99 percent confidence interval with a three-day liquidation hedge/horizon, as the basis for its Clearing Fund requirement. Because the proposed changes are designed to calculate each Clearing Member's Required Fund Deposit at a 99 percent confidence level, FICC believes each Clearing Member's Required Fund Deposit would cover its own losses in the event that such Member defaults under normal market conditions.

FICC believes that the proposed changes are consistent with Rules 17Ad-22(e)(4) and (e)(6) of the Act, which were recently adopted by the Commission.³⁰ Rule 17Ad-22(e)(4) will require FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those exposures arising from its payment, clearing, and settlement processes.³¹ The proposed changes referenced above in the second paragraph of this section would enhance FICC's ability to identify, measure, monitor and manage its credit exposures to Clearing Members and those exposures arising from its payment, clearing, and settlement processes. Therefore, FICC believes the proposed changes are consistent with the requirements of Rule 17Ad-22(e)(4), promulgated under the Act, cited above.

Rule 17Ad-22(e)(6) will require FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that is monitored by management on an ongoing basis and regularly reviewed,

³⁰ The Commission adopted amendments to Rule 17Ad-22, including the addition of new section 17Ad-22(e), on September 28, 2016. See Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14). The amendments to Rule 17Ad-22 become effective on December 12, 2016. *Id.* FICC is a "covered clearing agency" as defined in Rule 17Ad-22(a)(5) and must comply with new section (e) of Rule 17Ad-22 by April 11, 2017. *Id.*

³¹ See Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14).

tested, and verified.³² FICC's proposal to (1) implement the sensitivity approach in order to correct the existing deficiencies in the existing VaR methodology, (2) establish the Margin Proxy as a back-up to the sensitivity approach, (3) establish a VaR Floor as the minimum VaR Charge, and (4) apply a haircut to securities that have market price changes that are not consistently related to historical risk factors would help FICC to cover its credit exposures to Clearing Members because these proposed changes establish a risk-based margin system that would be monitored by FICC management on an ongoing basis and regularly reviewed, tested, and verified. Therefore, FICC believes that the proposed changes are consistent with the requirements of Rule 17Ad-22(e)(6), promulgated under the Act, cited above.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the Advance Notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its Web site of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

³² *Id.*

²⁵ See 12 U.S.C. 5464(b).

²⁶ *Id.*

²⁷ See 17 CFR 240.17Ad-22(b)(1) and (b)(2).

²⁸ See 17 CFR 240.17Ad-22(b)(1).

²⁹ See 17 CFR 240.17Ad-22(b)(2).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FICC-2016-801 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-FICC-2016-801. 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 Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice 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 FICC and on FICC's Web site (<http://dtcc.com/legal/sec-rule-filings.aspx>).

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2016-801 and should be submitted on or before January 12, 2017.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016-31312 Filed 12-27-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79639; File No. SR-NYSE-2016-88]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a Trading License Fee for Calendar Year 2017

December 21, 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 December 15, 2016, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by 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 adopt a trading license fee for calendar year 2017. The Exchange proposes to make the rule change operative on January 3, 2017. The proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to adopt a trading license fee

for calendar year 2017. The Exchange proposes to make the rule change operative on January 3, 2017.

NYSE Rule 300(b) provides that, in each annual offering, up to 1366 trading licenses for the following calendar year will be sold annually at a price per trading license to be established each year by the Exchange pursuant to a rule filing submitted to the Securities and Exchange Commission ("Commission") and that the price per trading license will be published each year in the Exchange's price list.

The Exchange proposes to leave the current trading license fee in place for 2017: \$50,000 for the first license held by a member organization and no charge for additional licenses held by a member organization. Such trading license fees have been in place since July 1, 2016.³ Fees will continue to be prorated for any portion of the year that a license may be outstanding. For a trading license that is in place for 10 calendar days or less in a calendar month, proration for that month will continue to be at a flat rate of \$100 per day with no tier pricing involved. For a trading license that is in place for 11 calendar days or more in a calendar month, proration for that month will continue to be computed based on the number of days as applied to the applicable annual fee for the license.

The proposed changes are not otherwise intended to address any other problem, and the Exchange is not aware of any significant problem that the affected market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and Section 6(b)(4) of the Act,⁵ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the trading license fee is reasonable because it maintains the existing fee schedule, which has been in place since July 1, 2016. The Exchange also believes that the proposal to maintain the current fee schedule is equitable and not unfairly discriminatory because all similarly situated member organizations would continue to be subject to the same trading license fee structure and

³ See Securities Exchange Act Release No. 78233 (July 6, 2016), 81 FR 45190 (July 12, 2016) (SR-NYSE-2016-47).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

because access to the Exchange's market would continue to be offered on fair and non-discriminatory terms. The Exchange also believes that the proposal to maintain the current fee schedule is equitable and not unfairly discriminatory because all member organizations would continue to have the opportunity to enjoy the benefits of the fee relief with respect to additional trading licenses.

The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will keep trading license fees the same as they have been since July 1, 2016. As a result, the Exchange does not believe that the proposed rule change will place an unreasonable burden on current members because their trading license fees will remain the same. In addition, the Exchange does not believe that the proposed rule change will place an unreasonable burden on potential members because a potential member's fees will be the same as for a current member and pro-rated for licenses held for less than a year.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order

execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)⁶ of the Act and subparagraph (f)(2) of Rule 19b-4⁷ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2016-88 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSE-2016-88. 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

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(2).

Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2016-88 and should be submitted on or before January 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2016-31301 Filed 12-27-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79637; File No. SR-NYSE-2016-86]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 123D and the Listed Company Manual

December 21, 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 December 13, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 123D and the Listed Company Manual to eliminate the requirement for Floor Official approval for halts in trading. The proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 123D and the Listed Company Manual to eliminate the requirement for Floor Official⁴ approval before halting trading in a security. The Exchange believes that in today's trading environment, the requirement for Floor Official approval before halting trading in a security is unnecessary and duplicative of Exchange obligations to assess whether to halt trading in a security under Section 202.06 of the Listed Company Manual.

Current Rule 123D(d) provides that once trading has commenced, trading may only be halted with the approval of a Floor Governor or two Floor Officials and that an Executive Floor Governor, or in their absence a Senior Floor Governor, should be consulted if it is felt that trading should be halted in a bank or brokerage stock due to a potential misperception regarding the

company's financial viability.⁵ The rule further provides that if a listed company notifies the Exchange in advance of publication concerning news which might have a substantial market impact, the Exchange should advise an Executive Floor Governor or Floor Governor, or in their absence, a Floor Official, and specifies procedures for Floor Governors to overrule the Exchange's determination that a security should be halted.

Commensurate with the evolution of the equities markets and trading on the Exchange towards more automated processes, the procedures and situations requiring approvals by Floor Officials have also evolved. For example, the Exchange previously eliminated the ability of a Floor broker to seek an exception to Rule 122 requirements if Floor Official permission is obtained.⁶ In connection with trading halts, the Exchange is responsible for determining whether to halt trading in a security under Section 202.06(B) of the Listed Company Manual. Thus, requiring Floor Official approval before a trading halt can be invoked is an unnecessary *pro forma* step rather than a substantive requirement. Moreover, obtaining Floor Governor approval adds an extra manual step to the process, which could impede the timely dissemination of a trading halt. Finally, given market fragmentation and highly automated equities trading environment, the Exchange does not believe that Floor Governors, who do not have contact with the listed company, should be in a position to override an Exchange determination to halt trading in a security. Consequently, the Exchange proposes to delete Rule 123D(d) in its entirety as unnecessary and duplicative of existing Exchange obligations specified in the Listed Company Manual.

The Exchange also proposes to make a related change to Section 202.06(B) of the Listed Company Manual to delete two references to Rule 123D that would be rendered obsolete by the proposed deletion of Rule 123D(d). In addition, the Exchange proposes to re-letter the remaining subsections of Rule 123D to account for the deletion of Rule 123D(d).

The Exchange proposes to make a related change to eliminate the

⁵ See Rules 46 and 46A (defining the terms Floor Official, Senior Floor Official, Executive Floor Official, Floor Governor, and Executive Floor Governor).

⁶ See also Securities Exchange Act Release No. 67345 (July 3, 2012), 77 FR 40683 (July 10, 2012) (SR-NYSE-2012-20) (notice of filing and immediate effectiveness of proposed rule change amending certain Exchange rules related to floor official duties and responsibilities).

requirement in Rule 123D(e) that an "Equipment Changeover" halt in trading requires the approval of a Floor Governor or two Floor Officials as such approval is no longer necessary. An Equipment Changeover halt is a non-regulatory halt condition that only halts trading on the Exchange. The Exchange believes that if circumstances arise warranting an Equipment Changeover halt, obtaining Floor Official approval before halting trading adds an unnecessary step that is no longer needed in today's automated markets.

Because of the procedural changes associated with the proposed rule changes, the Exchange proposes to announce the eliminations via Trader Update and anticipates implementing the changes in the first quarter of 2017.

2. Statutory Basis

The proposed rule changes are consistent with Section 6(b)⁷ of the Act, in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, in that they are 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.

The Exchange believes that the proposed rule changes support the objectives of the Act by amending duties and responsibilities once assigned to Floor Officials to better comport with the Exchange's current regulatory structure and to reflect the changing technology and development of its automated systems. Specifically, eliminating the unnecessary step of obtaining Floor Official approval in connection with trading halts would remove impediments to and perfect a national market system by streamlining and simplifying functionality and complexity in connection with trading halts. The Exchange believes that streamlining the procedures and eliminating unnecessary Floor Official approval requirements would be consistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from the removal of unnecessary functionality. The Exchange also believes that eliminating Floor Official approval would benefit investors by adding transparency and clarity to the Exchange's rules.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁴ "Floor Official" encompasses Floor Governor, Floor Official, Executive Floor Governor and Senior Floor Governor, as their responsibilities are currently assigned in connection with trading halts. See also Rules 46 and 46A defining Floor Governor, Floor Official, and Executive Floor Governor.

The Exchange believes that the proposed deletion of two references to Rule 123D in Section 202.06B of the Listed Company Manual is reasonable, equitable and not unfairly discriminatory because the references are obsolete. The proposed changes would result in the removal of obsolete text from the Listed Company Manual and therefore add greater clarity to the Listed Company Manual regarding halts in trading.

The Exchange believes that the proposed re-lettering of the remaining subsections of Rule 123D is reasonable, equitable and not unfairly discriminatory because the proposed change would add greater clarity to the Exchange's rule book.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather would streamline functionality, eliminate an unnecessary step, and streamline forms, thereby reducing confusion and making the Exchange's rules easier to understand and navigate.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission 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)¹³ 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-NYSE-2016-86 on the subject line.

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSE-2016-86. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2016-86 and should be submitted on or before January 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016-31299 Filed 12-27-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79645; File Nos. SR-NYSEMKT-2016-52 and SR-NYSEArca 2016-103]

Self-Regulatory Organizations; NYSE MKT LLC; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes To Extend the Time Within Which a Member, Member Organization, an ATP Holder, an OTP Holder, or an OTP Firm Must File a Uniform Termination Notice for Securities Industry Registration ("Form U5") and Any Amendments Thereto

December 21, 2016.

On June 16, 2016, NYSE MKT LLC ("NYSE MKT") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ a proposed rule change to extend the time within which a member or member organization, or an Amex Trading Permit Holder ("ATP Holder") must file a Form U5, or any amendments thereto. The proposed rule change was published for comment in

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ 15 U.S.C. 78s(b)(2)(B).

the **Federal Register** on July 7, 2016.⁴ On July 14, 2016, NYSE Arca, Inc. (“NYSE Arca”) (NYSE MKT and NYSE Arca, each an “Exchange”) filed with the Commission, pursuant to Section 19(b)(1)⁵ of the Act and Rule 19b-4 thereunder,⁶ a proposed rule change to extend the time within which an Options Trading Permit Holder (“OTP Holder”) or Options Trading Permit Firm (“OTP Firm”) must file a Form U5, or any amendments thereto. The proposed rule change was published for comment in the **Federal Register** on July 27, 2016.⁷ The Commission received one comment letter regarding the proposals.⁸ The New York Stock Exchange LLC (“NYSE”), on behalf of the Exchanges, responded to the comment on August 12, 2016.⁹ On August 17, 2016¹⁰ and September 1, 2016,¹¹ the Commission designated a longer period for Commission action on the respective proposed rule changes. On October 3, 2016, the Commission received another comment regarding the proposals.¹² On October 5, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act¹³ to determine whether to approve or disapprove the proposed rule changes.¹⁴ The Commission received four additional comment letters regarding the proposals.¹⁵ NYSE, on behalf of the

⁴ See Securities Exchange Act Release No. 78198 (June 30, 2016), 81 FR 44363.

⁵ 15 U.S.C. 78s(b)(1).

⁶ 17 CFR 240.19b-4.

⁷ See Securities Exchange Act Release No. 78381 (July 21, 2016), 81 FR 49286.

⁸ See letter from Judith Shaw, President, North American Securities Administrators Association, Inc. (“NASAA”), dated August 3, 2016, to Brent J. Fields, Secretary, Securities and Exchange Commission (“NASAA Letter”). While the NASAA Letter addresses issues associated with the NYSE MKT proposal, the Commission believes that the concerns raised by NASAA are equally applicable to the two proposals addressed in this Notice.

⁹ See letter from Elizabeth K. King, General Counsel and Corporate Secretary, NYSE, dated August 12, 2016, to Brent J. Fields, Secretary, Commission.

¹⁰ See Securities Exchange Act Release No. 78598, 81 FR 57642 (August 23, 2016).

¹¹ See Securities Exchange Act Release No. 78755, 81 FR 62912 (September 8, 2016).

¹² See letter from Rick A. Fleming, Investor Advocate, and Tracey L. McNeil, Ombudsman, Office of the Investor Advocate, Commission, dated October 3, 2016, to Brent J. Fields, Secretary, Commission (“OIA Letter”).

¹³ 15 U.S.C. 78s(b)(2)(B).

¹⁴ See Securities Exchange Act Release No. 79055, 81 FR 70460 (October 12, 2016).

¹⁵ See letters from Kevin Zambrowicz, Associate General Counsel, Securities Industry and Financial Markets Association, dated October 19, 2016; Michele Van Tassel, President, Association of Registration Management, November 4, 2016; Edwin L. Reed, Deputy Director, Alabama Securities Commission, dated November 14, 2016; and Mike Rothman, President, NASAA, dated November 16, 2016 (“NASAA Letter 2”), to Brent

Exchanges, responded to the OIA Letter on October 25, 2016.¹⁶

Section 19(b)(2) of the Act¹⁷ provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. For proposed rule change SR-NYSEMKT-2016-52, January 3, 2017 and March 4, 2017 are 180 days and 240 days, respectively, from July 7, 2016, the date that the proposed rule change was published for notice and comment in the **Federal Register**. For proposed rule change SR-NYSEArca 2016-103, January 23, 2017, and March 24, 2017, are 180 days and 240 days, respectively from July 27, 2016, the date that the proposed rule change was published for comment in the **Federal Register**.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule changes so that it has sufficient time to consider the proposed rule changes and the comments received.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act¹⁸ designates, for SR-NYSEMKT-2016-52 and SR-NYSEArca-2106-103, March 4, 2017 and March 24, 2017, respectively, as the dates by which the Commission shall either approve or disapprove the proposed rule changes.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Eduardo A. Aleman,
Assistant Secretary.

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J. Fields, Secretary, Commission. While the NASAA Letter 2 addresses issues associated with the NYSEMKT proposal, the Commission believes that the concerns raised by NASAA are equally applicable to the two proposals addressed in this Notice.

¹⁶ See letter from Elizabeth K. King, General Counsel and Corporate Secretary, NYSE, dated October 26, 2016, to Brent J. Fields, Secretary, Commission.

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ *Id.*

¹⁹ 17 CFR 200.30-3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-32399; File No. 812-13603]

Ares Capital Corporation, et al.; Notice of Application

December 21, 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 a business development company to co-invest in portfolio companies with affiliated investment funds.

Applicants: Ares Capital Corporation (“ARCC”), Ares Capital Management LLC (“ACM”), Ivy Hill Asset Management, L.P. (“Ivy Hill”), Ares Capital CP Funding LLC, Ares Capital JB Funding LLC, A.C. Corporation, ACE Equity Holdco (Cayman) Ltd., ACE II Master Fund L.P., ACE III Acquisition L.P., ACE III Master L.P., ACF Finco I LP, ACF Gateway LLC, ACOF Investment Management LLC, ACOF Operating Manager III, LLC, ACOF Operating Manager IV, LLC, ACRC Lender C LLC, ACRC Lender LLC, ACRC Lender W LLC, AELIS IR Participation LLC, AELIS X Management, L.P., AEPEP II Investment S.A.R.L., AEPEP II Master S.A.R.L., AEPEP II N Strategic Investments, L.P., AF III Cayman AIV, L.P., AF III US BD Holdings L.P., AF IV BD Holdings (offshore) Ltd., AF IV US BD Holdings II, L.P., AF IV US BD Holdings III, L.P., AF IV US BD Holdings IV, L.P., AF IV US BD Holdings V, L.P., AF IV US BD Holdings, L.P., Apollo European Real Estate III (EU) Cooperatief U.A., Apollo European Real Estate III Cooperatief U.A., APSecurities LLC, APSecurities Manager LP, AREG AC Makena Holdings LLC, AREG US Fund VIII Blocker LLC, AREG US Fund VIII Holdings LLC, AREG US Fund VIII REIT LLC, Ares ASIP Holdings Cayman, L.P., Ares Cactus Operating Manager, L.P., Ares Cactus Private Asset Backed Fund, L.P., Ares Capital Europe (Luxembourg) S.A.R.L., Ares Capital Europe II Assets S.A.R.L., Ares Capital Europe II Holdings S.A.R.L., Ares Capital Europe II Investments S.A.R.L., Ares Capital Europe III Holdings S.A.R.L., Ares Capital Europe III Investments S.A.R.L., Ares Capital Europe Limited, Ares Capital Europe, L.P., Ares Capital

European Investments Limited, Ares Capital Management II LLC, Ares Capital Management III LLC, Ares CCF Holdings Ltd., Ares CCF Holdings S.A.R.L., Ares Centre Street Management, L.P., Ares Centre Street Partnership, L.P., Ares CIP US Real Estate Opportunity Advisors, L.P., Ares CIP US Real Estate Opportunity Partners A, L.P., Ares CIP US Real Estate Opportunity Partners B, L.P., Ares CLO Management II LLC, Ares CLO Management III/IVR, L.P., Ares CLO Management LLC, Ares CLO Management XXIII, L.P., Ares CLO Management XXIX, L.P., Ares CLO Management XXVII, L.P., Ares CLO Management XXVIII, L.P., Ares CLO Management XXX, L.P., Ares CLO Management XXXI, L.P., Ares CLO Management XXXII, L.P., Ares CLO Management XXXIII, L.P., Ares Commercial Finance LP, Ares Commercial Finance Management LP, Ares Commercial Real Estate Corporation, Ares Commercial Real Estate Management LLC, Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P., Ares Corporate Opportunities Fund V, L.P., Ares Credit Strategies Feeder III UK, L.P., Ares Credit Strategies Fund I, L.P., Ares Credit Strategies Fund II, L.P., Ares Credit Strategies Fund III, L.P., Ares CSF Holdings S.A.R.L., Ares CSF III Investment Management LLC, Ares CSF III Luxembourg S.A.R.L., Ares CSF Operating Manager I, LLC, Ares CSF Operating Manager II, LLC, Ares Customized Credit Fund L.P., Ares ECSF II North S.A.R.L., Ares ECSF II South S.A.R.L., Ares ECSF III (A) Holdings S.A.R.L., Ares ECSF IV (M) Holdings S.A.R.L., Ares ECSF V (G) Holdings S.A.R.L., Ares EIF Management V L.P., Ares EIF Management, LLC, Ares Energy Investors Fund V, L.P., Ares Enhanced Credit Opportunities Fund B Ltd., Ares Enhanced Credit Opportunities Fund II, Ltd., Ares Enhanced Credit Opportunities Investment Management II, LLC, Ares Enhanced Credit Opportunities Master Fund II, Ltd., Ares Enhanced Loan Investment Strategy II Equity Holdings LLC, Ares Enhanced Loan Investment Strategy II Ltd., Ares Enhanced Loan Investment Strategy III, Ltd., Ares Enhanced Loan Investment Strategy IR, Ltd., Ares Enhanced Loan Management II, L.P., Ares Enhanced Loan Management III, L.P., Ares Enhanced Loan Management IR, L.P., Ares European CLO VI BV., Ares European CLO VII BV., Ares European Credit Strategies Fund (C), L.P., Ares European Credit Strategies Fund (G), L.P., Ares European Credit Strategies

Fund II (B), L.P., Ares European Credit Strategies Fund III (A), L.P., Ares European Credit Strategies Fund IV (M), L.P., Ares European Credit Strategies Fund V (G), L.P., Ares European Loan Funding S.A.R.L., Ares European Loan Funding S.L.P., Ares European Loan Management LLP, Ares European Property Enhancement Acquisition II, L.P., Ares European Property Enhancement Partners II, L.P., Ares European Real Estate Advisors III, L.P., Ares European Real Estate Advisors IV, L.P., Ares European Real Estate Fund III (Euro), L.P., Ares European Real Estate Fund III, L.P., Ares European Real Estate Fund IV, L.P., Ares European Real Estate IV (Euro), L.P., Ares European Real Estate Management III, L.P., Ares High Yield Strategies Fund IV Management, L.P., Ares ICOF Holdings Cayman, L.P., Ares ICOF I Management, LLC, Ares ICOF II Management, LLC, Ares ICOF II Master Fund, L.P., Ares ICOF II Rialto Investments LLC, Ares ICOF III Finco (Cayman Fund) LLC, Ares ICOF III Fund (Cayman) LP, Ares ICOF III Fund (Delaware) LP, Ares ICOF III Management, LP, Ares ICOF III Mini Master Fund (Cayman) LP, Ares IIR/IVR CLO LTD., Ares Institutional Credit Fund L.P., Ares Institutional Loan Fund B.V., Ares Loan Origination LP, Ares Loan Trust 2011, Ares Loan Trust 2016, Ares Management Limited, Ares Management LLC, Ares Management UK Limited, Ares MSCF V (H) Holdings S.A.R.L., Ares MSCF V (H) Management LLC, Ares Multi-Strategy Credit Fund V (H), L.P., Ares PCS Management, L.P., Ares Private Credit Solutions (Cayman), L.P., Ares Private Credit Solutions, L.P., Ares Real Estate Management Holdings, LLC, Ares SBI Management LLC, Ares Senior Loan Fund (JPY), Ares Senior Loan Fund P, Ares Senior Loan Trust, Ares Senior Loan Trust Management, L.P., Ares Senior Loan Trust Series M-1, Ares Small Business Investments LLC, Ares Special Situations Fund IV, L.P., Ares SSF IV Direct Holdings S.A.R.L., Ares Strategic Investment Management LLC, Ares Strategic Investment Partners (L) Ltd., Ares Strategic Investment Partners Ltd., Ares Strategic Investment Partners, L.P., Ares Strategic Real Estate Program -HHC, LLC, Ares UK Credit Strategies, L.P., Ares US Real Estate Fund VII 892, L.P., Ares US Real Estate Fund VII, L.P., Ares US Real Estate Fund VIII, L.P., Ares US Real Estate Opportunity Advisors, L.P., Ares US Real Estate Opportunity Fund, L.P., Ares US Real Estate Opportunity Management, L.P., Ares US Real Estate VII Advisors, L.P., Ares US Real Estate VII Management, LLC, Ares US Real Estate VIII Advisors, L.P., Ares US Real

Estate VIII Management, LLC, Ares WLP Management L.P., Ares XL CLO, Ltd., Ares XXIII CLO, Ltd., Ares XXIV CLO, Ltd., Ares XXIX CLO, Ltd., Ares XXV CLO, Ltd., Ares XXVI CLO, Ltd., Ares XXVII CLO, Ltd., Ares XXVIII CLO, Ltd., Ares XXX CLO, Ltd., Ares XXXI CLO, Ltd., Ares XXXII CLO, Ltd., Ares XXXIII CLO, Ltd., Ares XXXIV CLO, Ltd., Ares XXXIX CLO, Ltd., Ares XXXV CLO, Ltd., Ares XXXVII CLO, Ltd., Ares XXXVIII CLO, Ltd., ASIP (HOLDCO) IV S.A.R.L., ASIP Operating Manager IV, LLC, ASSF Operating Manager IV, L.P., COLTS 2005-1 Ltd., COLTS 2005-2 Ltd., DF III US BD Holdings LLC, Emporia Preferred Funding I, Ltd., Emporia Preferred Funding II, Ltd., Emporia Preferred Funding III, Ltd., Ivy Hill Investment Holdings, LLC, Ivy Hill Middle Market Credit Fund IV, Ltd., Ivy Hill Middle Market Credit Fund IX, Ltd., Ivy Hill Middle Market Credit Fund VI, Ltd., Ivy Hill Middle Market Credit Fund VII, Ltd., Ivy Hill Middle Market Credit Fund X, Ltd., Ivy Hill Middle Market Credit Fund XI, Ltd., Ivy Hill Senior Debt Fund, L.P., Ivy Hill Senior Debt Fund, Ltd., Ivy Hill Senior Debt Funding 2007-1, Q Street/Century LLC, Riopelle Century LLC, United States Power Fund III, L.P., and VEF V Holdings, LLC.

Filing Dates: The application was filed on November 3, 2008, and amended on May 5, 2009, January 8, 2010, August 23, 2010, July 18, 2011, July 23, 2012, August 19, 2014, September 30, 2015, March 29, 2016, and September 23, 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 January 17, 2017, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St. NE., Washington, DC 20549-1090. Applicants: ARCC, 245 Park Avenue, 44th Floor, New York, NY 10167; Ares Management, L.P., 2000 Avenue of the

Stars, 12th Floor, Los Angeles, CA 90067.

FOR FURTHER INFORMATION CONTACT:

Courtney S. Thornton, Senior Counsel, or David J. Marcinkus, Branch Chief, at (202) 551-6821 (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.

Introduction:

1. The Applicants request an order of the Commission under Sections 17(d) and 57(i) and Rule 17d-1 thereunder (the "Order") to permit, subject to the terms and conditions set forth in the application (the "Conditions"), a Regulated Fund¹ and one or more other Regulated Funds and/or one or more Affiliated Funds² to enter into Co-Investment Transactions with each other. "Co-Investment Transaction" means any transaction in which a Regulated Fund or its Wholly-Owned Investment Sub participates together with one or more Affiliated Funds and/or one or more other Regulated Funds in reliance on the Order. "Potential Co-Investment Transaction" means any

¹ "Regulated Funds" means ARCC, the Future Regulated Funds and the BDC Downstream Funds (defined below). "Future Regulated Fund" means a 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 other than Ivy Hill and (c) that intends to participate in the program of co-investment described in the application. "Adviser" means (a) ACM and the Existing Advisers to Affiliated Funds (identified in Appendix A to the application) together with any future investment adviser that (i) controls, is controlled by or is under common control with Ares Management, (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; and (b) Ivy Hill. "BDC Downstream Fund" means either (a) with respect to ARCC, the Downstream Ivy Hill Funds, or (b) with respect to any Regulated Fund that is a BDC, an entity (i) that the BDC directly or indirectly controls, (ii) that is not controlled by any person other than the BDC (except a person that indirectly controls the entity solely because it controls the BDC), (iii) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, (iv) whose investment adviser is an Adviser, (v) that is not a Wholly-Owned Investment Sub, and (vi) that intends to participate in the program of co-investment described in the application.

² "Affiliated Fund" means any Existing Affiliated Fund or any entity (a) whose investment adviser is an Adviser other than Ivy Hill, (b) that would be an investment company but for section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act, (c) that is not a BDC Downstream Fund, and (d) that intends to participate in the program of co-investment described in the application. Applicants represent that no Existing Affiliated Fund is a BDC Downstream Fund.

investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) 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.³

Applicants:

2. ARCC is a closed-end management investment company incorporated in Maryland that has elected to be regulated as a business development company ("BDC") under the Act.⁴ ARCC's Board⁵ currently consists of nine members, five of whom are Independent Directors.⁶ Each of Ares Capital CP Funding LLC and Ares Capital JB Funding LLC is a Wholly-Owned Investment Sub of ARCC.

3. ACM, a Delaware limited liability company registered under the Investment Advisers Act of 1940 (the "Advisers Act"), serves as the investment adviser to ARCC.

4. Ivy Hill is a Delaware limited partnership that is registered under the Advisers Act. Ivy Hill is ARCC's indirect wholly owned portfolio company that manages the investment and reinvestment of the assets of the Existing Downstream Ivy Hill Funds identified in Appendix B to the application. Each of the Existing Downstream Ivy Hill Funds would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act.⁷

³ All existing entities that currently intend to rely on the Order have been named as Applicants and any existing or future entities that may rely on the Order in the future will comply with its terms and Conditions as set forth in the application.

⁴ Section 2(a)(48) of the Act defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in Section 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

⁵ "Board" means (i) with respect to a Regulated Fund other than a BDC Downstream Fund, the board of directors (or the equivalent) of the Regulated Fund and (ii) with respect to a BDC Downstream Fund, the Independent Party of the BDC Downstream Fund. "Independent Party" means, with respect to a BDC Downstream Fund, (i) if the BDC Downstream Fund has a board of directors (or the equivalent), the board or (ii) if the BDC Downstream Fund does not have a board of directors (or the equivalent), a transaction committee or advisory committee of the BDC Downstream Fund.

⁶ "Independent Director" means a member of the Board of any relevant entity who is not an "interested person" as defined in Section 2(a)(19) of the Act. No Independent Director of a Regulated Fund (including any non-interested member of an Independent Party) will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

⁷ "Downstream Ivy Hill Funds" means any Existing Downstream Ivy Hill Funds or any entity (a) whose investment adviser is Ivy Hill and (b) that would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act, (c) in which none of

5. Applicants state that in March 2012, ARCC received an exemptive order under Sections 6(c) and 12(d)(3) of the Act which permits ARCC to own and make additional investments in Ivy Hill (the "12(d)(3) Order").⁸ Applicants state that the conditions to the 12(d)(3) Order provide that neither Ivy Hill (including members of its investment committee with respect to Covered Information⁹ received in their capacities as such) nor any persons controlled by Ivy Hill ("Information Providers") will directly or indirectly provide Covered Information to ACM or any person affiliated with ACM (other than ARCC and persons controlled by ARCC and as necessary to be provided to ACM and Ares Administration, to provide advisory and administrative services to ARCC and Ivy Hill) (such restrictions, the "12(d)(3) Restrictions"). Applicants believe that the 12(d)(3) Restrictions do not interfere with the Applicants' ability to comply with the Conditions because the terms of the Order would not modify the restrictions in the 12(d)(3) Order and Ivy Hill would comply in all respects with both the Order and the 12(d)(3) Order. Applicants acknowledge that the requested Order does not grant relief from Sections 17(a)(1), 17(a)(2), 57(a)(1) or 57(a)(2) of the Act.

6. The Existing Affiliated Funds are the investment funds identified in Appendix A to the application. Applicants represent that each Existing Affiliated Fund is a separate and distinct legal entity and each would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act.

7. The Existing Advisers to Affiliated Funds are the investment advisers to the Existing Affiliated Funds. Each of the

ACM, any person affiliated with ACM (other than ARCC or any entity controlled by ARCC), any of their clients, or Ares Operations LLC ("Ares Administration"), is invested, and (d) that intends to participate in the program of co-investment described in the Application.

⁸ Ares Capital Corporation, *et al.* (File No. 812-13847), Investment Company Release. Nos. 29977 (Mar. 9, 2012) (notice) and 30024 (Mar. 29, 2012) (order).

⁹ "Covered Information" is defined to mean all information except information that: (i) is generally available to the public; (ii) is of the nature that Information Providers share with unaffiliated market participants at no cost and is not proprietary to the Information Providers; (iii) Information Providers have obtained from unaffiliated third parties, including but not limited to general market opinions and analyses, analyst reports and diligence reports, and that such third parties generally make available to others, including market participants in the ordinary course, at no cost; or (iv) Information Providers have obtained from, or are providing on behalf of, borrowers or potential borrowers or their advisors, and that such borrowers or advisors generally make available to unaffiliated market participants at no cost upon request.

Existing Advisers to Affiliated Funds is registered as an investment adviser under the Advisers Act.

8. Each of the Applicants may be deemed to be directly or indirectly controlled by Ares Management L.P. (“Ares Management”), a publicly traded partnership and the parent company of the Advisers. Ares Management thus may be deemed to control the Regulated Funds and the Affiliated Funds. Applicants state that Ares Management 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, Ares Management has not been included as an Applicant.

9. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.¹⁰ Such a subsidiary may be prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund because it would be a company controlled by its parent Regulated Entity 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 the Regulated Entity that owns it and that the Wholly-Owned Investment Sub’s participation in any such transaction be treated, for purposes of the 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 parent Regulated Fund and the Wholly-Owned Investment Sub. The Board of the parent Regulated Fund 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 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 parent Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subs, the Board of the parent Regulated Fund will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Sub.

Applicants’ Representations:

A. Allocation Process

10. Applicants state that the Advisers are presented with thousands of investment opportunities each year on behalf of their clients and must determine how to allocate those opportunities in a manner that, over time, is fair and equitable to all of their clients. Such investment opportunities may be Potential Co-Investment Transactions.

11. Applicants represent that they have established processes for allocating initial investment opportunities, opportunities for subsequent investments in an issuer and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, Applicants represent that these processes will be extended and modified in a manner reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and the Affiliated Funds and (ii) comply with the Conditions.

12. Specifically, applicants state that the Advisers are organized and managed such that the individual portfolio managers and investment teams responsible for identifying and evaluating investment opportunities and making investment decisions on behalf of clients are promptly notified of the opportunities. If the requested Order is granted, the Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that, when such opportunities arise, the Advisers to the relevant Regulated Funds are promptly notified and receive the same information about the opportunity as any other Advisers considering the opportunity for their clients. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies¹¹

and any Board-Established Criteria¹² of a Regulated Fund, the policies and procedures will require that the relevant portfolio managers, investment teams and/or investment committees responsible for that Regulated Fund receive sufficient information to allow the Regulated Fund’s Adviser to make its independent determination and recommendations under the Conditions.

13. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund’s then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund’s participation in such Potential Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

14. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, the Adviser will submit a proposed order amount to an allocation committee for the area in question (e.g., credit, private equity, real estate) on which senior management, legal and compliance personnel

Downstream Fund, its investment objectives and strategies, as described in its most current registration statement on Form N-2, other current filings with the Commission under the Securities Act of 1933 (the “Securities Act”) or under the Securities Exchange Act of 1934, as amended, and its most current report to stockholders, and (ii) with respect to any BDC Downstream Fund, those investment objectives and strategies described in its disclosure documents (including private placement memoranda and reports to equity holders) and organizational documents (including operating agreements).

¹² “Board-Established Criteria” means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to the Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund’s Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund’s Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund’s then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the Board’s consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The Independent Directors of a Regulated Fund may at any time rescind, suspend or qualify its approval of any Board-Established Criteria, though Applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

¹⁰ “Wholly-Owned Investment Sub” means an entity (i) that is wholly-owned by a Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, directly or indirectly, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of such Regulated Fund (and, in the case of an SBIC Subsidiary), maintain a license under the SBA Act and issue debentures guaranteed by the SBA); (iii) with respect to which such Regulated Fund’s Board has the sole authority to make all determinations with respect to the entity’s participation under the Conditions; and (iv) that would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act. The term “SBIC Subsidiary” means a wholly owned consolidated subsidiary that is licensed by the Small Business Administration (the “SBA”) to operate under the Small Business Act of 1958, as amended, (the “SBA Act”) as a small business investment company.

¹¹ “Objectives and Strategies” means (i) with respect to any Regulated Fund other than a BDC

participate. Applicants state that these allocation committees are structured with overlapping membership to ensure consistency of approach. Applicants state that, at this stage, each proposed order amount may be reviewed and adjusted, in accordance with the Advisers' written allocation policies and procedures.¹³ Applicants state that prior to the External Submission (defined below), the order amount will be submitted to the internal trading function, which is comprised of a group of individual traders who collect and execute trades. The order of a Regulated Fund or Affiliated Fund resulting from this process is referred to as its "Internal Order." The Internal Order of participating Regulated Funds will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.¹⁴

15. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the "External Submission"), then each Internal Order will be fulfilled as placed. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders.¹⁵ If, subsequent to such External

¹³ The reason for any such adjustment to a proposed order amount will be documented in writing and preserved in the records of the Advisers.

¹⁴ "Required Majority" means a required majority, as defined in Section 57(o) of the Act. 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). In the case of a BDC Downstream Fund with a board of directors (or the equivalent), the members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to Section 57(o). In the case of a BDC Downstream Fund with a transaction committee or advisory committee, the committee members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to Section 57(o) and as if the committee members were directors of the fund.

¹⁵ The Advisers will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each applicable Adviser will provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with the Conditions. "Eligible Directors" means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that

Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal Orders in accordance with written allocation policies and procedures that the Advisers will establish, implement and maintain.¹⁶

B. Follow-On Investments

16. Applicants state that from time to time the Regulated Funds and Affiliated Funds may have opportunities to make Follow-On Investments¹⁷ in an issuer in which a Regulated Fund and one or more other Regulated Funds and/or Affiliated Funds previously have invested and continue to hold an investment.

17. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.¹⁸ If the Regulated Funds and Affiliated Funds had previously participated in a Co-Investment Transaction with respect to the issuer and continue to hold any securities acquired in a Co-Investment Transaction for that issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds

Potential Co-Investment Transaction under Section 57(o) of the Act.

¹⁶ However, if the size of the opportunity is decreased such that the aggregate of the original Internal Orders would exceed the amount of the remaining investment opportunity, then upon submitting any revised order amount to the Board of a Regulated Fund for approval, the Adviser to the Regulated Fund will also notify the Board promptly of the amount that the Regulated Fund would receive if the remaining investment opportunity were allocated pro rata on the basis of the size of the original Internal Orders. The Board of the Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with condition 2, 6, 7, 8 or 9, as applicable.

¹⁷ "Follow-On Investment" means an additional investment in the same issuer, including, but not limited to, through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

¹⁸ "Pre-Boarding Investments" are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds and/or one or more other Regulated Funds that: (i) Were acquired prior to participating in any Co-Investment Transaction; (ii) Were acquired in transactions in which the only term negotiated by or on behalf of such funds was price; and (iii) were acquired either: (A) In reliance on one of the JT No-Action Letters (defined below); or (B) in transactions occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.

and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds would need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

18. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under Condition 8(b) if it is (i) a Pro Rata Follow-On Investment¹⁹ or (ii) a Non-Negotiated Follow-On Investment.²⁰ Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

¹⁹ A "Pro Rata Follow-On Investment" is a Follow-On Investment (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Directors in accordance with Condition 8(c).

²⁰ A "Non-Negotiated Follow-On Investment" is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters. "JT No-Action Letters" means SMC Capital, Inc., SEC No-Action Letter (pub. avail. Sept. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC No-Action Letter (pub. avail. June 7, 2000).

C. Dispositions

19. Applicants propose that Dispositions²¹ would be divided into two categories. If the Regulated Funds and Affiliated Funds holding investments in the issuer had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.²²

20. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition²³ or (ii) the securities are Tradable Securities²⁴ and

²¹ "Disposition" means the sale, exchange or other disposition of an interest in a security of an issuer.

²² However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Directors must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.*, in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review would be required because such findings would not have been required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

²³ A "Pro Rata Disposition" is a Disposition (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Directors.

²⁴ "Tradable Security" means a security that meets the following criteria at the time of Disposition: (i) it trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it

the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

D. Delayed Settlement

21. Applicants represent that under the terms and Conditions of the Application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa.²⁵ Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

E. Holders

22. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the "Holders") own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the "Shares"), then the Holders will vote such Shares as directed by an independent third party when voting on matters specified in the Condition. Applicants believe that this Condition

trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

²⁵ Applicants state that this may occur for two reasons. First, when the Affiliated Fund or Regulated Fund is not yet fully funded because, when the Affiliated Fund or Regulated Fund desires to make an investment, it must call capital from its investors to obtain the financing to make the investment, and in these instances, the notice requirement to call capital could be as much as ten business days. Second, where, for tax or regulatory reasons, an Affiliated Fund or Regulated Fund does not purchase new issuances immediately upon issuance but only after a short seasoning period of up to ten business days.

will ensure that the Independent Directors will act independently in evaluating Co-Investment Transactions, because the ability of the Adviser or its principals to influence the Independent Directors by a suggestion, explicit or implied, that the Independent Directors can be removed will be limited significantly. The Independent Directors shall evaluate and approve any independent party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis:

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit participation by a registered investment company and an affiliated person in any "joint enterprise or other joint arrangement or profit-sharing plan," as defined in the rule, without prior approval by the Commission by order upon application. 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. Similarly, with regard to BDCs, section 57(a)(4) of the Act generally prohibits certain persons specified in section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC in contravention of rules as prescribed by the Commission. 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.

3. Co-Investment Transactions are prohibited by either or both of Rule 17d-1 and Section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in such transactions fall within the category of persons described by Rule 17d-1 and/or Section 57(b), as applicable, *vis-à-vis* each participating Regulated Fund. Each of the participating Regulated Funds and Affiliated Funds may be deemed to be affiliated persons *vis-à-vis* a Regulated Fund within the meaning of section 2(a)(3) by reason of common control because (i) controlled affiliates of Ares Management manage each of the Affiliated Funds, (ii) Ares Management controls ACM, which manages ARCC, and (iii) to the extent that ARCC

continues to control Ivy Hill, the Downstream Ivy Hill Funds, are, and, in the future will be, deemed to be controlled by ACM, ARCC or certain of ARCC's subsidiaries. Thus, each of the Affiliated Funds could be deemed to be a person related to the Downstream Ivy Hill Funds in a manner described by Section 57(b) and related to the other Regulated Funds in a manner described by Rule 17d-1; and therefore the prohibitions of Rule 17d-1 and Section 57(a)(4) would apply respectively to prohibit the Affiliated Funds from participating in Co-Investment Transactions with the Regulated Funds.

4. 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.

5. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by Rule 17d-1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance with the Conditions will be consistent with the provisions, policies, and purposes of the Act and would be done in a manner that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions:

Applicants agree that the Order will be subject to the following Conditions:

1. Identification and Referral of Potential Co-Investment Transactions

(a) Each Adviser (other than Ivy Hill) will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and

Strategies and Board-Established Criteria of any Regulated Fund the Adviser manages.

(b) When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. Board Approvals of Co-Investment Transactions

(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 Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c) After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds or 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 transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the Regulated Fund or its equity holders on the part of any person concerned;

(ii) the transaction is consistent with:

(A) the interests of the Regulated Fund's equity holders; and
(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Fund(s) or Affiliated Fund(s) 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 any other Regulated Fund(s) or Affiliated Fund(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A) the settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) the date on which the commitment of the Affiliated Funds and Regulated Funds is made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B) 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, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) the Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the 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 (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds 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 any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating

Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv) the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect²⁶ financial benefit to the Advisers, any other Regulated Fund, the Affiliated 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 14, (B) to the extent permitted by Section 17(e) or 57(k), 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)(B)(z).

3. *Right to Decline.* 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. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,²⁷ a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.²⁸

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund and Affiliated Fund and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and

²⁶ For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

²⁷ This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

²⁸ "Related Party" means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate. "Close Affiliate" means the Advisers, the Regulated Funds, the Affiliated Funds and any other person described in Section 57(b) (after giving effect to Rule 57b-1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in Section 57(b) to Section 2(a)(3)(D). "Remote Affiliate" means any person described in Section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective 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 5, if Condition 2(c)(iii)(B) is met.

6. *Standard Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then:

(i) The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b) *Same Terms and Conditions.* 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 Affiliated Funds and any other Regulated Fund.

(c) *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i) (A) the participation of each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition²⁹; (B) 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 (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii) each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of

the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d) *Standard Board Approval.* 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.

7. *Enhanced Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) the Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* 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:

(i) the Disposition complies with Conditions 2(c)(i), (ii), (iii)(A), and (iv); and

(ii) the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 or Rule 17d-1, as applicable, and records the basis for the finding in the Board minutes.

(c) *Additional Requirements.* The Disposition may only be completed in reliance on the Order if:

(i) *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions

²⁹ In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Disposition.

as those applicable to the Affiliated Funds and any other Regulated Fund;

(ii) *Original Investments*. All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(iii) *Advice of Counsel*. Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b-1) or Rule 17d-1, as applicable;

(iv) *Multiple Classes of Securities*. All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial³⁰ in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v) *No control*. The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

8. *Standard Review Follow-Ons*.

(a) *General*. If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:

(i) the Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of

the portfolio company of the proposed transaction at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b) *No Board Approval Required*. A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i) (A) the proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,³¹ immediately preceding the Follow-On Investment; and (B) 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); or

(ii) it is a Non-Negotiated Follow-On Investment.

(c) *Standard Board Approval*. 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 makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d) *Allocation*. If, with respect to any such Follow-On Investment:

(i) the amount of the opportunity proposed to be made available to any

Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions*. 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. *Enhanced Review Follow-Ons*.

(a) *General*. If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) the Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval*. 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 reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the

³⁰ In determining whether a holding is "immaterial" for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

³¹ To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b-1) or Rule 17d-1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c) *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(ii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b-1) or Rule 17d-1, as applicable;

(iii) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) the amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated

Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions.* 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.

10. *Board Reporting, Compliance and Annual Re-Approval.*

(a) Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) 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 Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b) All information presented to the Regulated Fund's 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.

(c) Each Regulated Fund's chief compliance officer, as defined in rule 38a-1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance. In the case of a BDC Downstream Fund that does not have a chief compliance officer, the chief compliance officer of the BDC that controls the BDC Downstream Fund will prepare the report for the relevant Independent Party.

(d) The Independent Directors (including the non-interested members of each Independent Party) will consider at least annually whether continued participation in new and existing Co-Investment Transactions is in the Regulated Fund's best interests.

11. *Record Keeping.* 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).

12. *Director Independence.* No Independent Director (including the non-interested members of any Independent Party) of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an "affiliated person" (as defined in the Act) of any Affiliated Fund.

13. *Expenses.* 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 advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*³² Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by Section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on

³² Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

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 the Adviser at a bank or banks having the qualifications prescribed in Section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Advisers, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) 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)(B)(z), (ii) brokerage or underwriting compensation permitted by Section 17(e) or 57(k) or (iii) in the case of the Advisers, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. 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. 2016-31289 Filed 12-27-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32398; File No. 812-14603]

Virtus Alternative Solutions Trust, et al.; Notice of Application

December 21, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order pursuant to: (a) section 6(c) of the Investment Company Act of 1940 ("Act") granting an exemption from

sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(j) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint arrangements and transactions. Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

Applicants: Virtus Alternative Solutions Trust, Virtus Equity Trust, Virtus Opportunities Trust, Virtus Retirement Trust, and Virtus Variable Insurance Trust (the "Trusts"), registered under the Act as open-end management investment companies with one or more series, and Virtus Alternative Investment Advisers, Inc. ("VAIA"), Virtus Investment Advisers, Inc. ("VIA"), and Virtus Retirement Investment Advisers, LLC ("VRIA"), registered as investment advisers under the Investment Advisers Act of 1940.

Filing Dates: The application was filed on January 15, 2016, and amended on June 23, 2016 and October 3, 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 January 17, 2017 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: 100 Pearl Street, Hartford, CT 06103.

FOR FURTHER INFORMATION CONTACT: Hae-Sung Lee, Attorney-Adviser, at (202) 551-7345 or Mary Kay Frech, 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. Applicants request an order that would permit the applicants to participate in an interfund lending facility where each Fund could lend money directly to and borrow money directly from other Funds to cover unanticipated cash shortfalls, such as unanticipated redemptions or trade fails.¹ The Funds will not borrow under the facility for leverage purposes and the loans' duration will be no more than 7 days.²

2. Applicants anticipate that the proposed facility would provide a borrowing Fund with a source of liquidity at a rate lower than the bank borrowing rate at times when the cash position of the Fund is insufficient to meet temporary cash requirements. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or certain other short term money market instruments. Thus, applicants assert that the facility would benefit both borrowing and lending Funds.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Among others, the Advisers, through a designated committee, would administer the facility as a disinterested fiduciary as part of its duties under the investment management and administrative agreements with the Funds and would receive no additional fee as compensation for its services in connection with the administration of the facility. The facility would be

¹ Applicants request that the order apply to the Trusts and any existing or future series thereof (each a "Fund" and collectively, the "Funds") and to any other registered open-end management investment company or its series for which VIA, VAIA, or VRIA and each successor thereto or a person controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with VIA, VAIA, or VRIA serves as investment adviser (each an "Adviser" and collectively, the "Advisers"). Any Adviser will be registered as an investment adviser under the Advisers Act. All Funds that currently intend to rely on the requested order have been named as applicants and any other Fund that relies on the requested order in the future will comply with the terms and conditions of the application. A "successor" is defined as any entity resulting from a reorganization of either VIA, VAIA, or VRIA into another jurisdiction or a change in the type of business organization.

² Any Fund, however, will be able to call a loan on one business day's notice.

subject to oversight and certain approvals by the Funds' Board, including, among others, approval of the interest rate formula and of the method for allocating loans across Funds, as well as review of the process in place to evaluate the liquidity implications for the Funds. A Fund's aggregate outstanding interfund loans will not exceed 15% of its net assets, and the Fund's loans to any one Fund will not exceed 5% of the lending Fund's net assets.³

4. Applicants assert that the facility does not raise the concerns underlying section 12(d)(1) of the Act given that the Funds are part of the same group of investment companies and there will be no duplicative costs or fees to the Funds.⁴ Applicants also assert that the proposed transactions do not raise the concerns underlying sections 17(a)(1), 17(a)(3), 17(d) and 21(b) of the Act as the Funds would not engage in lending transactions that unfairly benefit insiders or are detrimental to the Funds. Applicants state that the facility will offer both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and each Fund would have an equal opportunity to borrow and lend on equal terms based on an interest rate formula that is objective and verifiable. With respect to the relief from section 17(a)(2) of the Act, applicants note that any collateral pledged to secure an interfund loan would be subject to the same conditions imposed by any other lender to a Fund that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or better conditions (in any other circumstance).⁵

5. Applicants also believe that the limited relief from section 18(f)(1) of the Act that is necessary to implement the facility (because the lending Funds are not banks) is appropriate in light of the conditions and safeguards described in the application and because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including combined interfund loans and bank borrowings, have at least 300% asset coverage.

6. Section 6(c) of the Act permits the Commission to exempt any persons or

³ Under certain circumstances, a borrowing Fund will be required to pledge collateral to secure the loan.

⁴ Applicants state that the obligation to repay an interfund loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1) of the Act.

⁵ Applicants state that any pledge of securities to secure an interfund loan could constitute a purchase of securities for purposes of section 17(a)(2) of the Act.

transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) 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 provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Rule 17d-1(b) under the Act provides that in passing upon an application filed under the rule, the Commission will consider whether the participation of the registered investment company in a joint enterprise, joint arrangement or profit sharing plan on the basis proposed 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 the other participants.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-31288 Filed 12-27-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79651; File No. SR-NYSEMKT-2016-121]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Change Modifying the NYSE Amex Options Fee Schedule

December 21, 2016.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on December

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

15, 2016, NYSE MKT LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Amex Options Fee Schedule ("Fee Schedule"). The Exchange proposes to implement the fee change effective December 15, 2016. The proposed change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Section III.C. of the Fee Schedule to exempt Binary Return Derivatives contracts ("ByRDs") from the monthly Rights Fees assessed on Specialists, e-Specialists, Directed Order Market Markers (each a "DOMM"). The Exchange proposes to implement these changes effective December 15, 2016.

The Exchange added rules related to ByRDs in 2007 and re-launched trading in ByRDs in March 2016.⁴ To encourage

⁴ The Exchange adopted ByRDs in 2007 and plans to re-launch trading in ByRDs in March. See Securities Exchange Act Release No. 56251 (August 14, 2007), 72 FR 46523 (August 20, 2007) (SR-Amex-2004-27) (Order approving listing of Fixed Return Options ("FROs")); see also Securities Exchange Act Release Nos. 71957 (April 16, 2014), 79 FR 22563 (April 22, 2014) (SR-NYSEMKT-2014-06) (Order approving name change from FROs

trading in ByRDs, the Exchange currently exempts transactions in ByRDs from all transactions fees and credits.⁵ However, ByRDs are subject to monthly Rights Fees.⁶ The Exchange proposes to exempt ByRDs from all Rights Fees, which should encourage trading in ByRDs.⁷

The Exchange believes the proposed treatment of ByRDs for purposes of the Fee Schedule would further the Exchange's goal of introducing new products to the marketplace by encouraging trading in these products.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory because the Exchange's treatment of ByRDs would apply equally to all market participants that opted to trade ByRDs. Further, the proposed change is reasonable and does not unfairly discriminate because exempting ByRDs from monthly Rights

to Binary Return Derivatives (ByRDs) and re-launch of these products, with certain modification, and amending Obvious Errors rules to include ByRDs); 77014 (February 2, 2016), 81 FR 6566 (February 8, 2016) (SR-NYSEMKT-2016-16) (immediate effectiveness filing amending amend certain of rules related to ByRDs). ByRDs are European-style option contracts on individual stocks, exchange-traded funds ("ETFs") and Section 107 Securities that have a fixed return in cash based on a set strike price; satisfy specified listing criteria; and may only be exercised at expiration pursuant to the Rules of the Options Clearing Corporation (the "OCC").

⁵ See Fee Schedule, Section I.A., n. 5 (exempting ByRDs from all fees and credits for standard options transactions), available here, https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf.

⁶ The Exchange charges a monthly Rights Fee on each issue in the allocation of an e-Specialist, DOMM, and Specialist, which ranges from \$50 to \$2,500 (absent any applicable discount) and is based on the Average National Daily Customer Contracts per issue. See *id.*, Fee Schedule, Section III.C. (e-Specialist, DOMM and Specialist Monthly Rights Fees).

⁷ See proposed Fee Schedule, Section III.C. at n. 1 (stating that ByRDs are exempt from the Rights Fees). The Exchange proposes to delete as obsolete language from current note 1 to Section III.C., which provides that options listed before June 1, 2012 would be "grandfathered" for purposes of certain Rights Fee. See *id.* The Exchange believes this proposed change adds clarity and transparency to the Fee Schedule, as any options series listed before 2012 would have expired by now.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

Fees would further the Exchange's goal of introducing new products to the marketplace by encouraging trading in these products. To the extent that the proposed change incentivizes any market participants to direct their order flow to the Exchange, all market participants would benefit from increased liquidity and trading opportunities on the Exchange.

The Exchange believes the proposed change to remove obsolete language from the Fee Schedule adds clarity and transparency to the Fee Schedule, which makes it easier for market participants to comprehend.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁰ the Exchange does not believe that the proposed rule change would 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 change is pro-competitive as it would further the Exchange's goal of introducing new products to the marketplace and encouraging trading in these products, which would in turn, benefit market participants. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

¹⁰ 15 U.S.C. 78f(b)(8).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹¹ of the Act and subparagraph (f)(2) of Rule 19b-4¹² thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹³ 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-NYSEMKT-2016-121 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-NYSEMKT-2016-121. 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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 15 U.S.C. 78s(b)(2)(B).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2016-121 and should be submitted on or before January 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79636; File No. SR-BatsBZX-2016-87]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Market Data Section of Its Fee Schedule To Adopt Fees for BZX Summary Depth and Amend Fees for BZX Depth

December 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 14, 2016, Bats BZX Exchange, Inc. ("BZX" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2)

thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee schedule to: (i) Adopt fees for a new market data product called BZX Summary Depth; and (ii) amend the fees for BZX Depth.

The text of the proposed rule change is available at the Exchange's Web site at www.batstrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its fee schedule to: (i) Adopt fees for a new market data product called BZX Summary Depth; and (ii) amend the fees for BZX Depth.

BZX Summary Depth

BZX Summary Depth is a data feed that will provide aggregated two-sided quotations for all displayed orders entered into the System⁵ for up to five (5) price levels for securities traded on the Exchange and for which the Exchange reports quotes under the Consolidated Tape Association ("CTA") Plan or the Nasdaq/UTP Plan.⁶ BZX

⁴ 17 CFR 240.19b-4(f)(2).

⁵ "System" is defined as "the electronic communications and trading facility designated by the Board through which securities orders of Users Are consolidated for ranking, execution and, when applicable, routing away." See Exchange Rule 1.5(aa).

⁶ See Exchange Rule 11.22(m).

Summary Depth will also contain the individual last sale information, Market Status, Trading Status, and Trade Break messages. The individual last sale information will include the price, size, and time of execution. The last sale message will also include the cumulative number of shares executed on the Exchange for that trading day. The Exchange intends to begin to offer BZX Summary Depth on January 3, 2017.⁷

The Exchange now proposes to amend its fee schedule to incorporate fees for distribution of BZX Summary Depth to subscribers.⁸ The proposed fees include the following, each of which are described in detail below: (i) Distribution Fees for both Internal and External Distributors;⁹ (ii) Usage Fees for both Professional¹⁰ and Non-Professional¹¹ Users; (iii) an Enterprise Fee; and (iv) a Digital Media Enterprise Fee.

Distribution Fees. As proposed, each Internal Distributor that receives BZX

⁷ See *Reminder: Bats Global Markets to Introduce Bats Summary Depth Feeds on January 3, 2017*, http://cdn.batstrading.com/resources/release_notes/2017/Reminder-Bats-Global-Markets-to-Introduce-Bats-Summary-Depth-Feeds-on-Jan-3-2017.pdf.

⁸ The Exchange notes that its affiliated exchanges, Bats EDGX Exchange, Inc. ("EDGX"), Bats EDGA Exchange, Inc. ("EDGA") and Bats BYX Exchange, Inc. ("BYX", together with the Exchange, EDGX and EDGA, the "Bats Exchanges"), also intend to file proposed rule changes with Commission to adopt similar fees for their respective Summary Depth market data product.

⁹ A "Distributor" is defined as "any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party." See the Exchange's fee schedule available at http://www.bats.com/us/equities/membership/fee_schedule/bzx/. An "Internal Distributor" is defined as "a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity." *Id.* An "External Distributor" is defined as "a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity." *Id.*

¹⁰ A "Professional User" is defined as "any User other than a Non-Professional User." See the Exchange's fee schedule available at http://www.bats.com/us/equities/membership/fee_schedule/bzx/.

¹¹ A "Non-Professional User" is defined as "a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt." *Id.*

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

Summary Depth shall pay a fee of \$5,000 per month. The Exchange does not propose to charge any User fees for BZX Summary Depth where the data is received and subsequently internally distributed to Professional or Non-Professional Users. In addition, the Exchange proposes to charge also External Distributors that receive BZX Summary Depth a fee of \$5,000 per month.

User Fees. The Exchange proposes to charge External Distributors that redistribute BZX Summary Depth different fees for their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of \$5.00 per User. Non-Professional Users will be assessed a monthly fee of \$0.15 per User. The Exchange does not propose to charge per User fees to Internal Distributors.

External Distributors that receive BZX Summary Depth will be required to count every Professional User and Non-Professional User to which they provide BZX Summary Depth, the requirements for which are identical to that currently in place for other market data products offered by the Exchange.¹² Thus, the External Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data. External Distributors must report all Professional and Non-Professional Users in accordance with the following:

- In connection with an External Distributor's distribution of BZX Summary Depth, the Distributor should count as one User each unique User that the Distributor has entitled to have access to BZX Summary Depth. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.

- The External Distributor should identify and report each unique User. If a User uses the same unique method to gain access to BZX Summary Depth, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to BZX Summary Depth (e.g., a single User has multiple passwords and user identifications), the External Distributor should report all of those methods as an individual User.

¹² See Securities Exchange Act Release Nos. 74285 (February 18, 2015); 80 FR 9828 (February 24, 2015) (SR-BATS-2015-11) (proposing fees for the Bats One Feed); 75406 (July 9, 2015), 80 FR 41522 (July 15, 2015) (SR-BATS-2015-48) (proposing user fees for the BZX Top and Last Sale data feeds); and 75785 (August 28, 2015), 80 FR 53360 (September 3, 2015) (SR-BATS-2015-64) (proposing fees for BZX Book Viewer).

- External Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.

- If an External Distributor entitles one or more individuals to use the same device, the External Distributor should include only the individuals, and not the device, in the count.

Each External Distributor will receive a credit against its monthly Distribution Fee for BZX Summary Depth equal to the amount of its monthly Usage Fees up to a maximum of the Distribution Fee for BZX Summary Depth. For example, an External Distributor will be subject to a \$5,000 monthly Distribution Fee where they receive BZX Summary Depth. If that External Distributor reports User quantities totaling \$5,000 or more of monthly usage of BZX Summary Depth, it will pay no net Distribution Fee, whereas if that same External Distributor were to report User quantities totaling \$4,000 of monthly usage, it will pay a net of \$1,000 for the Distribution Fee. External Distributors will remain subject to the per User fees discussed above.

Enterprise Fee. The Exchange also proposes to establish a \$30,000 per month Enterprise Fee that will permit a recipient firm who receives BZX Summary Depth from an External Distributor to receive the data for an unlimited number of Professional and Non-Professional Users. For example, if a recipient firm had 15,000 Professional Users who each receive BZX Summary Depth at \$5.00 per month, then that recipient firm will pay \$75,000 per month in Professional Users fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of \$30,000 for an unlimited number of Professional and Non-Professional Users for BZX Summary Depth. A recipient firm must pay a separate Enterprise Fee for each External Distributor that controls the display of BZX Summary Depth if it wishes such User to be covered by an Enterprise Fee rather than by per User fees. A recipient firm that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. However, every six months, a recipient firm must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users. Lastly, the proposed Enterprise Fee would be counted towards the Distribution Fee credit described above, under which an External Distributor receives a credit towards its Distribution Fee equal to the

amount of its monthly BZX Summary Depth User fees.

Digital Media Enterprise Fee. The Exchange proposes to adopt a Digital Media Enterprise Fee of \$7,500 per month for BZX Summary Depth. As an alternative to proposed User fees discussed above, a recipient firm may purchase a monthly Digital Media Enterprise license to receive BZX Summary Depth from an External Distributor to distribute to an unlimited number of Professional and Non-Professional Users for viewing via television, Web sites, and mobile devices for informational and non-trading purposes only without having to account for the extent of access to the data or the report the number of Users to the Exchange. Lastly, the proposed Digital Media Enterprise Fee would be counted towards the Distribution Fee credit described above, under which an External Distributor receives a credit towards its Distribution Fee equal to the amount of its monthly BZX Summary Depth User fees.

BZX Depth

BZX Depth is an uncompressed market data feed that provides depth-of-book quotations and execution information based on equity orders entered into the System.¹³ Currently, the Exchange charges fees for both internal and external distribution of BZX Depth. The cost of BZX Depth for an Internal Distributor is currently \$1,500 per month. The Exchange also separately charges an External Distributor of BZX Depth a flat fee of \$5,000 per month. The Exchange does not currently charge Internal and External Distributors separate display User fees. The Exchange also charges a fee for Non-Display Usage¹⁴ by Trading Platforms¹⁵ by which subscribers to BZX Depth are charged a fee of \$5,000 per month. This fee is assessed in addition to existing Distribution fees. The Exchange now proposes to amend its fee schedule to incorporate Usage Fees for both Professional and Non-Professional Users

¹³ See Exchange Rule 11.22(a) and (c).

¹⁴ The term "Non-Display Usage" is defined as "any method of accessing a Market Data product that involves access or use by a machine or automated device without access or use of a display by a natural person or persons." See the Exchange's fee schedule available at http://www.bats.com/us/equities/membership/fee_schedule/bzx/.

¹⁵ The term "Trading Platform" is defined as "any execution platform operated as or by a registered National Securities Exchange (as defined in Section 3(a)(1) of the Exchange Act), an Alternative Trading System (as defined in Rule 300(a) of Regulation ATS), or an Electronic Communications Network (as defined in Rule 600(b)(23) of Regulation NMS)." See the Exchange's fee schedule available at http://www.bats.com/us/equities/membership/fee_schedule/bzx/.

and an Enterprise Fee for BZX Depth. Each of these changes are described in detail below.

User Fees. The Exchange proposes to charge Internal and External Distributors that redistribute BZX Depth different fees for their Professional Users and Non-Professional Users.¹⁶ The Exchange will assess a monthly fee for Professional Users of \$40.00 per User. Non-Professional Users will be assessed a monthly fee of \$5.00 per User. Distributors that receive BZX Depth will be required to count every Professional User and Non-Professional User to which they provide BZX Depth, the requirements for which are identical to that set forth above for BZX Summary Depth and as currently in place for other market data products offered by the Exchange.¹⁷

Enterprise Fee. The Exchange also proposes to establish a \$100,000 per month Enterprise Fee that will permit an Internal Distributor, External Distributor, or a recipient firm who receives BZX Depth from an External Distributor to receive the data for an unlimited number of Professional and Non-Professional Users. For example, if a recipient firm had 15,000 Professional Users who each receive BZX Depth at \$40.00 per month, then that recipient firm will pay \$600,000 per month in Professional Users fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of \$100,000 for an unlimited number of Professional and Non-Professional Users for BZX Depth. Like proposed above for BZX Summary Depth, a recipient firm must pay a separate Enterprise Fee for each External Distributor that controls the display of BZX Depth if it wishes such User to be covered by an Enterprise Fee rather than by per User fees. A recipient firm that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. However, every six months, a recipient firm must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users.

Implementation Date

The Exchange intends to implement the proposed fee change on January 3, 2017.

¹⁶ The Exchange notes that, unlike as proposed for BZX Summary Depth described above, both Internal and External Distributors of BZX Depth would be charged the same User fee for their Professional and Non-Professional Users.

¹⁷ See *supra* note 12 and accompanying text.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁸ in general, and furthers the objectives of Section 6(b)(4),¹⁹ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients. The Exchange also believes it is reasonable to charge different rates for BZX Depth and BZX Summary Depth as both products different levels of content (*e.g.*, BZX Depth contains quotations for all individual orders while BZX Summary Depth contains the aggregation quotation information for all orders up to five (5) price levels). Lastly, the Exchange also believes that the proposed fees are reasonable and non-discriminatory because they will apply uniformly to all recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act²⁰ in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,²¹ which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination

because all of the Exchange's customers and market data vendors will be subject to the proposed fees on an equivalent basis. BZX Summary Depth and BZX Depth are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to BZX Summary Depth and BZX Depth further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to distribute its similar product than the Exchange charges to consolidate and distribute BZX Summary Depth and BZX Depth, prospective Users likely would not subscribe to, or would cease subscribing to, BZX Summary Depth and BZX Depth.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.²²

²² The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on

BZX Summary Depth

Distribution Fee. The Exchange believes that the proposed Distribution Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution. The Exchange believes that the Distribution Fees for BZX Summary Depth are reasonable and fair in light of alternatives offered by other market centers. For example, BZX Summary Depth provides investors with alternative market data and competes with similar market data product currently offered by the New York Stock Exchange, Inc. (“NYSE”) and the Nasdaq Stock Market LLC (“Nasdaq”).²³ Specifically, the NYSE charges an access fee of \$5,000 per month for NYSE OpenBook,²⁴ which is equal to the External Distribution fee proposed herein for BZX Summary Depth.

User Fees. The Exchange believes that implementing the Professional and Non-Professional User fees for BZX Summary Depth are equitable and reasonable because they will result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for BZX Summary Depth is reasonable because it provides an additional method for retail investors to

escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress’s direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. See Appendix C to NYSE’s comments to the Commission’s 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission’s Web site at <http://www.sec.gov/rules/concept/s72899/buck1.htm>. See also Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR–NYSE–2014–64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

²³ See Nasdaq Rule 7023(a)(1)(C) (describing Nasdaq TotalView is a depth-of-book data feed that includes all orders and quotes from all Nasdaq members displayed in the Nasdaq Market Center as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center). See also Nasdaq Book Viewer, a description of which is available at <https://data.nasdaq.com/BookViewer.aspx>. See NYSE OpenBook available at <http://www.nyxdata.com/openbook> (providing real-time view of the NYSE limit order book).

²⁴ See NYSE Market Data Pricing dated November 2016 available at <http://www.nyxdata.com/>. Nasdaq charges distribution fees ranging from \$375 for 1–39 subscribers to \$75,000 for more than 250 subscribers. See Nasdaq Rule 7023(b)(4).

access BZX Summary Depth data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of differentiated Professional and Non-Professional fees is utilized by the Exchange for the Bats One Feed and has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.²⁵ Offering BZX Summary Depth to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients.

In addition, the proposed fees are reasonable when compared to similar fees for comparable products offered by the NYSE and Nasdaq. Specifically, NYSE offers NYSE OpenBook for a monthly fee of \$60.00 per professional subscriber and \$15 per non-professional subscriber.²⁶ Nasdaq offers Nasdaq TotalView-Aggregated for a monthly fee of \$70.00 per professional subscriber and \$14 per non-professional subscriber.²⁷ The Exchange’s proposed per User Fees for BZX Summary Depth are less than the NYSE and Nasdaq fees.

Enterprise Fee. The proposed Enterprise Fee for BZX Summary Depth is equitable and reasonable as the fees proposed are less than the enterprise fees currently charged for Nasdaq TotalView-Aggregated. Nasdaq charges an enterprise fee of \$100,000 per month for Nasdaq TotalView-Aggregated,²⁸ which is far greater than the proposed Enterprise Fee of \$30,000 per month for BZX Summary Depth. In addition, the

²⁵ See Securities Exchange Act Release Nos. 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR–BATS–2015–11); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR–EDGA–2015–09); 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR–EDGX–2015–09); and 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR–BYX–2015–09) (“Initial BATS One Feed Fee Filings”). See also, e.g., Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983) (establishing nonprofessional fees for CTA data); and Nasdaq Rules 7023(b), 7047.

²⁶ See NYSE Market Data Pricing dated November 2016 available at <http://www.nyxdata.com/>.

²⁷ See Nasdaq Rule 7023(b)(2).

²⁸ See Nasdaq Rule 7023(c)(2) (stating that a distributor that is also a broker-dealer pays a monthly fee of \$100,000 for the right to provide Nasdaq TotalView and for display usage for internal distribution, or for external distribution to both professional and non-professional subscribers with whom the firm has a brokerage relationship.) Nasdaq also charges an enterprise fee of \$25,000 to provide Nasdaq TotalView to an unlimited number of non-professional subscribers only. See Nasdaq Rule 7023(c)(1).

Enterprise Fee proposed by the Exchange could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of BZX Summary Depth, then it may continue using the per User structure and benefit from the per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute BZX Summary Depth, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange’s costs and the Distributor’s administrative burdens in tracking and auditing large numbers of Users.

Digital Media Enterprise Fee. The Exchange believes that the proposed Digital Media Enterprise Fee for BZX Summary Depth provides for an equitable allocation of reasonable fees among recipients of the data and is not designed to permit unfair discrimination among customers, brokers, or dealers. In establishing the Digital Media Enterprise Fee, the Exchange recognizes that there is demand for a more seamless and easier-to-administer data distribution model that takes into account the expanded variety of media and communication devices that investors utilize today. The Exchange believes the Digital Media Enterprise Fee will be easy to administer because data recipients that purchase it would not be required to differentiate between Professional and Non-Professional Users, account for the extent of access to the data, or report the number of Users. This is a significant reduction on a recipient firm’s administrative burdens and is a significant value to investors. For example, a television broadcaster could display BZX Summary Depth data during market-related programming and on its Web site or allow viewers to view the data via their mobile devices, creating a more seamless distribution

model that will allow investors more choice in how they receive and view market data, all without having to account for and/or measure who accesses the data and how often they do so.

The proposed Digital Media Enterprise Fee is equitable and reasonable because it will also enable recipient firms to more widely distribute data from BZX Summary Depth to investors for informational purposes at a lower cost than is available today. For example, a recipient firm may purchase an Enterprise license in the amount of \$30,000 per month for to receive BZX Summary Depth from an External Distributor for an unlimited number of Professional and Non-Professional Users, which is greater than the proposed Digital Media Enterprise Fee. The Exchange also believes the amount of the Digital Media Enterprise Fee is reasonable as compared to the existing enterprise fees discussed above because the distribution of BZX Summary Depth data is limited to television, Web sites, and mobile devices for informational purposes only, while distribution of BZX Summary Depth data pursuant to an Enterprise license contains no such limitation. The Exchange also believes that the proposed Digital Media Enterprise Fee is equitable and reasonable because it is less than similar fees charged by other exchanges.²⁹

BZX Depth

User Fees. The Exchange believes that implementing the Professional and Non-Professional User fees for BZX Depth are equitable and reasonable because they will result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for BZX Depth is reasonable because it provides an additional method for retail investors to access BZX Depth data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of differentiated Professional and Non-Professional fees is utilized by the Exchange and has long been used by

other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.³⁰ Offering BZX Depth to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients. The Exchange also believes it is equitable, reasonable, and not unfairly discriminatory to charge User fees to Internal Distributors, as such fees are currently charged by NYSE and Nasdaq.³¹

In addition, the proposed fees are reasonable when compared to similar fees for comparable products offered by the NYSE and Nasdaq. Specifically, NYSE offers NYSE OpenBook Ultra for a monthly fee of \$60.00 per professional subscriber and \$15 per non-professional subscriber.³² Nasdaq offers Nasdaq TotalView-ITCH for a monthly fee of \$70.00 per professional subscriber and \$14 per non-professional subscriber.³³ The Exchange's proposed per User Fees for BZX Depth are less than the NYSE and Nasdaq fees.

Enterprise Fee. The proposed Enterprise Fee for BZX Depth is equitable and reasonable as compared to the enterprise fees currently charged for Nasdaq TotalView-ITCH. Nasdaq charges an enterprise fee of \$100,000 per month for Nasdaq TotalView-ITCH,³⁴ which is equal to the proposed Enterprise Fee of \$100,000 per month for BZX Depth. In addition, the Enterprise Fee proposed by the Exchange could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of BZX Depth, then it may continue using the per User structure and benefit from the per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute BZX Depth, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the

proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of Users.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price BZX Depth and BZX Summary Depth is constrained by: (i) competition among exchanges, other trading platforms, and Trade Reporting Facilities ("TRF") that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, BZX Summary Depth and BZX Depth compete with a number of alternative products. For instance, BZX Summary Depth and BZX Depth do provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and Electronic Communication Networks ("ECN") that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce last sale information products, and many currently do, including Nasdaq and NYSE. In addition, market participants can gain access to BZX last sale and depth-of-book quotations, though integrated with the prices of other markets, on feeds made available through the SIPs.

²⁹ Nasdaq offers proprietary data products for distribution over the internet and television under alternative fee schedules that are subject to maximum fee of \$50,000 [sic] per month. See Nasdaq Rule 7039(b). The NYSE charges a Digital Media Enterprise fee of \$40,000 per month for the NYSE Trade Digital Media product. See Securities Exchange Act Release No. 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (SR-NYSE-2013-23).

³⁰ See *supra* note 24.

³¹ See *supra* notes 24 and 25 (not limiting the application of user fees to external distribution only).

³² See *supra* note 25.

³³ See *supra* note 26.

³⁴ See *supra* note 27.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to BZX Depth and BZX Summary Depth, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

Lastly, the Exchange represents that the increase in pricing of BZX Depth and the proposed pricing of the BZX Summary Feed would continue to enable a competing vendor to create a competing product to the Exchange's Bats One Feed on the same price and latency basis as the Exchange. The Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate BBO of all displayed orders for securities traded on each of the Bats Exchanges and for the Bats Exchanges report quotes under the CTA Plan or the Nasdaq/UTP Plan. The Bats One Feed also contains the individual last sale information for the Bats Exchanges (collectively with the aggregate BBO, the "Bats One Summary Feed"). In addition, the Bats One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Bats Exchanges for up to five (5) price levels ("Bats One Premium Feed").³⁵ The

Exchange uses the following data feeds to create the Bats One Feed, each of which are available to vendors: EDGX Depth, EDGA Depth, BYX Depth, and the BZX Depth.

When adopting the Bats One Feed, the Exchange represented that a vendor could create a competing product based in the data feed used to construct the Bats One Feed on the same cost and latency basis as the Exchange.³⁶ Therefore, the Exchange designed the pricing of these products so that their aggregate cost is not greater than the Bats One Feed, thereby enabling a vendor to create a competing product to the Bats One Feed on the same cost basis as the Exchange. However, the Exchange now proposes to increase the cost of BZX Depth, which when combined with the proposed increases by its affiliates for their depth products, would cause their aggregate cost to be higher than the Bats One Premium Feed.³⁷ However, to ensure that a vendor could continue to create a competing product to the Bats One Premium Feed at no greater cost, that vendor could now utilize BZX Summary Depth, as well as the Summary Depth feeds of BYX, EDGA, and EDGX to create a competing product to the Bats One Premium Feed for less cost and on the same latency basis as the Exchange.³⁸ The Exchange has designed the content and pricing of BZX Summary Depth, and related products by its affiliates, so that a vendor could utilize those feeds, in lieu of the Bats Exchange's existing depth-of-book products, to construct a competing product on the same cost and latency basis as the Exchange. The pricing the Exchange and its affiliates propose to charge for Summary Depth feeds would be lower than the cost to obtain the Bats One Premium Feed.³⁹ Such pricing

2014), 79 FR 78920 (December 31, 2014) (File Nos. SR-EDGX-2014-25; SR-EDGA-2014-25; SR-BATS-2014-055; SR-BYX-2014-030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) ("Bats One Approval Order").

³⁶ *Id.*

³⁷ The Exchange notes that a vendor seeking to create a product to compete with the Bats One Summary Feed may continue to utilize each of the Bats Exchange's Top and Last Sale data feeds, the aggregate cost of which is less than the Bats One Summary Feed.

³⁸ While the proposed BZX Summary Depth feed does not contain the symbol summary or consolidated volume data included in the Bats One Feed, a vendor could include this information in a competing product as this information is easily derivable from the proposed feeds or can be obtained from the securities information processors on the same terms as the Exchange.

³⁹ While the aggregate cost of each of the Bats Exchange's Summary Depth Products equals the

would continue to enable a vendor to receive each of the Bats Exchange's Summary Depth feeds and offer a similar product to the Bats One Premium Feed on a competitive basis and at no greater cost than the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁴⁰ and paragraph (f) of Rule 19b-4 thereunder.⁴¹ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BatsBZX-2016-87 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-BatsBZX-2016-87. 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

cost of the Bats One Premium Feed, the cost of the Bats One Feed continues to be greater because subscribers are required to pay an additional \$1,000 aggregation fee. See the Exchange's fee schedule available at http://www.bats.com/us/equities/membership/fee_schedule/bzx/.

⁴⁰ 15 U.S.C. 78s(b)(3)(A).

⁴¹ 17 CFR 240.19b-4(f).

³⁵ See Exchange Rule 11.22(i). See also Securities Exchange Act Release No. 73918 (December 23,

only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BatsBZX-2016-87 and should be submitted on or before January 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴²

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2016-31298 Filed 12-27-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79640; File No. SR-NYSEMKT-2016-117]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To (1) Change How Orders Would Be Processed When the Protected Best Bid ("PBB") Is Higher Than the Protected Best Offer ("PBO") (The "PBBO") in Certain Circumstances, and (2) Adopt a Limit Order Price Protection Mechanism

December 21, 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 December 12, 2016, NYSE MKT LLC (the

"Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) change how orders would be processed when the protected best bid ("PBB") is higher than the protected best offer ("PBO") (the "PBBO") in certain circumstances, and (2) adopt a limit order price protection mechanism. The proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (1) change how orders would be processed when the PBB is higher than the PBO in certain circumstances, and (2) adopt a limit order price protection mechanism.

Processing of Orders When the PBBO Is Crossed (Rules 13—Equities, 70—Equities, 76—Equities and 1000—Equities)

Currently, when the PBB is priced higher than the PBO in a security (*i.e.*, the PBBO is crossed), buy and sell orders trade on the Exchange without regard to price and without routing, consistent with the exception to the Order Protection Rule enumerated in Rule 611(b)(4) of Regulation NMS

("Rule 611(b)(4)").⁴ In certain circumstances as described herein, the Exchange proposes to no longer avail itself of this exception to the Order Protection Rule.⁵ In those circumstances, rather than trading through a protected quotation when the PBBO is crossed, routable orders may instead be routed to protected quotations. In order to implement this change, the Exchange proposes to amend the following rules:

Rule 13—Equities

Market Order

Rule 13(a)(1)—Equities provides that a Market Order that is eligible for automatic executions is an unpriced order to buy or sell a stated amount of a security that is to be traded at the best price obtainable without trading through the NBBO. Rule 13(a)(1)(B)(i)—Equities provides that when the Exchange is open for continuous trading, a Market Order will be rejected on arrival, or cancelled if resting, if there is no contra-side NBBO or if the best protected quotations are or become crossed.

The Exchange proposes to no longer reject or cancel Market Orders when the PBBO is crossed. To effectuate this change, the Exchange proposes to delete the phrase "or if the best protected quotations are or become crossed" in Rule 13(a)(1)(B)(i)—Equities. As a result of this proposed change, if a Market Order arrives when the PBBO is crossed, the Exchange would process the Market Order in the same way as when the NBBO is crossed under the current rule.⁶

Routing to Protected Quotations

The Exchange proposes to amend the Rule 13—Equities to specify circumstances when the Exchange would make order handling decisions based on a protected quotation. The Exchange proposes to make these changes because, in the circumstances described below, the Exchange would no longer avail itself of the exception to the Order Protection Rule specified in Rule 611(b)(4), and therefore the Exchange would include protected

⁴ 17 CFR 242.611(b)(4). See also Rule 15A—Equities (Order Protection Rule).

⁵ For example, assume if the Exchange has a displayed bid of \$10.00 and another market crosses that bid with a protected offer of \$9.99. Currently, if the Exchange receives a marketable order to buy, it will trade on the Exchange at prices higher than \$9.99. Once the Exchange no longer avails itself of the exception in Rule 611(b)(4), unless otherwise specified in Exchange rules as described in this proposed rule change, arriving routable interest to buy that is marketable on the Exchange would instead first route to that protected offer.

⁶ See Rule 13(a)(1)(B)(ii)—Equities.

⁴² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

quotations for order handling purposes even when the PBBO is crossed.

First, the Exchange proposes to amend the definition of Exchange IOC Order to reflect that, when the PBBO is crossed, the Exchange would route such orders to other markets if an execution on the Exchange would trade through a protected quotation in compliance with Regulation NMS. Rule 13(b)(2)(B)—Equities defines an Exchange IOC Order as a Limit Order designated Immediate or Cancel (“IOC”) that will be automatically executed against the displayed quotation up to its full size and sweep the Exchange book, as provided in Rule 1000 to the extent possible, with portions of the order routed to other markets if necessary in compliance with Regulation NMS and the portion not so executed will be immediately and automatically cancelled. As such, currently an Exchange IOC Order is only routed to a protected quotation unless the exception in Rule 611(b)(4) applies. Because the Exchange proposes to route an Exchange IOC Order to other markets if an execution on the Exchange would trade through a protected quotation, *i.e.*, in circumstances when the PBBO is crossed, the Exchange would revise the rule text to read “with portions of the order routed to other markets if an execution would trade through a protected quotation, in compliance with Regulation NMS. The portion of the order not so executed will be immediately and automatically cancelled.”

Second, the Exchange proposes to amend the definition of “best-priced sell interest” and “best-priced buy interest,” which are terms used for purposes of determining where to display and rank a Limit Order designated with an Add Liquidity Only (“ALO”) Modifier. Supplementary Material .10 of Rule 13—Equities provides that, for purposes of the Rule, the term “best-priced sell interest” refers to the lowest priced sell interest against which incoming buy interest would be required to execute with and/or route to, including Exchange displayed offers, Non-Display Reserve Orders, Non-Display Reserve e-Quotes, odd-lot sized sell interest, unexecuted Market Orders, and protected offers on away markets and that the term “best-priced buy interest” refers to the highest priced buy interest against which incoming sell interest would be required to execute with and/or route to, including Exchange displayed bids, Non-Display Reserve Orders, Non-Display Reserve e-Quotes, odd-lot sized buy interest, unexecuted Market Orders, and protected bids on away markets, but does not include non-

displayed buy interest that is priced based on the PBBO.⁷

Because the Exchange currently avails itself of the exception in Rule 611(b)(4) when the PBBO is crossed, the Exchange does not include protected bids or offers in the determination of “best-priced sell interest” or “best-priced buy interest.” With the proposed change, in the circumstances when the Exchange no longer avails itself of this exception, the Exchange would consider all protected quotations, including when the PBBO is crossed. To reflect this change, the Exchange proposes the following amendments to Supplementary Material .10 to Rule 13—Equities.⁸

- In the first clause defining “best-priced sell interest,” the Exchange proposes to delete “with and/or route to” after “execute,” add the word “and” before “unexecuted Market Orders” and add the phrase “the lowest-priced” before “protected offers on away markets.” The proposed change would clarify that best-priced sell interest can mean either the lowest-priced sell interest against which incoming buy interest would execute with on the Exchange or the lowest-priced protected offer, which can be a protected offer on an away market.

- In the second clause defining “best-priced buy interest,” the Exchange would delete “with and/or route to” after “execute,” add the word “and” before “unexecuted Market Orders,” and add “the highest-priced” before “protected bids on away markets.” The proposed change would clarify that best-priced buy interest can mean either the lowest-priced buy interest against which incoming sell interest would execute with on the Exchange or the lowest-priced protected bid, which can be a protected bid on an away market.

Pegging Interest

Rule 13(f)(1)—Equities defines pegging interest and provides that pegging interest pegs to prices based on (i) a PBBO, which may be available on the Exchange or an away market, or (ii) interest that establishes a price on the Exchange. If the PBBO is not within the specified price range of the pegging interest, the pegging interest will instead peg to the next available best-priced displayable interest that is within

⁷ The Exchange also proposes a non-substantive change to add a colon after Supplementary Material in the heading.

⁸ Since the terms defined in Supplementary Material .10 are only used for Limit Orders designated ALO, the Exchange proposes to replace “this Rule” after “For purposes of” with “displaying and ranking a Limit Order with an Add Liquidity Only (ALO) modifier”.

the specified price range, which may be on the Exchange or the protected bid or offer of another market.⁹ Rule 13(f)(1)(B)(i)—Equities further provides that pegging interest to buy (sell) will not peg to a price that is locking or crossing the Exchange best offer (bid), but instead will peg to the next available best-priced displayable interest that would not lock or cross the Exchange best offer (bid).

To avoid routing pegging interest when the PBBO is locked or crossed, the Exchange proposes to specify that the Exchange would not peg to a locking or crossing PBBO and would instead peg to the next-available best-priced displayable interest that would not lock or cross either the Exchange’s BBO or the PBBO. To effect this change, the Exchange proposes to amend Rule 13(f)(1)(B)(i)—Equities to provide that pegging interest to buy (sell) will not peg to the PBO (PBB) if the PBBO is locked or crossed or to a price that is locking or crossing the Exchange best offer (bid), but instead would peg to the next available best-priced displayable interest that would not lock or cross the Exchange best offer (bid) or the PBO (PBB).

Rule 70—Equities

Rule 70—Equities governs the execution of Floor broker interest, including g-Quotes. G-Quotes are an electronic method for Floor brokers to represent orders that yield priority, parity and precedence based on size to displayed and non-displayed orders on the Exchange’s book, in compliance with Section 11(a)(1)(G) of the Act (the “G Rule”).¹⁰

Because the proposed change to how the Exchange would operate when the PBBO is crossed would result in routable orders being routed to a crossed PBBO, the Exchange proposes to revise the behavior of g-Quotes to limit the circumstances when such orders would route. While the G Rule only requires G orders to yield to orders on the Exchange, the Exchange does not believe that a G order should trade on

⁹ See Rule 13(f)(1)(A)(iv)(a) & (f)(1)(A)(iii)—Equities.

¹⁰ Section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1), generally prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or any account over which it or an associated person exercises discretion. Subsection (G) of Section 11(a)(1) provides an exemption from this prohibition, allowing an exchange member to have its own floor broker execute a proprietary order, also known as a “G order,” provided such order yields priority, parity, and precedence. Under the G Rule, G orders are not required to yield to other orders that are for the account of a member, *e.g.*, Designated Market Maker (“DMM”) interest or other g-Quotes.

another market before resting displayed interest on the Exchange trades and to which, absent routing of the G order, would be yielded priority by the G order under the G Rule. Accordingly, the Exchange proposes to restrict a g-Quote from routing to a protected quotation ahead of displayed orders on the Exchange at the same price. To effect this change, the Exchange proposes to add a new subsection (iii) to Rule 70(a)—Equities that would provide that a g-Quote to buy (sell) that would be required to route on arrival would be cancelled when there is resting displayable interest that is not a g-Quote or DMM interest to buy (sell) at the same or higher (lower) price as the g-Quote.

Further, the Exchange proposes to amend subsection (a)(ii) of Supplementary Material .25 to Rule 70—Equities to specify that discretionary instructions for Floor broker d-Quotes¹¹ are unavailable when the PBBO is crossed. To effectuate this change, the Exchange proposes to delete the phrase “at all times” following “Discretionary instructions are active” and add the phrase “unless the PBBO is crossed” following “during the trading day.”¹²

Rule 76—Equities

Rule 76—Equities governs the execution of manual “cross” or “crossing” orders by Floor brokers on the Exchange trading Floor. Supplementary Material .10 of Rule 76—Equities permits Floor Brokers to enter a cross transaction into their hand held device (“HHD”) and describes the operation by the Exchange of a quote minder function that monitors protected bids and offers to determine when the limit price assigned to the proposed crossed transaction is such that the orders may be executed consistent with Regulation NMS Rule 611.

The Exchange proposes to amend Supplementary Material .10 of Rule 76—Equities to specify that quote minder would be unavailable to Floor brokers when the PBBO is crossed by adding the sentence “Quote minder will not monitor protected bids and offers when the PBBO is crossed” to the end of the Rule. The proposed change to Rule 76.10—Equities is consistent with the proposed change, described above, that the Exchange would route orders even if the PBBO is crossed. Because

¹¹ D-Quotes enable Floor brokers to enter discretionary instructions as to the price at which the d-Quote may trade and the number of shares to which the discretionary price instructions apply.

¹² The Exchange also proposes to add “reopening” after “at the opening” and before “and closing transactions” in Rule 70.25(a)(ii)—Equities.

Rule 76—Equities governs crossing orders at a single price on the Exchange, the Exchange believes this proposed change makes clear that the Exchange would not permit a crossing order to be executed when the PBBO is crossed.

Rule 1000—Equities

Rule 1000—Equities provides for automatic executions by Exchange systems. The Exchange proposes to add new Supplementary Material .10 to specify how DMM interest would be processed when the PBBO is crossed and there is same side resting displayable interest that is locking or crossing the contra-side PBBO. Similar to the proposed amendment described above relating to g-Quotes, the Exchange does not believe that DMM interest should have an opportunity to trade on another market ahead of displayed orders on the Exchange.

To effect this change, the proposed amendment would provide that DMM interest that would be required to route on arrival would be cancelled when there is same side resting displayable buy (sell) interest (that is not a g-Quote or DMM interest to buy (sell)) that is locking or crossing the PBO (PBB). Similarly, the Exchange proposes to specify that certain DMM interest that would increase the displayed quantity of the similarly-entered resting DMM interest would be rejected when the resting DMM interest is locked or crossed by a protected away quote.¹³

Limit Order Price Protection (Rules 13—Equities and 1000—Equities)

The Exchange proposes to amend Rule 13—Equities to introduce limit order price protection, which would result in Limit Orders with prices too far away from the prevailing quote to be rejected on arrival. The proposed rule is based on NYSE Arca Equities, Inc. (“NYSE Arca Equities”) Rule 7.31(a)(2)(B).

As proposed, the Exchange would reject limit orders that are priced a specified percentage away from the contra side national best bid (“NBB”) or national best offer (“NBO”), as defined in Rule 600(b)(42) of Regulation NMS. As the Exchange receives limit orders, Exchange systems will check the price of the limit order against the contra-side NBB or NBO at the time of the order entry to determine whether the limit order is within the specified percentage. As proposed, the specified percentage would be equal to the corresponding “numerical guideline” percentages set forth in paragraph (c)(1) of Rule 1000—

¹³ See Rule 104(b)—Equities & 1000—Equities.

Equities (Automatic Executions) that are used to calculate Trading Collars.¹⁴

Proposed Rule 13(a)(2)(A)—Equities would provide that a Limit Order to buy (sell) would be rejected if it is priced at or above (below) a specified percentage away from the NBO (NBB). Proposed Rule 13(a)(2)(A)(i)—Equities would further provide if the NBB or the NBO is greater than \$0.00 up to and including \$25.00, the specified percentage would be 10%; if the NBB or NBO is greater than \$25.00 up to and including \$50.00, the specified percentage would be 5%; and if the NBB or NBO is greater than \$50.00, the specified percentage would be 3%. For example, if the NBB is \$26.00, a sell order priced at or below \$24.70, which is 5% below the NBB, would be rejected. Likewise, if the NBO is \$55.00, a buy order priced at or above \$56.65, which is 3% above the NBO, would be rejected.

Proposed Rule 13(a)(2)(A)(i)—Equities would further provide that if the NBBO is crossed, the Exchange would use the Exchange Best Offer (“BO”) instead of the NBO for buy orders and the Exchange Best Bid (“BB”) instead of the NBB for sell orders. The proposed Rule would further provide that if the NBBO is crossed and there is no BO (BB), Limit Order Price Protection will not be applied to an incoming Limit Order to buy (sell). Further, proposed Rule 13(a)(2)(A)(i)—Equities would provide, like current NYSE Arca Rule 7.31(a)(2)(B), that Limit Order Price Protection will not be applied to an incoming Limit Order to buy (sell) if there is no NBO (NBB). Further, if the specified percentage for both buy and sell orders are not in the minimum price variation (“MPV”) for the security, as defined in Supplemental Material .10 to Rule 62—Equities, they would be rounded down to the nearest price at the applicable MPV. This proposed rule text is based on current Rule 1000(c)(1)—Equities, governing Trading Collars.

Proposed Rule 13(a)(2)(A)(ii)—Equities would provide that Limit Order Price Protection would be applicable only when automatic executions are in effect. This rule would further provide that Limit Order Price Protection would not be applicable (a) before a security opens for trading or during a halt or pause; (b) during a trading suspension; (c) to incoming Auction-Only Orders;

¹⁴ The NYSE Arca Equities limit order price protection mechanism uses the “numerical guideline” percentage set forth in Rule 7.10(c)(1) (Clearly Erroneous Executions) for its Core Trading Session. See NYSE Arca Equities Rule 7.31(a)(2)(B). The Exchange’s proposal would use the same numerical guidelines, but rather than cross referencing another rule, the Exchange proposes to enumerate the specified percentages in proposed Rule 13(a)(2)(A).

and (d) to high-priced securities, as defined in Rule 1000(a)(iii)—Equities.

Finally, in connection with the introduction of the proposed Limit Order Price Protection mechanism, the Exchange proposes to amend Rule 1000(c)—Equities and (c)(ii)—Equities to delete references to marketable limit orders. Accordingly, Trading Collars specified in Rule 1000(c)—Equities would be applicable to Market Orders only, and pricing protections in proposed Rule 13(a)(2)(A)—Equities would be applicable to Limit Orders.

The Exchange believes that the Limit Order Protection mechanism would prevent the entry of supermarketable limit orders, *i.e.*, limit orders that in essence act like market orders because they are priced so far away from the prevailing market price, that could cause significant price dislocation in the market. The Exchange also believes that the mechanism would further serve to mitigate the potential for clearly erroneous executions to occur. The Exchange believes that the proposed treatment of limit orders serves as an additional safeguard that could help limit potential harm from extreme price volatility by preventing executions that could occur at a price significantly away from the contra side national best bid or national best offer.

* * * * *

Because of the technology changes associated with this rule proposal, the Exchange will announce the implementation date in a Trader Update. The Exchange currently anticipates implementing the proposed changes no later than March 31, 2017.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Specifically, while the Exchange is entitled to avail itself of the exception to Rule 611(b)(4) to the Order Protection Rule, the Exchange believes that trading or routing based on the PBBO, even when it is crossed, may result in additional order execution opportunities to trade at prevailing prices in the market. Accordingly, as a general matter, taking into consideration

all protected quotations for purposes of the price at which to trade or route an order on the Exchange, even when the PBBO is crossed, would remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed changes to modify current order behavior that is based on Rule 611(b)(4) would remove impediments to and perfect the mechanism of a free and open market and a national market system because they are designed to reflect changes to how such orders would be processed when the PBBO is crossed in a manner consistent with the original intent of such orders.

- The Exchange believes the proposed amendment to Rule 13—Equities governing Market Orders would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote transparency that a Market Order would be accepted when the PBBO is crossed, and thus may route when the PBBO is crossed.

- The Exchange believes the proposed amendments to Rule 13—Equities definition of an Exchange IOC Order clarifying that the Exchange would route to a protected quotation when the PBBO is crossed would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide specificity regarding the reason why an order may be routed, thereby promoting transparency in Exchange rules. The Exchange further believes that specifying that Supplementary Material .10 relates to the displaying and ranking of Limit Orders designated ALO would remove impediments to and perfect the mechanism of a free and open market and a national market system by adding clarity and transparency to the Exchange's rules.

- The proposed amendments to Rules 70—Equities and 1000—Equities to cancel g-Quotes that would otherwise be required to route to away markets ahead of resting displayable interest and reject DMM interest that would increase the displayed quantity of similarly-entered resting DMM interest when that resting interest is locked or crossed by a protected away quote would remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors and the public because it would provide priority to previously-displayed orders not only for execution opportunities on the Exchange, but also on other markets.

- The proposed amendment to Rule 76—Equities relating to crossing orders would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide transparency that crossing orders, which are designed to trade on the Exchange as a single-priced transaction, would not be eligible to trade if the PBBO is crossed.

The Exchange believes that the proposed Limit Order Protection mechanism would remove impediments to and perfect the mechanism of a free and open market and a national market system by rejecting orders that are priced too far away from the prevailing market. The Exchange believes that the proposed rule would ensure that limit orders would not cause the price of a security to move beyond prices that could otherwise be determined to be a clearly erroneous execution, thereby protecting investors from receiving executions away from the prevailing prices at any given time.

Finally, the Exchange's proposal to make non-substantive changes to the text of Supplementary Material .10 of Rule 13—Equities and to Rule 70.25(a)—Equities adds clarity and transparency to Exchange rules and reduces potential investor confusion, which would remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change would not impose any burden on competition because it would align how the Exchange operates when the PBBO is crossed with how other equity exchanges function when the PBBO is crossed. Moreover, the proposed rule changes would specify how orders would be processed when the PBBO is crossed, thereby promoting transparency and efficiency to the benefit of all market participants, and the adoption of a limit order protection mechanism that is based on the rules of another exchange. The Exchange believes that the proposed rule change will serve to promote regulatory clarity and consistency, thereby reducing burdens on competition in the marketplace and facilitating investor protection.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²¹ 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-NYSEMKT-2016-117 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2016-117. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2016-117 and should be submitted on or before January 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79641; File No. SR-NASDAQ-2016-179]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation of the Limit Order Protection

December 21, 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 December 20, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by 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 delay the implementation of the Limit Order Protection or "LOP" for members accessing the Nasdaq Market Center.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to delay the implementation of the Exchange's mechanism to protect against erroneous Limit Orders, which are entered into the Nasdaq Market

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ 15 U.S.C. 78s(b)(2)(B).

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Center, at Rule 4757(c).³ The Exchange received approval to implement this mechanism on August 24, 2016.⁴ Within that rule change, the Exchanges proposed to implement LOP within ninety days of the approval of the proposal, which was November 22, 2016.⁵ The Exchange subsequently filed a modification to the original proposal and delayed the implementation an additional sixty (60) days from the original timeframe in order to implement the LOP, which was January 21, 2017.⁶

At this time the Exchange proposes to delay the implementation from January 21, 2017 until a date no later than March 31, 2017 in order to allow additional time to complete testing. The Exchange will announce the specific date in advance through an Equities Trader Alert. For more information regarding LOP see the previous LOP rule changes.⁷

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ 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, by permitting the Exchange additional time to implement the LOP in accordance with the Exchange's processes. The Exchange's proposal does not significantly affect the protection of investors or the public interest because this proposal does not modify the manner in which LOP operates, only the implementation date is impacted. The Exchange will provide advance notice to members with respect to the new date.

³ See Securities Exchange Act Release No. 78246 (August 24, 2016), 81 FR 59672 (August 30, 2016) (SR-NASDAQ-2016-067). See also Securities Exchange Act Release No. 79330 (November 16, 2016), 81 FR 83892 (November 22, 2016) (SR-NASDAQ-2016-155).

⁴ See Securities Exchange Act Release No. 78246 (August 24, 2016), 81 FR 59672 (August 30, 2016) (SR-NASDAQ-2016-067) (Notice of Filing of Amendments No. 1 and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments No. 1, To Adopt Limit Order Protections).

⁵ *Id.* at 45333.

⁶ See Securities Exchange Act Release No. 79330 (November 16, 2016), 81 FR 83892 (November 22, 2016) (SR-NASDAQ-2016-155) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Limit Order Protection for Members Accessing the Nasdaq Market Center).

⁷ See note 3 above.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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. The Exchange's proposal does not impose any significant burden on competition because LOP will apply to all Nasdaq market participants in a uniform manner once implemented.

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)(iii) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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:

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 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.

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2016-179 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2016-179. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2016-179 and should be submitted on or before January 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Eduardo A. Aleman,

Assistant Secretary.

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¹² 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79648; File No. SR-FINRA-2016-047]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rules To Conform to the Commission's Proposed Amendment to Commission Rule 15c6-1(a) and the Industry-Led Initiative To Shorten the Standard Settlement Cycle for Most Broker-Dealer Transactions From T+3 to T+2

December 21, 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 December 14, 2016, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rules 2341 (Investment Company Securities), 11140 (Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-Warrants"), 11150 (Transactions "Ex-Interest" in Bonds Which Are Dealt in "Flat"), 11210 (Sent by Each Party), 11320 (Dates of Delivery), 11620 (Computation of Interest), 11810 (Buy-In Procedures and Requirements), and 11860 (COD Orders) to conform to the Commission's proposed amendment to SEA Rule 15c6-1(a) to shorten the standard settlement cycle for most broker-dealer transactions from three business days after the trade date ("T+3") to two business days after the trade date ("T+2") and the industry-led initiative to shorten the settlement cycle from T+3 to T+2.³

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

SEC Proposing Release

On September 28, 2016, the Commission proposed amending SEA Rule 15c6-1(a) to shorten the standard settlement cycle for most broker-dealer transactions from T+3 to T+2 on the basis that the shorter settlement cycle would reduce the risks that arise from the value and number of unsettled securities transactions prior to the completion of settlement, including credit, market, and liquidity risk directly faced by U.S. market participants. The proposed rule amendment was published for comment in the **Federal Register** on October 5, 2016.⁴

Background

In 1995, the standard U.S. trade settlement cycle for equities, municipal and corporate bonds, and unit investment trusts, and financial instruments composed of these products was shortened from five business days after the trade date ("T+5") to T+3.⁵

⁴ See *supra* note 3.

⁵ In 1993, the Commission adopted SEA Rule 15c6-1 which became effective in 1995. See Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (October 13, 1993) and 34952 (November 9, 1994), 59 FR 59137 (November 16, 1994). SEA Rule 15c6-1(a) provides, in relevant part, that "a broker or dealer shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security, government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction." 17 CFR 240.15c6-1(a). Although not covered by SEA Rule 15c6-1, in 1995, the Commission approved the Municipal Securities Rulemaking Board's rule change requiring transactions in municipal securities to settle by T+3. See Securities Exchange Act Release No. 35427 (February 28, 1995), 60 FR 12798 (March 8, 1995) (Order Approving File No. SR-MSRB-94-10).

Accordingly, FINRA and other self-regulatory organizations ("SROs") amended their respective rules to conform to the T+3 settlement cycle.⁶ Since that time, the SEC and the financial services industry have continued to explore the idea of shortening the settlement cycle even further.⁷

In April 2014, the Depository Trust & Clearing Corporation ("DTCC") published its formal recommendation to shorten the standard U.S. trade settlement cycle to T+2 and announced that it would partner with market participants and industry organizations to devise the necessary approach and timelines to achieve T+2.⁸

In an effort to improve the overall efficiency of the U.S. settlement system by reducing the attendant risks in T+3 settlement of securities transactions, and to align U.S. markets with other major global markets that have already moved to T+2, DTCC, in collaboration with the financial services industry, formed an Industry Steering Committee ("ISC") and an industry working group and sub-working groups to facilitate the move to T+2.⁹ In June 2015, the ISC published a White Paper outlining the activities and proposed time frames that would be required to move to T+2 in the U.S.¹⁰ Concurrently, the Securities Industry and Financial Markets Association ("SIFMA") and the Investment Company Institute ("ICI") jointly submitted a letter to SEC Chair White, expressing support of the financial services industry's efforts to shorten the settlement cycle and identifying SEA Rule 15c6-1(a) and several SRO rules that they believed would require amendments for an

⁶ See, e.g., Securities Exchange Act Release No. 35507 (March 17, 1995), 60 FR 15616 (March 24, 1995) (Order Approving File No. SR-NASD-94-56); Securities Exchange Act Release No. 35506 (March 17, 1995), 60 FR 15618 (March 24, 1995) (Order Approving File No. SR-NYSE-94-40); and Securities Exchange Act Release No. 35553 (March 31, 1995), 60 FR 18161 (April 10, 1995) (Order Approving File No. SR-Amex-94-57).

⁷ See, e.g., Securities Industry Association ("SIA"), "SIA T+1 Business Case Final Report" (July 2000); Concept Release: Securities Transactions Settlement, Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004); and Depository Trust & Clearing Corporation, "Proposal to Launch a New Cost-Benefit Analysis on Shortening the Settlement Cycle" (December 2011).

⁸ See DTCC, "DTCC Recommends Shortening the U.S. Trade Settlement Cycle" (April 2014).

⁹ The ISC includes, among other participants, DTCC, the Securities Industry and Financial Markets Association and the Investment Company Institute.

¹⁰ See "Shortening the Settlement Cycle: The Move to T+2" (June 18, 2015).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 78962 (September 28, 2016), 81 FR 69240 (October 5, 2016) (Amendment to Securities Transaction Settlement Cycle) (File No. S7-22-16) ("SEC Proposing Release").

effective transition to T+2.¹¹ In March 2016, the ISC announced the industry target date of September 5, 2017 for the transition to a T+2 settlement cycle to occur.¹²

Proposed Rule Change

In light of the SEC Proposing Release that would amend SEA Rule 15c6-1(a) to require standard settlement no later than T+2 and similar proposals from other SROs,¹³ FINRA is proposing changes to its rules pertaining to securities settlement by, among other things, amending the definition of “regular way” settlement as occurring on T+2. SEA Rule 15c6-1(a) currently establishes standard settlement as occurring no later than T+3 for all securities, other than an exempted security, government security, municipal security, commercial paper, bankers’ acceptances, or commercial bills.¹⁴ FINRA is proposing changes to rules pertaining to securities settlement to support the industry-led initiative to shorten the standard settlement cycle to two business days. Most of the rules that FINRA has identified for these changes are successors to provisions under the legacy NASD Rules of Fair Practice and NASD Uniform Practice Code (“UPC”) that were amended when the Commission adopted SEA Rule 15c6-1(a), which established T+3 as the standard settlement cycle.¹⁵ As such, FINRA is proposing to amend FINRA Rules 2341 (Investment Company Securities), 11140 (Transactions in Securities “Ex-Dividend,” “Ex-Rights”

or “Ex-Warrants”), 11150 (Transactions “Ex-Interest” in Bonds Which Are Dealt in “Flat”), 11320 (Dates of Delivery), 11620 (Computation of Interest), and 11860 (COD Orders). In addition, FINRA is proposing to amend FINRA Rules 11210 (Sent by Each Party) and 11810 (Buy-In Procedures and Requirements) to conform provisions, where appropriate, to the T+2 settlement cycle.¹⁶

The details of the proposed rule change are described below.

(A) FINRA Rule 2341 (Investment Company Securities)¹⁷

Rule 2341(m) requires members, including underwriters, that engage in direct retail transactions for investment company shares to transmit payments received from customers for the purchase of investment company shares to the payee by the end of the third business day after receipt of a customer’s order to purchase the shares, or by the end of one business day after receipt of a customer’s payment for the shares, whichever is later. FINRA is proposing to amend Rule 2341(m) to change the three-business day transmittal requirement to two business days, while retaining the one-business day alternative.

(B) FINRA Rule 11140 (Transactions in Securities “Ex-Dividend,” “Ex-Rights” or “Ex-Warrants”)

Rule 11140(b)(1) provides that for dividends or distributions, and the issuance or distribution of warrants, that are less than 25 percent of the value of the subject security, if definitive information is received sufficiently in advance of the record date, the date designated as the “ex-dividend date” shall be the second business day preceding the record date if the record date falls on a business day, or the third business day preceding the record date if the record date falls on a day designated by FINRA’s UPC Committee as a non-delivery date. FINRA is proposing to shorten the time frames in Rule 11140(b)(1) by one business day.

(C) FINRA Rule 11150 (“Ex-Interest” in Bonds Which Are Dealt in “Flat”)

Rule 11150(a) prescribes the manner for establishing “ex-interest dates” for transactions in bonds or other similar evidences of indebtedness which are traded “flat.” Such transactions are “ex-interest” on the second business day preceding the record date if the record date falls on a business day, on the third business day preceding the record date if the record date falls on a day other than a business day, or on the third business day preceding the date on which an interest payment is to be made if no record date has been fixed. FINRA is proposing to shorten the time frames in Rule 11150(a) by one business day.

(D) FINRA Rule 11210 (Sent by Each Party)

Paragraphs (c) and (d) of Rule 11210 set forth the “Don’t Know” (“DK”) voluntary procedures for using “DK Notices” (FINRA Form No. 101) or other forms of notices, respectively. Depending upon the notice used, a confirming member may follow the “DK” procedures when it sends a comparison or confirmation of a trade (other than one that clears through the National Securities Clearing Corporation (“NSCC”) or other registered clearing agency), but does not receive a comparison or confirmation or a signed “DK” from the contra-member by the close of four business days following the trade date of the transaction (“T+4”). The procedures generally provide that after T+4, the confirming member shall send a “DK Notice” (or similar notice) to the contra-member. The contra-member then has four business days after receipt of the confirming member’s notice to either confirm or “DK” the transaction.

FINRA is proposing to amend paragraphs (c) and (d) of Rule 11210 to provide that the “DK” procedures may be used by the confirming member if it does not receive a comparison or confirmation or signed “DK” from the contra-member by the close of one business day following the trade date of the transaction, rather than the current T+4.¹⁸ In addition, FINRA is proposing amendments to paragraphs (c)(2)(A), (c)(3), and (d)(5) of Rule 11210 to adjust

¹¹ See Letter from ICI and SIFMA to Mary Jo White, Chair, SEC, dated June 18, 2015. See also Letter from Mary Jo White, Chair, SEC, to Kenneth E. Bentsen, Jr., President and CEO, SIFMA, and Paul Schott Stevens, President and CEO, ICI, dated September 16, 2015 (expressing her strong support for industry efforts to shorten the trade settlement cycle to T+2 and commitment to developing a proposal to amend SEA Rule 15c6-1(a) to require standard settlement no later than T+2).

¹² See ISC Media Alert: “US T+2 ISC Recommends Move to Shorter Settlement Cycle On September 5, 2017” (March 7, 2016).

¹³ See, e.g., Securities Exchange Act Release No. 77744 (April 29, 2016), 81 FR 26851 (May 4, 2016) (Order Approving File No. SR-MSRB-2016-04).

¹⁴ See *supra* note 5.

¹⁵ The legacy NASD rules that were changed to conform to the move from T+5 to T+3 included Section 26 (Investment Companies) of the Rules of Fair Practice, and Section 5 (Transactions in Securities “Ex-Dividend,” “Ex-Rights” or “Ex-Warrants”), Section 6 (Transactions “Ex-Interest” in Bonds Which Are Dealt in “Flat”), Section 12 (Dates of Delivery), Section 46 (Computation of Interest) and Section 64 (Acceptance and Settlement of COD Orders) of the UPC. See Securities Exchange Act Release No. 35507 (March 17, 1995), 60 FR 15616 (March 24, 1995) (Order Approving File No. SR-NASD-94-56). See also *Notice to Members* 95-36 (May 1995) (enumerating the various sections under the NASD Rules of Fair Practice and UPC that were amended to implement T+3 settlement for securities transactions).

¹⁶ FINRA Rules 11210 and 11810 are successors to legacy NASD UPC Sections 9 (Sent by Each Party) and 59 (“Buying-in”), respectively, which remained unchanged during the transition from T+5 to T+3. See *supra* note 15.

¹⁷ In June 2016, legacy NASD Rule 2830 (Investment Company Securities) was adopted as FINRA Rule 2341 in the consolidated FINRA rulebook without any substantive changes. See Securities Exchange Act Release No. 78130 (June 22, 2016), 81 FR 42016 (June 28, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2016-019).

¹⁸ As stated above, the time frames in Rule 11210 remained unchanged during the transition from T+5 to T+3. In light of the industry-led initiative to shorten the standard settlement cycle and the SEC Proposing Release to amend SEA Rule 15c6-1(a) to establish T+2 as the standard settlement for most broker-dealer transactions, FINRA believes that the current time frames in Rule 11210 are more protracted than necessary even in a T+3 environment and as such, FINRA is proposing to amend these time frames to reflect more current industry practices.

the time in which a contra-member has to respond to a “DK Notice” (or similar notice) from four business days after the contra-member’s receipt of the notice to two business days. The proposed rule change would also make non-substantive technical changes to paragraph (c)(2)(A) to reflect FINRA Manual style convention.

(E) FINRA Rule 11320 (Dates of Delivery)

Rule 11320 prescribes delivery dates for various transactions. Paragraph (b) states that for a “regular way” transaction, delivery must be made on, but not before, the third business day after the date of the transaction. FINRA is proposing to amend Rule 11320(b) to change the reference to third business day to second business day. Paragraph (c) provides that in a “seller’s option” transaction, delivery may be made by the seller on any business day after the third business day following the date of the transaction. FINRA is proposing to amend Rule 11320(c) to change the reference to third business day to second business day.

(F) FINRA Rule 11620 (Computation of Interest)

In the settlement of contracts in interest-paying securities other than for cash, Rule 11620(a) requires the calculation of interest at the rate specified in the security up to, but not including, the third business day after the date of the transaction. The proposed amendment would shorten the time frame to the second business day. In addition, the proposed amendment would make non-substantive technical changes to the title of paragraph (a).

(G) FINRA Rule 11810 (Buy-in Procedures and Requirements)

Rule 11810(j)(1)(A) sets forth the fail-to-deliver and liability notice procedures where a securities contract is for warrants, rights, convertible securities or other securities which have been called for redemption; are due to expire by their terms; are the subject of a tender or exchange offer; or are subject to other expiring events such as a record date for the underlying security and the last day on which the securities must be delivered or surrendered is the settlement date of the contract or later.¹⁹

¹⁹ Rule 11810(j) is the successor to legacy NASD UPC Section 59(i) (Failure to Deliver and Liability Notice Procedures). When this provision was added to NASD’s existing close-out procedures in 1984, it was drafted to be similar to the liability notice provisions adopted by the NSCC so that members that were also participants in NSCC could use the same procedures for both ex-clearing and NSCC cleared transactions, thereby simplifying members’ back office procedures. See Securities Exchange Act

Under Rule 11810(j)(1)(A), the receiving member delivers a liability notice to the owing counterparty. The liability notice sets a cutoff date for the delivery of the securities by the counterparty and provides notice to the counterparty of the liability attendant to its failure to deliver the securities in time. If the owing counterparty, or delivering member, delivers the securities in response to the liability notice, it has met its delivery obligation. If the delivering member fails to deliver the securities on the expiration date, it will be liable for any damages that may accrue thereby.

Rule 11810(j)(1)(A) further provides that when both parties to a contract are participants in a registered clearing agency that has an automated liability notification service, transmission of the liability notice must be accomplished through such system.²⁰ When the parties to a contract are not both participants in a registered clearing agency that has an automated liability notification service, such notice must be issued using written or comparable electronic media having immediate receipt capabilities not later than one business day prior to the latest time and the date of the offer or other event in order to obtain the protection provided by the Rule.²¹

Release No. 21262 (August 22, 1984), 49 FR 34321 (August 29, 1984) (Notice of Filing of File No. SR-NASD-84-20). See also Securities Exchange Act Release No. 21406 (October 19, 1984), 49 FR 43006 (October 25, 1984) (Order Approving File No. SR-NASD-84-20).

²⁰ In 2007, NYSE Rule 180 was amended to require that when the parties to a failed contract were both participants in a registered clearing agency that had an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver and the contract was to be settled through the facilities of that registered clearing agency, the transmission of the liability notification must be accomplished through the use of the registered clearing agency’s automated liability notification system. See Securities Exchange Act Release No. 55132 (January 19, 2007), 72 FR 3896 (January 26, 2007) (Order Approving File No. SR-NYSE-2006-57). FINRA followed suit and effective in 2008, Rule 11810(j) mandated the use of an automated liability notification system when the parties to a contract are participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that would be attendant to failure to deliver. See Securities Exchange Act Release No. 56972 (December 14, 2007), 72 FR 73927 (December 28, 2007) (Order Approving File No. SR-NASD-2007-035). See also *Regulatory Notice* 08-06 (February 2008).

²¹ While Rule 11810 has undergone amendments over the years, the one-day time frame in paragraph (j) has remained unchanged. The one-day time frame also appears in comparable provisions of other SROs. See, e.g., NSCC Rules & Procedures, Procedure X (Execution of Buy-Ins) (Effective August 10, 2016); NYSE Rule 282.65 (Fail to Deliver and Liability Notice Procedures); and Nasdaq Rule IM-11810 (Buying-in). See also *infra* note 30 and accompanying text.

Given the proposed shortened settlement cycle, FINRA is proposing to amend Rule 11810(j)(1)(A) in situations where both parties to a contract are not participants of a registered clearing agency with an automated notification service, by extending the time frame for delivery of the liability notice. Rule 11810(j)(1)(A) would be amended to provide that in such cases, the receiving member must send the liability notice to the delivering member as soon as practicable but not later than two hours prior to the cutoff time set forth in the instructions on a specific offer or other event to obtain the protection provided by the Rule. FINRA believes that extending the time given to the receiving member to transmit liability notifications will maintain the efficiency of the notification process while mitigating the possible overuse of such notifications.

Currently, FINRA understands that the identity of the counterparty, or delivering member, becomes known to the receiving member by mid-day on the business day after trade date (“T+1”), and by that time, the receiving member will generally also know which transactions are subject to an event identified in Rule 11810(j)(1)(A) that would prompt the receiving member to issue a liability notice to the delivering member. FINRA believes that the receiving member regularly issues liability notices to the seller or other parties from which the securities involved are due when the security is subject to an event identified in Rule 11810(j)(1)(A) during the settlement cycle as a way to mitigate the risk of a potential fail-to-deliver. In the current T+3 settlement environment, the one business day time frame gives the receiving member the requisite time needed to identify the parties involved and undertake the liability notification process.

However, FINRA believes that the move to a T+2 settlement environment will create inefficiencies in the liability notification process under Rule 11810(j)(1)(A) when both parties to a contract are not participants in a registered clearing agency with an automated notification service. The shorter settlement cycle, with the loss of one-business day, would not afford the receiving member sufficient time to: (1) Ascertain that the securities are subject to an event listed in Rule 11810(j)(1)(A) during the settlement cycle; (2) identify the delivering member and other parties from which the securities involved are due; and (3) determine the likelihood that such parties may fail to deliver. Where the receiving member has sufficient time (e.g., one business day

after), it can transmit liability notices as needed to the right parties. However, as a consequence of the shortened settlement cycle, the receiving member would be compelled to issue liability notices proactively to all potentially failing parties as a matter of course to preserve its rights against such parties without the benefit of knowing which transactions would actually necessitate the delivery of such notice. This would create a significant increase in the volume of liability notices members send and receive, many of which may be unnecessary. Members would then have to manage this overabundance of liability notices, increasing the possibility of errors, which would adversely impact the efficiency of the process. Therefore, FINRA believes its proposal to extend the time for the receiving member to deliver a liability notice when the parties to a contract are not both participants in a registered clearing agency with an automated notification service would help alleviate the potential burden on the liability notification process in a T+2 settlement environment.

(H) FINRA Rule 11860 (COD Orders)

Rule 11860(a) directs members to follow various procedures before accepting collect on delivery (“COD”) or payment on delivery (“POD”) orders. Rule 11860(a)(4)(A) states that the member must obtain an agreement from the customer that the customer will furnish instructions to the agent no later than the close of business on the second business day after the date of execution of the trade to which the confirmation relates in the case of a purchase by the customer where the agent is to receive the securities against payment, or COD. In light of the proposed shortened settlement cycle, FINRA is proposing to amend Rule 11860(a)(4)(A) to provide that the time period for a customer buying COD to furnish instructions to the agent will be no later than the close of business on the first business day after the date of execution of the trade, rather than the close of business on the second business day.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice*, which date would correspond with the industry-led transition to a T+2 standard settlement, and the effective date of the Commission’s proposed amendment to SEA Rule 15c6–1(a) to require standard settlement no later than T+2.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²² which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change supports the industry-led initiative to shorten the settlement cycle to two business days. Moreover, the proposed rule change is consistent with the SEC’s proposed amendment to SEA Rule 15c6–1(a) to require standard settlement no later than T+2. FINRA believes that the proposed rule change will provide the regulatory certainty to facilitate the industry-led move to a T+2 settlement cycle.

B. Self-Regulatory Organization’s Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change makes changes to rules pertaining to securities settlement and is intended to facilitate the implementation of the industry-led transition to a T+2 settlement cycle. Moreover, the proposed rule changes are consistent with the SEC’s proposed amendment to SEA Rule 15c6–1(a) to require standard settlement no later than T+2. Accordingly, FINRA believes that the proposed changes do not impose any burdens on the industry in addition to those necessary to implement amendments to SEA Rule 15c6–1(a) as described and enumerated in the SEC Proposing Release.²³

These conforming changes include changes to rules that specifically establish the settlement cycle as well as rules that establish time frames based on settlement dates, including for certain post-settlement rights and obligations. FINRA believes that the proposed changes set forth in the filing are necessary to support a standard settlement cycle across the U.S. for secondary market transactions in equities, corporate and municipal bonds, unit investment trusts, and financial instruments composed of these

products, among others.²⁴ A standard U.S. settlement cycle for such products is critical for the operation of fair and orderly markets.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in *Regulatory Notice* 16–09 (March 2016). Eight comments were received in response to the *Regulatory Notice*.²⁵ A copy of the *Regulatory Notice* is attached as Exhibit 2a.²⁶ A list of commenters is attached as Exhibit 2b and copies of the comment letters received in response to the *Regulatory Notice* are attached as Exhibit 2c.

Of the eight comment letters received, seven expressed support for the industry-led move to T+2 stating, among other benefits, that the move will align U.S. markets with international markets that already work in the T+2 environment, improve the overall efficiency and liquidity of the securities markets, and the stability of the financial system by reducing counterparty risk and pro-cyclical and liquidity demands, and decreasing clearing capital requirements.²⁷ Several

²⁴ See *supra* note 3.

²⁵ See Letter from Michael Nicholas, Chief Executive Officer, Bond Dealers of America, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2016 (“BDA”); letter from Stephen E. Roth, Sutherland Asbill & Brennan LLP on behalf of the Committee of Annuity Insurers, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2016 (“CAI”); letter from Norman L. Ashkenas, Chief Compliance Officer, Fidelity Brokerage Services, LLC, and Richard J. O’Brien, Chief Compliance Officer, National Financial Services, LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2016 (“Fidelity”); letter from David T. Bellaire, Executive Vice President and General Counsel, Financial Services Institute, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2016 (“FSI”); letter from Martin A. Burns, Chief Industry Operations Officer, Investment Company Institute, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2016 (“ICI”); letter from Thomas F. Price, Managing Director, Operations, Technology & BCP, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2016 (“SIFMA”) (April 4, 2016); letter from Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2016 (“Thomson Reuters”); and letter from Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2016 (“WFA”).

²⁶ The Commission notes that the exhibits referred to are attached to the filing and not to this Notice.

²⁷ BDA, Fidelity, FSI, ICI, SIFMA, Thomson Reuters and WFA. CAI did not comment on the proposed rule amendments and instead requested FINRA’s “acknowledgment and confirmation that insurance securities products, which are currently exempt from the T+3 settlement cycle requirements,

²² 15 U.S.C. 78o–3(b)(6).

²³ See *supra* note 3.

commenters encouraged FINRA to coordinate with other regulators to make the necessary regulatory changes to help facilitate the move to a T+2 standard settlement cycle²⁸ with two commenters²⁹ providing their views on the proposed amendments to two rules under the FINRA Rule 11800 Series (Close-Out Procedures).

FINRA Rule 11810(j)—Failure To Deliver and Liability Notice Procedures

In its comment letter, SIFMA raised a concern with the one-day time frame in Rule 11810(j)(1)(A), asserting that the requirement for the delivering member to deliver a liability notice to the receiving member no later than one business day prior to the latest time and the date of the offer or other event in order to obtain the protection provided by the Rule may no longer be appropriate in a T+2 environment in some situations such as where the delivery obligation is transferred to another party as a result of continuous net settlement, settlements outside of the NSCC, and settlements involving a third party that is not a FINRA member firm. SIFMA noted that NYSE Rule 180 (Failure to Deliver) includes a similar requirement for NYSE member firms that are participants in a registered clearing agency to transmit liability notification through an automated notification service and proposed amending Rule 11810(j)(1)(A) to omit the reference to a notification time frame, which would align with NYSE Rule 180.³⁰ In the alternative, SIFMA proposed amending Rule 11810(j)(1)(A) to require that the liability notice be delivered in a “reasonable amount of

will continue to be exempt from the settlement cycle requirements after the timetable is shortened to T+2.” The Commission has granted an exemption for transactions involving certain insurance contracts from the scope of SEA Rule 15c6–1. See Securities Exchange Act Release No. 35815 (June 6, 1995), 60 FR 30906 (June 12, 1995). FINRA notes that any modification or revocation of the current exemptions to SEA Rule 15c6–1 rests with the Commission.

²⁸ Fidelity, FSI, ICI, and Thomson Reuters.

²⁹ BDA and SIFMA.

³⁰ See NYSE Rule 180 (Failure to Deliver) providing in part that “[w]hen the parties to a contract are both participants in a registered clearing agency which has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver and that contract was to be settled through the facilities of said registered clearing agency, the transmission of the liability notification must be accomplished through use of said automated notification service.” FINRA notes that NYSE Rule 180 does not address the transmission of the liability notification for parties to a contract that are not both participants in a registered clearing agency (or non-participants). The transmission of the liability notification for non-participants is addressed under NYSE Rule 282.65 (Failure to Deliver and Liability Notice Procedures). See *supra* note 21.

time” ahead of the settlement obligation in light of facts and circumstances. SIFMA maintained that under either proposed amendment to paragraph (j), the delivering member would be liable for any damages caused by its failure to deliver in a timely fashion.

While FINRA did not initially propose amendments to Rule 11810 for the T+2 initiative,³¹ in light of SIFMA’s concern regarding Rule 11810(j)(1)(A), FINRA is proposing to amend the Rule to provide that, where both parties to a contract are not participants of a registered clearing agency with an automated notification service, the receiving member must send the liability notice to the delivering member as soon as practicable but not later than two hours prior to the cutoff time set forth in the instructions on a specific offer or other event to obtain the protection provided by the Rule.³²

FINRA Rule 11860 (COD Orders)

Rule 11860(a)(3) requires a member that accepts a COD or POD order from a customer to deliver to the customer a confirmation not later than the close of business on T+1. In *Regulatory Notice* 16–09, FINRA proposed shortening the confirmation delivery time frame to the close of business on the date of the trade (“T+0”). In its comment letter, BDA urged FINRA to consider leaving the requirement for delivering customer confirmations under Rule 11860(a)(3) unchanged and allow customer confirmations to continue to be sent T+1 to minimize the regulatory and compliance costs of the proposed amendment without limiting the risk-reducing benefits of the shortened settlement cycle. BDA asserted that shortening confirmation delivery to T+0 would be a tremendous undertaking for small firms that would need to commit large amounts of internal resources to change the systems and processes that are used to deliver confirmations in order to process confirmations on a T+0 basis.

FINRA has considered the comment and agrees that the proposed change to T+0 may present significant difficulties for member firms, particularly small firms. Moreover, FINRA believes that the existing requirement to deliver customer confirmations on T+1 would still assure the efficient clearance and settlement of transactions in a T+2

settlement environment. Therefore, in order to remain aligned with the provisions of other SROs and current industry practices, FINRA has determined to retain the current T+1 confirmation delivery requirement under Rule 11860(a)(3).³³

Other Comments

Several commenters conveyed the importance of testing systems and educating market participants and retail investors on the impacts of a shorter settlement cycle.³⁴ BDA explained that currently, a customer has five business days to submit payment for purchases of securities in a cash account or in a margin account before a broker-dealer would cancel or liquidate the transaction in whole or in part.³⁵ BDA further explained that “[s]hortening the settlement cycle to T+2 would automatically reduce the timeframe before a dealer would have to liquidate an unpaid for transaction to T+4.” BDA noted that shortening the settlement cycle by one day may negatively impact retail clients that still use checks, which may not be sent, received, processed, and cleared, within the shortened four-day window. BDA expressed that firms that do a large amount of retail business would need ample time to communicate the practical impacts on a shortened settlement cycle.

FINRA recognizes that market participants will have to undergo systemic and procedural changes to implement the shorter payment period for a securities purchase as part of the ongoing transition to the T+2 framework. As BDA acknowledged, the 2017 timeline should allow firms to make all the necessary changes to systems that the proposed rule will require. FINRA further recognizes the importance of educating retail investors regarding the impact of a shortened settlement cycle and is committed to

³³ In *Regulatory Notice* 16–09, FINRA preliminarily identified Rule 11210(a) (Comparisons or Confirmations) to undergo an amendment to reflect the T+2 settlement cycle. Rule 11210(a)(1) requires each party to a transaction, other than a cash transaction, to send a Uniform Comparison or Confirmation on or before T+1. FINRA proposed changing the delivery time frame to T+0. While not specifically referenced by BDA, Rule 11210(a) would raise similar concerns. Thus, the time frame under Rule 11210(a)(1) for sending a Uniform Comparison or Confirmation would also remain unchanged at T+1.

³⁴ BDA, FSI and WFA.

³⁵ Federal Reserve Board Regulation T governs, among other things, the extension of credit by broker-dealers to customers to pay for the purchase of securities. Regulation T provides that a customer has one payment period (currently five business days) to submit payment for purchases of securities in a cash account or in a margin account. 12 CFR 220.2 (Definitions), 220.4 (Margin Account) and 220.8 (Cash Account).

³¹ See *Regulatory Notice* 16–09 (March 2016).

³² FINRA expects similar amendments to other comparable SRO provisions in NYSE Rule 282.65 (Fail to Deliver and Liability Notice Procedures) and Nasdaq Rule IM–11810 (Buying-in), and NSCC Rules & Procedures, Procedure X (Execution of Buy-Ins) to address SIFMA’s concern about the one-day notification time frame.

working with market participants to provide the information necessary to educate retail investors.

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 (i) as the Commission may designate up to 90 days of such date 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 such 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-FINRA-2016-047 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-FINRA-2016-047. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE.,

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2016-047 and should be submitted on or before January 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2016-31308 Filed 12-27-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79644; File No. SR-ISEGemini-2016-22]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adjust Qualifying Tier Thresholds and Fees and Rebates

December 21, 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 December 9, 2016, ISE Gemini, LLC ("ISE Gemini" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adjust qualifying tier thresholds and fees and rebates under the Schedule of Fees.

The text of the proposed rule change is available on the Exchange's Web site at www.ise.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

³⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adjust qualifying tier thresholds and fees and rebates under the Exchange's Schedule of Fees. Each of the proposed changes is described in more detail below.

Qualifying Tier Thresholds

ISE Gemini currently provides volume-based maker rebates to Market Maker³ and Priority Customer⁴ orders in five tiers based on a member's average daily volume ("ADV") in the following categories: (i) Total Affiliated Member ADV,⁵ (ii) Priority Customer Maker ADV,⁶ and (iii) Total Affiliated Member ADV with a Minimum Priority Customer Maker ADV, as shown in the table below.⁷ In addition, the Exchange

³ The term Market Maker refers to "Competitive Market Makers" and "Primary Market Makers" collectively.

⁴ A Priority Customer is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

⁵ The Total Affiliated Member ADV category includes all volume in all symbols and order types, including both maker and taker volume and volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms.

⁶ The Priority Customer Maker ADV category includes all Priority Customer volume that adds liquidity in all symbols.

⁷ All eligible volume from affiliated members is aggregated in determining applicable tiers, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A.

The highest tier threshold attained by any method above applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants.

Any day that the market is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from the ADV calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.

charges volume based taker fees to market participants based on achieving these volume thresholds.

TABLE 1—CURRENT

Tier	Total Affiliated Member ADV	Priority Customer Maker ADV	Total Affiliated Member ADV/Minimum Priority Customer Maker ADV
Tier 1	0–49,999	0–19,999	0–39,999/0+
Tier 2	50,000–124,999	20,000–49,999	40,000–99,999/15,000+
Tier 3	125,000–249,999	50,000–84,999	100,000–174,999/40,000+
Tier 4	250,000–349,999	85,000–124,999	175,000–249,999/65,000+
Tier 5	350,000+	125,000+	250,000+/85,000+

As outlined in the following table, the Exchange now proposes to decrease the number of tiers available to four, modify the ADV thresholds required for members to achieve for each of those tiers, and eliminate the qualifying thresholds based on Total Affiliated Member ADV with a Minimum Priority Customer Maker ADV. With the elimination of the fifth tier, the Exchange hereby proposes to eliminate all fees and rebates applicable to members that achieve that tier.⁸ As described in the following sections, the Exchange is proposing to make changes to rates in other tiers so that fees and rebates remain competitive.

TABLE 1—PROPOSED

Tier	Total Affiliated Member ADV	Priority Customer Maker ADV
Tier 1	0–99,999	0–19,999.
Tier 2	100,000–224,999.	20,000–99,999.
Tier 3	225,000–349,999.	100,000–149,999.
Tier 4	350,000 or more.	150,000 or more.

Maker Rebates in Penny Symbols and SPY

Currently, the Exchange provides a maker rebate to Market Maker orders in Penny Symbols and SPY that is \$0.30 per contract in Tier 1, \$0.32 per contract in Tier 2 (or \$0.33 per contract for members that execute a Market Maker ADV of 100,000 to 124,999 contracts in a given month), \$0.34 per contract in Tier 3, \$0.37 per contract in Tier 4, and \$0.38 per contract in Tier 5. The Exchange proposes to increase the maker rebate provided to Market Maker orders in Penny Symbols and SPY to

⁸ The current fees and rebates applicable to Tier 5 are described in the following sections. Those fees and rebates are eliminated in connection with the reduction to four tiers.

\$0.45 per contract in Tier 4.⁹ In addition, the Exchange proposes to eliminate the higher maker rebate provided in Tier 2 for members that execute a Market Maker ADV of 100,000 to 124,999 contracts in a given month.¹⁰

Currently, the Exchange provides a maker rebate to Priority Customer orders in Penny Symbols and SPY that is \$0.25 per contract in Tier 1 (or \$0.32 per contract for members that execute a Priority Customer Maker ADV of 5,000 to 19,999 contracts in a given month), \$0.40 per contract in Tier 2, \$0.48 per contract in Tier 3, \$0.50 per contract in Tier 4, and \$0.52 per contract in Tier 5. The Exchange proposes to increase the maker rebate provided to Priority Customer orders in Penny Symbols and SPY to \$0.53 per contract in Tier 4.

Maker Rebates in Non-Penny Symbols

Currently, the Exchange provides a maker rebate to Market Maker orders in Non-Penny Symbols that is \$0.40 per contract in Tier 1, \$0.42 per contract in Tier 2 (or \$0.43 per contract for members that execute a Market Maker ADV of 100,000 to 124,999 contracts in a given month), \$0.44 per contract in Tier 3, \$0.47 per contract in Tier 4, and \$0.49 per contract in Tier 5. The Exchange proposes to increase the maker rebate provided to Market Maker orders in Non-Penny Symbols to \$0.50 per contract in Tier 3, and \$0.75 per contract in Tier 4. In addition, the Exchange proposes to eliminate the higher rebate provided in Tier 2 for members that execute a Market Maker ADV of 100,000 to 124,999 contracts in a given month.¹¹

⁹ Tier 5 is being eliminated, and the Exchange has therefore proposed to eliminate all fees and rebates applicable to members that achieve this tier. *See id.* and accompanying text. The proposed Tier 4 rates in this and following sections will therefore represent the rates for the highest volume tier.

¹⁰ The Exchange will therefore eliminate footnote 9 under the Schedule of Fees, Section I Regular Order Fees and Rebates.

¹¹ The Exchange will therefore eliminate footnote 10 under the Schedule of Fees, Section I Regular Order Fees and Rebates.

Currently, the Exchange provides a maker rebate to Priority Customer orders in Non-Penny Symbols that is \$0.75 per contract in Tier 1 (or \$0.76 per contract for members that execute a Priority Customer Maker ADV of 5,000 to 19,999 contracts in a given month), \$0.80 per contract in Tier 2, and \$0.85 per contract in Tiers 3 through 5. The Exchange proposes to increase the maker rebate provided to Priority Customer orders in Non-Penny Symbols to \$1.05 per contract in Tier 4.

Taker Fees in Penny Symbols and SPY

Currently, the Exchange charges a taker fee for Market Maker and Non-ISE Gemini Market Maker¹² orders in Penny Symbols and SPY that is \$0.49 per contract for Tiers 1 through 4, and \$0.48 per contract in Tier 5, for trades executed against a Non-Priority Customer.¹³ Firm Proprietary,¹⁴ Broker-Dealer,¹⁵ and Professional Customer¹⁶ orders in Penny Symbols and SPY are charged a \$0.49 per contract taker fee for trades executed against a Non-Priority Customer, regardless of the tier achieved. The taker fee is \$0.50 per contract for all Non-Priority Customer orders in Penny Symbols and SPY for trades executed against a Priority Customer. Finally, the Exchange charges a taker fee for Priority Customer orders in Penny Symbols and SPY that is \$0.45 per contract in Tier 1, and \$0.44 per contract in Tiers 2 through 5. Priority

¹² A “Non-ISE Gemini Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

¹³ Non-Priority Customer includes Market Maker, Non-ISE Market Maker, Firm Proprietary, Broker-Dealer, and Professional Customer.

¹⁴ A “Firm Proprietary” order is an order submitted by a member for its own proprietary account.

¹⁵ A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

¹⁶ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

Customer orders are charged these rates regardless of the counterparty.

The Exchange proposes to decrease the taker fee charged to Market Maker and Non-ISE Gemini Market Maker orders in Penny Symbols and SPY to \$0.48 per contract in Tier 4 for trades executed against a Non-Priority Customer. The Exchange also proposes to increase the taker fee for Priority Customer orders in Penny Symbols and SPY to \$0.48 per contract in Tier 1, \$0.47 per contract in Tiers 2 and 3, and \$0.45 per contract in Tier 4. Finally, the Exchange proposes to charge a taker fee of \$0.49 per contract for Priority Customer orders in Penny Symbols and SPY for trades executed against a Priority Customer.

Taker Fees in Non-Penny Symbols

Currently, the Exchange charges a taker fee for Non-Priority Customer orders in Non-Penny Symbols that is \$0.89 per contract, regardless of the tier achieved.¹⁷ In addition, the Exchange charges a taker fee for Priority Customer orders that is \$0.82 per contract for Tier 1, and \$0.81 per contract for Tiers 2 through 5. Today, the taker fees in Non-Penny Symbols described above apply regardless of the counterparty.

The Exchange proposes to increase the taker fee for Non-Priority Customer orders to \$1.10 for trades executed against a Priority Customer in Non-Penny Symbols. In addition, the Exchange proposes to increase the taker fee for Priority Customer orders in Non-Penny Symbols to \$0.85 per contract for trades executed against a Priority Customer. With these changes, different taker fees will be charged for trades executed against a Priority Customer similar to taker fees charged in Penny Symbols. Orders that do not trade against a Priority Customer will continue to be charged at their current rates.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁸ in general, and Section 6(b)(4) of the Act,¹⁹ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that the proposed fee change is reasonable and

equitable. The Exchange is reducing the number of tiers offered to four, and is eliminating one of the methods of achieving those tiers—*i.e.*, the Total Affiliated Member ADV/Minimum Priority Customer ADV categories. These two changes will simplify the Exchange's volume tiers. As the Exchange implements new pricing programs over time, the Exchange believes that it is appropriate to eliminate pricing programs when the Exchange no longer believes they are necessary. With respect to the elimination of the Total Affiliated Member ADV/Minimum Priority Customer ADV qualifying methodology in particular, the Exchange notes that members were not making use of these qualifying thresholds to achieve higher tiers on the Exchange. The Exchange therefore believes that it is appropriate to remove this alternative method of qualifying for higher tiers. The proposed changes to the tier structure are also accompanied by changes to the fees charged and rebates offered to members. The Exchange believes that these changes taken together will be attractive to market participants. The proposed fee change will allow the Exchange to offer more favorable rebates to Market Maker and Priority Customer orders in the highest tiers, and is designed to attract more of that volume to the Exchange. Even though the Exchange is reducing the number of volume tiers, the maker rebates proposed for the new highest tier (*i.e.*, Tier 4) are higher than the current Tier 5 maker rebates.

Today, the Exchange provides enhanced maker rebates for Market Maker Priority Customer orders. Further increasing the rebates will incentivize these members to send additional order flow to ISE Gemini, thereby creating additional liquidity to the benefit of members and investors that trade on the Exchange. Although the proposed fee changes are designed to attract liquidity from Market Makers and Priority Customers by increasing maker rebates, certain taker fees will also be increased. The Exchange believes that the taker fee increases are appropriate as the fees will remain attractive to market participants who will now also benefit from additional liquidity posted on the Exchange.

With respect to increased taker fees for trades executed against a Priority Customer, the Exchange believes that the proposed fees are appropriate as they are designed to offset the enhanced rebates. With the proposed changes, Priority Customers will be offered even more favorable maker rebates. The Exchange believes that members will benefit from the additional liquidity

created by the higher Priority Customer rebates, and it is therefore appropriate to charge an increased taker fee for trades executed against a Priority Customer. Furthermore, these taker fees are within the range of taker fees charged on other markets, including for example the Nasdaq Options Market ("NOM"), which charges a taker fee of up to \$1.10 in Non-Penny Pilot Options and \$0.50 per contract in Penny Pilot Options.²⁰

The Exchange also does not believe that the proposed fee change is unfairly discriminatory. While the proposed fee change generally increases maker rebates for Market Maker and Priority Customer orders, and increases taker fees for trades executed against a Priority Customer, the Exchange believe that the proposed fee structure will remain attractive to all members. As has historically been the case, Market Maker and Priority Customer orders will earn more favorable maker rebates in order to encourage that order flow. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements). In addition, a Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). This limitation does not apply to participants whose behavior is substantially similar to that of market professionals, including Professional Customers, who will generally submit a higher number of orders than Priority Customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,²¹ the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes to fees and rebates are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed fees and rebates are competitive with fees and rebates offered to orders executed on other options exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain

¹⁷ Non-Priority Customer orders are also charged the taker fee for trades executed during the opening rotation. Priority Customer orders executed during the opening rotation receive the applicable maker rebate based on the tier achieved.

¹⁸ 15 U.S.C. 78f.

¹⁹ 15 U.S.C. 78f(b)(4).

²⁰ See NOM Rules, Chapter XV Options Pricing, Sec. 2 NOM—Fees and Rebates.

²¹ 15 U.S.C. 78f(b)(8).

competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,²² and Rule 19b-4(f)(2)²³ 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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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-ISEGemini-2016-22 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-ISEGemini-2016-22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISEGemini-2016-22 and should be submitted on or before January 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016-31305 Filed 12-27-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79646; File No. SR-BOX-2016-59]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Rule 3220, Disruptive Quoting and Trading Activity Prohibited and Rule 12160, Expedited Suspension Proceeding

December 21, 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 December 14, 2016, BOX Options Exchange LLC ("BOX" 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

The Exchange proposes to adopt (i) BOX Rule 3220 (Disruptive Quoting and Trading Activity Prohibited) to clearly prohibit disruptive quoting and trading activity on the Exchange and (ii) BOX Rule 12160 (Expedited Suspension Proceeding) to permit the Exchange to take prompt action to suspend Option Participants or their clients that violate Rule 3220. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://boxexchange.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt BOX Rule 3220 (Disruptive Quoting and Trading Activity Prohibited) to clearly prohibit disruptive quoting and trading activity on the Exchange and to adopt a new Exchange Rule 12160 (Expedited Suspension Proceeding), to permit the Exchange to take prompt action to suspend Options Participants³ and their clients that violate such rule.

Background

As a national securities exchange registered pursuant to Section 6 of the Act, the Exchange is required to be organized and to have the capacity to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations

³ The term "Options Participant" or "Participant" means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in options trading on BOX as an "Order Flow Provider" or "Market Maker".

²² 15 U.S.C. 78s(b)(3)(A)(ii).

²³ 17 CFR 240.19b-4(f)(2).

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

thereunder, and the Exchange's Rules. Further, the Exchange's Rules are required to be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade . . . and, in general, to protect investors and the public interest."⁴ In fulfilling these requirements, the Exchange has developed a comprehensive regulatory program that includes automated surveillance of trading activity that is both operated directly by Exchange staff and by staff of the Financial Industry Regulatory Authority ("FINRA") pursuant to a Regulatory Services Agreement ("RSA"). When disruptive and potentially manipulative or improper quoting and trading activity is identified, the Exchange or FINRA (acting as an agent of the Exchange) conducts an investigation into the activity, requesting additional information from the Options Participant or Options Participants involved. To the extent violations of the Act, the rules and regulations thereunder, or Exchange Rules have been identified and confirmed, the Exchange or FINRA as its agent will commence the enforcement process, which might result in, among other things, a censure, a requirement to take certain remedial actions, one or more restrictions on future business activities, a monetary fine, or even a temporary or permanent ban from the securities industry.

The process described above, from the identification of disruptive and potentially manipulative or improper quoting and trading activity to a final resolution of the matter, can often take several years. The Exchange believes that this time period is generally necessary and appropriate to afford the subject Options Participant adequate due process, particularly in complex cases. However, as described below, the Exchange believes that there are certain obvious and uncomplicated cases of disruptive and manipulative behavior or cases where the potential harm to investors is so large that the Exchange should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange.

In recent years, several cases have been brought and resolved by the Exchange and other SROs that involved allegations of wide-spread market manipulation, much of which was ultimately being conducted by foreign persons and entities using relatively rudimentary technology to access the markets and over which the Exchange

and other SROs had no direct jurisdiction. In each case, the conduct involved a pattern of disruptive quoting and trading activity indicative of manipulative layering⁵ or spoofing.⁶ The Exchange and other SROs were able to identify the disruptive quoting and trading activity in real-time or near real-time; nonetheless, in accordance with Exchange Rules and the Act, the Members responsible for such conduct or responsible for their customers' conduct were allowed to continue the disruptive quoting and trading activity on the Exchange and other exchanges during the entirety of the subsequent lengthy investigation and enforcement process. The Exchange believes that it should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange if an Options Participant is engaging in or facilitating disruptive quoting and trading activity and the Options Participant has received sufficient notice with an opportunity to respond, but such activity has not ceased.

The following two examples are instructive on the Exchange's rationale for the proposed rule change.

In July 2012, Biremis Corp. (formerly Swift Trade Securities USA, Inc.) (the "Firm") and its CEO were barred from the industry for, among other things, supervisory violations related to a failure by the Firm to detect and prevent disruptive and allegedly manipulative trading activities, including layering, short sale violations, and anti-money laundering violations.⁷ The Firm's sole business was to provide trade execution services via a proprietary day trading platform and order management system to day traders located in foreign jurisdictions. Thus, the disruptive and allegedly manipulative trading activity introduced by the Firm to U.S. markets originated directly or indirectly from foreign clients of the Firm. The pattern of disruptive and allegedly manipulative quoting and trading

⁵ "Layering" is a form of market manipulation in which multiple, non-bona fide limit orders are entered on one side of the market at various price levels in order to create the appearance of a change in the levels of supply and demand, thereby artificially moving the price of the security. An order is then executed on the opposite side of the market at the artificially created price, and the non-bona fide orders are cancelled.

⁶ "Spoofing" is a form of market manipulation that involves the market manipulator placing non-bona fide orders that are intended to trigger some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading bona fide orders.

⁷ See Biremis Corp. and Peter Beck, FINRA Letter of Acceptance, Waiver and Consent No. 2010021162202, July 30, 2012.

activity was widespread across multiple exchanges, and the Exchange, FINRA, and other SROs identified clear patterns of the behavior in 2007 and 2008. Although the Firm and its principals were on notice of the disruptive and allegedly manipulative quoting and trading activity that was occurring, the Firm took little to no action to attempt to supervise or prevent such quoting and trading activity until at least 2009. Even when it put some controls in place, they were deficient and the pattern of disruptive and allegedly manipulative trading activity continued to occur. As noted above, the final resolution of the enforcement action to bar the Firm and its CEO from the industry was not concluded until 2012, four years after the disruptive and allegedly manipulative trading activity was first identified.

In September of 2012, Hold Brothers On-Line Investment Services, Inc. (the "Firm") settled a regulatory action in connection with the Firm's provision of a trading platform, trade software and trade execution, support and clearing services for day traders.⁸ Many traders using the Firm's services were located in foreign jurisdictions. The Firm ultimately settled the action with FINRA and several exchanges, including the Exchange, for a total monetary fine of \$3.4 million. In a separate action, the Firm settled with the Commission for a monetary fine of \$2.5 million.⁹ Among the alleged violations in the case were disruptive and allegedly manipulative quoting and trading activity, including spoofing, layering, wash trading, and pre-arranged trading. Through its conduct and insufficient procedures and controls, the Firm also allegedly committed anti-money laundering violations by failing to detect and report manipulative and suspicious trading activity. The Firm was alleged to have not only provided foreign traders with access to the U.S. markets to engage in such activities, but that [sic] its principals also owned and funded foreign subsidiaries that engaged in the disruptive and allegedly manipulative quoting and trading activity. Although the pattern of disruptive and allegedly manipulative quoting and trading activity was identified in 2009, as noted above, the enforcement action was not concluded until 2012. Thus, although disruptive and allegedly manipulative

⁸ See Hold Brothers On-Line Investment Services, LLC, FINRA Letter of Acceptance, Waiver and Consent No. 2010023771001, September 25, 2012.

⁹ In the Matter of Hold Brothers On-Line Investment Services, LLC, Exchange Act Release No. 67924, September 25, 2012.

⁴ 15 U.S.C. 78f(b)(1).

quoting and trading was promptly detected, it continued for several years.

The Exchange also notes the criminal proceedings against Navinder Singh Sarao. Mr. Sarao's for [sic] manipulative trading activity, which included forms of layering and spoofing in the futures markets, which has been linked as a contributing factor to the "Flash Crash" of 2010, and yet continued through 2015.

The Exchange believes that the activities described in the cases above provide justification for the proposed rule change, which is described below. In addition, while the examples provided are related to the equities market, the Exchange believes that this type of conduct should be prohibited for options as well. The Exchange believes that these patterns of disruptive and allegedly manipulative quoting and trading activity need to be addressed and the product should not limit the action taken by the Exchange.

Rule 12160—Expedited Suspension Proceeding

The Exchange proposes to adopt new Rule 12160, titled "Expedited Suspension Proceeding," to set forth procedures for issuing suspension orders, immediately prohibiting an Options Participant from conducting continued disruptive quoting and trading activity on the Exchange. Importantly, these procedures would also provide the Exchange the authority to order an Options Participant to cease and desist from providing access to the Exchange to a client of the Options Participant that is conducting disruptive quoting and trading activity in violation of proposed Rule 3220. Proposed Rule 3220 would be titled, "Disruptive Quoting and Trading Activity Prohibited." Under proposed paragraph (a) of Rule 12160, with the prior written authorization of the Chief Regulatory Officer ("CRO") or such other senior officers as the CRO may designate, the Office of General Counsel or Regulatory Department of the Exchange (such departments generally referred to as the "Exchange" for purposes of proposed Rule 12160) may initiate an expedited suspension proceeding with respect to alleged violations of Rule 3220, which is proposed as part of this filing and described in detail below. Proposed paragraph (a) would also set forth the requirements for notice and service of such notice pursuant to the Rule, including the required method of service and the content of notice.

Proposed paragraph (b) of Rule 12160 would govern the appointment of a Hearing Panel as well as potential disqualification or recusal of Panel

Members. The proposed provision is consistent with existing Exchange Rule 12060(a). The proposed rule provides for a Panel Member to be recused in the event he or she has a conflict of interest or bias or other circumstances exist where his or her fairness might reasonably be questioned in accordance with Rules [sic]12160(b)(2). In addition to recusal initiated by such a Panel Member, a party to the proceeding will be permitted to file a motion to disqualify a Panel Member. However, due to the compressed schedule pursuant to which the process would operate under Rule 12160, the proposed rule would require such motion to be filed no later than 5 days after the announcement of the Hearing Panel and the Exchange's brief in opposition to such motion would be required to be filed no later than 5 days after service thereof. Pursuant to existing Rule 12060(a)(3), any time a person serving on a Panel has a conflict of interest or bias or circumstances otherwise exist where his fairness might be reasonably questioned, the person must withdraw from the Panel. The applicable Panel Member shall remove himself or herself and the Panel Chairman may request the Chairman of the Hearing Committee to select a replacement such that the Hearing Panel still meets the compositional requirements described in Rule 12060(a).

Under paragraph (c) of the proposed Rule, the hearing would be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. In the event of a recusal or disqualification of a Panel Member, the hearing shall be held not later than five days after a replacement Panel Member is appointed. Proposed paragraph (c) would also govern how the hearing is conducted, including the authority of Panel Members, witnesses, additional information that may be required by the Hearing Panel, the requirement that a transcript of the proceeding be created and details related to such transcript, and details regarding the creation and maintenance of the record of the proceeding. Proposed paragraph (c) would also state that if a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings. Finally, as proposed, if the Exchange fails to appear at a hearing for which it has notice, the

Hearing Panel may order that the suspension proceeding be dismissed.

Under paragraph (d) of the proposed Rule, the Hearing Panel would be required to issue a written decision stating whether a suspension order would be imposed. The Hearing Panel would be required to issue the decision not later than 10 days after receipt of the hearing transcript, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. The Rule would state that a suspension order shall be imposed if the Hearing Panel finds by a preponderance of the evidence that the alleged violation specified in the notice has occurred and that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

Proposed paragraph (d) would also describe the content, scope and form of a suspension order. As proposed, a suspension order shall be limited to ordering a Respondent to cease and desist from violating proposed Rule 3220 and/or to ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of Rule 3220. Under the proposed rule, a suspension order shall also set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order. The order shall describe in reasonable detail the act or acts the Respondent is to take or refrain from taking, and suspend such Respondent unless and until such action is taken or refrained from. Finally, the order shall include the date and hour of its issuance. As proposed, a suspension order would remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to proposed paragraph (e), as described below. Finally, paragraph (d) would require service of the Hearing Panel's decision and any suspension order consistent with other portions of the proposed rule related to service.

Proposed paragraph (e) of Rule 12160 would state that at any time after the Hearing Panel served the Respondent with a suspension order, a Party could apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. If any part of a suspension order is modified, set aside, limited, or revoked, proposed paragraph (e) of Rule 12160 provides the Hearing Panel discretion to leave the cease and desist part of the order in place. For example, if a suspension order suspends Respondent unless and until Respondent ceases and desists

providing access to the Exchange to a client of Respondent, and after the order is entered the Respondent complies, the Hearing Panel is permitted to modify the order to lift the suspension portion of the order while keeping in place the cease and desist portion of the order. With its broad modification powers, the Hearing Panel also maintains the discretion to impose conditions upon the removal of a suspension—for example, the Hearing Panel could modify an order to lift the suspension portion of the order in the event a Respondent complies with the cease and desist portion of the order but additionally order that the suspension will be re-imposed if Respondent violates the cease and desist provisions modified [sic] order in the future. The Hearing Panel generally would be required to respond to the request in writing within 10 days after receipt of the request. An application to modify, set aside, limit or revoke a suspension order would not stay the effectiveness of the suspension order.

Finally, proposed paragraph (f) would provide that sanctions issued under the proposed Rule 12160 would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, and that the right to have any action under the Rule reviewed by the Commission would be governed by Section 19 of the Act. The filing of an application for review would not stay the effectiveness of a suspension order unless the Commission otherwise ordered.

Rule 3220—Disruptive Quoting and Trading Activity Prohibited

The Exchange currently has authority to prohibit and take action against manipulative trading activity, including disruptive quoting and trading activity, pursuant to its general market manipulation rules, including Rules 3000, Just and Equitable Principles of Trade, and 3050, Manipulation. The Exchange proposes to adopt new Rule 3220, which would more specifically define and prohibit disruptive quoting and trading activity on the Exchange. As noted above, the Exchange proposes to apply the proposed suspension rules to proposed Rule 3220.

Proposed Rule 3220 would prohibit Option Participants from engaging in or facilitating disruptive quoting and trading activity on the Exchange, as described in proposed Rule 3220(a)(1) and (2), including acting in concert with other persons to effect such activity. The Exchange believes that it is necessary to extend the prohibition to situations when persons are acting in concert to avoid a potential loophole where

disruptive quoting and trading activity is simply split between several brokers or customers. The Exchange believes, that with respect to persons acting in concert perpetrating an abusive scheme, it is important that the Exchange have authority to act against the parties perpetrating the abusive scheme, whether it is one person or multiple persons.

To provide proper context for the situations in which the Exchange proposes to utilize its proposed authority, the Exchange believes it is necessary to describe the types of disruptive quoting and trading activity that would cause the Exchange to use its authority. Accordingly, the Exchange proposes to adopt Rule 3220(a)(1) and (2) providing additional details regarding disruptive quoting and trading activity. Proposed Rule 3220(a)(1)(i) describes disruptive quoting and trading activity containing many of the elements indicative of layering. It would describe disruptive quoting and trading activity as a frequent pattern in which the following facts are present: (i) A party enters multiple limit orders on one side of the market at various price levels (the “Displayed Orders”); and (ii) following the entry of the Displayed Orders, the level of supply and demand for the security changes; and (iii) the party enters one or more orders on the opposite side of the market of the Displayed Orders (the “Contra-Side Orders”) that are subsequently executed; and (iv) following the execution of the Contra-Side Orders, the party cancels the Displayed Orders.

Proposed Rule 3220(a)(1)(ii) describes disruptive quoting and trading activity containing many of the elements indicative of spoofing and would describe disruptive quoting and trading activity as a frequent pattern in which the following facts are present: (i) a party narrows the spread for a security by placing an order inside the national best bid or offer; and (ii) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in proposed 3220(a)(1)(ii)(A) that narrowed the spread. The Exchange believes that the proposed descriptions of disruptive quoting and trading activity articulated in the rule are consistent with the activities that have been identified and described in the client access cases described above. The Exchange further believes that the proposed descriptions will provide Option Participants with clear descriptions of disruptive quoting and trading activity that will help them to avoid engaging in such activities or

allowing their clients to engage in such activities.

The Exchange proposes to make clear in proposed Rule 3220(a)(2), unless otherwise indicated, the descriptions of disruptive quoting and trading activity do not require the facts to occur in a specific order in order for the rule to apply. For instance, with respect to the pattern defined in proposed Rule 3220(a)(1)(i) it is of no consequence whether a party first enters Displayed Orders and then Contra-side Orders or vice-versa. However, as proposed, it is required for supply and demand to change following the entry of the Displayed Orders. The Exchange also proposes to make clear that disruptive quoting and trading activity includes a pattern or practice in which some portion of the disruptive quoting and trading activity is conducted on the Exchange and the other portions of the disruptive quoting and trading activity are conducted on one or more other exchanges. The Exchange believes that this authority is necessary to address market participants who would otherwise seek to avoid the prohibitions of the proposed Rule by spreading their activity amongst various execution venues. In sum, proposed Rule 3220 coupled with proposed Rule 12160 would provide the Exchange with authority to promptly act to prevent disruptive quoting and trading activity from continuing on the Exchange.

Below is an example of how the proposed rule would operate.

Assume that through its surveillance program, Exchange staff identifies a pattern of potentially disruptive quoting and trading activity. After an initial investigation the Exchange would then contact the Option Participant responsible for the orders that caused the activity to request an explanation of the activity as well as any additional relevant information, including the source of the activity. If the Exchange were to continue to see the same pattern from the same Option Participant and the source of the activity is the same or has been previously identified as a frequent source of disruptive quoting and trading activity then the Exchange could initiate an expedited suspension proceeding by serving notice on the Option Participant that would include details regarding the alleged violations as well as the proposed sanction. In such a case the proposed sanction would likely be to order the Option Participant to cease and desist providing access to the Exchange to the client that is responsible for the disruptive quoting and trading activity and to suspend such Options Participant unless and until such action is taken.

The Options Participant would have the opportunity to be heard in front of a Hearing Panel at a hearing to be conducted within 15 days of the notice. If the Hearing Panel determined that the violation alleged in the notice did not occur or that the conduct or its continuation would not have the potential to result in significant market disruption or other significant harm to investors, then the Hearing Panel would dismiss the suspension order proceeding.

If the Hearing Panel determined that the violation alleged in the notice did occur and that the conduct or its continuation is likely to result in significant market disruption or other significant harm to investors, then the Hearing Panel would issue the order including the proposed sanction, ordering the Options Participant to cease providing access to the client at issue and suspending such Options Participant unless and until such action is taken. If such Option Participant wished for the suspension to be lifted because the client ultimately responsible for the activity no longer would be provided access to the Exchange, then such Option Participant could apply to the Hearing Panel to have the order modified, set aside, limited or revoked. The Exchange notes that the issuance of a suspension order would not alter the Exchange's ability to further investigate the matter and/or later sanction the Options Participant pursuant to the Exchange's standard disciplinary process for supervisory violations or other violations of Exchange rules or the Act.

The Exchange reiterates that it already has broad authority to take action against an Options Participant in the event that such Options Participant is engaging in or facilitating disruptive or manipulative trading activity on the Exchange. For the reasons described above, and in light of recent cases like the client access cases described above, as well as other cases currently under investigation, the Exchange believes that it is equally important for the Exchange to have the authority to promptly initiate expedited suspension proceedings against any Options Participant who has demonstrated a clear pattern or practice of disruptive quoting and trading activity, as described above, and to take action including ordering such Options Participant to terminate access to the Exchange to one or more of such Options Participant's clients if such clients are responsible for the activity.

The Exchange recognizes that its proposed authority to issue a suspension order is a powerful measure

that should be used very cautiously. Consequently, the proposed rules have been designed to ensure that the proceedings are used to address only the most clear and serious types of disruptive quoting and trading activity and that the interests of Respondents are protected. For example, to ensure that proceedings are used appropriately and that the decision to initiate a proceeding is made only at the highest staff levels, the proposed rules require the CRO or another senior officer of the Exchange to issue written authorization before the Exchange can institute an expedited suspension proceeding. In addition, the rule by its terms is limited to violations of Rules [sic] 3220, when necessary to protect investors, other Options Participants and the Exchange. The Exchange will initiate disciplinary action for violations of Rule 3220, pursuant to Rule 12160. Further, the Exchange believes that the proposed expedited suspension provisions described above that provide the opportunity to respond as well as a Hearing Panel determination prior to taking action will ensure that the Exchange would not utilize its authority in the absence of a clear pattern or practice of disruptive quoting and trading activity.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),¹⁰ in general, and Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Pursuant to the proposal, the Exchange will have a mechanism to promptly initiate expedited suspension proceedings in the event the Exchange believes that it has sufficient proof that a violation of Rule 3220 has occurred and is ongoing.

Further, the Exchange believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,¹² which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules.

The Exchange also believes that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act because the proposal helps to strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other Options Participants and their customers. Also, the Exchange notes that if this type of conduct is allowed to continue on the Exchange, the Exchange's reputation could be harmed because it may appear to the public that the Exchange is not acting to address the behavior. The expedited process would enable the Exchange to address the behavior with greater speed.

As explained above, the Exchange notes that it has defined the prohibited disruptive quoting and trading activity by modifying the traditional definitions of layering and spoofing¹³ to eliminate an express intent element that would not be proven on an expedited basis and would instead require a thorough investigation into the activity. As noted throughout this filing, the Exchange believes it is necessary for the protection of investors to make such modifications in order to adopt an expedited process rather than allowing disruptive quoting and trading activity to occur for several years.

Through this proposal, the Exchange does not intend to modify the definitions of spoofing and layering that have generally been used by the Exchange and other regulators in connection with actions like those cited above. The Exchange believes that the pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and the Exchange, FINRA, and other SROs identified clear patterns of the behavior in 2007 and 2008 in the equities markets.¹⁴ The Exchange believes that this proposal will provide the Exchange with the necessary means to enforce against such behavior in an expedited manner while providing Options Participants with the necessary due process. The Exchange believes that its proposal is consistent with the Act because it provides the Exchange with the ability to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78f(b)(1) and 78f(b)(6).

¹³ See *supra*, notes 5 and 6.

¹⁴ See Section 3 herein, the Purpose section, for examples of conduct referred to herein.

investors and the public interest from such ongoing behavior.

Further, the Exchange believes that adopting a rule applicable to Options Participants is consistent with the Act because the Exchange believes that this type of behavior should be prohibited for all Options Participants. The type of product should not be the determining factor, rather the behavior which challenges the market structure is the primary concern for the Exchange. While this behavior may not be as prevalent on the options market today, the Exchange does not believe that the possibility of such behavior in the future would not have the same market impact and thereby warrant an expedited process.

The Exchange further believes that the proposal is consistent with Section 6(b)(7) of the Act,¹⁵ which requires that the rules of an exchange “provide a fair procedure for the disciplining of members and persons associated with members . . . and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof.” Finally, the Exchange also believes the proposal is consistent with Sections 6(d)(1) and 6(d)(2) of the Act,¹⁶ which require that the rules of an exchange with respect to a disciplinary proceeding or proceeding that would limit or prohibit access to or membership in the exchange require the exchange to: Provide adequate and specific notice of the charges brought against a member or person associated with a member, provide an opportunity to defend against such charges, keep a record, and provide details regarding the findings and applicable sanctions in the event a determination to impose a disciplinary sanction is made. The Exchange believes that each of these requirements is addressed by the notice and due process provisions included within Rule 12160. Importantly, as noted above, the Exchange will use the authority only in clear and egregious cases when necessary to protect investors, other Options Participants and the Exchange, and in such cases, the Respondent will be afforded due process in connection with the suspension proceedings.

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. To the

contrary, the Exchange believes that each self-regulatory organization should be empowered to regulate trading occurring on its market consistent with the Act and without regard to competitive issues. The Exchange is requesting authority to take appropriate action if necessary for the protection of investors, other Options Participants and the Exchange. The Exchange also believes that it is important for all exchanges to be able to take similar action to enforce their rules against manipulative conduct thereby leaving no exchange prey to such conduct. The Exchange does not believe that the proposed rule change imposes an undue burden on competition, rather this process will provide the Exchange with the necessary means to enforce against violations of manipulative quoting and trading activity in an expedited manner, while providing Options Participants with the necessary due process. The Exchange’s proposal would treat all Options Participants in a uniform manner with respect to the type of disciplinary action that would be taken for violations of manipulative quoting and trading activity.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁹ 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-BOX-2016-59 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-2016-59. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only

¹⁵ 15 U.S.C. 78f(b)(7).

¹⁶ U.S.C. 78f(d)(1) and (d)(2).

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–59, and should be submitted on or before January 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31307 Filed 12–27–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79642; File No. SR–NYSEMKT–2016–118]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 123D—Equities and the Listed Company Manual

December 21, 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 December 13, 2016, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 123D—Equities and the Listed Company Manual to eliminate the requirement for Floor Official approval for halts in trading. The proposed rule change is available on the Exchange’s Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of,

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 123D—Equities and the Company Guide to eliminate the requirement for Floor Official⁴ approval before halting trading in a security. The Exchange believes that in today’s trading environment, the requirement for Floor Official approval before halting trading in a security is unnecessary and duplicative of Exchange obligations to assess whether to halt trading in a security under Section 402 of the NYSE MKT Company Guide.

Current Rule 123D(d)—Equities provides that once trading has commenced, trading may only be halted with the approval of a Floor Governor or two Floor Officials and that an Executive Floor Governor, or in their absence a Senior Floor Governor, should be consulted if it is felt that trading should be halted in a bank or brokerage stock due to a potential misperception regarding the company’s financial viability.⁵ The rule further provides that if a listed company notifies the Exchange in advance of publication concerning news which might have a substantial market impact, the Exchange should advise an Executive Floor Governor or Floor Governor, or in their absence, a Floor Official, and specifies procedures for Floor Governors to overrule the Exchange’s determination that a security should be halted.

Commensurate with the evolution of the equities markets and trading on the Exchange towards more automated processes, the procedures and situations requiring approvals by Floor Officials have also evolved. For example, the Exchange previously eliminated the ability of a Floor broker to seek an

exception to Rule 122—Equities requirements if Floor Official permission is obtained.⁶ In connection with trading halts, the Exchange is responsible for determining whether to halt trading in a security under Section 402 of the Company Guide. Thus, requiring Floor Official approval before a trading halt can be invoked is an unnecessary *pro forma* step rather than a substantive requirement. Moreover, obtaining Floor Governor approval adds an extra manual step to the process, which could impede the timely dissemination of a trading halt. Finally, given market fragmentation and highly automated equities trading environment, the Exchange does not believe that Floor Governors, who do not have contact with the listed company, should be in a position to override an Exchange determination to halt trading in a security. Consequently, the Exchange proposes to delete Rule 123D(d)—Equities in its entirety as unnecessary and duplicative of existing Exchange obligations specified in the Company Guide.

The Exchange also proposes to make a related change to Section 402 of the Company Guide to delete a reference to Rule 123D—Equities that would be rendered obsolete by the proposed deletion of Rule 123D(d)—Equities. In addition, the Exchange also proposes to make a related change to Section 404 of the Company Guide to delete a reference to a consultation with trading floor officials that would be rendered obsolete by the proposed deletion of Rule 123D(d)—Equities. In addition, the Exchange proposes to re-letter the remaining subsections of Rule 123D—Equities to account for the deletion of Rule 123D(d)—Equities.

The Exchange proposes to make a related change to eliminate the requirement in Rule 123D(e)—Equities that an “Equipment Changeover” halt in trading requires the approval of a Floor Governor or two Floor Officials as such approval is no longer necessary. An Equipment Changeover halt is a non-regulatory halt condition that only halts trading on the Exchange. The Exchange believes that if circumstances arise warranting an Equipment Changeover halt, obtaining Floor Official approval before halting trading adds an unnecessary step that is no longer needed in today’s automated markets.

Because of the procedural changes associated with the proposed rule

⁴ “Floor Official” encompasses Floor Governor, Floor Official, Executive Floor Governor and Senior Floor Governor, as their responsibilities are currently assigned in connection with trading halts. See also Rules 46—Equities and 46A—Equities defining Floor Governor, Floor Official, and Executive Floor Governor.

⁵ See Rules 46—Equities and 46A—Equities (defining the terms Floor Official, Senior Floor Official, Executive Floor Official, Floor Governor, and Executive Floor Governor).

⁶ See also Securities Exchange Act Release No. 67346 (July 3, 2012), 77 FR 40671 (July 10, 2012) (SR–NYSEMKT–2012–15) (notice of filing and immediate effectiveness of proposed rule change amending certain Exchange rules related to floor official duties and responsibilities).

²⁰ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

changes, the Exchange proposes to announce the eliminations via Trader Update and anticipates implementing the changes in the first quarter of 2017.

2. Statutory Basis

The proposed rule changes are consistent with Section 6(b)⁷ of the Act, in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, in that they are 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.

The Exchange believes that the proposed rule changes support the objectives of the Act by amending duties and responsibilities once assigned to Floor Officials to better comport with the Exchange's current regulatory structure and to reflect the changing technology and development of its automated systems. Specifically, eliminating the unnecessary step of obtaining Floor Official approval in connection with trading halts would remove impediments to and perfect a national market system by streamlining and simplifying functionality and complexity in connection with trading halts. The Exchange believes that streamlining the procedures and eliminating unnecessary Floor Official approval requirements would be consistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from the removal of unnecessary functionality. The Exchange also believes that eliminating Floor Official approval would benefit investors by adding transparency and clarity to the Exchange's rules.

The Exchange believes that the proposed deletion of the reference to Rule 123D—Equities in Section 402 of the Company Guide is reasonable, equitable and not unfairly discriminatory because the reference is obsolete. The Exchange believes that the proposed deletion of the reference to a consultation with trading floor officials in Section 404 of the Company Guide is reasonable, equitable and not unfairly discriminatory because the reference is obsolete. The proposed changes would result in the removal of obsolete text from the Company Guide and therefore add greater clarity to the Company Guide regarding halts in trading.

The Exchange believes that the proposed re-lettering of the remaining subsections of Rule 123D—Equities is reasonable, equitable and not unfairly discriminatory because the proposed change would add greater clarity to the Exchange's rule book.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather would streamline functionality, eliminate an unnecessary step, and streamline forms, thereby reducing confusion and making the Exchange's rules easier to understand and navigate.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹³ 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-NYSEMKT-2016-118 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2016-118. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ 15 U.S.C. 78s(b)(2)(B).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–118 and should be submitted on or before January 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2016–31304 Filed 12–27–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9832]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: “East of the Mississippi: Nineteenth-Century American Landscape Photography” Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition “East of the Mississippi: Nineteenth-Century American Landscape Photography,” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, District of Columbia, from on or about March 12, 2017, until on or about July 16, 2017, and at the New Orleans Museum of Art, New Orleans, Louisiana, from on or about October 5, 2017, until on or about January 7, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs

in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–31321 Filed 12–27–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9831]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: “Lygia Pape” Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition “Lygia Pape,” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about March 21, 2017, until on or about July 23, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S.

Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–31320 Filed 12–27–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9830]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: “Thomas Annan: Photographer of Glasgow” Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition “Thomas Annan: Photographer of Glasgow,” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum at the Getty Center, Los Angeles, California, from on or about May 23, 2017, until on or about August 13, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–31319 Filed 12–27–16; 8:45 am]

BILLING CODE 4710–05–P

¹⁴ 17 CFR 200.30–3(a)(12).

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in "DATES."

DATES: November 1–30, 2016.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT:

Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: joyler@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals by Rule Issued Under 18 CFR 806.22(f)

1. Inflection Energy (PA), LLC, Pad ID: Stunner, ABR–201111037.R1, Gamble and Eldred Townships, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 7, 2016.

2. Inflection Energy (PA), LLC, Pad ID: Nature Boy East, ABR–201203010.R1, Upper Fairfield Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 7, 2016.

3. EXCO Resources (PA), LLC, Pad ID: Farnsworth Unit 1H Pad, ABR–201111038.R1, Franklin Township, Lycoming County, Pa.; Consumptive Use of Up to 8.0000 mgd; Approval Date: November 9, 2016.

4. SWEPI LP, Pad ID: Chappell 855, ABR–201110009.R1, Middlebury Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 9, 2016.

5. Chief Oil & Gas LLC, Pad ID: King Drilling Pad #1, ABR–201205007.R1, Towanda Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: November 10, 2016.

6. Chief Oil & Gas LLC, Pad ID: Ambrosius Drilling Pad #1, ABR–201205004.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: November 14, 2016.

7. Chief Oil & Gas LLC, Pad ID: D & J Farms Drilling Pad #1, ABR–201204004.R1, Sheshequin Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: November 17, 2016.

8. SWN Production Company, LLC, Pad ID: LOCH, ABR–201112031.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: November 17, 2016.

9. SWN Production Company, LLC, Pad ID: FLICKS RUN, ABR–201201011.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: November 17, 2016.

10. Chief Oil & Gas LLC, Pad ID: Yanavitch Drilling Pad #1, ABR–201204003.R1, Stevens Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: November 22, 2016.

11. Chief Oil & Gas LLC, Pad ID: Polowy Drilling Pad #1, ABR–201205008.R1, Ulster Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: November 28, 2016.

12. Talisman Energy USA, Inc., Pad ID: Bucks Hill, ABR–201112019.R1, LeRayville Borough, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 28, 2016.

13. Chesapeake Appalachia, LLC, Pad ID: Hart, ABR–201205009.R1, Wyalusing Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 29, 2016.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: December 21, 2016.

Stephanie L. Richardson,
Secretary to the Commission.

[FR Doc. 2016–31260 Filed 12–27–16; 8:45 am]

BILLING CODE 7040–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2016–0026]

2017 Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974; Request for Public Comment and Notice of Public Hearing

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing.

SUMMARY: Section 182 of the Trade Act of 1974 (Trade Act) requires the United States Trade Representative (Trade

Representative) to identify countries that deny adequate and effective protection of intellectual property rights (IPR) or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. The provisions of Section 182 are commonly referred to as the "Special 301" provisions of the Trade Act. The Trade Act requires the Trade Representative to determine which, if any, of these countries to identify as Priority Foreign Countries. The Office of the United States Trade Representative (USTR) requests written comments that identify acts, policies, or practices that may form the basis of a country's identification as a Priority Foreign Country or placement on the Priority Watch List or Watch List. USTR also requests notices of intent to appear at the public hearing.

DATES: The schedule and deadlines for the 2017 Special 301 review are as follows:

February 9, 2017 at midnight EST: Written comments, notices of intent to testify at the Special 301 Public Hearing, and hearing statements from the public are due.

February 23, 2017 at midnight EST: Written comments, notices of intent to testify at the Special 301 Public Hearing, and although not mandatory, any prepared hearing statements from foreign governments are due.

February 28, 2017: The Special 301 Subcommittee will hold a public hearing at the Office of the United States Trade Representative, 1724 F Street NW., Rooms 1&2, Washington, DC 20508. If necessary, the hearing may continue on the next business day. Please consult the USTR Web site for confirmation of the date and location and the schedule of witnesses.

March 3, 2017 at midnight EST: Post-hearing written comments from persons who testified at the public hearing are due.

On or about April 30, 2017: USTR will publish the 2017 Special 301 Report within 30 days of the publication of the National Trade Estimate (NTE) Report.

ADDRESSES: You should submit written comments, notice of intent to testify, hearing statements, and post hearing comments, which must be in English, through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments in section II below. For alternatives to on-line submissions, please contact USTR at Special301@ustr.eop.gov before transmitting a comment and in advance of the relevant deadline.

Procedures/Addresses: All written comments, notices of intent to testify at

the public hearing, hearing statements and post-hearing written responses must be in English and submitted electronically via www.regulations.gov, Docket Number USTR–2016–0026.

Please specify “2017 Special 301 Review” in the “Type Comment” field.

FOR FURTHER INFORMATION CONTACT:

Christine Peterson, Director for Innovation and Intellectual Property, Office of the United States Trade Representative, at special301@ustr.eop.gov. You can find information about the Special 301 Review at www.ustr.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182 of the Trade Act, commonly known as the “Special 301” provisions, requires the Trade Representative to identify countries that deny adequate and effective IPR protections or fair and equitable market access to U.S. persons who rely on intellectual property protection. The Trade Act requires the Trade Representative to determine which, if any, of these countries to identify as Priority Foreign Countries. Acts, policies or practices that are the basis of a country’s identification as a Priority Foreign Country can be subject to the procedures set out in sections 301–305 of the Trade Act.

In addition, USTR has created a “Priority Watch List” and “Watch List” to assist the Administration in pursuing the goals of the Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement or market access for persons that rely on intellectual property protection. Trading partners placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

USTR chairs the Special 301 Subcommittee (Subcommittee) of the Trade Policy Staff Committee. The Subcommittee reviews information from many sources, and consults with and makes recommendations to the Trade Representative on issues arising under Special 301. Written submissions from the public are a key source of information for the Special 301 review process. In 2017, USTR again will conduct a public hearing as part of the review process as well as offer the opportunity, as described below, for hearing participants to provide additional information relevant to the review. At the conclusion of the process, USTR will publish the results of the review in a “Special 301” Report.

USTR requests that interested persons identify through the process outlined in this notice those countries whose acts, policies, or practices deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection.

Section 182 also requires the Trade Representative to identify any act, policy or practice of Canada that affects cultural industries, was adopted or expanded after December 17, 1992, and is actionable under Article 2106 of the North American Free Trade Agreement (NAFTA). The public is invited to submit views relevant to this aspect of the review.

Section 182 requires the Trade Representative to identify all such acts, policies, or practices within 30 days of the publication of the NTE Report. In accordance with this statutory requirement, USTR will publish the annual Special 301 Report on or about April 30, 2017.

II. Public Comments

To facilitate the review, written comments should be as detailed as possible and provide all necessary information for identifying and assessing the effect of the acts, policies, and practices. USTR invites written comments that provide specific references to laws, regulations, policy statements, including innovation policies, executive, presidential or other orders, and administrative, court or other determinations that should factor in the review. USTR also requests that, where relevant, submissions mention particular regions, provinces, states, or other subdivisions of a country in which an act, policy, or practice is believed to warrant special attention. Finally, submissions proposing countries for review should include data, loss estimates, and other information regarding the economic impact on the United States, U.S. industry and the U.S. workforce caused by the denial of adequate and effective intellectual property protection. Comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses.

III. Public Hearing

The Special 301 Subcommittee will hold a public hearing on February 28, 2017, at the Office of the United States Trade Representative, 1724 F Street NW., Rooms 1&2, Washington DC 20508, at which interested persons, including representatives of foreign governments, may appear to provide

oral testimony. If necessary, the hearing may continue on the next business day. The hearing will be open to the public. Because the hearing will take place in Federal facilities, security screening will be required. Attendees will need to show photo identification and be screened for security purposes. Please consult www.ustr.gov to confirm the date and location of the hearing and to obtain copies of the hearing schedule. USTR also will post the transcript and recording of the hearing on the USTR Web site as soon after the hearing as possible.

Prepared oral testimony before the Special 301 Subcommittee must be delivered in person, in English, and will be limited to five minutes.

Subcommittee member agencies may ask questions following the prepared statement. Persons, except representatives of foreign governments, wishing to testify at the hearing must submit a “Notice of Intent to Testify” and “Hearing Statement” by the February 9, 2017, deadline to www.regulations.gov following the procedures set forth in part IV below. The Notice of Intent to Testify must include the name of the witness, name of the organization (if applicable), address, telephone number, fax number, and email address. A Hearing Statement must accompany the Notice of Intent to Testify. There is no requirement regarding the length of the Hearing Statement; however, the content of the testimony must be relevant to the Special 301 Review.

All representatives of foreign governments that wish to testify at the hearing must submit a “Notice of Intent to Testify” by the February 23, 2017, deadline to www.regulations.gov following the procedures set forth in part IV below. The Notice of Intent to Testify must include the name of the witness, name of the organization (if applicable), address, telephone number, fax number, and email address. Although not mandatory, government witnesses may submit a Hearing Statement when filing the Notice of Intent to Testify.

IV. Submission Instructions

All submissions must be in English and sent electronically via www.regulations.gov, docket number USTR–2016–0026. To submit comments, locate the docket (folder) by entering the number USTR–2016–0026 in the “Enter Keyword or ID” window at the www.regulations.gov home page and click “Search.” The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by

selecting “Notice” under “Document Type” on the left side of the search-results page, and click on the link entitled “Comment Now!”. USTR requests that you provide comments in an attached document, and that you name the file according to the following protocol, as appropriate: Commenter Name, or Organization_2017 Special 301_Review_Comment, or Notice of Intent to Testify or Hearing Testimony. Please include the following information in the “Type Comment” field: “2017 Special 301 Review” and whether the submission is a comment, a request to testify at the hearing, or hearing testimony. Please submit documents prepared in (or compatible with) Microsoft Word (.doc) or Adobe Acrobat (.pdf) formats. If the submission was prepared in a compatible format, please indicate the name of the relevant software application in the “Type Comment” field. For further information on using the www.regulations.gov Web site, please select “How to Use Regulations.gov” on the bottom of any page. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files. For any comments submitted electronically that contains business confidential information, the file name of the business confidential version should begin with the characters “BC”. Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and would not customarily be released to the public by the submitter. Additionally, the submitter should type “Business Confidential” in the “Type Comment” field.

Filers of comments containing business confidential information also must submit a public version of their comments. The file name of the public version should begin with the character “P”. The “BC” and “P” should be followed by the name of the person or entity submitting the comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the

comments. The non-business confidential version will be placed in the docket at www.regulations.gov and be available for public inspection.

As noted, USTR strongly urges commenters to submit comments through www.regulations.gov. Any alternative arrangements must be made before transmitting a comment and in advance of the relevant deadline by contacting USTR at Special301@ustr.eop.gov.

Comments will be placed in the docket and open to public inspection, except business confidential information. Comments may be viewed on the www.regulations.gov Web site by entering Docket Number USTR–2016–0026 in the “Search” field on the home page.

Probir Mehta,

Assistant United States Trade Representative for Innovation and Intellectual Property Office of the United States Trade Representative.

[FR Doc. 2016–31379 Filed 12–27–16; 8:45 am]

BILLING CODE 3290–F7–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2016–0025]

Public Comments and Hearing Regarding Request To Reinstatement Action Taken in Connection With the European Union’s Measures Concerning Meat and Meat Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of public hearing and request for comments.

SUMMARY: The interagency Section 301 Committee is holding a public hearing and seeking public comments to assist the United States Trade Representative (Trade Representative) in connection with the request of representatives of the U.S. beef industry to reinstate action against the European Union (EU) pursuant to Section 306(c) of the 1974 Trade Act, as amended (19 U.S.C. 2416(c)). Prior to reinstating trade action, the Office of the United States Trade Representative (USTR) will conduct a review of the effectiveness of such an action, and of other actions that could be taken (including actions against other products), in achieving the objectives of Section 301 of this title (19 U.S.C. 2411); and the effects of such actions on the United States economy, including consumers.

DATES: The schedule and deadlines are as follows:

Monday, January 30, 2017 at 11:59 p.m.: Deadline for interested persons to

submit written comments and requests to appear at the hearing, which must include a summary of testimony.

Wednesday, February 15, 2017: The Section 301 Committee will convene a public hearing in Rooms 1 and 2, 1724 F Street NW., Washington, DC 20508, beginning at 9:30 a.m. If necessary, the hearing may continue on the next business day.

Wednesday, February 22, 2017 at 11:59 p.m.: Deadline for submission of post-hearing rebuttal comments.

ADDRESSES: All written comments, requests to appear at the hearing, hearing summaries, and rebuttal comments must be in English and submitted electronically via the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments in section E below.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participating in the public hearing, contact Gwendolyn Diggs at (202) 395–3150. For questions on the *EU-Beef* matter, contact Roger Wentzel, Deputy Assistant U.S. Trade Representative for Agricultural Affairs, (202) 395–6127, or David Weiner, Deputy Assistant U.S. Trade Representative for Europe, (202) 395–3320. Direct all other questions regarding this notice to William Busis, Associate General Counsel and Chair of the Section 301 Committee, (202) 395–3150, or Katherine Linton, Assistant General Counsel, at (202) 395–3150.

SUPPLEMENTARY INFORMATION:

A. The EU-Beef Matter

The EU bans the import of beef and beef products produced from animals to which any of six hormones have been administered for growth-promotion purposes. The six hormones at issue are estradiol 17–b, testosterone, progesterone, zeranol, trenbolone acetate (TBA) and melengestrol acetate (MGA). The effect of the EU ban is to prohibit the import of all but specially-produced U.S. beef and beef products. In February 1998, the WTO Dispute Settlement Body (DSB) in the *EU-Beef* case found that the ban was inconsistent with the obligations of the European Communities (now the EU) under the WTO Agreement. In July 1999, a WTO arbitrator determined that the EU import ban on U.S. beef and beef products had nullified or impaired U.S. benefits under the WTO Agreement in the amount of \$116.8 million each year. On July 26, 1999, the DSB authorized the United States to suspend the application to the EU, and member States thereof, of WTO tariff concessions and related

obligations covering trade in an amount of \$116.8 million per year. Pursuant to that authorization, USTR announced a list of EU products that would be subject to a 100 percent rate of duty effective with respect to products entered, or withdrawn from warehouse, for consumption on or after July 29, 1999. *See* 64 FR 40638.

On November 6, 2008, the inter-agency Section 301 committee requested public comments on a list of alternative products under consideration for the imposition of increased duties. On January 23, 2009, USTR announced a determination to modify the list of products subject to additional duties by removing some products from the list and adding replacement products, consistent with the WTO's authorization. *See* 74 FR 4265. USTR subsequently delayed the additional duties on the replacement products to facilitate negotiations with the EU. On May 13, 2009, the United States and the European Commission announced the signing of a Memorandum of Understanding (MOU) in the *EU-Beef* case. *See* 74 FR 40864.

B. The MOU

The MOU provided for the EU to make phased increases in market access by adopting a tariff-rate quota (TRQ) for beef produced without growth-promoting hormones (termed HQB products), in return for the United States making phased reductions in additional duties the United States had imposed consistent with WTO authorization. *See* 74 FR 40864. Both in accordance with the MOU and as a result of a decision of the United States Court of Appeals for the Federal Circuit, USTR terminated all additional duties on EU products, effective May 2011. *See* 76 FR 30987.

Under the second phase of the MOU, starting in August 2012, the EU increased the TRQ to 45,000 metric tons (MT). Although the EU has maintained this 45,000 MT TRQ for HQB products, it has not in practice provided benefits to the U.S. beef industry sufficient to compensate for the economic harm resulting from the EU ban on all but specially-produced U.S. beef. In particular, non-U.S. exporters of HQB products have been able to fill a substantial part of the 45,000 MT TRQ.

C. Sections 306 and 307 of the 1974 Trade Act, as Amended

In February 2016, Congress passed and the President signed the Trade Facilitation and Trade Enforcement Act of 2015. Among other things, the Act amended relevant provisions of the 1974 Trade Act to confirm that the

Trade Representative may reinstate a previously terminated Section 301 action in order to exercise a WTO authorization to suspend trade concessions. In particular, the new Section 306(c) of the 1974 Trade Act permits the Trade Representative to reinstate a Section 301 action following (1) a request from the petitioner or any representative of the domestic industry that would benefit from reinstatement of action, (2) consultations under Section 306(d) of the Trade Act, and (3) a review under section 307(c) of the Trade Act.

Section 306(d) of the 1974 Trade Act requires the Trade Representative to consult with the petitioner, if any, involved in the initial investigation and with representatives of the domestic industry concerned, and provide an opportunity for the presentation of views by interested parties. Section 307(c) requires the Trade Representative to conduct a review of the effectiveness of such an action, and of other actions that could be taken (including actions against other products), in achieving the objectives of Section 301 of this title (19 U.S.C. 2411); and the effects of such actions on the United States economy, including consumers.

On December 9, 2016, representatives of the U.S. beef industry invoked the new Section 306(c) of the 1974 Trade Act by filing a written request for reinstatement of action.

D. Request for Public Comments and To Testify at the Hearing

In order to assist in a possible reinstatement of the action in accordance with Section 306(c) of the 1974 Trade Act, and to provide information in connection with a review under Section 307(c) of the Act, the Section 301 Committee seeks public comments with respect to the specific EU products on the lists in the annexes to this notice. Annex I contains the full list of EU products covered by the ongoing WTO authorization for the United States to suspend tariff concessions and related obligations with respect to the EU. In addition, for convenience, Annex II contains the list of EU products initially subject to increased duties starting in 1999, and in effect in whole or in part until 2011. Annex II is a subset of the full product list in Annex I. In considering a possible reinstatement of the action, the Trade Representative will consider including any product listed in Annex I, regardless of whether that product was covered by the 1999 action.

The Section 301 Committee invites comments with respect to whether particular products should be included on a new list that would be subject to

increased duties, as well as the rate of duty that would be best suited to the objective of encouraging a satisfactory resolution of the dispute. The comments should address: (i) Whether imposing increased duties on a particular product would be practicable or effective in terms of encouraging a favorable resolution of the dispute, and (ii) whether imposing increased duties on a particular product would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses and consumers.

In addition, the Section 301 Committee requests comments on whether actions on particular products should be taken with respect to products of all members of the EU, or whether action should be taken with respect to products of one or more particular EU members. The EU currently has 28 member States: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

To be assured of consideration, you must submit written comments by 11:59 p.m. on January 30, 2017 in accordance with the instructions in section E below.

The Section 301 Committee will convene a public hearing in Rooms 1 and 2, 1724 F Street NW., Washington, DC 20508, beginning at 9:30 a.m. on February 15, 2017. Persons wishing to appear at the hearing must provide written notification of their intention and a summary of the proposed testimony by 11:59 p.m. on January 30, 2017 in accordance with the instructions in section E below. Remarks at the hearing may be no more than five minutes to allow for possible questions from the Section 301 Committee. The deadline for submission of post-hearing rebuttal comments is 11:59 p.m. February 22, 2017.

Indicate in the "Type Comment" field if you are submitting a request to appear at the hearing, and include the name, address and telephone number of the person presenting the testimony. A summary of the testimony should be attached by using the "Upload File" field. The file name should include who will be presenting the testimony. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the section 301 Committee.

E. Requirements for Submissions

Persons submitting a notification of intent to testify and/or written

comments must do so in English and must identify (on the reference line of the first page of the submission) “Request to Reinstate Action Taken in Connection with European Union Measures Concerning Meat and Meat Products.” In addition, if the submission covers one or more particular products, those products (both tariff number and description) should be listed on the reference line. To be assured of consideration, you must submit written comments, requests to testify and summaries of testimony by 11:59 p.m. on January 30, 2017. Rebuttal comments are due by 11:59 p.m. on February 22, 2017.

All submissions must be in English and must be submitted electronically via <http://www.regulations.gov>, using docket number USTR–2016–0025. Hand-delivered submissions will not be accepted.

To make a submission via www.regulations.gov, enter Docket Number USTR–2016–0025 on the home page and click “Search.” The site will provide a search-results page listing all documents associated with this docket. Find the reference to this notice and click on the button labeled “Comment Now.” For further information on using the www.regulations.gov Web site, please consult the resources provided on the Web site by clicking on “How to Use *Regulations.gov*” on the bottom of the home page.

The www.regulations.gov Web site allows users to provide comments by filling in a “Type Comment” field, or by attaching a document using an “Upload File” field. USTR prefers that submissions be provided as an attached document. If a document is attached, it is sufficient to type “see attached” in the “Type Comment” field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) format. If

the submission is in another file format, please indicate the name of the software application in the “Type Comment” field. File names should reflect the name of the person or entity submitting the comments.

Indicate in the “Type Comment” field if you are submitting a request to appear at the hearing, and include the name, address and telephone number of the person presenting the testimony. The file name should include who will be presenting the testimony.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters “BC”. Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and would not customarily be released to the public by the submitter. Filers of submissions containing business confidential information also must submit a public version of their comments. The file name of the public version should begin with the character “P”. The “BC” and “P” should be followed by the name of the person or entity submitting the comments or reply comments.

As noted, USTR strongly urges submitters to file comments through www.regulations.gov. Any alternative arrangements must be made in advance of submission with Gwendolyn Diggs at (202) 395–3150. General information concerning USTR is available at www.ustr.gov.

Comments will be placed in the docket and open to public inspection, except information granted business confidential status. Comments may be viewed on the www.regulations.gov Web site by entering the relevant docket number in the search field on the home page.

William L. Busis,
Chair, Section 301 Committee.

ANNEX I

EU-Beef: List of Products Under Consideration for the Imposition of Increased Duties

The products listed below are under consideration for the imposition of increased duties in accordance with the WTO DSB authorization in the *EU-Beef* dispute. In particular, increased tariffs may be applied to articles that are: (i) classified in the numerical headings and subheadings of the HTS listed below; and, (ii) products of one or more of the member States of the EU. In the instances where a 4-digit HTS heading appears in the left column of this list, products classified in any of the 8-digit subheadings in the HTS under those 4-digit headings may be subject to increased duties. In all cases, the tariff nomenclatures in the HTS for the headings and subheadings listed below are definitive; the product descriptions in this list are for information purposes only. The descriptions below are not intended to delimit in any way the scope of the products that would be subject to increased duties. An asterisk (*) indicates a change in the HTS number and/or product description since the previous publication of this list. See 73 FR 66071–66074.

HTS	Description
0201	Meat of bovine animals, fresh or chilled.
0202	Meat of bovine animals, frozen.
0203	Meat of swine (pork), fresh, chilled or frozen.
0206	Edible offal of bovine animals, swine, sheep, goats, horses, or mules, fresh, chilled or frozen.
0207	Meat and edible offal of poultry (chickens, ducks, geese, turkeys and guineas), fresh, chilled or frozen.
02101100	Hams, shoulders and cuts thereof with bone in, salted, in brine, dried or smoked.
02101200	Bellies (streaky) and cuts thereof of swine, salted, in brine, dried or smoked.
02102000	Meat of bovine animals, salted, in brine, dried or smoked.
02109920	Meat and edible offal of poultry (chickens, ducks, geese, turkeys and guineas), salted, in brine, dried or smoked; flour and meal of these animals.
02109991 *	Meat and edible offal nesoi, salted, in brine, dried or smoked; flour and meal thereof.
04064020	Roquefort cheese in original loaves.
04064040	Roquefort cheese, other than in original loaves, not grated or powdered, not processed.
05040000	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof, fresh, chilled, frozen, salted, in brine, dried or smoked.
06039000	Cut flowers and flower buds, suitable for bouquets or ornamental purposes, dried, dyed, bleached impregnated or otherwise prepared.
06042000 *	Foliage, branches and other parts of plants without flowers or flower buds, and grasses, suitable for bouquets or ornamental purposes, fresh.

HTS	Description
06049030 *	Foliage, branches, parts of plants without flowers or buds, and grasses, suitable for bouquets or ornamental purposes, dried or bleached.
07020020	Tomatoes, fresh or chilled, entered during March 1 to July 14, inclusive, or during September 1 to November 14, inclusive, in any year.
07020040	Tomatoes, fresh or chilled, entered from July 15 through August 31 in any year.
07020060	Tomatoes, fresh or chilled, entered from November 15 to the last day of February, inclusive, of the following year.
07031040	Onions, other than onion sets or pearl onions not over 16 mm in diameter, and shallots, fresh or chilled.
07095910	Truffles, fresh or chilled.
07129010	Dried carrots, whole, cut, sliced, broken or in powder, but not further prepared.
07129074	Dried tomatoes, in powder.
07129078	Dried tomatoes, whole, cut, sliced or broken, but not further prepared.
08024100 *	Chestnuts, fresh or dried, in shell.*
08024200 *	Chestnuts, fresh or dried, shelled.*
09042120 *	Paprika, dried, neither crushed nor ground.*
09042220 *	Paprika, crushed or ground.*
10041000 *	Oats, seed.*
10049000 *	Oats, other than seed.*
11041200	Rolled or flaked grains of oats.
11042200	Grains of oats, hulled, pearled, clipped, sliced, kibbled or otherwise worked, but not rolled or flaked.
15050090	Fatty substances derived from wool grease (including lanolin).
1601	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products.
16021000	Homogenized preparations of meat, meat offal or blood, other than sausages and similar products.
16022020	Prepared or preserved liver of goose.
16022040	Prepared or preserved liver of any animal other than of goose.
16023100	Prepared or preserved meat or meat offal of turkeys, other than sausages and similar products.
16023200	Prepared or preserved meat or meat offal of chickens, other than sausages and similar products.
16023900	Prepared or preserved meat or meat offal of ducks, geese or guineas, other than sausages and similar products.
16024110	Prepared or preserved pork ham and cuts thereof, containing cereals or vegetables.
16024120	Pork hams and cuts thereof, not containing cereals or vegetables, boned and cooked and packed in airtight containers.
16024190	Prepared or preserved pork hams and cuts thereof, not containing cereals or vegetables, other than boned and cooked and packed in airtight containers.
16024220	Pork shoulders and cuts thereof, boned and cooked and packed in airtight containers.
16024240	Prepared or preserved pork shoulders and cuts thereof, other than boned and cooked and packed in airtight containers.
16024910	Prepared or preserved pork offal, including mixtures.
16024920	Pork other than hams, shoulders or cuts thereof, not containing cereals or vegetables, boned and cooked and packed in airtight containers.
16024940	Prepared or preserved pork, not containing cereals or vegetables, nesoi.
16024960	Prepared or preserved pork mixed with beef.
16024990	Prepared or preserved pork, nesoi.
16025005	Prepared or preserved offal of bovine animals.
16025009	Prepared or preserved meat of bovine animals, cured or pickled, not containing cereals or vegetables.
16025010	Corned beef in airtight containers.
16025020	Prepared or preserved beef in airtight containers, other than corned beef, not containing cereals or vegetables, not cured or pickled.
16025060	Prepared or preserved meat of bovine animals, not containing cereals or vegetables, not in airtight containers.
16025090	Prepared or preserved meat of bovine animals, containing cereals or vegetables.
17041000	Chewing gum, whether or not sugar-coated.
17049025	Sugar confectionary cough drops.
18063100	Chocolate and other cocoa preparations, in blocks, slabs or bars, filled, weighing not more than 2 kg.
19054000	Rusks, toasted bread and similar toasted products.
20021000	Tomatoes, whole or in pieces, prepared or preserved otherwise than by vinegar or acetic acid.
20029040	Tomatoes, in powder.
20029080	Tomatoes, other than whole or in pieces and other than in powder (including paste and puree), prepared or preserved otherwise than by vinegar or acetic acid.
20079905	Lingonberry and raspberry jams obtained by cooking.
20083042	Satsumas, prepared or preserved, in airtight containers, aggregate quantity not over 40,000 metric tons/calendar year.
20083046	Satsumas, prepared or preserved, in airtight containers, aggregate quantity over 40,000 metric tons/calendar year.
20084000	Pears, otherwise prepared or preserved, nesoi.
20087020	Peaches (excluding nectarines), otherwise prepared or preserved, nesoi.
20096100	Grape juice (including grape must), of a Brix value not exceeding 30.
20096900	Grape juice (including grape must), of a Brix value exceeding 30.
20098100 *	Cranberry juice, concentrated or not concentrated.*
20098960 *	Juice of any single fruit, nesi, (including cherries and berries), concentrated or not concentrated.*
20099040	Mixtures of fruit juices, or mixtures of vegetable and fruit juices.
21013000	Roasted chicory and other roasted coffee substitutes and extracts, essences and concentrates thereof.
21033040	Prepared mustard.
21041000	Soups and broths and preparations therefor.
22011000	Mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavored.
23099010	Mixed feed or mixed feed ingredients of a kind used in animal feeding.
35061050	Products suitable for use as glues or adhesives, put up for retail sale, not exceeding 1 kg, including fish glue but not other animal glue.
55041000	Viscose rayon staple fibers, not carded, combed or otherwise processed for spinning.
55101100	Single yarn (other than sewing thread) containing 85% or more by weight of artificial staple fibers, not put up for retail sale.

HTS	Description
85102010	Hair clippers, with self-contained electric motor, to be used for agricultural or horticultural purposes.
85102090	Hair clippers, with self-contained electric motor, other than those to be used for agricultural or horticultural purposes.
87112000	Motorcycles (incl. mopeds) and cycles, fitted with reciprocating internal-combustion piston engine with cylinder capacity of over 50 cc but not over 250 cc.
87113000	Motorcycles (incl. mopeds) and cycles, fitted with reciprocating internal-combustion piston engine with cylinder capacity of over 250 cc but not over 500 cc.

ANNEX II**EU-Beef: List of Products Initially Subject to Increased Duties**

Annex II contains the list of EU products initially subject to increased duties starting

in 1999, and in effect in whole or in part until 2011. Annex II is a subset of the full product list in Annex I.

HTS	Description
Products of Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, or Sweden	
0201	Meat of bovine animals, fresh or chilled.
0202	Meat of bovine animals, frozen.
02031100	Pork carcasses and half-carcasses, fresh or chilled.
02031210	Pork hams and shoulders and cuts thereof, fresh or chilled, with bone in, processed.
02031290	Pork hams and shoulders and cuts thereof, fresh or chilled, with bone in, not processed.
02031920	Meat of swine (pork), fresh or chilled, other, processed.
02031940	Meat of swine (pork), fresh or chilled, other.
02032100	Pork carcasses and half-carcasses, frozen.
02032210	Pork hams and shoulders and cuts thereof, frozen, with bone in, processed.
02032290	Pork hams and shoulders and cuts thereof, frozen, with bone in, not processed.
02061000	Bovine tongues, fresh or chilled.
02062100	Bovine tongues, frozen.
02062200	Bovine livers, frozen.
02062900	Edible offal of bovine animals, frozen, other than tongues or livers.
04064020	Roquefort cheese in original loaves.
04064040	Roquefort cheese, other than in original loaves, not grated or powdered, not processed.
07031040	Onions, other than onion sets or pearl onions not over 16 mm in diameter, and shallots, fresh or chilled.
07095910	Truffles, fresh or chilled.
07129010	Dried carrots, whole, cut, sliced, broken or in powder, but not further prepared.
16022020	Prepared or preserved liver of goose.
16022040	Prepared or preserved liver of any animal other than of goose.
19054000	Rusks, toasted bread and similar toasted products.
20098060	Juice of any single fruit, (including cherries and berries), concentrated or not concentrated, other than citrus, pineapple, tomato, grape, apple, pear, or prune juices.
21013000	Roasted chicory and other roasted coffee substitutes and extracts, essences and concentrates thereof.
21033040	Prepared mustard.

Products of France, the Federal Republic of Germany, or Italy

20021000	Tomatoes, whole or in pieces, prepared or preserved otherwise than by vinegar or acetic acid
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Products of France or the Federal Republic of Germany

05040000	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof, fresh, chilled, frozen, salted, in brine, dried or smoked
21041000	Soups and broths and preparations therefor.
55101100	Yarn (other than sewing thread) containing 85% or more by weight of artificial staple fibers, singles, not put up for retail sale.

Products of France

02101100	Hams, shoulders and cuts thereof with bone in, salted, in brine, dried or smoked.
15050090	Fatty substances derived from wool grease (including lanolin).
18063100	Chocolate and other cocoa preparations, in blocks, slabs or bars, filled, weighing not more than 2 kg.
20079905	Lingonberry and raspberry jams obtained by cooking.
35061050	Products suitable for use as glues or adhesives, put up for retail sale, not exceeding 1 kg, including fish glue, but not other animal glue.

[FR Doc. 2016-31352 Filed 12-27-16; 8:45 am]

BILLING CODE 3290-F7-P

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration****Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Notice of Unified Carrier Registration Plan Board of Directors meeting.**SUMMARY:** The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.**DATES:** The meeting will be held on February 7, 2017, from 9:00 a.m. to 12:00 noon Pacific Standard Time.**ADDRESSES:** The meetings will be open to the public at the Courtyard by Marriott Downtown, 530 Broadway, San Diego, CA 92101, and via conference call. Those not attending the meetings in person may call 1-877-422-1931, passcode 2855443940, to listen and participate in the meetings.**FOR FURTHER INFORMATION CONTACT:** Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827-4565.

Issued on: December 19, 2016.

Larry W. Minor,*Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.*

[FR Doc. 2016-31551 Filed 12-23-16; 4:15 pm]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION**Maritime Administration****[Docket No. MARAD-2016-0131]****Agency Request for Renewal of a Previously Approved Information Collection: Requirements for Establishing U.S. Citizenship—46 CFR 355****AGENCY:** Maritime Administration, Department of Transportation.**ACTION:** Notice and request for comments**SUMMARY:** The Department of Transportation (DOT) invites public comments about our intention to requestthe Office of Management and Budget (OMB) approval to renew an information collection. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104-13.**DATES:** Written comments should be submitted by February 27, 2017.**ADDRESSES:** You may submit comments identified by Docket No. MARAD-2016-0131 through one of the following methods:

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

- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

- *Fax:* 1-202-493-2251.

FOR FURTHER INFORMATION CONTACT:Michael Pucci, 202-366-5167, Office of Maritime Program, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, Email: Michael.Pucci@dot.gov. Copies of this collection also can be obtained from that office.**SUPPLEMENTARY INFORMATION:***OMB Control Number:* 2133-0012.*Title:* Requirements for Establishing U.S. Citizenship—46 CFR 355.*Form Numbers:**Type of Review:* Renewal of an information collection.*Background:* Maritime Administration implementing regulations at 46 CFR parts 355 and 356 set forth requirements for establishing U.S. citizenship in accordance with MARAD statutory authority. Those receiving benefits under 46 U.S.C. Chapters 531, 535, and 537 (formerly the Merchant Marine Act, 1936, as amended), or applicants seeking a fishery endorsement eligibility approval pursuant to the American Fisheries Act must be citizens of the United States within the meaning of 46 U.S.C. 50501, (formerly Section 2 of the Shipping Act, 1916, as amended). In either case, whether seeking program benefits or fishery endorsement eligibility, Section 50501 sets forth the statutory requirements for determining whether an applicant, be it a corporation, partnership, or association is a U.S. citizen. 46 CFR part 356 is distinguished from 46 CFR part 355 in that Part 356 establishes requirements for U.S. citizenship exclusively in accordance with the AFA while Part 355 is applied for purposes of establishing citizenship across multiple MARAD programs arising under other statutory authority. Most program participants are

required to submit to MARAD on an annual basis the form of affidavit prescribed by Part 355 or Part 356.

Number of Respondents: 500.*Frequency:* Once annually.*Estimated Average Burden per**Response:* 5 hours.*Total Annual Burden:* 2500.*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.*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, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.

* * * * *

Dated: December 22, 2016.

By order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,*Secretary, Maritime Administration.*

[FR Doc. 2016-31330 Filed 12-27-16; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****[Docket No. NHTSA-2016-0131]****Reports, Forms and Record Keeping Requirements****AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed extension, without change, of a currently approved collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, the agency must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. In compliance with the Paperwork Reduction Act of 1995, this notice describes one collection of information for which NHTSA intends to seek OMB approval, relating to confidential business information.

DATES: Comments must be submitted on or before February 27, 2017.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

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

Regardless of how you submit your comments, please be sure to mention the docket number of this document and cite OMB Clearance No. 2127-0025, “49 CFR part 512, Confidential Business Information.”

You may call the Docket at 202-366-9322.

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 discussion below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

FOR FURTHER INFORMATION CONTACT: For questions contact Thomas Healy in the

Office of the Chief Counsel at the National Highway Traffic Safety Administration, telephone (202) 366-7161.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB’s regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected; and

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comment on the following extension of clearance for a currently approved collection of information:

Confidential Business Information

Type of Request—Extension of clearance.

OMB Clearance Number—2127-0025
Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Three (3) years from the date of approval of the collection.

Summary of the Collection of Information—Persons who submit information to the agency and seek to have the agency withhold some or all of that information from disclosure under the Freedom of Information Act (“FOIA”), 5 U.S.C. 552, must provide the agency with sufficient support that justifies the confidential treatment of that information. In addition, a request for confidential treatment must be accompanied by: (1) A complete copy of the submission; (2) a copy of the

submission containing only those portions for which confidentiality is not sought with the confidential portions redacted; and (3) either a second complete copy of the submission or alternatively those portions of the submission that contain the information for which confidentiality is sought. Furthermore, the requestor must submit a completed certification as provided in 49 CFR part 512, Appendix A. *See generally* 49 CFR part 512 (NHTSA Confidential Business Information regulations).

Part 512 ensures that information submitted under a claim of confidentiality is properly evaluated in an efficient manner under prevailing legal standards and, where appropriate, accorded confidential treatment. To facilitate the evaluation process, in their requests for confidential treatment, submitters of information may make reference to certain limited classes of information that are presumptively treated as confidential, such as blueprints and engineering drawings, future specific model plans (under limited conditions), and future vehicle production or sales figures for specific models (under limited conditions). Further, most early warning reporting (EWR) data are confidential under class determinations provided in 49 CFR part 512, with the exception of information on death, injury, and property damage claims and notices, which would be handled on an individual basis according to the procedures of part 512 and are, therefore, covered by this notice. 72 FR 59434 (Oct. 19, 2007).

Description of the Need for the Information and Use of the Information—NHTSA receives confidential information for use in its activities, which include investigations, rulemaking actions, program planning and management, and program evaluation. The information is needed to ensure the agency has sufficient relevant information for decision-making in connection with these activities. Some of this information is submitted voluntarily, as in rulemaking, and some is submitted in response to compulsory information requests, as in investigations.

Description of the Likely Respondents, Including Estimated Number and Proposed Frequency of Response to the Collection of Information—This collection of information applies to entities that submit to the agency information that the entities wish to have withheld from disclosure under the FOIA. Thus, the collection of information applies to entities that are subject to laws administered by the agency or agency regulations and are

under an obligation to provide information to the agency. It also includes entities that voluntarily submit information to the agency. Such entities would include manufacturers of motor vehicles and of motor vehicle equipment. Importers are considered to be manufacturers. It may also include other entities that are involved with motor vehicles or motor vehicle equipment but are not manufacturers.

Estimate of the Total Annual Reporting and Recordkeeping Burdens Resulting from the Collection of Information—4000 hours.

The agency receives requests for confidential treatment that vary in size from requests that ask the agency to withhold as little as a portion of one page to multiple boxes of documents. NHTSA estimates that it will take on average approximately eight (8) hours for an entity to prepare a submission requesting confidential treatment. This estimate will vary based on the size of the submission, with smaller and voluntary submissions taking considerably less time to prepare. The agency based this estimate on the volume of requests received over the past three years.

NHTSA estimates that it will receive approximately 500 requests for confidential treatment annually. This figure is based on the average number of requests received over the past three years. We selected this period because it provides an estimate based on incoming requests for the most recent three years. The agency estimates that the total burden for this information collection will be approximately 4000 hours, which is based on the number of requests (500) multiplied by the estimated number of hours to prepare each submission (8 hours).

Since nothing in the rule requires those persons who request confidential treatment pursuant to part 512 to keep copies of any records or requests submitted to us, recordkeeping costs imposed would be zero hours and zero costs.

Authority: 44 U.S.C. 3506; delegation of authority at 49 CFR 1.95.

Issued on December 21, 2016 in Washington, DC, under authority delegated in 49 CFR part 1.95.

Paul A. Hemmersbaugh,
Chief Counsel.

[FR Doc. 2016–31333 Filed 12–27–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0116; Notice 1]

Ford Motor Company, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Ford Motor Company (Ford), has determined that certain model year (MY) 2015–2017 Ford F–150 and Ford F–Super Duty pickup trucks do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 202a, *Head Restraints*. Ford filed a noncompliance information report dated October 18, 2016. Ford also petitioned NHTSA on November 17, 2016, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

DATES: The closing date for comments on the petition is January 27, 2017.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- **Hand Delivery:** Deliver comments by hand to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- **Electronically:** Submit comments electronically by logging onto the Federal Docket Management System (FDMS) Web site at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive

confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview

Ford Motor Company (Ford), has determined that certain model year (MY) 2015–2017 Ford F–150 and Ford F–Super Duty pickup trucks do not fully comply with paragraph S4.2.2 of Federal Motor Vehicle Safety Standard (FMVSS) No. 202a, *Head Restraints*. Ford filed a noncompliance information report dated October 18, 2016, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Ford also petitioned NHTSA on November 17, 2016, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of Ford's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Vehicles Involved

Approximately 274,321 MY 2015–2017 Ford F–150 and MY 2017 Ford

F-Super Duty pickup trucks manufactured between March 12, 2014 and September 28, 2016, are potentially involved. The affected vehicles are those equipped with a 4-way adjustable driver and front passenger seat head restraint and a front row center seating position (referred to as a “40/20/40 front seat”).

III. Noncompliance

Ford explains that the noncompliance is that the driver and front passenger seat head restraints in the subject vehicles do not meet the minimum width requirements of paragraph S4.2.2 of FMVSS No. 202a. The head restraints have, on average, a width of 239 mm, which is below the 254 mm minimum width required by the standard.

IV. Rule Text

Paragraph S4.2.2 of FMVSS No. 202a states:

S4.2.2 *Width*. When measured in accordance with S5.2.2 of this section, 65 ± 3 mm below the top of the head restraint, the lateral width of a head restraint must be not less than 170 mm, except the lateral width of the head restraint for front outboard designated seating positions in a vehicle with a front center designated seating position, must be no less than 254mm . . .

V. Summary of Ford’s Petition

Ford described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Ford submitted the following reasoning:

1. *Identical bucket seat and head restraint design provides the intended level of protection:* The outboard front bucket seats (cushion, back, head restraint) are identical for trucks built with or without a front row center designated seating position (dsp). In fact, it is possible to remove the seats from a subject truck and swap them with the seats from a truck built without a front center dsp. The center area between the two outboard front bucket seats can be configured with a fold down storage console/dsp, center storage console, or nothing. The

outboard bucket seats are the same, regardless of the selected center option.

a. Review of preamble discussions (FMVSS No. 202a rulemaking) finds that the main reason for retaining the 254 mm width requirement was concern that “occupants seated on bench seats are freer than occupants of single seats to position themselves so that they are not directly in front of the head restraint, and a bench head restraint needs to be wider to assure that the head restraint will be behind the occupant in event of a crash.” (72 FR 25514)

b. Review of preamble discussions finds that the main reason for retaining the 170 mm width requirement, and not increasing to 254 mm, for “bucket seats” is “. . . front outboard non-bench seats have a defined contour that, in addition to belt use, better prescribe occupant seating position relative to the head restraint. Therefore, the front non-bench head restraints can be narrower than the front bench seat head restraints.” (69 FR 74848)

c. Conclusion: The seat utilized in the subject vehicles are not “bench seats” in the traditional sense of providing a single seating surface that spans the width of the vehicle. All of the characteristics cited by the Agency in supporting the basis for narrower head restraints for bucket seat vehicles are present in the outboard seats of the subject trucks because the outboard bucket seats are identical regardless of how the center area between the seats is configured. The ability for an occupant to position or mis-position themselves in the outboard seat is the same for trucks with or without the center dsp because the seat contours and seat belt anchorage locations are the same. The seats are identical and interchangeable but the head restraint width requirement is different. Ford is not advocating that a narrower head restraint width requirement should apply. Rather, Ford believes that the safety risk the agency sought to address by retaining a wider width requirement for seats with a front center dsp is simply not present in the subject bucket

seats because of its contoured design. Regardless how the front center area between the seats is configured, Ford believes that the subject head restraints in the outboard front bucket seats provide the intended level of protection.

2. *Seating reference point measurements demonstrate head restraints provide required width protection and intended level of safety:*

a. Ford evaluated head restraint width protection using seating reference point measurements (SgRP). In promulgating FMVSS No. 202a, the Agency proposed to “maintain the existing width requirements.” In responding to comments to harmonize the requirements with ECE 17, the agency stated that, “The 254 mm width requirement for these head restraints on bench seats has been in effect since January 1, 1969.” (69 FR 74848). Ford believes that this clearly shows that the agency intended to retain the width requirement as-is in the upgraded standard.

b. In retaining the width requirements, the measurement procedure was revised from “when measured either 64 mm below the top of the head restraint or 635 mm above the seating reference point” to “when measured 65 ± 3 mm below the top of the head restraint.”

c. Ford believes that the position of the occupant’s head is determined by their seating position, not by the head restraint. In this case, Ford believes that measuring the head restraint width from the SgRP demonstrates that the subject head restraints provide the intended level of safety. Measuring from the top of the head restraint actually varies the location of the width requirement based on the head restraint design, and is not necessarily based on the position of the occupant’s head. Below is a table providing data illustrating how the height of a head restraint affects the location at which the width requirement applies, further it shows how this is different under the original FMVSS No. 202 standard.

TABLE 1—COMPARISON OF HEAD RESTRAINT WITH MEASUREMENT LOCATION

Top of head restraint (mm)	Height at width measurement—FMVSS No. 202 (635 mm above SgRP)	Height at width measurement—FMVSS No. 202a (65 mm below top)
700 (FMVSS No. 202)	635	635
750 (FMVSS No. 202a)	635	685
800 (FMVSS No. 202a)	635	735
850	635	785

d. The height of the adjustable head restraint in the subject trucks ranges from a minimum of 802 mm up to 851 mm, exceeding the height requirements of FMVSS No. 202a by 50 mm.

e. While the agency argued that the existing requirements should not be changed because they meet the need for motor vehicle safety, in the preambles for the FMVSS No. 202a upgrade, no rationale was provided for excluding the option of measuring up from the SgRP or how this option did not meet the need for motor vehicle safety.

f. Conclusion: In the subject trucks, the outboard dsp head restraint width exceeds the requirement when the width is measured 635 mm above the SgRP. This method is based on the occupant seated height and is consistent for all seats and head restraints, and demonstrates that the subject head restraints provide occupants with the intended level of safety.

3. Exemplar measurements demonstrate that the subject head restraints provide required width protection and intended level of safety for all occupants:

a. Ford evaluated head restraint width protection for occupants using a SAEJ826 package manikin. The measured width of the head restraint at the initial point of contact between the head restraint and the head of the manikin is 257 mm. The height at this location is 636 mm above the seating reference point (SgRP).

b. Based on a survey of 15 trucks the highest point on the head restraint that meets the 254 mm width requirement ranged from 674 mm to 721 mm above the SgRP with the head restraint in the full down position. Ford provides the required width across a wide section of the head restraint. Adjusting the head restraint up (up to 50 mm of vertical adjustment is available) further increases the range at which Ford provides the required width. This range of coverage includes occupants as tall and taller than the 95th percentile American male.

c. Conclusion: The subject trucks provide the required width and intended level of safety for all occupants including, and taller than, the 95th percentile American male.

4. Vehicle performance testing demonstrates head restraints provide intended level of safety:

a. Another alternative method for evaluating seat performance is testing. The Ford F-150 meets or exceeds all other FMVSS No. 202a requirements and was rated "Good" by the Insurance Institute for Highway Safety based on dynamic whiplash testing. Based on testing, Ford believes that its head

restraints are indeed providing the intended level of safety to occupants.

Ford stated that it has made changes in production to increase the width of the head restraints.

Ford concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Ford no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Ford notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,
Director, Office of Vehicle Safety Compliance.
[FR Doc. 2016-31405 Filed 12-27-16; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Bank Secrecy Act Advisory Group; Solicitation of Application for Membership

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice and request for nominations.

SUMMARY: FinCEN is inviting nominations from the public for membership on the Bank Secrecy Act Advisory Group. New members will be selected for three-year membership terms.

DATES: Nominations must be received by January 27, 2017.

ADDRESSES: Nominations must be emailed to BSAAG@fincen.gov.

FOR FURTHER INFORMATION CONTACT: FinCEN Resource Center at 800-767-2825.

SUPPLEMENTARY INFORMATION: The Annunzio-Wylie Anti-Money Laundering Act of 1992 required the Secretary of the Treasury to establish a Bank Secrecy Act Advisory Group (BSAAG) consisting of representatives from federal regulatory and law enforcement agencies, financial institutions, and trade groups with members subject to the requirements of the Bank Secrecy Act, 31 CFR 1000-1099 *et seq.* or Section 6050I of the Internal Revenue Code of 1986. The BSAAG is the means by which the Treasury receives advice on the operations of the Bank Secrecy Act. As chair of the BSAAG, the Director of FinCEN is responsible for ensuring that relevant issues are placed before the BSAAG for review, analysis, and discussion.

FinCEN invites BSAAG membership nominations for financial institutions, trade groups, and non-federal regulatory and law enforcement agencies. New members will be selected to serve a three-year term and must designate one individual to represent that member at plenary meetings. The designated representative should be knowledgeable about Bank Secrecy Act requirements and must be able and willing to make the necessary time commitment to participate on committees throughout the year by phone and attend biannual plenary meetings held in Washington, DC, in May and October.

It is important to provide complete answers to the following items, as nominations will be evaluated on the information provided through this process. There is no formal application; interested organizations may submit their nominations via email or email attachment. Nominations should consist of:

- Name of the organization requesting membership
- Point of contact, title, address, email address and phone number
- Description of the financial institution or trade group and its involvement with the Bank Secrecy Act, 31 CFR 1000-1099 *et seq.*
- Reasons why the organization's participation on the BSAAG will bring value to the group

Organizations may nominate themselves, but nominations for individuals who are not representing an organization will not be considered. Members will not be remunerated for their time, services, or travel. In making the selections, FinCEN will seek to complement current BSAAG members

in terms of affiliation, industry, and geographic representation. The Director of FinCEN retains full discretion on all membership decisions. The Director may consider prior years' applications when making selections and does not limit consideration to institutions nominated by the public when making selections.

Jamal El-Hindi,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 2016-31323 Filed 12-27-16; 8:45 am]

BILLING CODE 4810-02-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0813]

Agency Information Collection Activity: (Knee and Lower Leg Conditions Disability Benefits Questionnaire (VA Form 21-0960M-9))

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

VA Forms 21-0960M-9 is used to gather necessary information from a claimant's treating physician regarding the results of medical examinations.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 27, 2017.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0813" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632-8924 or FAX (202) 632-8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: (Knee and Lower Leg Conditions Disability Benefits Questionnaire (VA Form 21-0960M-9)).

OMB Control Number: 2900-0813.

Type of Review: Extension of an approved collection.

Abstract: VA Forms 21-0960M-9 is used to gather necessary information from a claimant's treating physician regarding the results of medical examinations.

Affected Public: Individuals or households.

Estimated Annual Burden: 25,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 50,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016-31318 Filed 12-27-16; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0812]

Agency Information Collection Activity: (Elbow and Forearm Conditions Disability Benefits Questionnaire (VA Form 21-0960M-4))

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

VA Forms 21-0960M-4 is used to gather necessary information from a claimant's treating physician regarding the results of medical examinations.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 27, 2017.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0812" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632-8924 or FAX (202) 632-8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: (Elbow and Forearm Conditions Disability Benefits Questionnaire (VA Form 21–0960M–4)).

OMB Control Number: 2900–0812.

Type of Review: Extension of an approved collection.

Abstract: VA Forms 21–0960M–4 is used to gather necessary information from a claimant's treating physician regarding the results of medical examinations.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 20,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–31317 Filed 12–27–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0811]

Agency Information Collection

Activity: (Hip and Thigh Conditions Disability Benefits Questionnaire (VA Form 21–0960M–8))

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an

opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

VA Forms 21–0960M–8 is used to gather necessary information from a claimant's treating physician regarding the results of medical examinations.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 27, 2017.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900–0811" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: (Hip and Thigh Conditions Disability Benefits Questionnaire (VA Form 21–0960M–8)).

OMB Control Number: 2900–0811.

Type of Review: Extension of an approved collection.

Abstract: VA Forms 21–0960M–8 is used to gather necessary information from a claimant's treating physician regarding the results of medical examinations.

Affected Public: Individuals or households.

Estimated Annual Burden: 25,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 50,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–31316 Filed 12–27–16; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

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Part II

Department of the Interior

Bureau of Land Management

Notice of Proposed Withdrawal; California Desert Conservation Area and
Notice of Intent To Prepare an Environmental Impact Statement; California;
Notice

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[LLCA932000.17X.L13400000.DP0000.
LXSSB0020000 CACA057064]

**Notice of Proposed Withdrawal;
California Desert Conservation Area
and Notice of Intent To Prepare an
Environmental Impact Statement;
California**

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Assistant Secretary of the Interior for Land and Minerals Management proposes to withdraw 1,337,904 acres of public lands located within designated California Desert National Conservation Lands from mining to protect nationally significant landscapes with outstanding cultural, biological, and scientific values. This notice temporarily segregates the lands from location and entry under the United States mining laws for up to two years and provides the public with an opportunity to comment on the proposed withdrawal. In addition, this notice initiates the public scoping process for an Environmental Impact Statement (EIS), which will analyze and disclose impacts of the proposed withdrawal.

DATES: Comments on the proposed withdrawal application and scoping comments on issues to be analyzed in the EIS must be received by March 28, 2017. Please clearly indicate whether comments are in regard to the withdrawal application or scoping comments on the EIS. The date(s) and location(s) of meetings related to the proposed withdrawal and scoping meetings for the EIS will be announced at least 30 days in advance of the meeting through local media, newspapers, the **Federal Register**, and the BLM Web site at: <http://www.blm.gov/california/DRECP>. In order to be included in the EIS, all comments must be received prior to the close of the 90-day scoping period. Additional opportunities for public participation will be available following publication of the draft EIS.

ADDRESSES: Written comments should be sent to the BLM-California State Director, 2800 Cottage Way, Rm W-1623, Sacramento, CA 95825 or electronically to drecp_cdncl_withdrawal@blm.gov.

FOR FURTHER INFORMATION CONTACT: Vicki Campbell, DRECP Program Manager, 916-978-4320; Bureau of Land Management, 2800 Cottage Way,

Rm W-1623, Sacramento, CA 95825; email vlcampbell@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to reach the BLM contact person. The Service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) petitioned the Assistant Secretary of the Interior for Land and Minerals Management to withdraw 1,337,904 million acres of California Desert National Conservation Lands from location and entry under the United States mining laws for a period of 20 years, subject to valid existing rights. All of the lands (unless otherwise subject to an existing withdrawal) will remain open to the public land laws, leasing under the mineral and geothermal leasing laws, and disposal under the mineral material sales laws. The lands are located in the California Desert Conservation Area. Copies of the maps entitled "DRECP-California Desert National Conservation Lands Proposed Withdrawal" depicting the lands proposed for withdrawal are posted on the BLM Web site at <http://www.blm.gov/california/DRECP.html> and are also available from the following BLM offices:

- BLM California State Office, 2800 Cottage Way, Suite W-1623, Sacramento, CA 95825;
- BLM California Desert District Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553;
- BLM Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311;
- BLM El Centro Field Office, 1661 S. 4th Street, El Centro, CA 92243;
- BLM Needles Field Office, 1303 S. Highway 95, Needles, CA 92363;
- BLM Palm Springs South Coast Field Office, 1201 Bird Center Drive, Palm Springs, CA 92262; and
- BLM Ridgecrest Field Office, 300 S. Richmond Road, Ridgecrest, CA 93555.

The proposed withdrawal is divided into four areas and includes all of the public lands identified below:

Amargosa Area

San Bernardino Meridian

- T. 15.5 N., R. 16 E.,
Sec. 19, that portion lying northwesterly of California State Highway 164.
- T. 16 N., R. 16 E.,
Secs. 6 thru 8;
Secs. 16 thru 22;
Sec. 26, that portion lying northwesterly of California State Highway 164;
Secs. 27 thru 30;

- Sec. 31, that portion lying northwesterly of California State Highway 164.
- Sec. 32, N $\frac{1}{2}$ and those portions of the W $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ lying northwesterly of California State Highway 164;
- Sec. 33, NW $\frac{1}{4}$ NW $\frac{1}{4}$ and those portions of the NE $\frac{1}{4}$ and W $\frac{1}{2}$ NW $\frac{1}{4}$ lying northwesterly of California State Highway 164;
- Secs. 34 thru 35, those portions lying northwesterly of California State Highway 164.
- T. 15.5 N., R. 15 E.,
Sec. 19, that portion lying northeasterly of California State Highway 164;
- Sec. 21, lots 1 thru 3 and that portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ lying northerly of California State Highway 164;
- Secs. 22 thru 24, those portions lying northerly of California State Highway 164.
- T. 16 N., R. 15 E.,
Secs. 1 thru 3;
Sec. 4, that portion lying easterly of Ivanpah Special Recreation Management Area (SRMA 2);
- Sec. 7, that portion lying southeasterly of Ivanpah Valley Extensive Recreation Management Area (ERMA 26) and southwesterly of Ivanpah SRMA 2;
- Secs. 9 thru 10, those portions lying easterly of Ivanpah SRMA 2;
- Secs. 11 thru 15;
- Sec. 17, that portion lying southerly of Ivanpah SRMA 2;
- Sec. 18, that portion lying southeasterly of Ivanpah Valley ERMA 26 and southwesterly of Ivanpah SRMA 2;
- Secs. 19 thru 30;
- Sec. 31, that portion lying northeasterly of California State Highway 164;
- Sec. 32;
- Sec. 33, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, and W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$;
- Secs. 34 and 35;
- Sec. 36, S $\frac{1}{2}$ SE $\frac{1}{4}$.
- T. 17 N., R. 15 E.,
Sec. 21, that portion lying easterly of Ivanpah Valley ERMA 26;
- Sec. 22;
- Secs. 26 thru 28;
- Sec. 29, that portion lying easterly of Ivanpah SRMA 2;
- Secs. 32 and 33, those portions lying northeasterly of Ivanpah SRMA 2;
- Secs. 34 thru 36.
- T. 15.5 N., R. 14 E.,
Sec. 29, that portion of the S $\frac{1}{2}$ lying westerly of Ivanpah Valley ERMA 26;
- Sec. 30, that portion of the S $\frac{1}{2}$ lying northwesterly of Ivanpah Valley ERMA 26;
- Sec. 31, that portion lying westerly of Ivanpah Valley ERMA 26;
- T. 16 N., R. 14 E.,
Sec. 24, that portion lying easterly of Ivanpah ACEC 105;
- Sec. 25;
- Sec. 26, that portion lying easterly of U.S. Interstate Highway 15;
- Sec. 35, that portion lying easterly of U.S. Interstate Highway 15 and northerly of California State Highway 164.

- T. 17 N., R. 14 E.,
 Sec. 1, that portion lying northwesterly of Ivanpah Area of Critical Environmental Concern (ACEC) 105;
 Sec. 2, that portion lying northeasterly of BLM Stataline Wilderness Area.
- T. 18 N., R. 14 E.,
 Sec. 21, that portion lying northeasterly of BLM Stataline Wilderness Area and southeasterly of Mesquite Valley ERMA 30;
 Sec. 22;
 Secs. 26 and 27;
 Sec. 28, that portion lying easterly of BLM Stataline Wilderness Area;
 Secs. 33 thru 35, those portions lying northeasterly of BLM Stataline Wilderness Area;
 Sec. 36.
- T. 16 N., R. 13 E.,
 Sec. 7, those portions lying southerly of Mojave National Preserve and excluding Mineral Survey No. 5372AB, approved November 2, 1918;
 Sec. 17, SW $\frac{1}{4}$ NW $\frac{1}{4}$, lots 1 thru 7, those portions of the SE $\frac{1}{4}$ and SW $\frac{1}{4}$ lying northwesterly of U.S. Interstate Highway 15;
 Sec. 18, that portion lying northwesterly of U.S. Interstate Highway 15 and excluding Mineral Survey No. 5372AB, approved November 2, 1918;
 Sec. 19, that portion lying northwesterly of U.S. Interstate Highway 15;
 Sec. 25, SE $\frac{1}{4}$.
- T. 16 N., R. 12.5 E.,
 Sec. 12, that portion lying southeasterly of Mojave National Preserve;
 Sec. 13;
 Sec. 24, that portion lying northwesterly of U.S. Interstate Highway 15.
- T. 15 N., R. 12 E.,
 Sec. 6, that portion lying northwesterly of U.S. Interstate Highway 15.
- T. 16 N., R. 12 E.,
 Sec. 4, that portion lying westerly of Mojave National Preserve;
 Secs. 5 thru 8;
 Sec. 9, that portion lying westerly of Mojave National Preserve;
 Sec. 11 and 12, those portions lying southeasterly of Mojave National Preserve;
 Sec. 13;
 Secs. 14 and 15, those portions lying southeasterly of Mojave National Preserve;
 Secs. 17 thru 21;
 Sec. 22, those portions excluding Mineral Survey No. 5372AB, approved November 2, 1918;
 Sec. 23;
 Secs. 24 thru 26, those portions lying northwesterly of U.S. Interstate Highway 15;
 Sec. 27, NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, and those portions of NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ lying northerly of U.S. Interstate Highway 15;
 Sec. 28, S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, and W $\frac{1}{2}$;
 Secs. 29 and 30;
 Secs. 31 and 32, those portions lying northwesterly of U.S. Interstate Highway 15.
- T. 17 N., R. 12 E.,
 Sec. 5, that portion lying westerly of BLM Mesquite Wilderness Area;
- Sec. 6, that portion lying easterly of BLM Kingston Range Wilderness Area;
 Sec. 8, those portions lying easterly of BLM Kingston Range Wilderness Area and westerly and southeasterly of BLM Mesquite Wilderness Area;
 Secs. 9 and 10, those portions lying southeasterly of BLM Mesquite Wilderness Area;
 Sec. 14, that portion lying northwesterly of Mojave National Preserve;
 Sec. 15, those portions lying northwesterly of Mojave National Preserve;
 Sec. 17, those portions lying northeasterly and southeasterly of BLM Kingston Range Wilderness Area;
 Secs. 18 and 19, those portions lying southeasterly of BLM Kingston Range Wilderness Area;
 Sec. 20;
 Sec. 21, those portions lying northwesterly and westerly of Mojave National Preserve;
 Sec. 28, that portion lying westerly of Mojave National Preserve;
 Secs. 29 thru 32;
 Sec. 33, that portion lying westerly of Mojave National Preserve.
- T. 18 N., R. 12 E.,
 Sec. 31, that portion lying easterly of Kingston Range Wilderness and westerly of Mesquite Wilderness;
 Sec. 32, that portion lying westerly of Mesquite Wilderness.
- T. 19 N., R. 12 E.,
 Secs. 7 and 8, those portions lying southerly of BLM Pahrump Valley Wilderness Area;
 Sec. 17, that portion lying northeasterly of BLM Mesquite Wilderness Area;
 Sec. 18, that portion lying northerly of BLM Mesquite Wilderness Area.
- T. 15 N., R. 11 E.,
 Secs. 1 and 2, those portions lying northwesterly of U.S. Interstate Highway 15;
 Sec. 3;
 Sec. 4, those portions lying southeasterly Mineral Survey No. 3991AB, approved July 15, 1902;
 Sec. 5, those portions lying southwestly Mineral Survey No. 3991AB, approved July 15, 1902;
 Secs. 6 and 7;
 Sec. 8, that portion lying northwesterly of U.S. Interstate Highway 15;
 Sec. 9, N $\frac{1}{2}$ and those portions of W $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ lying northwesterly of U.S. Interstate Highway 15;
 Sec. 10, those portions of W $\frac{1}{2}$ NE $\frac{1}{4}$ and W $\frac{1}{2}$ lying northwesterly of U.S. Interstate Highway 15;
 Sec. 11 those portions lying northwesterly of U.S. Interstate Highway 15;
 Secs. 17 and 18, those portions lying northwesterly of U.S. Interstate Highway 15.
- T. 16 N., R. 11 E.,
 Secs. 1 thru 6;
 Sec. 7, those portions lying northerly, easterly, and westerly of Mineral Survey No. 3991AB, approved July 15, 1902;
 Secs. 8 thru 15;
 Sec. 17;
 Sec. 18, those portions lying southeasterly and southwestly of Mineral Survey No. 3991AB, approved July 15, 1902;
- Secs. 19 thru 31;
 Sec. 32, those portions lying northerly, westerly, and southerly of Mineral Survey No. 3991AB, approved July 15, 1902;
 Sec. 33, those portions excluding Mineral Survey No. 3991AB, approved July 15, 1902;
 Secs. 34 and 35.
- T. 17 N., R. 11 E.,
 Sec. 9, S $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 10, that portion lying southerly of BLM Kingston Range Wilderness Area;
 Sec. 15, that portion lying northwesterly of BLM Kingston Range Wilderness Area;
 Sec. 20, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 21;
 Sec. 22, that portion lying southwestly of BLM Kingston Range Wilderness Area;
 Sec. 23, those portions lying southeasterly and southwestly of Kingston Range Wilderness Area;
 Sec. 24, that portion lying southeasterly of BLM Kingston Range Wilderness Area;
 Secs. 25 and 26;
 Sec. 27, those portions lying northerly, southerly, and easterly of BLM Kingston Range Wilderness Area;
 Sec. 28, those portions lying northeasterly and southeasterly of BLM Kingston Range Wilderness Area;
 Secs. 29 thru 31, those portions lying southeasterly of BLM Kingston Range Wilderness Area;
 Secs. 32 thru 35.
- T. 19 N., R. 11 E.,
 Secs. 1 thru 3, those portions lying northwesterly of BLM Mesquite Wilderness Area;
 Sec. 4, that portion lying northeasterly of BLM Mesquite Wilderness Area;
 Sec. 5, that portion lying northerly of BLM Mesquite Wilderness Area;
 Sec. 6, those portions lying southerly and easterly of BLM Pahrump Valley Wilderness Area and northerly and westerly of BLM Mesquite Wilderness Area;
 Sec. 7;
 Secs. 8 and 9, those portions lying southwestly of BLM Mesquite Wilderness Area;
 Sec. 17, that portion lying easterly of BLM Kingston Range Wilderness Area;
 Sec. 20, that portion lying easterly of BLM Kingston Range Wilderness Area;
 Sec. 21, that portion lying westerly of BLM Mesquite Wilderness Area;
 Sec. 27, that portion lying southwestly of BLM Mesquite Wilderness Area;
 Sec. 28, that portion lying northeasterly of BLM Kingston Range Wilderness and southwestly of BLM Mesquite Wilderness Area;
 Sec. 29, that portion lying northeasterly of BLM Kingston Range Wilderness Area;
 Sec. 33, that portion lying northeasterly of BLM Kingston Range Wilderness Area;
 Sec. 34, that portion lying northeasterly of BLM Kingston Range Wilderness Area and southwestly of BLM Mesquite Wilderness Area.
- T. 20 N., R. 11 E.,
 Sec. 29, that portion lying southerly of BLM Pahrump Valley Wilderness Area;
 Sec. 30, that portion lying southeasterly of BLM Pahrump Valley Wilderness Area;

- Sec. 31, that portion lying easterly of BLM Pahrump Valley Wilderness Area;
- Sec. 32, that portion lying southerly and northeasterly of BLM Pahrump Valley Wilderness Area;
- Secs. 33 thru 35, those portions lying southerly of BLM Pahrump Valley Wilderness Area.
- T. 15 N., R. 10 E.,
- Secs. 1 thru 6;
- Sec. 7, that portion lying northeasterly of BLM Hollow Hills Wilderness Area;
- Secs. 8 thru 12;
- Sec. 13, that portion lying northwesterly of U.S. Interstate Highway 15;
- Sec. 14;
- Sec. 15, those portions excluding Mineral Survey No. 3993AB, approved July 22, 1902;
- Sec. 17;
- Secs. 18 and 19, those portions lying easterly of BLM Hollow Hills Wilderness Area;
- Sec. 20;
- Secs. 21 and 22, those portions lying northwesterly of U.S. Interstate Highway 15;
- Sec. 23, N $\frac{1}{2}$ NW $\frac{1}{4}$, and that portion of the NE $\frac{1}{4}$ lying northwesterly of U.S. Interstate Highway 15;
- Sec. 24, that portion lying northwesterly of U.S. Interstate Highway 15;
- Sec. 28, that portion lying northwesterly of U.S. Interstate Highway 15;
- Sec. 29, N $\frac{1}{2}$, SW $\frac{1}{4}$, and those portions of N $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ lying northwesterly of U.S. Interstate Highway 15;
- Sec. 30, that portion lying easterly and southerly of BLM Hollow Hills Wilderness Area;
- Secs. 31 and 32, those portions lying northwesterly of U.S. Interstate Highway 15.
- T. 16 N., R. 10 E.,
- Secs. 1 and 2;
- Secs. 3 and 4, those portions lying southerly and easterly of BLM Kingston Range Wilderness Area;
- Sec. 7, those portions lying southeasterly and northwesterly of BLM Kingston Range Wilderness Area;
- Secs. 8 and 9, those portions lying southeasterly of BLM Kingston Range Wilderness Area;
- Secs. 10 thru 15;
- Sec. 17;
- Sec. 18, that portion lying southeasterly of BLM Kingston Range Wilderness Area;
- Secs. 19 thru 30;
- Sec. 31, those portions excluding Mineral Survey No. 3899 AB, approved October 19, 1901, and Mineral Survey No. 3992, approved July 17, 1902;
- Sec. 32, those portions excluding Mineral Survey No. 3983, approved October 6, 1902, and Mineral Survey No. 3999, approved August 27, 1902;
- Sec. 33, those portions excluding Mineral Survey No. 3999, approved August 27, 1902;
- Secs. 34 and 35;
- T. 17 N., R. 10 E.,
- Sec. 35, that portion lying southeasterly of BLM Kingston Range Wilderness Area.
- T. 19 N., R. 10 E.,
- Sec. 1, that portion lying southwesterly of BLM Pahrump Valley Wilderness Area;
- Secs. 2 thru 4;
- Sec. 5, that portion lying northeasterly of BLM Kingston Range Wilderness Area;
- Sec. 11, that portion lying northeasterly of BLM Kingston Range Wilderness Area;
- Sec. 12.
- T. 20 N., R. 10 E.,
- Sec. 5, that portion lying southwesterly of BLM Pahrump Valley Wilderness Area;
- Sec. 6, that portion lying southerly of BLM Pahrump Valley Wilderness Area;
- Sec. 7;
- Sec. 8, that portion lying southwesterly of BLM Pahrump Valley Wilderness Area;
- Sec. 9, that portion lying southerly and westerly of BLM Pahrump Valley Wilderness Area;
- Secs. 17 thru 20;
- Sec. 21, that portion lying westerly of BLM Pahrump Valley Wilderness Area;
- Secs. 27 and 28, that portion lying northerly, southerly, and westerly of BLM Pahrump Valley Wilderness Area;
- Sec. 29;
- Sec. 30, those portions excluding Mineral Survey No. 4723A, approved October 15, 1908, Mineral Survey No. 6173, approved April 2, 1936, Mineral Survey No. 6174, approved March 31, 1936, and Mineral Survey No. 6236, approved October 29, 1938;
- Sec. 31, that portion lying northerly, easterly, and westerly of BLM Kingston Range Wilderness Area, excluding Mineral Survey No. 4723A, approved October 15, 1908, Mineral Survey No. 6173, approved April 2, 1936, Mineral Survey No. 6174, approved March 31, 1936, and Mineral Survey No. 6237, approved October 29, 1938;
- Sec. 32, that portion lying northeasterly of BLM Kingston Range Wilderness Area, excluding Mineral Survey No. 4723, approved October 15, 1908, Mineral Survey No. 6173, approved April 2, 1936, Mineral Survey No. 6174, approved March 31, 1936, and Mineral Survey No. 6237, approved October 29, 1938;
- Sec. 33;
- Sec. 34, that portion lying southerly, easterly, and westerly of BLM Pahrump Valley Wilderness Area;
- Sec. 35, that portion lying southerly of BLM Pahrump Valley Wilderness Area.
- T. 21 N., R. 10 E.,
- Sec. 7, that portion lying northwesterly of BLM Pahrump Valley Wilderness Area and southwesterly of an undefined boundary.
- T. 14 N., R. 9 E.,
- Sec. 1, that portion lying northwesterly of U.S. Interstate Highway 15;
- Sec. 2;
- Secs. 3 thru 5, those portions lying southeasterly of BLM Hollow Hills Wilderness Area;
- Secs. 7 thru 9;
- Secs. 10 and 11, those portions lying northwesterly of U.S. Interstate Highway 15;
- Sec. 15, that portion lying northwesterly of U.S. Interstate Highway 15;
- Secs. 17 thru 19;
- Sec. 20, NW $\frac{1}{4}$ and those portions of the E $\frac{1}{2}$ lying northwesterly of U.S. Interstate Highway 15;
- Sec. 21, that portion lying northwesterly of U.S. Interstate Highway 15;
- Sec. 30, E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.
- T. 15 N., R. 9 E.,
- Sec. 1, that portion lying northeasterly of BLM Hollow Hills Wilderness Area;
- Secs. 2 and 3, those portions lying northerly of BLM Hollow Hills Wilderness Area;
- Sec. 4, that portion lying northerly and northwesterly of BLM Hollow Hills Wilderness Area;
- Sec. 5, that portion lying northwesterly of BLM Hollow Hills Wilderness Area;
- Sec. 6;
- Secs. 7 and 8, those portions lying northwesterly of BLM Hollow Hills Wilderness Area;
- Sec. 12, that portion lying northeasterly of BLM Hollow Hills Wilderness Area;
- Sec. 25, that portion lying southeasterly of BLM Hollow Hills Wilderness Area;
- Secs. 34 and 35, those portions lying southeasterly of BLM Hollow Hills Wilderness Area.
- T. 16 N., R. 9 E.,
- Sec. 1, that portion lying easterly of BLM Kingston Range Wilderness Area;
- Secs. 2 thru 8;
- Sec. 9, that portion excluding Mineral Survey No. 5816, approved January 16, 1926, and Mineral Survey No. 5817, approved May 29, 1926;
- Sec. 10, that portion excluding Mineral Survey No. 5817, approved May 29, 1926;
- Sec. 11;
- Sec. 12, that portion lying southwesterly and northwesterly of BLM Kingston Range Wilderness Area;
- Sec. 13, that portion lying southerly and westerly of BLM Kingston Range Wilderness Area;
- Secs. 14 and 15;
- Secs. 17 thru 20;
- Sec. 21, those portions excluding Mineral Survey No. 5235, approved May 19, 1916, Mineral Survey No. 5969, approved July 14, 1928, and Mineral Survey No. 6188, approved January 23, 1937;
- Sec. 22, those portions excluding Mineral Survey No. 5235, approved May 19, 1916, the Tremolite Nos. 2 and 3, and Tremolite "C" portions of Mineral Survey No. 6188, approved January 23, 1937, and Mineral Survey No. 6204, approved July 28, 1937;
- Secs. 23 thru 26;
- Sec. 27, those portions excluding the Tremolite Nos. 3 and 4, and Tremolite "C" portions of Mineral Survey No. 6188, approved January 23, 1937, and Mineral Survey No. 6196, approved March 16, 1937;
- Sec. 28, those portions excluding Mineral Survey No. 5235, approved May 19, 1916, and Mineral Survey No. 6188, approved January 23, 1937;
- Secs. 29 thru 35.
- T. 17 N., R. 9 E.,

- Sec. 20, that portion lying southerly and westerly of BLM Kingston Range Wilderness Area;
- Secs. 21 and 22, those portions lying southerly of BLM Kingston Range Wilderness Area;
- Sec. 23, that portion lying southwesterly of BLM Kingston Range Wilderness Area;
- Secs. 25 and 26, those portions lying southerly and westerly of BLM Kingston Range Wilderness Area;
- Secs. 27 and 28;
- Sec. 29, that portion lying southeasterly of BLM Kingston Range Wilderness Area;
- Sec. 30, that portion lying southwesterly of BLM Kingston Range Wilderness Area;
- Secs. 31 thru 35.
- T. 19 N., R. 9 E.,
- Secs. 5 and 6;
- Secs. 7 and 8, that portion lying northerly of BLM Kingston Range Wilderness area;
- Sec. 9, that portion lying northeasterly and southwesterly of BLM Kingston Range Wilderness Area.
- T. 20 N., R. 9 E.,
- Secs. 1 thru 3, those portions lying southerly of BLM Pahrump Valley Wilderness Area;
- Secs. 4 and 5;
- Secs. 6 and 7, those portions lying easterly of BLM South Nopah Range Wilderness Area;
- Secs. 8 and 9;
- Sec. 10, that portion lying southerly, easterly and westerly of BLM Pahrump Valley Wilderness Area;
- Secs. 11 thru 15;
- Sec. 17;
- Secs. 18 and 19, those portions lying easterly and southerly of BLM South Nopah Range Wilderness Area;
- Secs. 20 thru 24;
- Sec. 25, that portion excluding Mineral Survey No. 6174, approved March 31, 1936;
- Sec. 26, those portions excluding Mineral Survey No. 6171, approved March 31, 1936, and Mineral Survey No. 6172, approved March 31, 1936;
- Secs. 27 thru 32;
- Sec. 33, those portions excluding Mineral Survey No. 6280, approved January 26, 1942;
- Sec. 34, those portions lying northerly of BLM Kingston Range Wilderness Area and excluding Mineral Survey No. 6280, approved January 26, 1942, and Mineral Survey No. 6497, approved August 8, 1951;
- Sec. 35, those portions lying northerly of BLM Kingston Range Wilderness area, and excluding Mineral Survey No. 6172, approved March 31, 1936.
- T. 20.5 N., R. 9 E.,
- Sec. 31, that portion lying easterly of BLM South Nopah Range Wilderness Area;
- Secs. 32 and 33.
- T. 21 N., R. 9 E.,
- Secs. 1 and 2, those portions lying southwesterly of an undefined boundary;
- Sec. 3, that portion lying easterly of BLM Nopah Range Wilderness Area;
- Secs. 9 and 10, that portion lying southeasterly of BLM Nopah Range Wilderness Area;
- Sec. 11;
- Sec. 12, that portion lying southwesterly of an undefined boundary;
- Sec. 13, that portion lying northwesterly of BLM Pahrump Valley Wilderness Area;
- Secs. 14 and 15;
- Sec. 16, that portion lying southeasterly of BLM Nopah Range Wilderness Area;
- Sec. 21, that portion lying southeasterly of BLM Nopah Range Wilderness Area;
- Secs. 22 and 23;
- Secs. 24 thru 26, that portion lying northwesterly of BLM Pahrump Valley Wilderness Area;
- Sec. 27;
- Sec. 28, that portion lying easterly of Nopah Range BLM Wilderness Area;
- Sec. 32, that portion lying easterly of Nopah Range BLM Wilderness Area;
- Sec. 33;
- Secs. 34 and 35, those portions lying westerly and northwesterly of BLM Pahrump Valley Wilderness Area.
- T. 21.5 N., R. 9 E.,
- Sec. 34, that portion lying easterly of BLM Nopah Range Wilderness Area and southwesterly of an undefined boundary;
- Sec. 35, that portion lying southwesterly of an undefined boundary.
- T. 13 N., R. 8 E.,
- Sec. 2, that portion lying westerly of U.S. Interstate Highway 15;
- Sec. 3, that portion lying easterly of Soda Mountains Expansion ACEC 16;
- Sec. 10, that portion lying easterly of Soda Mountains Expansion ACEC 16;
- Sec. 11, that portion lying westerly of U.S. Interstate Highway 15;
- Sec. 14, that portion lying northwesterly of U.S. Interstate Highway 15;
- Sec. 15, that portion lying easterly of Soda Mountains Expansion ACEC 16.
- T. 14 N., R. 8 E.,
- Sec. 1, that portion lying easterly of California State Highway 127;
- Sec. 12, that portion lying easterly of California State Highway 127;
- Sec. 13, E $\frac{1}{2}$ and SW $\frac{1}{4}$;
- Sec. 14, that portion of S $\frac{1}{2}$ lying easterly of Soda Mountains Expansion Wilderness Study Area, Area of Critical Environmental Concern WSA ACEC 132;
- Secs. 22 and 23, those portions lying northeasterly of Soda Mountains Expansion ACEC 16;
- Sec. 24;
- Sec. 25, W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, and W $\frac{1}{2}$;
- Sec. 26, NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, and that portion of W $\frac{1}{2}$ easterly of Soda Mountains Expansion ACEC 16;
- Sec. 35, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, and that portion of W $\frac{1}{2}$ easterly of Soda Mountains Expansion ACEC 16.
- T. 15 N., R. 8 E.,
- Secs. 1 thru 3;
- Sec. 4, those portions lying northeasterly of California State Highway 127 and southwesterly of an unidentified boundary;
- Sec. 5, that portion lying southwesterly of an undefined boundary;
- Sec. 8, that portion lying northwesterly of an undefined boundary;
- Sec. 9, those portions lying northeasterly of California State Highway 127 and westerly of an undefined boundary;
- Secs. 10 and 11;
- Secs. 12 thru 14, those portions lying northwesterly of BLM Hollow Hills Wilderness Area;
- Sec. 15, that portion lying easterly of California State Highway 127;
- Sec. 17, that portion lying northwesterly of an undefined boundary;
- Sec. 22, N $\frac{1}{2}$ NE $\frac{1}{4}$, and those portions of SE $\frac{1}{4}$ SE $\frac{1}{4}$ and NW $\frac{1}{4}$ lying northeasterly of California State Highway 127;
- Sec. 23, that portion lying northwesterly of BLM Hollow Hills Wilderness Area.
- T. 16 N., R. 8 E.,
- Sec. 1, those portions excluding Mineral Survey No. 5020, approved March 7, 1913, and Mineral Survey No. 5021, approved February 26, 1913;
- Sec. 2, those portions excluding Mineral Survey No. 5020, approved March 7, 1913, and Mineral Survey No. 5021, approved February 27, 1913;
- Secs. 3 thru 5;
- Secs. 6 and 7, those portions lying easterly of California State Highway 127 and westerly of an undefined boundary;
- Secs. 8 thru 15;
- Sec. 17;
- Secs. 18 and 19, those portions lying easterly of California State Highway 127 and westerly of an undefined boundary;
- Secs. 20 thru 28;
- Secs. 29 and 30, those portions lying easterly of California State Highway 127 and westerly of an undefined boundary;
- Sec. 31;
- Sec. 32, those portions lying easterly of California State Highway 127 and westerly of an undefined boundary;
- Secs. 33 thru 35.
- T. 17 N., R. 8 E.,
- Sec. 19, that portion lying southwesterly of BLM Kingston Range Wilderness area;
- Sec. 23, that portion lying southeasterly of BLM Kingston Range Wilderness Area;
- Sec. 24, that portion lying southerly and easterly of BLM Kingston Range Wilderness Area;
- Sec. 25;
- Sec. 26, that portion lying southeasterly of BLM Kingston Range Wilderness Area;
- Secs. 27 thru 29, those portions lying southerly of BLM Kingston Range Wilderness Area;
- Sec. 30, that portion lying southerly and westerly of BLM Kingston Range Wilderness Area;
- Sec. 31, that portion lying northeasterly of California State Highway 127;
- Secs. 32 thru 35.
- T. 18 N., R. 8 E.,
- Sec. 6, that portion lying southwesterly of BLM Kingston Range Wilderness Area and southeasterly of Dumont Dunes SRMA 32;
- Sec. 7;
- Sec. 8, that portion lying southwesterly of BLM Kingston Range Wilderness Area;
- Sec. 17, that portion lying southwesterly of BLM Kingston Range Wilderness Area;
- Secs. 18 and 19;
- Sec. 20, that portion lying southwesterly of BLM Kingston Range Wilderness Area;
- Sec. 28, that portion lying northerly and westerly of BLM Kingston Range Wilderness Area;

- Secs. 29 thru 31, those portions lying northwesterly of BLM Kingston Range Wilderness Area.
- T. 19 N., R. 8 E.,
- Sec. 1, that portion lying northeasterly of BLM Kingston Range Wilderness Area;
- Sec. 2, that portion lying westerly of BLM Kingston Range Wilderness Area;
- Sec. 3, those portions lying northeasterly of BLM Kingston Range Wilderness Area, and excluding Mineral Survey No. 857, approved October 20, 1877, Mineral Survey No. 859, approved October 20, 1877, and Mineral Survey No. 4611, approved September 4, 1907;
- Sec. 4, those portions excluding Mineral Survey No. 5730, approved April 12, 1924;
- Sec. 5, that portion lying northerly, easterly and westerly of BLM Kingston Range Wilderness Area;
- Sec. 10, those portions lying northerly, easterly, and westerly of BLM Kingston Range Wilderness Area, and excluding Mineral Survey No. 857, approved October 20, 1877, and Mineral Survey No. 859, approved October 20, 1877;
- Sec. 11, that portion lying northwesterly of BLM Kingston Range Wilderness Area;
- Sec. 31, that portion lying southwestwesterly of BLM Kingston Range Wilderness Area and northeasterly of Dumont Dunes SRMA 32.
- T. 19.5 N., R. 8 E.,
- Sec. 31, that portion lying northerly and westerly of BLM Kingston Range Wilderness Area;
- Sec. 32, that portion lying northerly and easterly of BLM Kingston Range Wilderness Area;
- Sec. 33, those portions excluding Mineral Survey No. 5730, approved April 12, 1924;
- Sec. 34, those portions excluding Mineral Survey No. 4608, approved September 4, 1907;
- Sec. 35, those portions excluding Mineral Survey No. 4608, approved September 4, 1907.
- T. 20 N., R. 8 E.,
- Sec. 6, that portion lying northwesterly of BLM South Nopah Range Wilderness Area;
- Secs. 7 and 8, those portions lying southerly of BLM South Nopah Range Wilderness Area;
- Sec. 9, those portions lying southerly and westerly of BLM South Nopah Range Wilderness Area and excluding Mineral Survey No. 829, approved September 25, 1877, Mineral Survey No. 4610, approved September 4, 1907, and Mineral Survey No. 4795, Approved January 12, 1910;
- Sec. 10, those portions lying southerly and westerly of BLM South Nopah Range Wilderness Area and excluding Mineral Survey No. 4610, approved September 4, 1907;
- Sec. 15, those portions lying southerly, easterly, and westerly of BLM South Nopah Range Wilderness and excluding Mineral Survey No. 4610, approved September 4, 1907, and Mineral Survey No. 6493, approved April 13, 1959;
- Sec. 17, that portion lying westerly of BLM South Nopah Range Wilderness Area;
- Secs. 18 and 19;
- Sec. 20, that portion lying northerly, southerly, and westerly of BLM South Nopah Range Wilderness Area;
- Sec. 21, that portion lying southerly, easterly, and westerly of BLM South Nopah Range Wilderness Area;
- Sec. 22, those portions lying southeasterly of BLM South Nopah Range Wilderness Area and excluding Mineral Survey No. 4607, approved September 4, 1907, Mineral Survey No. 6493, approved April 13, 1959, and Mineral Survey No. 6494, approved January 27, 1960;
- Sec. 23, those portions lying easterly of BLM South Nopah Range Wilderness Area and excluding Mineral Survey No. 4607, approved September 4, 1907, Mineral Survey No. 4609, approved September 4, 1907, and Mineral Survey No. 6493, approved April 13, 1959;
- Sec. 25, that portion lying southeasterly of South BLM Nopah Range Wilderness Area;
- Sec. 26, N $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$, and those portions of E $\frac{1}{2}$ lying southerly and easterly of BLM South Nopah Range Wilderness Area;
- Sec. 27, N $\frac{1}{2}$ SE $\frac{1}{4}$ and those portions of NE $\frac{1}{4}$ and W $\frac{1}{2}$ excluding Mineral Survey No. 6485, approved February 12, 1951;
- Secs. 28 thru 31;
- Secs. 32 and 33, those portions excluding Mineral Survey No. 5730, approved April 12, 1924;
- Secs. 34 and 35.
- T. 21 N., R. 8 E.,
- Sec. 30, S $\frac{1}{2}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$;
- Sec. 31, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$;
- Sec. 32, that portion of S $\frac{1}{2}$ SW $\frac{1}{4}$ lying northwesterly of BLM South Nopah Range Wilderness Area.
- T. 22 N., R. 8 E.,
- Sec. 6, that portion lying southwestwesterly of BLM Nopah Range Wilderness Area;
- Sec. 7, that portion lying westerly of BLM Nopah Range Wilderness Area;
- Secs. 18 and 19, those portions lying westerly of BLM Nopah Range Wilderness Area;
- Sec. 30, that portion lying westerly and northeasterly of BLM Nopah Range Wilderness Area.
- T. 16 N., R. 7 E.,
- Sec. 1;
- Sec. 2, that portion lying easterly of Avawatz Mountains WSA ACEC 72;
- Secs. 11 and 12, those portions lying northeasterly of Avawatz Mountains WSA ACEC 72;
- Sec. 13, that portion lying easterly of Avawatz Mountains WSA ACEC 72;
- Sec. 24, that portion lying southerly and easterly of Avawatz Mountains WSA ACEC 72;
- Sec. 25;
- Sec. 26, that portion lying easterly of Avawatz Mountains WSA ACEC 72;
- Sec. 35, that portion lying easterly of Avawatz Mountains WSA ACEC 72.
- T. 17 N., R. 7 E.,
- Sec. 3, that portion lying northerly, southerly, and easterly of BLM Kingston Range Wilderness Area, and northeasterly of California State Highway 127;
- Sec. 4, those portions lying northeasterly of California State Highway 127, and southwestwesterly of an undefined boundary;
- Sec. 5, that portion lying northerly and easterly of Avawatz Mountains WSA ACEC 72;
- Secs. 8 and 9, those portions lying northerly and easterly of Avawatz Mountains WSA ACEC 72;
- Sec. 10, those portions lying southwestwesterly of BLM Kingston Range Wilderness Area, northeasterly of California State Highway 127, and southwestwesterly of an undefined boundary;
- Sec. 11, those portions lying southwestwesterly of BLM Kingston Range Wilderness Area, northeasterly of California State Highway 127;
- Sec. 13, those portions lying southwestwesterly of BLM Kingston Range Wilderness Area, northeasterly of California State Highway 127;
- Sec. 14, those portions lying southwestwesterly of BLM Kingston Range Wilderness Area, northeasterly of California State Highway 127, and southwestwesterly of an undefined boundary;
- Sec. 15, that portion lying northeasterly of Avawatz Mountains WSA ACEC 72;
- Sec. 22, that portion lying northeasterly of Avawatz Mountains WSA ACEC 72;
- Sec. 23, that portion lying southwestwesterly of an undefined boundary;
- Secs. 24 and 25, those portions lying northerly and easterly of California State Highway 127, and southwestwesterly of an undefined boundary;
- Sec. 26, that portion lying easterly of Avawatz Mountains WSA ACEC 72; sec. 35, that portion lying easterly of Avawatz Mountains WSA ACEC 72 and northerly and southerly of an undefined boundary.
- T. 18 N., R. 7 E.,
- Secs. 1 and 2, that portion lying southeasterly of Dumont Dunes SRMA 32;
- Secs. 5 thru 11, those portions lying northerly, southerly, easterly, and westerly of Dumont Dunes SRMA 32;
- Secs. 12 thru 15;
- Sec. 17;
- Secs. 18 and 19, those portions lying southerly and easterly of Dumont Dunes SRMA 32;
- Secs. 20 thru 28;
- Sec. 29, that portion lying northeasterly of California State Highway 127;
- Sec. 30, those portions lying northerly and easterly of California State Highway 127, and southwestwesterly of an undefined boundary;
- Sec. 31, that portion lying northerly, southerly, easterly, and westerly of Avawatz Mountains WSA ACEC 72;
- Sec. 32, those portions lying northeasterly of California State Highway 127, southwestwesterly of an undefined boundary, and easterly of Avawatz Mountains WSA ACEC 72;
- Sec. 33, those portions lying northerly and easterly of California State Highway 127, and southwestwesterly of an undefined boundary;
- Secs. 34 and 35, those portions lying northwesterly of BLM Kingston Range Wilderness Area.

- T. 19 N., R. 7 E.,
Secs. 6 and 7, those portions lying westerly of BLM Kingston Range Wilderness Area;
Sec. 18, that portion lying westerly of BLM Kingston Range Wilderness Area;
Secs. 19 thru 21;
Sec. 22, that portion lying westerly of BLM Kingston Range Wilderness Area;
Sec. 27, that portion of N¹/₂ lying westerly of BLM Kingston Range Wilderness Area and northerly of Dumont Dunes SRMA 32;
Sec. 28, that portion lying northwesterly of Dumont Dunes SRMA 32;
Secs. 29 thru 31;
Secs. 32 and 33, those portions lying northwesterly of Dumont Dunes SRMA 32.
- T. 19.5 N., R. 7 E.,
Sec. 31, that portion lying westerly of BLM Kingston Range Wilderness Area.
- T. 20 N., R. 7 E.,
Sec. 1, N¹/₂NE¹/₄ and those portions of S¹/₂SE¹/₄ and W¹/₂ lying northwesterly of BLM South Nopah Range Wilderness Area;
Secs. 2 and 3;
Sec. 4, S¹/₂NE¹/₄, SE¹/₄, SW¹/₄, S¹/₂NW¹/₄, and NW¹/₄NW¹/₄;
Secs. 5 thru 7;
Sec. 8, NE¹/₄NE¹/₄, E¹/₂NE¹/₄SE¹/₄NE¹/₄, SW¹/₄SE¹/₄NE¹/₄SE¹/₄NE¹/₄, S¹/₂SE¹/₄NE¹/₄, SE¹/₄SW¹/₄NE¹/₄SE¹/₄NE¹/₄, W¹/₂NW¹/₄NE¹/₄SE¹/₄NE¹/₄, W¹/₂NE¹/₂, SE¹/₄, and W¹/₂;
Sec. 9, NE¹/₂NE¹/₄, N¹/₂SE¹/₄NE¹/₄, N¹/₂SE¹/₄SE¹/₄NE¹/₄, N¹/₂SW¹/₄NE¹/₄, and W¹/₂;
Sec. 10, NE¹/₄, S¹/₂SE¹/₄NE¹/₄SE¹/₄, SW¹/₄NE¹/₄SE¹/₄, N¹/₂NW¹/₄NE¹/₄SE¹/₄, S¹/₂SE¹/₄SE¹/₄, S¹/₂NE¹/₄SW¹/₄SE¹/₄, NE¹/₄NW¹/₄SE¹/₄, N¹/₂SE¹/₄NW¹/₄SE¹/₄, S¹/₂SW¹/₄NW¹/₄SE¹/₄, SE¹/₄NW¹/₄NW¹/₄SE¹/₄, N¹/₂SE¹/₄NE¹/₄SW¹/₄, SE¹/₄SE¹/₄NE¹/₄SW¹/₄, N¹/₂SW¹/₄NE¹/₄SW¹/₄, W¹/₂SE¹/₄SW¹/₄, SW¹/₄SW¹/₄, N¹/₂NW¹/₄, and N¹/₂SW¹/₄NW¹/₄;
Sec. 11;
Sec. 12, that portion lying easterly and southerly of BLM South Nopah Range Wilderness Area;
Secs. 13 thru 21;
Sec. 22, E¹/₂, NE¹/₄SW¹/₄, W¹/₂SW¹/₄, and NW¹/₄;
Secs. 23 and 24;
Sec. 25, E¹/₂, E¹/₂SW¹/₄, SW¹/₄SW¹/₄, E¹/₂NW¹/₄, NW¹/₄NW¹/₄;
Sec. 26, N¹/₂, SE¹/₄SE¹/₄, and those portions depicted on the following plat: Mineral Survey No. 4732, approved January 22, 1903;
Sec. 27, NE¹/₄, N¹/₂NW¹/₄, SE¹/₄NW¹/₄, lots 1 thru 2, W¹/₂ of lot 3, those portions lying easterly and westerly of BLM Kingston Range Wilderness Area, and those portions depicted as Nitre Beds Nos. 1, 2, 4, 12, and 13, Mineral Survey No. 4732, approved January 22, 1903;
Secs. 28 thru 30;
Secs. 31 and 32, those portions lying northerly and westerly of BLM Kingston Range Wilderness Area;
- Sec. 33, that portion lying northerly and easterly of BLM Kingston Range Wilderness Area;
Sec. 34, those portions lying northerly, easterly, and westerly of BLM Kingston Range Wilderness Area;
Sec. 35, that portion lying northerly and westerly of BLM Kingston Range Wilderness Area.
- T. 21 N., R. 7 E.,
Secs. 2 and 3, those portions lying southerly and westerly of BLM Nopah Range Wilderness Area;
Sec. 4;
Sec. 5, E¹/₂, E¹/₂SW¹/₄, lot 5 and SE¹/₄NW¹/₄;
Sec. 6, W¹/₂SE¹/₄NE¹/₄, W¹/₂NE¹/₄SE¹/₄, W¹/₂SE¹/₄SE¹/₄, lots 6 thru 11, N¹/₂NE¹/₄, SE¹/₄NE¹/₄, S¹/₂, SW¹/₄NW¹/₄, and N¹/₂NW¹/₄ of lot 12, lots 13 thru 16, lots 18 thru 20, lots 21 thru 23, lots 26 thru 28, and lots 29 thru 31;
Secs. 7 thru 11;
Secs. 12 and 13, those portions lying westerly of BLM Nopah Range Wilderness Area;
Secs. 14 and 15;
Sec. 16, N¹/₂, N¹/₂SE¹/₄, SW¹/₄SE¹/₄, and SW¹/₄;
Secs. 17 thru 23;
Secs. 24 and 25, those portions lying westerly of BLM Nopah Range Wilderness Area;
Secs. 26 thru 32;
Sec. 33, NE¹/₄, S¹/₂SW¹/₄, NE¹/₄NW¹/₄, and W¹/₂NW¹/₄;
Secs. 34 and 35.
- T. 22 N., R. 7 E.,
Secs. 1 thru 7;
Sec. 8, N¹/₂, NE¹/₄SE¹/₄, W¹/₂SE¹/₄, and SW¹/₄;
Sec. 9, that portion excluding Mineral Survey No. 6072, approved April 12, 1930;
Secs. 10 and 11;
Sec. 12, E¹/₂ and NW¹/₄;
Sec. 14, W¹/₂;
Sec. 15;
Sec. 17, that portion excluding Mineral Survey No. 6746, approved June 21, 1967;
Sec. 18;
Sec. 19, N¹/₂, N¹/₂SE¹/₄, SE¹/₄SE¹/₄, lots 11, 12, and 15;
Sec. 20;
Sec. 21, that portion lying northerly and westerly of California State Highway 178, and westerly of BLM Nopah Range Wilderness Area;
Sec. 22, that portion lying northerly of California State Highway 178;
Sec. 23, that portion lying northerly of California State Highway 178, and easterly of BLM Nopah Range Wilderness Area;
Sec. 24, N¹/₂SE¹/₄, SE¹/₄SE¹/₄, NE¹/₄SW¹/₄, W¹/₂SW¹/₄, and W¹/₂NW¹/₄;
Sec. 25, that portion lying northeasterly of BLM Nopah Range Wilderness Area;
Sec. 28, that portion lying southwesterly of BLM Nopah Range Wilderness Area;
Sec. 29;
Sec. 30, lots 3 thru 9, E¹/₂NE¹/₄ and E¹/₂SE¹/₄;
Sec. 31, lots 4 thru 7, and lots 11 thru 14, and SW¹/₄SE¹/₄;
Sec. 32, N¹/₂, SE¹/₄, E¹/₂SW¹/₄, and NW¹/₄SW¹/₄;
- Secs. 33 and 34, those portions lying southwesterly of BLM Nopah Range Wilderness Area.
- T. 23 N., R. 7 E.,
Sec. 23, that portion lying easterly of BLM Resting Springs Wilderness Area and westerly of California State Highway 178;
Sec. 24, that portion lying westerly of California State Highway 178;
Sec. 25, that portion lying southwesterly of BLM Nopah Range Wilderness Area;
Sec. 26, that portion lying easterly of BLM Resting Springs Wilderness Area and westerly of California State Highway 178;
Secs. 33 thru 35.
- T. 17 N., R. 6 E.,
Sec. 5, that portion lying easterly of Death Valley WSA ACEC 17 and northwesterly of Sheep Creek Springs Road;
- T. 18 N., R. 6 E.,
Sec. 1, that portion lying northeasterly of California State Highway 127, and northwesterly of Dumont Dunes SRMA 32;
Sec. 2, that portion lying northeasterly of California State Highway 127;
Sec. 12, that portion lying northeasterly of California State Highway 127, and northwesterly of Dumont Dunes SRMA 32;
Sec. 15, that portion lying southerly of Death Valley National Park;
Sec. 17, that portion lying southerly of Death Valley National Park and easterly of Death Valley WSA ACEC 17;
Sec. 20, that portion lying easterly of Death Valley WSA ACEC 17;
Sec. 21;
Secs. 22 and 23, that portion lying southerly of Death Valley National Park;
Sec. 24, those portions lying easterly of California State Highway 127, southerly of Death Valley National Park, and easterly of an undefined boundary;
Sec. 25, those portions lying northeasterly of California State Highway 127 and southwesterly of an undefined boundary;
Sec. 26, that portion lying easterly and westerly of an undefined boundary;
Secs. 27 and 28, those portions lying easterly and westerly of Sheep Creek Springs Road right-of-way;
Sec. 29, that portion lying easterly of Death Valley WSA ACEC 17;
Sec. 32, that portion lying easterly of Death Valley WSA ACEC 17 and northwesterly of Sheep Creek Springs Road;
Sec. 33, that portion lying northerly and westerly of Sheep Creek Springs Road, and northerly and easterly of Avawatz Mountains WSA ACEC 72;
Sec. 34, that portion lying northerly of Avawatz Mountains WSA ACEC 72;
Sec. 35, those portions lying northerly of Avawatz Mountains WSA ACEC 72, and easterly and westerly of an undefined boundary.
- T. 19 N., R. 6 E.,
Secs. 1 and 2;
Secs. 3 and 4, those portions lying southeasterly of BLM Saddle Peak Hills Wilderness Area, and northeasterly of Death Valley National Park;

- Secs 10 and 11, those portions lying northeasterly of California State Highway 127;
- Secs. 12 and 13;
- Sec. 14, that portion lying easterly of California State Highway 127;
- Sec. 23, that portion lying easterly of California State Highway 127;
- Secs. 24 and 25;
- Sec. 26, that portion lying easterly of California State Highway 127;
- Sec. 35, that portion lying easterly of California State Highway 127;
- Sec. 36, $W\frac{1}{2}SW\frac{1}{4}$, $W\frac{1}{2}NW\frac{1}{4}$, and that portion described in easement deed CACA 20608.
- T. 19.5 N., R. 6 E.,
- Sec. 34, that portion lying easterly of California State Highway 127;
- Sec. 35.
- T. 20 N., R. 6 E.,
- Sec. 1;
- Sec. 2, that portion lying southeasterly of BLM Ibex Wilderness Area;
- Sec. 3, that portion lying southerly and easterly of BLM Ibex Wilderness Area;
- Sec. 10, that portion lying easterly of BLM Ibex Wilderness Area;
- Secs. 11 thru 14;
- Sec. 15, that portion lying easterly of BLM Ibex Wilderness Area;
- Secs. 21 and 22, those portions lying southeasterly of BLM Ibex Wilderness Area;
- Secs. 23 thru 27;
- Sec. 28, that portion lying northerly and easterly of BLM Saddle Peak Hills Wilderness Area;
- Sec. 29, that portion lying easterly of Death Valley National Park and northerly of BLM Saddle Peak Hills Wilderness Area;
- Sec. 33, that portion lying easterly of BLM Saddle Peak Hills Wilderness Area.
- Secs. 34 and 35.
- T. 21 N., R. 6 E.,
- Secs. 1 thru 4;
- Secs 5 thru 6, those portions lying northerly and easterly of BLM Ibex Wilderness Area;
- Secs. 8 and 9, those portions lying northerly and easterly of BLM Ibex Wilderness Area;
- Secs 10 thru 14;
- Sec. 15, that portion lying northeasterly of BLM Ibex Wilderness Area;
- Secs. 22 thru 24, those portions lying northeasterly of BLM Ibex Wilderness;
- Sec. 25, that portion lying northerly, southerly, and easterly of BLM Ibex Wilderness Area;
- Secs. 35 and 36, those portions lying southeasterly of BLM Ibex Wilderness Area.
- T. 22 N., R. 6 E.,
- Sec. 1, that portion lying easterly of California State Highway 127;
- Secs. 12 and 13, those portions lying easterly of California State Highway 127;
- Secs. 21 thru 24, those portions lying southerly and easterly of California State Highway 178;
- Sec. 25, $N\frac{1}{2}$, $N\frac{1}{2}SE\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$, $SW\frac{1}{4}SE\frac{1}{4}$, and $SW\frac{1}{4}$;
- Secs. 26 and 27;
- Secs. 28 and 29, those portions lying southerly and easterly of California State Highway 178;
- Sec. 31, that portion lying southerly and easterly of California State Highway 178 and northeasterly of BLM Ibex Wilderness Area;
- Sec. 32, that portion lying southerly and easterly of California State Highway 178;
- Secs. 33 thru 35.
- The Amargosa area of the California Desert National Conservation Lands described aggregate 417,894 acres in Inyo and San Bernardino Counties.
- Big Morongo Area**
- San Bernardino Meridian*
- T. 1 N., R. 5 E.,
- Sec. 4.
- T. 2 N., R. 5 E.,
- Sec. 4, that portion lying southwestly of California State Highway 247;
- Secs. 5 thru 9;
- Sec. 10, $NW\frac{1}{4}NW\frac{1}{4}NW\frac{1}{4}$ and $SW\frac{1}{4}SW\frac{1}{4}$;
- Sec. 15, $NE\frac{1}{4}NW\frac{1}{4}NW\frac{1}{4}$, $W\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$, $NW\frac{1}{4}SW\frac{1}{4}NW\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}NW\frac{1}{4}$, $W\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}SW\frac{1}{4}$, $N\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$, $SW\frac{1}{4}NE\frac{1}{4}SW\frac{1}{4}$, $NW\frac{1}{4}SW\frac{1}{4}$, $N\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}$ and $SW\frac{1}{4}SW\frac{1}{4}SW\frac{1}{4}$;
- Secs. 16 thru 21;
- Secs. 28 thru 33.
- T. 2 N., R. 4 E.,
- Sec. 6, that portion lying southwestly of the boundary of the BLM Bighorn Mountain Wilderness Area;
- Sec. 7;
- Sec. 8, that portion lying northerly of the boundary of the BLM Bighorn Mountain Wilderness Area;
- Sec. 9, that portion lying northeasterly of the boundary of the BLM Bighorn Mountain Wilderness Area;
- Secs. 10 thru 12;
- Sec. 13, $N\frac{1}{2}NE\frac{1}{4}$, $N\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}$, $N\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}$, $SW\frac{1}{4}SW\frac{1}{4}NE\frac{1}{4}$, $N\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}NE\frac{1}{4}$, $NW\frac{1}{4}$, $SW\frac{1}{4}$, $N\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$, $SE\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$, $NW\frac{1}{4}NW\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$ and $S\frac{1}{2}SE\frac{1}{4}$;
- Sec. 14, $NE\frac{1}{4}$, $NW\frac{1}{4}$, $N\frac{1}{2}SW\frac{1}{4}$, $SE\frac{1}{4}SW\frac{1}{4}$ and $SE\frac{1}{4}$;
- Sec. 15, $E\frac{1}{2}NE\frac{1}{4}$;
- Sec. 16, $N\frac{1}{2}NE\frac{1}{4}$, $NE\frac{1}{4}NW\frac{1}{4}$ and $NW\frac{1}{4}NW\frac{1}{4}$ that portion lying northeasterly of the boundary of the BLM Bighorn Mountain Wilderness Area;
- Sec. 18.
- T. 2 N., R. 3 E.,
- Sec. 1;
- Sec. 2, $S\frac{1}{2}SW\frac{1}{4}$ and $S\frac{1}{2}SE\frac{1}{4}$;
- Secs. 10 thru 12;
- Secs. 14 and 15;
- Secs. 22 and 24;
- T. 3 N., R. 5 E.,
- Sec. 19, that portion lying southwestly of California State Highway 247;
- Sec. 20, that portion lying southwestly of California State Highway 247;
- Sec. 28, lot 5 that portion lying southwestly of California State Highway 247;
- Sec. 29, that portion lying southwestly of California State Highway 247;
- Secs. 30 thru 32;
- Sec. 33, lots 4 and 6, that portion lying southwestly of California State Highway 247, lot 5, $S\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$, $N\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}SW\frac{1}{4}$, $NE\frac{1}{4}NW\frac{1}{4}SW\frac{1}{4}$, $S\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}SW\frac{1}{4}$, $S\frac{1}{2}NW\frac{1}{4}SW\frac{1}{4}$, $N\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$, $SW\frac{1}{4}$, $NW\frac{1}{4}SW\frac{1}{4}SW\frac{1}{4}$, $SE\frac{1}{4}SW\frac{1}{4}SW\frac{1}{4}$, $SE\frac{1}{4}SW\frac{1}{4}$ and $SW\frac{1}{4}SE\frac{1}{4}$ that portion lying southwestly of California State Highway 247.
- T. 3 N., R. 4 E.,
- Sec. 19, lots 7 thru 14;
- Sec. 20, $SW\frac{1}{4}SW\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$, $S\frac{1}{2}S\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}$, $S\frac{1}{2}S\frac{1}{2}SE\frac{1}{4}$, $NW\frac{1}{4}$, $S\frac{1}{2}S\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}$, $SW\frac{1}{4}$, $NW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$, $SW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$, $NW\frac{1}{4}SE\frac{1}{4}$, $N\frac{1}{2}SW\frac{1}{4}SE\frac{1}{4}$, $SW\frac{1}{4}SW\frac{1}{4}SE\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}SE\frac{1}{4}$, $W\frac{1}{2}NE\frac{1}{4}SE\frac{1}{4}SE\frac{1}{4}$, $NW\frac{1}{4}SE\frac{1}{4}SE\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}SE\frac{1}{4}SE\frac{1}{4}$ and $SE\frac{1}{4}SE\frac{1}{4}SE\frac{1}{4}$;
- Sec. 21, lots 5 thru 8, $S\frac{1}{2}SW\frac{1}{4}$ and $S\frac{1}{2}SE\frac{1}{4}$;
- Sec. 22, lots 1 thru 4, $S\frac{1}{2}SW\frac{1}{4}$ and $S\frac{1}{2}SE\frac{1}{4}$;
- Secs. 23 thru 26;
- Sec. 27, $NE\frac{1}{4}$, $NW\frac{1}{4}$, $N\frac{1}{2}SW\frac{1}{4}$ and $N\frac{1}{2}SE\frac{1}{4}$;
- Sec. 28, $N\frac{1}{2}NE\frac{1}{4}$ and $N\frac{1}{2}N\frac{1}{2}NW\frac{1}{4}$;
- Sec. 29, $N\frac{1}{2}N\frac{1}{2}NE\frac{1}{4}$ and $N\frac{1}{2}N\frac{1}{2}NW\frac{1}{4}$;
- Sec. 30, $N\frac{1}{2}N\frac{1}{2}NE\frac{1}{4}$, $N\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$ and $N\frac{1}{2}$ lot 1;
- Sec. 35, $NE\frac{1}{4}$;
- Sec. 36, lots 1 thru 4, $W\frac{1}{2}NE\frac{1}{4}$, $NW\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}$ and $NW\frac{1}{4}SE\frac{1}{4}$.
- T. 3 N., R. 3 E.,
- Secs. 5 thru 8;
- Secs. 14 thru 18;
- Sec. 19, $N\frac{1}{2}$;
- Sec. 20, $N\frac{1}{2}$, $N\frac{1}{2}S\frac{1}{2}$;
- Sec. 21, $N\frac{1}{2}$, $N\frac{1}{2}S\frac{1}{2}$;
- Sec. 22, $N\frac{1}{2}$, $N\frac{1}{2}S\frac{1}{2}$;
- Sec. 23, $N\frac{1}{2}$, $N\frac{1}{2}S\frac{1}{2}$.
- T. 3 N., R. 2 E.,
- Sec. 1;
- Secs. 3 and 4;
- Sec. 5, that portion lying southeasterly of an unnamed road;
- Sec. 6, that portion lying southerly of an unnamed road; Protracted Block 38;
- Sec. 8, excluding a portion of Mineral Survey No. 5659 A, approved September 30, 1922;
- Secs. 9 thru 16; Protracted Block 43; Protracted Block 42; Protracted Block 41 that portion lying northwesterly of the boundary of the BLM Bighorn Mountain Wilderness Area.
- T. 3 N., R. 1 E.,
- Sec. 1, lot 1, lots 2 thru 4 and lots 7 and 8 those portions lying southwestly of an unidentified boundary, lots 5 and 6, lots 9 thru 12, and $S\frac{1}{2}$;
- Sec. 2, lots 1 thru 12, $NE\frac{1}{4}SE\frac{1}{4}$ and $SE\frac{1}{4}SE\frac{1}{4}$;
- Sec. 3, lots 71 thru 74, lots 81 thru 83, and lots 87 thru 91;
- Sec. 10, $NW\frac{1}{4}NW\frac{1}{4}$, $S\frac{1}{2}NW\frac{1}{4}$ and $SW\frac{1}{4}$;
- Sec. 11, $NE\frac{1}{4}$ and $SE\frac{1}{4}NW\frac{1}{4}$;
- Sec. 12, $NE\frac{1}{4}$, $NW\frac{1}{4}$ and $SE\frac{1}{4}$.
- T. 4 N., R. 2 E.,
- Sec. 20, $SE\frac{1}{4}SE\frac{1}{4}$ that portion lying southeasterly of a line projecting from the Section corner of sections 31 and 32 only, T. 4 N., R. 2 E. and the NW $1/16$ corner of section 21,
- T. 4 N., R. 2 E., hereinafter referred to as "projection line";

- Sec. 21, SW $\frac{1}{4}$ that portion lying southeasterly of Highway 247, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ that portion southwesterly of Highway 247, SW $\frac{1}{4}$ NW $\frac{1}{4}$ that portion lying southeasterly of "projection line", SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ that portion lying southeasterly of "projection line", SW $\frac{1}{4}$ SW $\frac{1}{4}$ that portion lying southeasterly of "projection line", E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$;
- Sec. 22, NE $\frac{1}{4}$ SW $\frac{1}{4}$ that portion lying southwesterly of Highway 247, NW $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$;
- Sec. 23, N $\frac{1}{2}$ SW $\frac{1}{4}$ that portion lying southwesterly of Highway 247, S $\frac{1}{2}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ that portion lying southwesterly of Highway 247;
- Sec. 26, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, SW $\frac{1}{4}$ and SE $\frac{1}{4}$; Secs. 27 and 28;
- Sec. 29, E $\frac{1}{2}$ NE $\frac{1}{4}$ that portion lying southeasterly of "projection line", SW $\frac{1}{4}$ NE $\frac{1}{4}$ that portion lying southeasterly of "projection line", W $\frac{1}{2}$ SE $\frac{1}{4}$ that portion lying southeasterly of "projection line" and E $\frac{1}{2}$ SE $\frac{1}{4}$;
- Sec. 32, NE $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$ that portion lying southeasterly of "projection line"; Secs. 33 thru 35.
- T. 4 N., R. 1 E.,
Sec. 35, SE $\frac{1}{4}$.
- The Big Morongo area of the California Desert National Conservation Lands described aggregates 94,744 acres in San Bernardino County.
- Chuckwalla Bench and Dos Palmas Area**
San Bernardino Meridian
- T. 4 S., R. 14 E.,
Sec. 24, that portion lying southeasterly of Chuckwalla ACEC;
- Sec. 25, that portion lying northeasterly of Joshua Tree National Park boundary.
- T. 4 S., R. 15 E.,
Sec. 20, NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$;
- Sec. 21, SE $\frac{1}{4}$ SE $\frac{1}{4}$ that portion lying southwesterly of unnamed road, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ that portion lying southwesterly of unnamed road, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ that portion lying southwesterly of unnamed road, NE $\frac{1}{4}$ SW $\frac{1}{4}$ that portion lying southwesterly of unnamed road, N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ that portion lying southwesterly of unnamed road;
- Sec. 27, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ that portion lying westerly of Kaiser Road, SE $\frac{1}{4}$ SW $\frac{1}{4}$ that portion lying westerly of Kaiser Road, SW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ that portion lying westerly of Kaiser Road;
- Sec. 28, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$;
- Sec. 29, S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, SW $\frac{1}{4}$, and NW $\frac{1}{4}$;
- Sec. 30, that portion lying northeasterly of Joshua Tree National Park boundary;
- Sec. 31, that portion lying southeasterly of Joshua Tree National Park boundary;
- Secs. 32 and 33;
- Sec. 34, that portion lying westerly of Kaiser Road.
- T. 5 S., R. 9 E.,
Sec. 26, that portion lying southwesterly of Joshua Tree National Park.
- T. 5 S., R. 13 E.,
Sec. 25, the S $\frac{1}{2}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, and lots 6 thru 15;
- Sec. 26, the S $\frac{1}{2}$ SE $\frac{1}{4}$ and lots 5 thru 14;
- Sec. 27, lots 8 thru 10;
- Sec. 28, lots 9 and 10;
- Sec. 29, lots 5 thru 8;
- Sec. 30, lots 10 thru 13, and lots 18 thru 21;
- Sec. 34, lot 1;
- Sec. 35, lots 1 thru 4.
- T. 5 S., R. 14 E.,
Sec. 1, that portion lying southerly and easterly of Joshua Tree National Park;
- Sec. 12, that portion lying southerly and easterly of Joshua Tree National Park excluding Tract 37;
- Sec. 13, that portion excluding Tract 37;
- Sec. 14, that portion lying southerly and easterly of Joshua Tree National Park;
- Secs. 22 and 23, those portions lying southerly and easterly of Joshua Tree National Park;
- Secs. 24 and 26;
- Sec. 27, N $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, and N $\frac{1}{2}$ SW $\frac{1}{4}$;
- Sec. 28, those portions excluding aqueduct corridor LA 051310; aqueduct, transmission line, road, substation etc. LA 051424, aqueduct, telephone, transmission line, water line, etc. LA 051571, transmission line and road corridor LA 052059, ROW tram road LA 0121701, aqueduct (sanitary protection) LA 0118168 and aqueduct (diagonal drains) LA 053393;
- Sec. 30, those portions lying southerly of Joshua Tree National Park, excluding aqueduct corridor LA 051310, aqueduct (sanitary protection) LA 0118168 and aqueduct (diagonal drains) LA 053393;
- Sec. 32, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$;
- Sec. 34.
- T. 5 S., R. 15 E.,
Sec. 3, W $\frac{1}{2}$ of lot 1 and W $\frac{1}{2}$ of lot 2 in the NE $\frac{1}{4}$, lots 1 and 2 in the NW $\frac{1}{4}$ and S $\frac{1}{2}$;
- Secs. 4 thru 9;
- Sec. 10, W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, and W $\frac{1}{2}$;
- Sec. 15, W $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$, and NW $\frac{1}{4}$ NW $\frac{1}{4}$;
- Secs. 17 and 18;
- Sec. 19, N $\frac{1}{2}$ and SE $\frac{1}{4}$;
- Secs. 20 and 21;
- Sec. 22, W $\frac{1}{2}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$;
- Sec. 25, that portion lying southwesterly of Chuckwalla SRMA 4;
- Sec. 26, S $\frac{1}{2}$;
- Sec. 27, SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$;
- Sec. 28;
- Sec. 29, E $\frac{1}{2}$;
- Sec. 32, N $\frac{1}{2}$, SE $\frac{1}{4}$, and N $\frac{1}{2}$ SW $\frac{1}{4}$;
- Sec. 33, N $\frac{1}{2}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$;
- Secs. 34 and 35.
- T. 5 S., R. 16 E.,
Secs. 29 and 30, those portions lying southwesterly of Chuckwalla SRMA 4;
- Sec. 31, that portion lying northerly of BLM Chuckwalla Mountain Wilderness Area;
- Sec. 32, that portion lying northerly and easterly of BLM Chuckwalla Mountain Wilderness Area.
- T. 6 S., R. 9 E.,
Sec. 2;
- Sec. 10, that portion lying northerly of BLM Mecca Hills Wilderness Area;
- Sec. 11, those portions of the SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, and E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ lying northerly of BLM Mecca Hills Wilderness Area;
- Sec. 12, that portion lying northerly of BLM Mecca Hills Wilderness Area.
- T. 6 S., R. 10 E.,
Sec. 2, lots 1 thru 4, and S $\frac{1}{2}$ N $\frac{1}{2}$;
- Sec. 4, S $\frac{1}{2}$ NE $\frac{1}{4}$, lots 1 and 2, SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, and that portion of the W $\frac{1}{2}$ of lot 4 lying southerly of Pinkham Canyon Road;
- Sec. 6, SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ of lot 3 and lots 4 thru 5;
- Secs. 7 and 8;
- Sec. 12, that portion excluding aqueduct corridor LA 051059;
- Sec. 18, that portion lying northwesterly of BLM Mecca Hills Wilderness Area;
- Sec. 23, that portion lying northeasterly of BLM Mecca Hills Wilderness Area;
- Sec. 24, that portion excluding aqueduct corridor LA 051672;
- Sec. 25;
- Sec. 26, that portion lying northerly, southerly, and easterly of BLM Mecca Hills Wilderness Area;
- Sec. 35, that portion lying northerly and easterly of BLM Mecca Hills Wilderness Area.
- T. 6 S., R. 11 E.,
Sec. 2, that portion lying southerly of aqueduct corridor LA 051291;
- Sec. 4, W $\frac{1}{2}$ of lot 4, those portions of the S $\frac{1}{2}$ NW $\frac{1}{4}$ and lot 2 lying northerly of aqueduct corridor LA 051291, and those portions of the S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$ lying northerly, southerly, and easterly of aqueduct corridor LA 051291 and aqueduct corridor LA 051059;
- Sec. 6, lots 3 thru 8, and those portions of the SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$, and lots 1 and 2 lying northerly, southerly, easterly and westerly of aqueduct, road, transmission line, camp etc. LA 051291, aqueduct corridor LA 051266 and aqueduct corridor LA 051672;
- Sec. 8, excluding aqueduct corridor LA 051059 and aqueduct corridor LA 051266;
- Sec. 10;
- Sec. 18, S $\frac{1}{2}$ and NW $\frac{1}{4}$;
- Secs. 20, 22, 24, and 26;
- Sec. 30, N $\frac{1}{2}$.
- T. 6 S., R. 12 E.,
Sec. 2, that portion lying southeasterly of aqueduct corridor, road, transmission line, etc. LA 051311, excluding aqueduct corridor LA 051310 and aqueduct corridor, gravel pad, road, etc. LA 052426;
- Sec. 4, that portion lying southerly of aqueduct corridor, road, transmission line, etc. LA 051311, excluding aqueduct corridor, transmission line LA 051266;
- Sec. 6, that portion lying southerly of aqueduct corridor, road, transmission line, etc. LA 051311, westerly of

- aqueduct corridor, camp, etc. LA 052369, and northerly of aqueduct corridor LA 051058;
- Sec. 8;
- Sec. 11; those portions lying southerly of U.S. Interstate Highway 10 excluding unidentified corridors in the S $\frac{1}{2}$;
- Sec. 12;
- Secs. 13 and 14, those portions lying northerly of BLM Orocopia Mountains Wilderness Area;
- Sec. 15, that portion of the S $\frac{1}{2}$ lying northerly and westerly of BLM Orocopia Mountains Wilderness Area;
- Secs. 20, 22, and 30;
- Sec. 31, S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ NW $\frac{1}{4}$;
- Sec. 32.
- T. 6 S., R. 13 E.,
- Sec. 1, that portion of R/W, drainage areas R 01731 in the W $\frac{1}{2}$;
- Sec. 2, that portion of R/W, drainage areas R 01731 and R 07303;
- Sec. 3, that portion of R/W, drainage area R 01731;
- Sec. 6, excluding aqueduct corridor LA 051310;
- Sec. 8, S $\frac{1}{2}$;
- Secs. 10 and 11;
- Sec. 12, S $\frac{1}{2}$ and NW $\frac{1}{4}$;
- Secs. 13 and 14;
- Sec. 15, SW $\frac{1}{4}$;
- Sec. 17, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
- Sec. 18, N $\frac{1}{2}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ NW $\frac{1}{4}$;
- Sec. 22;
- Sec. 23, W $\frac{1}{2}$ NW $\frac{1}{4}$;
- Sec. 24;
- Sec. 25, S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$;
- Sec. 26;
- Sec. 27, N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$;
- Sec. 33, N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$;
- Sec. 34;
- Sec. 36, N $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$.
- T. 6 S., R. 14 E.,
- Secs. 1 and 2, that portion lying northerly, easterly, and westerly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 3, those portions of the NE $\frac{1}{4}$ and S $\frac{1}{2}$ lying northerly and westerly of BLM Chuckwalla Mountains Wilderness Area, and northeasterly and southwesterly of aqueduct corridor, road, gravel deposit, etc., LA 052082;
- Sec. 4, those portions of the NE $\frac{1}{4}$ and S $\frac{1}{2}$ lying northerly, southerly, easterly, and westerly of aqueduct corridor, road, gravel deposit, etc., LA 052082;
- Sec. 5, that portion lying southerly of Patent No. 790933;
- Sec. 6, E $\frac{1}{2}$;
- Sec. 7, S $\frac{1}{2}$ and that portion of the NE $\frac{1}{4}$ lying southwesterly of Summit Road;
- Sec. 8;
- Sec. 9; excluding a portion of Patent No. 790933;
- Sec. 10, that portion lying westerly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 15, that portion lying westerly of BLM Chuckwalla Mountains Wilderness Area;
- Secs. 16 thru 21;
- Secs. 22 thru 25, those portions lying southerly and westerly of BLM Chuckwalla Mountains Wilderness Area;
- Secs. 26 thru 32;
- Sec. 33, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and W $\frac{1}{2}$;
- Secs. 34 thru 35.
- T. 6 S., R. 15 E.,
- Secs 1 and 2, those portions lying northerly and easterly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 3, that portion lying northerly, easterly, and westerly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 4, that portion lying northerly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 5, that portion lying northerly, easterly, and westerly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 6, that portion lying northerly and easterly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 13, that portion lying southerly, easterly, and westerly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 15, that portion lying southerly, easterly, and westerly of BLM Chuckwalla Mountains Wilderness Area;
- Secs. 22 thru 23, those portions lying northerly, southerly, easterly, and westerly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 24, that portion lying southerly, easterly, and westerly of BLM Chuckwalla Mountains Wilderness Area, excluding Mineral Survey No. 6400B, approved March 26, 1948;
- Sec. 25;
- Sec. 26, that portion lying northerly and easterly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 29, that portion lying southerly and westerly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 30, that portion lying southerly and easterly of BLM Chuckwalla Mountains Wilderness Area, excluding Mineral Survey No. 3837B, approved August 3, 1901, and Mineral Survey No. 3838, approved August 9, 1901;
- Sec. 31, excluding Mineral Survey No. 3837B, approved August 3, 1901;
- Sec. 32, that portion lying southerly and easterly of BLM Chuckwalla Mountains Wilderness Area, excluding Mineral Survey No. 3837A, approved August 3, 1901 and Mineral Survey No. 5059A, approved July 29, 1913.
- T. 6 S., R. 16 E.,
- Secs. 19 thru 21, those portions lying southerly and westerly of BLM Chuckwalla Mountains Wilderness Area;
- Secs. 28 and 29, those portions lying northerly and westerly of BLM Chuckwalla Mountains Wilderness Area;
- Secs 30 and 31, those portions lying northerly and westerly of BLM Chuckwalla Mountains Wilderness Area, excluding Mineral Survey No. 5058, approved August 7, 1913.
- T. 6 S., R. 17 E.,
- Sec. 36, E $\frac{1}{2}$ SE $\frac{1}{4}$ and those portions of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ lying southeasterly of BLM Chuckwalla Mountains Wilderness Area.
- T. 6 S., R. 18 E.,
- Sec. 31, that portion lying southwesterly of Chuckwalla SRMA 4.
- T. 7 S., R. 11 E.,
- Sec. 34.
- T. 7 S., R. 13 E.,
- Secs. 2 thru 4;
- Secs. 9 and 10;
- Sec. 11, W $\frac{1}{2}$;
- Sec. 12;
- Sec. 13, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and N $\frac{1}{2}$ SW $\frac{1}{4}$;
- Sec. 14;
- Sec. 15, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ NW $\frac{1}{4}$;
- Sec. 17, W $\frac{1}{2}$ NE $\frac{1}{4}$;
- Sec. 20, that portion lying easterly of BLM Orocopia Mountains Wilderness Area;
- Sec. 22, that portion lying northerly and westerly of Chocolate Mountains Aerial Gunnery Range;
- Sec. 31, that portion lying easterly of BLM Orocopia Mountains Wilderness Area and northerly of Chocolate Mountains Aerial Gunnery Range;
- T. 7 S., R. 14 E.,
- Sec. 1, that portion lying northerly, southerly, and easterly of BLM Chuckwalla Mountains Wilderness Area;
- Secs. 2 thru 6;
- Sec. 7, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$;
- Sec. 8;
- Sec. 9, N $\frac{1}{2}$;
- Secs. 10 thru 14;
- Sec. 15, W $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and W $\frac{1}{2}$;
- Sec. 16, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, and W $\frac{1}{2}$ NW $\frac{1}{4}$;
- Secs. 17 and 18;
- Sec. 19, that portion lying northerly and easterly of Chocolate Mountains Aerial Gunnery Range;
- Sec. 20, N $\frac{1}{2}$, SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ SW $\frac{1}{4}$;
- Secs. 21 and 22;
- Sec. 23, E $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, and W $\frac{1}{2}$;
- Sec. 24;
- Sec. 25, N $\frac{1}{2}$;
- Secs. 26 thru 28, those portions lying northerly of Chocolate Mountains Aerial Gunnery Range.
- T. 7 S., R. 15 E.,
- Secs. 5 thru 7, those portions lying northerly, southerly, easterly, and westerly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 8, that portion lying northerly, easterly, and westerly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 15, that portion lying southerly, easterly, and westerly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 17, that portion lying southerly, easterly, and westerly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 18, that portion lying southerly and westerly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 19, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, and W $\frac{1}{2}$;
- Secs. 20 thru 22, those portions lying southerly, easterly, and westerly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 28;
- Sec. 29, N $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$ NW $\frac{1}{4}$;

- Sec. 30, that portion lying northerly of Chocolate Mountains Aerial Gunnery Range;
- Sec. 33, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, and those portions of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ lying northerly of Chocolate Mountains Aerial Gunnery Range;
- Sec. 34, that portion lying northerly and easterly of Chocolate Mountains Aerial Gunnery Range;
- Sec. 35, NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, and W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$.
- T. 7 S., R. 16 E.,
- Secs. 30 thru 32, that portion lying southerly, easterly, and westerly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 33, that portion lying southerly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 34, that portion lying southerly and westerly of BLM Chuckwalla Mountains Wilderness Area.
- T. 7 S., R. 17 E.,
- Sec. 1;
- Secs. 2 and 3, those portions lying southerly and easterly of BLM Chuckwalla Mountains Wilderness Area;
- Secs. 8 thru 10, those portions lying southerly and easterly of BLM Chuckwalla Mountains Wilderness Area;
- Secs. 11 thru 15;
- Secs. 17 and 18, those portions lying southerly and easterly of BLM Chuckwalla Mountains Wilderness Area;
- Sec. 19, that portion lying northerly, southerly, easterly, and westerly of BLM Chuckwalla Mountains Wilderness Area;
- Secs. 20 thru 29;
- Sec. 30, that portion lying northerly, easterly, and westerly of BLM Chuckwalla Mountains Wilderness Area;
- Secs. 34 and 35.
- T. 7 S., R. 18 E.,
- Sec. 1, S $\frac{1}{2}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$;
- Secs. 2 thru 11;
- Sec. 12, S $\frac{1}{2}$;
- Secs. 13 and 14;
- Sec. 15, S $\frac{1}{2}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$;
- Secs. 17 thru 35.
- T. 7 S., R. 19 E.,
- Sec. 1, W $\frac{1}{2}$;
- Sec. 2, S $\frac{1}{2}$, lot 1 and lot 2 in the NW $\frac{1}{4}$, lot 1 and the W $\frac{1}{2}$ of lot 2 in the NE $\frac{1}{4}$,
- Secs. 3, 4, 6, 7, and 8;
- Sec. 9, E $\frac{1}{2}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SW $\frac{1}{4}$;
- Secs. 10 thru 15;
- Sec. 17, NE $\frac{1}{4}$ and SW $\frac{1}{4}$;
- Secs. 18 thru 25;
- Secs. 26 and 27, those portions lying northerly and easterly of BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 29, that portion lying northerly and westerly of BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 30;
- Sec. 31, that portion lying northerly and westerly of BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 35, that portion lying northerly and easterly of BLM Little Chuckwalla Mountains Wilderness Area.
- T. 7 S., R. 20 E.,
- Sec. 4, that portion lying easterly of Mule McCoy Linkage ACEC 79;
- Sec. 5, SE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ lot 1 in the NW $\frac{1}{4}$ and W $\frac{1}{2}$ lot 2 in the NW $\frac{1}{4}$;
- Sec. 6, S $\frac{1}{2}$, lots 1 and 2 in the NW $\frac{1}{4}$ and the E $\frac{1}{2}$ lots 1 and 2 in the NE $\frac{1}{4}$;
- Secs. 7 and 8;
- Sec. 9, that portion lying easterly of Mule McCoy Linkage ACEC 79;
- Sec. 18, lots 1 and 2 in the SW $\frac{1}{4}$, S $\frac{1}{2}$ lot 1 and lot 2 in the NW $\frac{1}{4}$;
- Sec. 19;
- Sec. 20, E $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$, and NW $\frac{1}{4}$;
- Sec. 21, SW $\frac{1}{4}$ and that portion of the N $\frac{1}{2}$ lying southerly and westerly of Mule McCoy Linkage ACEC 79;
- Sec. 22, that portion lying southerly and westerly of Mule McCoy Linkage ACEC 79;
- Sec. 27, that portion lying westerly of Mule McCoy Linkage ACEC 79;
- Sec. 28, SE $\frac{1}{4}$;
- Secs. 29 thru 33;
- Sec. 34, that portion lying westerly of Mule McCoy Linkage ACEC 79;
- T. 7 S., R. 21 E.,
- Secs. 19 thru 21; those portions lying southerly, easterly and westerly of Development Focus Area (DFA) 1;
- Secs. 27 snf 28; those portions lying southerly westerly of DFA 1;
- Sec. 29;
- Sec. 30, that portion lying easterly of DFA 1;
- Secs. 31 thru 33;
- Sec. 34, S $\frac{1}{2}$ SW $\frac{1}{4}$ and that portion lying southeasterly of DFA 1.
- T. 8 S., R. 11 E.,
- Sec. 2, un-numbered lot NE $\frac{1}{4}$, un-numbered lot NW $\frac{1}{4}$, SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SW $\frac{1}{4}$;
- Sec. 3, un-numbered lot NW $\frac{1}{4}$, and SW $\frac{1}{4}$;
- Sec. 4, un-numbered lot NE $\frac{1}{4}$, un-numbered lot NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$;
- Sec. 9, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, SW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$;
- Sec. 10, W $\frac{1}{2}$;
- Sec. 11, NE $\frac{1}{4}$;
- Sec. 12, E $\frac{1}{2}$;
- Sec. 13, E $\frac{1}{2}$;
- Sec. 14;
- Sec. 15, NE $\frac{1}{4}$;
- Sec. 21, NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, and E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;
- Sec. 22;
- Sec. 23, N $\frac{1}{2}$;
- Sec. 24, E $\frac{1}{2}$;
- Sec. 25, N $\frac{1}{2}$;
- Sec. 26, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, SW $\frac{1}{4}$, and NW $\frac{1}{4}$;
- Sec. 28, SE $\frac{1}{4}$, SW $\frac{1}{4}$, and NW $\frac{1}{4}$.
- T. 8 S., R. 12 E.,
- Sec. 18;
- Sec. 19, SE $\frac{1}{4}$;
- Sec. 30, lot 1 in the SW $\frac{1}{4}$, lot 2 in the SW $\frac{1}{4}$, and SE $\frac{1}{4}$.
- T. 8 S., R. 15 E.,
- Sec. 1, lot 2, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SW $\frac{1}{4}$.
- T. 8 S., R. 16 E.,
- Sec. 2, that portion lying southwesterly of the boundary of the BLM Chuckwalla Mountains Wilderness Area;
- Sec. 3, that portion lying southwesterly of the boundary of the BLM Chuckwalla Mountains Wilderness Area;
- Secs. 4 thru 6;
- Sec. 8, that portion lying northerly of the boundary of the Chuckwalla Special Recreation Management (SRA) Area;
- Secs. 9 and 10;
- Sec. 11, that portion lying southwesterly of the boundary of the BLM Chuckwalla Mountains Wilderness Area;
- Sec. 12, that portion lying southerly of the boundary of the BLM Chuckwalla Mountains Wilderness Area;
- Sec. 13;
- Sec. 14, NE $\frac{1}{4}$, SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$;
- Sec. 23, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, that portion lying in the westerly half of the remaining westerly half of the NE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, Lot 1, Lot 4, Lot 13, Lot 15, Lot 18, and Lot 19;
- Sec. 24, NE $\frac{1}{4}$, SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$.
- T. 8 S., R. 17 E.,
- Secs. 1 thru 4, secs. 8 thru 15, and secs. 17 thru 28;
- Sec. 29, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$;
- Sec. 30;
- Sec. 31, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, Lot 11, that portion lying southerly of an arbitrary east-west line that divides the lot in half, and Lot 18, that portion lying northeasterly of the boundary of the Chuckwalla ACEC;
- Sec. 32, NE $\frac{1}{4}$, SE $\frac{1}{4}$, and NW $\frac{1}{4}$;
- Sec. 34;
- Sec. 35.
- T. 8 S., R. 18 E.,
- Sec. 1, that portion lying southwesterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Secs. 2 thru 9;
- Sec. 10, that portion lying northwesterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 11, that portion lying northerly of the boundary of the Bureau of Land Management Little Chuckwalla Mountains Wilderness Area;
- Sec. 12, that portion lying northerly of the boundary of the Bureau of Land Management Little Chuckwalla Mountains Wilderness Area;
- Sec. 15, that portion lying northwesterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Secs. 17 and 18;

- Sec. 19, that portion lying northwesterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 20, that portion lying northwesterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 25, that portion lying southwesterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 26, that portion lying southerly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 27, that portion lying southeasterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 30, that portion lying northwesterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 31, that portion lying westerly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 34, that portion lying northeasterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 35, that portion lying northeasterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 36.
- T. 8 S., R. 19 E.,
- Sec. 1;
- Sec. 2, that portion lying northeasterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 3, that portion lying northeasterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 6, that portion lying westerly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 11, that portion lying easterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Secs. 12 and 13;
- Sec. 14, that portion lying easterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 22, that portion lying southeasterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 23, that portion lying southeasterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Secs. 24 thru 26;
- Sec. 27, that portion lying southeasterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 28, that portion lying southeasterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 29, that portion lying southeasterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 30, that portion lying southwesterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 31, that portion lying southerly of the boundary of the Bureau of Land Management Little Chuckwalla Mountains Wilderness Area;
- Sec. 32, that portion lying southeasterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Secs. 33 thru 35.
- T. 8 S., R. 20 E.,
- Secs. 1 thru 31;
- Sec. 32, that portion lying northwesterly of the boundary of the BLM Palo Verde Mountains Wilderness Area;
- Sec. 33, that portion lying northerly of the boundary of the BLM Palo Verde Mountains Wilderness Area;
- Sec. 34, that portion lying northeasterly of the boundary of the BLM Palo Verde Mountains Wilderness Area;
- Sec. 35.
- T. 8 S., R. 21 E.,
- Sec. 2, SW $\frac{1}{4}$, Lot 4, and Lot 5;
- Sec. 3, lot 1, SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ (unsurveyed);
- Sec. 4, NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ and NW $\frac{1}{4}$ (unsurveyed);
- Secs. 5 thru 8;
- Sec. 9, SE $\frac{1}{4}$, SW $\frac{1}{4}$, and NW $\frac{1}{4}$ (unsurveyed);
- Sec. 10, NE $\frac{1}{4}$, SE $\frac{1}{4}$, SW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$;
- Sec. 11, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$;
- Sec. 14, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$;
- Sec. 15, NE $\frac{1}{4}$, SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, and NW $\frac{1}{4}$ NW $\frac{1}{4}$;
- Secs. 17 thru 19;
- Sec. 29, S $\frac{1}{2}$;
- Secs. 30 thru 32.
- T. 8 $\frac{1}{2}$ S., R. 21 E.,
- Sec. 31.
- T. 9 S., R. 16 E.,
- Sec. 1, that portion lying southeasterly of the boundary of the Chocolate Mountains Aerial Gunnery Range;
- Sec. 11, that portion lying southerly of the boundary of the Chocolate Mountains Aerial Gunnery Range;
- Sec. 12, NE $\frac{1}{4}$, SE $\frac{1}{4}$, and SW $\frac{1}{4}$.
- T. 9 S., R. 17 E.,
- Sec. 1, NW $\frac{1}{4}$ of lot 2 in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ that portion lying northerly of Graham Pass Road, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ that portion lying southerly of Bradshaw Trail, NW $\frac{1}{4}$ SW $\frac{1}{4}$ that portion lying southerly of Bradshaw Trail, and E $\frac{1}{2}$ lot 2 in the NW $\frac{1}{4}$ that portion lying northerly of Graham Pass Road;
- Sec. 2, lot 2 in the NE $\frac{1}{4}$ that portion lying northerly of Graham Pass Road, SE $\frac{1}{4}$ that portion lying southerly of Bradshaw Trail, SW $\frac{1}{4}$ that portion lying southwesterly of Bradshaw Trail, Lot 1 in the NW $\frac{1}{4}$ that portion lying northwesterly of Graham Pass Road and lying southwesterly of Bradshaw Trail, and Lot 2 in the NW $\frac{1}{4}$ that portion lying northwesterly of Graham Pass Road;
- Sec. 3, SE $\frac{1}{4}$, SW $\frac{1}{4}$, and S $\frac{1}{2}$ Lot 1 in the NW $\frac{1}{4}$;
- Sec. 4;
- Sec. 5, NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SW $\frac{1}{4}$;
- Sec. 6, lot 1 in the NE $\frac{1}{4}$, lot 2 in the NE $\frac{1}{4}$, SE $\frac{1}{4}$, lot 1 in the SW $\frac{1}{4}$, and lot 2 in the SW $\frac{1}{4}$;
- Sec. 7, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ Lot 1 in the SW $\frac{1}{4}$, N $\frac{1}{2}$ Lot 2 in the SW $\frac{1}{4}$, N $\frac{1}{2}$ Lot 1 in the NW $\frac{1}{4}$, and N $\frac{1}{2}$ Lot 2 in the NW $\frac{1}{4}$;
- Sec. 8;
- Sec. 9, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$;
- Secs. 10 thru 12;
- Sec. 13, NE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SW $\frac{1}{4}$;
- Sec. 14;
- Sec. 15, SE $\frac{1}{4}$ NW $\frac{1}{4}$;
- Sec. 16;
- Sec. 17, NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$ NW $\frac{1}{4}$;
- Sec. 18;
- Sec. 19, N $\frac{1}{2}$ lot 1 in the NW $\frac{1}{4}$;
- Sec. 20, NE $\frac{1}{4}$, SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$;
- Secs. 21, 22, and 24;
- Sec. 25, NE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$;
- Sec. 28, NW $\frac{1}{4}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$.
- T. 9 S., R. 18 E.,
- Sec. 2;
- Sec. 3, NE $\frac{1}{4}$ lot 14 that portion lying southeasterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 4, lot 11 that portion lying southeasterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area, SE $\frac{1}{4}$ that portion lying southeasterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area, and SW $\frac{1}{4}$ that portion lying southerly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 5, NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ that portion lying southerly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area;
- Sec. 6, SE $\frac{1}{4}$ that portion lying southerly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area, lot 18 that portion lying southerly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area, Lot 19 that portion lying southwesterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area, lot 20 that portion lying southwesterly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area, Lot 21 that portion lying southerly of the boundary of the BLM Little Chuckwalla Mountains Wilderness Area, lot 22, and lot 23;
- Sec. 7, NE $\frac{1}{4}$ NW $\frac{1}{4}$ lot 5;
- Secs. 8, 10, 12, and 14;
- Sec. 15, NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$;
- Secs. 16 and 18;
- Sec. 19, S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, lot 5, lot 6, lot 11, and lot 12;
- Sec. 20;
- Sec. 21, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$;
- Secs. 22, 24, 26, 28, 30, 32, and 34.
- T. 9 S., R. 19 E.,
- Secs. 1, 2, 4, 6, 8, secs. 10 thru 12, secs. 14 and 18, and secs. 20 thru 22;
- Sec. 24, that portion lying westerly of the boundary of the BLM Palo Verde Mountains Wilderness Area;
- Secs. 26, 28, and 30;
- Sec. 31, NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$;
- Secs. 32 and 34.
- T. 9 S., R. 20 E.,
- Sec. 1;
- Sec. 2, that portion lying northeasterly of the boundary of the BLM Palo Verde Mountains Wilderness Area;

- Sec. 3, that portion lying northeasterly of the boundary of the BLM Palo Verde Mountains Wilderness Area;
- Sec. 4, that portion lying northeasterly of the boundary of the BLM Palo Verde Mountains Wilderness Area;
- Sec. 6, that portion lying westerly of the boundary of the BLM Palo Verde Mountains Wilderness Area;
- Sec. 7, that portion lying westerly of the boundary of the BLM Palo Verde Mountains Wilderness Area;
- Sec. 11, that portion lying northeasterly of the boundary of the BLM Palo Verde Mountains Wilderness Area;
- Sec. 12, that portion lying northeasterly of the boundary of the BLM Palo Verde Mountains Wilderness Area;
- Sec. 13, that portion lying northeasterly of the boundary of the BLM Palo Verde Mountains Wilderness Area;
- Sec. 18, that portion lying northwesterly of the boundary of the BLM Palo Verde Mountains Wilderness Area;
- Sec. 30, that portion lying southwesterly of the boundary of the BLM Palo Verde Mountains Wilderness Area;
- Sec. 31, that portion lying westerly of the boundary of the BLM Palo Verde Mountains Wilderness Area.
- T. 9 S., R. 21 E.,
Secs. 5 thru 8, secs. 17 and 18;
Sec. 19, NE $\frac{1}{4}$ that portion lying easterly of the boundary of the BLM Palo Verde Mountains Wilderness Area;
- Sec. 20, that portion lying northeasterly of the boundary of the BLM Palo Verde Mountains Wilderness Area;
- Sec. 28, that portion lying northerly of the boundary of the BLM Palo Verde Mountains Wilderness Area;
- Sec. 29, excluding that portion of the BLM Palo Verde Mountains Wilderness Area;
- Sec. 32, excluding that portion of the BLM Palo Verde Mountains Wilderness Area.
- T. 10 S., R. 18 E.,
Secs. 2 and 4;
Sec. 5, S $\frac{1}{2}$ lot 9, and S $\frac{1}{2}$ lot 10;
Secs. 10, 12, 14, and 24.
- T. 10 S., R. 19 E.,
Secs. 2, 4, and 6;
Sec. 7, NE $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Secs. 8, 10, 12, 14, 18, 20, 22, 24, 26, and 28;
Sec. 29, SE $\frac{1}{4}$, SW $\frac{1}{4}$, and NW $\frac{1}{4}$;
Secs. 30 and 34.
- T. 10 S., R. 20 E.,
Secs. 3 and 5;
Sec. 6, that portion lying southwesterly of the boundary of the BLM Palo Verde Mountains Wilderness Area;
- Secs. 7 thru 11, secs. 13 thru 15, and secs. 17 thru 35;
Sec. 36, excluding Highway 78.
- T. 10 S., R. 21 E.,
Sec. 5, excluding that portion of the BLM Palo Verde Mountains Wilderness Area;
- Sec. 7, NE $\frac{1}{4}$, SE $\frac{1}{4}$, lot 1, and lot 2;
- Sec. 8, that portion lying westerly of the boundary of the BLM Palo Verde Mountains Wilderness Area;
- Sec. 16, NE $\frac{1}{4}$ NW $\frac{1}{4}$, and NW $\frac{1}{4}$ NW $\frac{1}{4}$;
Secs. 17 thru 20;
- Sec. 21, excluding Railroad Grant 900667;
- Sec. 27;
- Sec. 28, excluding Highway 78;
- Sec. 29, excluding Railroad Grant 900667;
- Sec. 30;
- Sec. 31, excluding Railroad Grant 900667;
- Secs. 32 and 34.
- T. 10 $\frac{1}{2}$ S., R. 21 E.,
Secs. 31 thru 36.
- T. 11 S., R. 19 E.,
Secs. 2, 12, and 24.
- T. 11 S., R. 20 E.,
Sec. 1, excluding Railroad Grant 952956;
Secs. 2 thru 10;
Sec. 11, excluding Railroad Grant 790933;
Secs. 12 thru 14;
Sec. 15, NE $\frac{1}{4}$ excluding Highway 78, SE $\frac{1}{4}$ excluding Highway 78, SW $\frac{1}{4}$ excluding Highway 78, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and NW $\frac{1}{4}$ NW $\frac{1}{4}$;
Secs. 17 thru 24;
Sec. 25, N $\frac{1}{2}$;
Sec. 26;
Sec. 27, excluding Highway 78;
Secs. 28 thru 32;
Sec. 33, excluding Highway 78;
Secs. 34 and 35.
- T. 11 S., R. 21 E.,
Secs. 2 thru 15, secs. 17 and 18;
Sec. 19, NE $\frac{1}{4}$, lot 1, and lot 6;
Secs. 20 thru 30, and secs. 32 thru 36.
- T. 12 S., R. 19 E.,
Sec. 1, lots 1 thru 12;
Sec. 12;
Sec. 13, S $\frac{1}{2}$;
Sec. 14;
Secs. 23 thru 26, and sec. 35.
- T. 12 S., R. 20 E.,
Secs. 1 thru 8;
Sec. 9, excluding a portion of Railroad Grant 92;
Secs. 10 thru 12;
Sec. 13, N $\frac{1}{2}$;
Sec. 15;
Sec. 17, excluding a portion of Railroad Grant 92;
Secs. 18 thru 21;
Sec. 22, that portion lying northwesterly of the boundary of the BLM Indian Pass Wilderness Area;
- Sec. 23, that portion lying northwesterly of the boundary of the BLM Indian Pass Wilderness Area;
- Sec. 27, that portion lying westerly of the boundary of the BLM Indian Pass Wilderness Area;
- Secs. 28 thru 33;
- Sec. 34, that portion lying southwesterly of the boundary of the BLM Indian Pass Wilderness Area;
- Sec. 35, that portion lying southwesterly of the boundary of the BLM Indian Pass Wilderness Area.
- T. 12 S., R. 21 E.,
Secs. 1 thru 11;
Sec. 15, N $\frac{1}{2}$;
Sec. 17, N $\frac{1}{2}$.
- T. 13 S., R. 18 E.,
Sec. 23, SE $\frac{1}{4}$ SE $\frac{1}{4}$ that portion lying southerly of Highway 78 and easterly of that undefined diagonal line;
- Sec. 24, that portion lying southerly of Highway 78;
- Sec. 25, that portion lying northeasterly of that undefined diagonal line;
- Sec. 26, that portion lying northeasterly of that undefined diagonal line.
- T. 13 S., R. 19 E.,
Sec. 1;
- Sec. 2, that portion lying easterly of Highway 78;
- Sec. 10, that portion lying easterly of Highway 78;
- Secs. 11 thru 14;
- Sec. 15, that portion lying southeasterly of Highway 78;
- Sec. 19, that portion lying southerly of Highway 78;
- Sec. 20, that portion lying southerly of Highway 78;
- Sec. 21, that portion lying southeasterly of Highway 78;
- Sec. 22, that portion lying southeasterly of Highway 78;
- Secs. 23 thru 32;
- Sec. 33, excluding a portion of Mineral Survey No. 6921, approved January 29, 1987;
- Secs. 34 and 35.
- T. 13 S., R. 20 E.,
Sec. 1, that portion lying southwesterly of the boundary of the BLM Indian Pass Wilderness Area;
- Sec. 2, that portion lying southwesterly of the boundary of the BLM Indian Pass Wilderness Area;
- Secs. 3 thru 11;
- Sec. 12, that portion lying westerly of the boundary of the BLM Indian Pass Wilderness Area;
- Sec. 13, that portion lying westerly of the boundary of the BLM Indian Pass Wilderness Area;
- Secs. 14 and 15;
- Sec. 16, N $\frac{1}{2}$;
- Secs. 17 thru 23;
- Sec. 24, that portion lying westerly of the boundary of the BLM Indian Pass Wilderness Area;
- Secs. 25 thru 35.
- T. 13 S., R. 21 E.,
Sec. 13, that portion lying southerly of a line extended from a point on the boundary of the BLM Indian Pass Wilderness Area to its intersection on the line of the BLM Picacho Peak Wilderness Area, and lying northwesterly of the boundary of the BLM Picacho Peak Wilderness Area;
- Sec. 14, that portion lying southerly of the boundary of the BLM Indian Pass Wilderness Area, lying southerly of a line extended from a point on the boundary of the BLM Indian Pass Wilderness Area to its intersection on the line of the BLM Picacho Peak Wilderness Area, and lying northerly of the boundary of the BLM Picacho Peak Wilderness Area;
- Sec. 15, that portion lying southerly of the boundary of the BLM Indian Pass Wilderness Area;
- Sec. 16, that portion lying southeasterly of the boundary of the BLM Indian Pass Wilderness Area;
- Sec. 21, that portion lying easterly of the boundary of the BLM Indian Pass Wilderness Area, lying easterly of a line extended from a point on the boundary of the BLM Indian Pass Wilderness Area to its intersection on the line of the BLM Picacho Peak Wilderness Area, and lying northerly of the boundary of the BLM Picacho Peak Wilderness Area;

- Sec. 22, that portion lying northerly of the boundary of the BLM Picacho Peak Wilderness Area;
- Sec. 23, that portion lying northwesterly of the boundary of the BLM Picacho Peak Wilderness Area;
- Sec. 25, that portion lying southeasterly of the boundary of the BLM Picacho Peak Wilderness Area;
- Sec. 28, that portion lying westerly of the boundary of the BLM Picacho Peak Wilderness Area;
- Sec. 29, that portion lying northwesterly of the boundary of the BLM Picacho Peak Wilderness Area;
- Secs. 30 thru 33;
- Sec. 34, that portion lying southwesterly of the boundary of the BLM Picacho Peak Wilderness Area;
- Sec. 35, that portion lying westerly of the boundary of the BLM Picacho Peak Wilderness Area;
- Sec. 36, that portion lying southeasterly of the boundary of the BLM Picacho Peak Wilderness Area.
- T. 13 S., R. 22 E.,
Secs. 26 thru 28;
- Sec. 29, that portion lying southeasterly of the boundary of the BLM Picacho Peak Wilderness Area;
- Sec. 30, that portion lying southeasterly of the boundary of the BLM Picacho Peak Wilderness Area;
- Sec. 31, that portion lying southeasterly of the boundary of the BLM Picacho Peak Wilderness Area;
- Secs. 32 thru 35.
- T. 13½ S., R. 22 E.,
Secs. 31 thru 35;
- Sec. 36, that portion lying westerly of the boundary of the BLM Little Picacho Wilderness Area.
- T. 14 S., R. 18 E.,
Sec. 1, that portion lying easterly of that undefined line and lying northeasterly of that undefined diagonal line.
- T. 14 S., R. 19 E.,
Secs. 1 thru 3;
- Sec. 4, excluding a portion of Mineral Survey No. 6921, approved January 29, 1987;
- Sec. 5;
- Sec. 6, that portion lying easterly of that undefined line and lying northeasterly of that undefined diagonal line;
- Sec. 7, that portion lying northeasterly of that undefined diagonal line;
- Sec. 8, that portion lying northeasterly of that undefined diagonal line;
- Secs. 9 thru 15;
- Sec. 17, that portion lying northeasterly of that undefined diagonal line;
- Sec. 21, that portion lying northeasterly of that undefined diagonal line;
- Sec. 22, that portion lying northeasterly of that undefined diagonal line;
- Secs. 23 thru 25;
- Sec. 26, that portion lying northeasterly of that undefined diagonal line;
- Sec. 27, that portion lying northeasterly of that undefined diagonal line;
- Sec. 35, that portion lying northeasterly of that undefined diagonal line.
- T. 14 S., R. 20 E.,
Secs. 1 thru 15;
- Secs. 17 thru 30;
- Sec. 31, that portion lying northeasterly of that undefined diagonal line;
- Secs. 32 thru 35.
- T. 14 S., R. 21 E.,
Sec. 1;
- Sec. 2, that portion lying southeasterly of the boundary of the BLM Picacho Peak Wilderness Area;
- Sec. 3, that portion lying southwesterly of the boundary of the BLM Picacho Peak Wilderness Area;
- Secs. 4 thru 15;
- Secs. 17 thru 35.
- T. 14 S., R. 22 E.,
Sec. 1, that portion lying westerly of the boundary of the BLM Little Picacho Wilderness Area;
- Sec. 2, excluding a portion of Mineral Survey No. 3954A, approved March 3, 1904, and Mineral Survey No. 6155 approved September 21, 1935;
- Sec. 3, excluding a portion of Mineral Survey No. 3954A, approved March 3, 1904;
- Sec. 4, excluding a portion of Mineral Survey No. 3954A, approved March 3, 1904;
- Secs. 5 thru 8;
- Sec. 9, excluding a portion of Mineral Survey No. 3954A, approved March 3, 1904;
- Sec. 10, excluding a portion of Mineral Survey No. 3193, approved June 14, 1893, Mineral Survey No. 3194, approved June 19, 1893, Mineral Survey No. 3954A, approved March 3, 1904, and Mineral Survey No. 6157, approved September 16, 1935;
- Sec. 11, that portion lying northwesterly of the boundary of the BLM Little Picacho Wilderness Area and excluding a portion of Mineral Survey No. 3192, approved June 14, 1893, Mineral Survey No. 3954A, approved March 3, 1904, Mineral Survey No. 6155, approved September 21, 1935, Mineral Survey No. 6156, approved September 16, 1935, and Mineral Survey No. 6157, approved September 16, 1935;
- Sec. 12, that portion lying northwesterly of the boundary of the BLM Little Picacho Wilderness Area;
- Sec. 14, that portion lying westerly of the boundary of the BLM Little Picacho Wilderness Area;
- Secs. 15 thru 22;
- Sec. 23, that portion lying westerly of the boundary of the BLM Little Picacho Wilderness Area;
- Sec. 26, that portion lying westerly of the boundary of the BLM Little Picacho Wilderness Area;
- Secs. 27 thru 34;
- Sec. 35, that portion lying westerly of the boundary of the BLM Little Picacho Wilderness Area.
- T. 15 S., R. 20 E.,
Secs. 1 thru 3;
- Sec. 4, NE¼, N½SE¼, SW¼, and NW¼;
- Sec. 5;
- Sec. 6, that portion lying northeasterly of that undefined diagonal line;
- Sec. 8, that portion lying northeasterly of that undefined diagonal line;
- Sec. 9, S½NE¼, SE¼, N½SW¼, SE¼SW¼, SW¼SW¼ that portion lying northeasterly of that undefined diagonal line, and NW¼;
- Secs. 10 thru 14;
- Sec. 15, that portion lying northeasterly of that undefined diagonal line;
- Sec. 22, that portion lying northeasterly of that undefined diagonal line;
- Sec. 23, that portion lying northeasterly of that undefined diagonal line;
- Sec. 24.
- T. 15 S., R. 21 E.,
Secs. 1 thru 15;
- Sec. 17, excluding a portion of Mineral Survey No. 4266, approved July 26, 1904, Mineral Survey No. 5098, approved March 19, 1919, and Mineral Survey No. 5765, approved November 15, 1924;
- Sec. 20, excluding Mineral Survey No. 3147, approved October 15, 1892, Mineral Survey No. 3242, approved May 11, 1894, and a portion of Mineral Survey No. 4266, approved July 26, 1904;
- Sec. 21, excluding a portion of Mineral Survey No. 4266, approved July 26, 1904;
- Secs. 22 thru 24, and secs. 27 thru 29;
- Sec. 32, that portion lying northeasterly of Sidewinder Road;
- Secs. 33 and 34.
- T. 15 S., R. 22 E.,
Sec. 2, that portion lying westerly of the boundary of the BLM Little Picacho Wilderness Area;
- Secs. 3 thru 10;
- Sec. 11, that portion lying southwesterly of the boundary of the BLM Little Picacho Wilderness Area;
- Secs. 14 and 15, and secs. 17 thru 23.
- The Chuckwalla Bench and Dos Palmas area of the California Desert National Conservation Lands described aggregates 589,662 acres in Imperial and Riverside Counties.

Eastern Slope-West Desert Area

Mount Diablo Meridian

- T. 18 S., R. 40 E.,
Sec. 5, that portion lying northwesterly of Saine Valley Road;
- Sec. 6, that portion lying northeasterly of BLM Malpais Mesa Wilderness Area;
- Sec. 18, that portion lying northwesterly of Saine Valley Road.
- T. 17 S., R. 40 E.,
Sec. 5, that portion lying southwesterly of Death Valley National Park;
- Sec. 6;
- Sec. 7, that portion lying northeasterly of BLM Malpais Mesa Wilderness Area;
- Secs. 8 thru 9, those portions lying southwesterly of Death Valley National Park;
- Secs. 15 thru 16, those portions lying southwesterly of Death Valley National Park;
- Sec. 17, that portion lying northeasterly of BLM Malpais Mesa Wilderness Area;
- Sec. 20, that portion lying easterly of BLM Malpais Mesa Wilderness Area;
- Sec. 21;
- Sec. 22, that portion lying southwesterly of Death Valley National Park and westerly of Saine Valley Road;

- Sec. 27, that portion lying northwesterly of Death Valley National Park;
- Sec. 28, that portion lying northwesterly of Death Valley National Park and northwesterly of Saine Valley Road;
- Sec. 29;
- Secs. 30 thru 31, those portions lying northeasterly of BLM Malpais Mesa Wilderness Area;
- Secs. 32 and 33, those portions lying northwesterly of Saine Valley Road.
- T. 16 S., R. 40 E.,
- Sec. 31, that portion lying southwesterly of Death Valley National Park.
- T. 19 S., R. 39 E.,
- Sec. 4;
- Sec. 5, that portion lying northeasterly of BLM Coso Range Wilderness Area;
- Sec. 9, that portion lying northeasterly of BLM Coso Range Wilderness Area.
- T. 18 S., R. 39 E.,
- Sec. 13, that portion lying northwesterly of Saine Valley Road;
- Sec. 14;
- Sec. 15, that portion lying easterly of BLM Malpais Mesa Wilderness Area;
- Sec. 19, and secs. 21 thru 23;
- Secs. 24 thru 26, those portions lying northwesterly of Saine Valley Road;
- Secs. 28 thru 30;
- Sec. 31, that portion lying northerly of BLM Coso Range Wilderness Area;
- Sec. 32, that portion lying northeasterly of BLM Coso Range Wilderness Area;
- Secs. 33 and 34;
- Sec. 35, that portion lying northerly of California State Highway 190 and westerly of Saine Valley Road.
- T. 17 S., R. 39 E.,
- Secs. 1 thru 8;
- Secs. 9 thru 12, that portion lying northerly of BLM Malpais Mesa Wilderness Area;
- Secs. 16 thru 18, those portions lying northerly of BLM Malpais Mesa Wilderness Area;
- Sec. 25, that portion lying northeasterly of BLM Malpais Mesa Wilderness Area.
- T. 16 S., R. 39 E.,
- Sec. 4, that portion lying southwesterly of Death Valley National Park;
- Sec. 5, that portion lying southeasterly of BLM Inyo Mountains Wilderness Area;
- Sec. 6, that portion lying southerly of Inyo Mountains Wilderness and excluding Mineral Survey No. 6720, approved October 13, 1964;
- Sec. 7, excluding Mineral Survey No. 6720, approved October 13, 1964;
- Sec. 8;
- Secs. 9 and 10, those portions lying southwesterly of Death Valley National Park;
- Secs. 14 and 15, those portions lying southwesterly of Death Valley National Park;
- Sec. 16;
- Sec. 17, excluding Mineral Survey No. 5395, approved September 5, 1918;
- Secs. 18 and 19, excluding Mineral Survey No. 5395, approved September 5, 1918;
- Sec. 20, excluding Mineral Survey No. 5395, approved September 5, 1918;
- Secs. 21 thru 22;
- Sec. 23, that portion lying southwesterly of Death Valley National Park;
- Secs. 25 thru 26, those portions lying southwesterly of Death Valley National Park;
- Secs. 27 thru 35;
- Sec. 36, that portion lying southwesterly of Death Valley National Park.
- T. 15 S., R. 39 E.,
- Sec. 32, that portion lying southeasterly of BLM Inyo Mountains Wilderness Area;
- Sec. 33, that portion lying southwesterly of Death Valley National Park.
- T. 29 S., R. 38 E.,
- Secs. 1 thru 3.
- T. 28 S., R. 38 E.,
- Sec. 4, that portion lying northwesterly of BLM El Paso Mountains Wilderness Area;
- Secs. 5 thru 7;
- Sec. 8, that portion lying northwesterly of BLM El Paso Mountains Wilderness Area;
- Secs. 17 thru 19, those portions lying northwesterly of BLM El Paso Mountains Wilderness Area;
- Secs. 29 thru 30, those portions lying southwesterly of BLM El Paso Mountains Wilderness Area;
- Sec. 31;
- Sec. 32, that portion lying southwesterly of BLM El Paso Mountains Wilderness Area;
- Secs. 33 thru 35, those portions lying southerly of BLM El Paso Mountains Wilderness Area.
- T. 27 S., R. 38 E.,
- Sec. 6, that portion lying southwesterly of California State Highway 178;
- Sec. 7, those portions of the N $\frac{1}{2}$ lying southerly of California State Highway 178, SW $\frac{1}{4}$ SE $\frac{1}{4}$, the S $\frac{1}{2}$ of lot 1 and lot 2 in the SW $\frac{1}{4}$;
- Sec. 8, S $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and that portion of the NW $\frac{1}{4}$ lying southerly of California State Highway 178;
- Sec. 9, that portion lying southwesterly of Mojave Ground Squirrel ACEC 123;
- Sec. 15, that portion lying southwesterly of Mojave Ground Squirrel ACEC 123;
- Sec. 17, E $\frac{1}{2}$, SW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$ NW $\frac{1}{4}$;
- Secs. 18 thru 22;
- Sec. 23, the S $\frac{1}{2}$;
- Sec. 24, that portion of the S $\frac{1}{2}$ lying southwesterly of El Paso/Rand SRMA 18;
- Sec. 25, that portion lying northwesterly of BLM El Paso Mountains Wilderness Area;
- Sec. 26, that portion lying northeasterly and northwesterly of BLM El Paso Mountains Wilderness Area;
- Secs. 27 thru 28, those portions lying northwesterly of BLM El Paso Mountains Wilderness Area;
- Sec. 29;
- Sec. 30, lots 1 and 2 in NW $\frac{1}{4}$, the N $\frac{1}{2}$ of lot 1 and lot 2 in SW $\frac{1}{4}$, and E $\frac{1}{2}$;
- Sec. 31, lots 1 and 2 in SW $\frac{1}{4}$, and N $\frac{1}{2}$ of lot 2 in NW $\frac{1}{4}$, and E $\frac{1}{2}$;
- Sec. 32;
- Sec. 33, that portion lying westerly of El Paso Mountains Wilderness Area.
- T. 26 S., R. 38 E.,
- Sec. 3, that portion lying westerly of Mojave Ground Squirrel ACEC 123;
- Sec. 4;
- Sec. 5, that portion lying easterly of BLM Owens Peak Wilderness Area;
- Sec. 6, that portion lying southwesterly of BLM Owens Peak Wilderness Area;
- Secs. 7 thru 8, those portions lying northerly and southerly of Owens Peak Wilderness;
- Sec. 9;
- Sec. 10, that portion lying westerly of Mojave Ground Squirrel ACEC 123;
- Sec. 15, that portion of N $\frac{1}{2}$ lying westerly of Mojave Ground Squirrel ACEC 123 and that portion of S $\frac{1}{2}$ lying westerly of East Sierra SRMA 1;
- Sec. 16, NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and NW $\frac{1}{4}$;
- Sec. 17, that portion lying northeasterly of BLM Owens Peak Wilderness Area;
- Sec. 21, that portion lying northeasterly of BLM Owens Peak Wilderness Area;
- Sec. 22, that portion lying westerly of Mojave Ground Squirrel ACEC 123.
- T. 25 S., R. 38 E.,
- Sec. 4, that portion lying westerly of East Sierra SRMA 1;
- Sec. 5, that portion lying easterly of BLM Owens Peak Wilderness Area;
- Sec. 7, that portion lying easterly of BLM Owens Peak Wilderness Area;
- Sec. 8, NE $\frac{1}{4}$, SE $\frac{1}{4}$, and those portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ lying easterly of BLM Owens Peak Wilderness Area;
- Sec. 9, that portion lying westerly of East Sierra SRMA 1;
- Sec. 16, SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SW $\frac{1}{4}$;
- Sec. 17, that portion lying easterly of BLM Owens Peak Wilderness Area;
- Sec. 20, that portion lying easterly of BLM Owens Peak Wilderness Area;
- Sec. 21;
- Sec. 22, that portion of W $\frac{1}{2}$ SW $\frac{1}{4}$ lying westerly of East Sierra SRMA 1;
- Sec. 27, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
- Sec. 28;
- Sec. 29, those portions of NE $\frac{1}{4}$, SE $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$ lying easterly of Owens Peak Wilderness Area;
- Sec. 30, that portion of the W $\frac{1}{2}$ NW $\frac{1}{4}$ lying southerly of BLM Owens Peak Wilderness Area;
- Sec. 32, that portion lying easterly of BLM Owens Peak Wilderness Area;
- Sec. 33;
- Sec. 34, that portion lying westerly of East Sierra SRMA 1.
- T. 24 S., R. 38 E.,
- Sec. 5, that portion lying westerly of East Sierra SRMA 1;
- Secs. 6 thru 7, those portions lying easterly of BLM Sacatar Trail Wilderness Area;
- Sec. 8, that portion lying westerly of East Sierra SRMA 1;
- Sec. 17, that portion lying westerly of East Sierra SRMA 1;
- Sec. 18, that portion lying northeasterly of BLM Owens Peak Wilderness Area and southeasterly of BLM Sacatar Trail Wilderness Area;
- Sec. 19, that portion lying northeasterly of BLM Owens Peak Wilderness Area;
- Sec. 20, that portion lying westerly of East Sierra SRMA 1;
- Sec. 29, SW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, and that portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$ lying westerly of East Sierra SRMA 1;
- Sec. 30, that portion lying easterly of BLM Owens Peak Wilderness Area;

- Sec. 31, that portion lying northeasterly of BLM Owens Peak Wilderness Area;
- Secs. 32 and 33, those portions lying westerly of East Sierra SRMA 1.
- T. 23 S., R. 38 E.,
- Sec. 5, lot 3, NE $\frac{1}{4}$, SE $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$;
- Sec. 6, lot 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ and NW $\frac{1}{4}$;
- Sec. 7, W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$;
- Sec. 8, NE $\frac{1}{4}$, SE $\frac{1}{4}$, and E $\frac{1}{2}$ SW $\frac{1}{4}$;
- Sec. 17, NE $\frac{1}{4}$, SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$;
- Sec. 18, NW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ and that portion of W $\frac{1}{2}$ lying easterly of BLM Sacatar Trail Wilderness Area;
- Sec. 19, those portions of W $\frac{1}{2}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ lying easterly of Bureau of Land Management Sacatar Trail Wilderness Area;
- Sec. 20, NE $\frac{1}{4}$ and SE $\frac{1}{4}$;
- Sec. 29, that portion lying westerly of East Sierra SRMA 1;
- Secs. 30 thru 31, those portions lying easterly of BLM Sacatar Trail Wilderness Area;
- Sec. 32, that portion lying westerly of East Sierra SRMA 1.
- T. 22 S., R. 38 E.,
- Sec. 19, that portion of the SW $\frac{1}{4}$ lying southwesterly of a line projected from the $\frac{1}{4}$ sec. corner of secs. 19 and 24 to the $\frac{1}{4}$ sec. corner of secs. 19 and 30;
- Sec. 29, the SW $\frac{1}{4}$, and that portion of the NW $\frac{1}{4}$ lying southwesterly of a line projected from the corner of secs. 19, 20, 29 and 30 to the center $\frac{1}{4}$ sec. corner of sec. 29;
- Sec. 30, N $\frac{1}{2}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SW $\frac{1}{4}$;
- Sec. 31, E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, that portion of S $\frac{1}{2}$ lying northeasterly of Mojave Ground Squirrel ACEC SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, and that portion of W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ lying westerly of Development Focus Area 38 (DFA 8);
- Sec. 32.
- T. 21 S., R. 38 E.,
- Sec. 2, that portion lying southwesterly of BLM Coso Range Wilderness Area;
- Secs. 3 thru 10;
- Sec. 11, that portion lying southwesterly of BLM Coso Range Wilderness Area;
- Sec. 14, NE $\frac{1}{4}$, SW $\frac{1}{4}$, and NW $\frac{1}{4}$;
- Sec. 15;
- Secs. 17 and 18;
- Sec. 19, that portion lying northeasterly of DFA 171;
- Secs. 20 and 22;
- Sec. 26, N $\frac{1}{2}$;
- Secs. 27 and 28;
- Secs. 29 and 30, those portions lying northeasterly of DFA 171;
- Sec. 32, that portion lying northeasterly of DFA 171;
- Secs. 33 and 34.
- T. 20 S., R. 38 E.,
- Secs. 17 and 18, that portion lying southwesterly of BLM Coso Range Wilderness Area;
- Sec. 19;
- Secs. 20 and 21, those portions lying southwesterly of BLM Coso Range Wilderness Area;
- Sec. 28, that portion lying westerly of BLM Coso Range Wilderness Area;
- Secs. 29 thru 32;
- Sec. 33, that portion lying westerly of BLM Coso Range Wilderness Area.
- T. 18 S., R. 38 E.,
- Sec. 1, that portion lying westerly of BLM Malpais Mesa Wilderness Area;
- Sec. 2;
- Secs. 3 and 4, those portions lying southeasterly of California State Highway 190;
- Secs. 8 and 9, those portions lying southeasterly of California State Highway 190;
- Secs. 10 and 11;
- Secs. 12 and 13, those portions lying southwesterly of BLM Malpais Mesa Wilderness Area;
- Secs. 14 and 15;
- Secs. 17 thru 19, those portions lying southeasterly of California State Highway 190;
- Secs. 20 and 21, those portions lying northwesterly of BLM Coso Range Wilderness Area;
- Sec. 22, that portion lying easterly of BLM Coso Range Wilderness Area;
- Secs. 23 and 24;
- Sec. 25, that portion lying easterly of BLM Coso Range Wilderness Area;
- Secs 29 and 30, those portions lying northwesterly of BLM Coso Range Wilderness Area;
- Sec. 36, that portion lying northeasterly of BLM Coso Range Wilderness Area.
- T. 17 S., R. 38 E.,
- Secs. 1 thru 3;
- Sec. 4, that portion lying northeasterly of California State Highway 136;
- Secs. 11 and 12;
- Sec. 13, that portion lying northwesterly of BLM Malpais Mesa Wilderness Area;
- Sec. 14, that portion lying northeasterly of California State Highway 136 and northwesterly of BLM Malpais Mesa Wilderness Area;
- Sec. 23, that portion lying northeasterly of California State Highway 136 and northwesterly of BLM Malpais Mesa Wilderness Area;
- Sec. 26, that portion lying southeasterly of California State Highway 190 and southwesterly of California State Highway 136;
- Secs. 34 and 35, those portions lying southeasterly of California State Highway 190;
- Sec. 36, that portion lying westerly of BLM Malpais Mesa Wilderness Area.
- T. 16 S., R. 38 E.,
- Sec. 1, those portions lying southwesterly of BLM Inyo Mountains Wilderness Area and excluding Mineral Survey No. 5857, approved May 29, 1926;
- Sec. 2, those portions lying easterly of Inyo Mountain Crest Road, and excluding Mineral Survey No. 5857, approved May 29, 1926, and Mineral Survey No. 2048, approved December 30, 1882;
- Sec. 3, that portion lying easterly of Inyo Mountain Crest Road;
- Sec. 11, that portion lying northeasterly of Inyo Mountain Crest Road;
- Sec. 12, excluding Mineral Survey No. 5396, approved October 7, 1918;
- Sec. 13, those portions lying northerly of Inyo Mountain Crest Road and southerly of Cerro Gordo Road, excluding Mineral Survey No. 171, approved April 12, 1873, Mineral Survey No. 987, approved September 7, 1876, Mineral Survey No. 1057, approved May 1, 1880, Mineral Survey No. 1131, approved May 1, 1880, Mineral Survey No. 1295, approved November 20, 1882, Mineral Survey No. 1587, approved October 12, 1875, Mineral Survey No. 4651, approved October 7, 1907, Mineral Survey No. 5390, approved May 21, 1918, Mineral Survey No. 5395, approved September 5, 1918, and Mineral Survey No. 5396, approved October 7, 1918;
- Sec. 14, those portions lying northeasterly of Inyo Mountain Crest Road and southerly of Cerro Gordo Road, excluding Mineral Survey No. 1131, approved May 1, 1880, Mineral Survey No. 1151, approved May 7, 1880, and Mineral Survey No. 1303, approved March 20, 1878;
- Sec. 22, that portion lying easterly of Cerro Gordo Road;
- Sec. 23, those portions lying southerly of Cerro Gordo Road, excluding Mineral Survey No. 1131, approved May 1, 1880, Mineral Survey No. 1151, approved May 7, 1880, and Mineral Survey No. 1303, approved March 20, 1878;
- Sec. 24, those portions lying southerly of Cerro Gordo Road and excluding Mineral Survey No. 301, approved September 20, 1873, Mineral Survey No. 987, approved September 7, 1876, Mineral Survey No. 1057, approved May 1, 1880, Mineral Survey No. 1124, approved May, 1883, Mineral Survey No. 1131, approved May 1, 1880, Mineral Survey No. 1295, approved November 20, 1882, Mineral Survey No. 1587, approved October 12, 1875, Mineral Survey No. 1730, approved April 15, 1881, Mineral Survey No. 5390, approved May 21, 1918, and Mineral Survey No. 5395, approved September 5, 1918;
- Sec. 25;
- Secs. 26 thru 28, those portions lying southeasterly of Cerro Gordo Road;
- Secs. 32 and 33, those portions lying southeasterly of Cerro Gordo Road;
- Secs. 34 thru 36.
- T. 15 S., R. 38 E.,
- Sec. 34, that portion lying southeasterly of Inyo Mountain Crest Road and southerly of BLM Inyo Mountains Wilderness Area;
- Sec. 35, those portions lying southerly of BLM Inyo Mountains Wilderness Area and excluding Mineral Survey No. 5857, approved May 29, 1926;
- Sec. 36, that portion lying southwesterly of BLM Inyo Mountains Wilderness Area.

- T. 26 S., R. 37.5 E.,
Sec. 12, that portion lying northerly of BLM Kiavah Wilderness Area.
- T. 23 S., R. 37.5 E.,
Sec. 1;
Sec. 12, that portion lying northerly of BLM Sacatar Trail Wilderness Area.
- T. 20 S., R. 37.5 E.,
Sec. 12, that portion lying southerly of BLM Coso Range Wilderness Area;
Secs. 13, 24, and 25.
- T. 28 S., R. 37 E.,
Secs. 1 thru 8;
Sec. 9, N¹/₂, W¹/₂SE¹/₄, and SW¹/₄;
Secs. 10 thru 12;
Sec. 13, E¹/₂, W¹/₂SW¹/₄, and W¹/₂NW¹/₄;
Secs. 14 and 15;
Sec. 16, E¹/₂SE¹/₄;
Secs. 17 and 18;
Sec. 25, E¹/₂SE¹/₄NE¹/₄, E¹/₂SW¹/₄SE¹/₄NE¹/₄, E¹/₂SE¹/₄, and those portions of the E¹/₂E¹/₂NE¹/₄NE¹/₄, NW¹/₄SE¹/₄NE¹/₄, W¹/₂SE¹/₄, and SE¹/₄SW¹/₄ lying southeasterly of El Paso/Rand SRMA 18;
Sec. 35, that portion lying southeasterly of El Paso/Rand SRMA 18;
Sec. 36, S¹/₂NE¹/₄, NW¹/₄NE¹/₄, SE¹/₄, E¹/₂SW¹/₄, SW¹/₄SW¹/₄, SE¹/₄NW¹/₄, and those portions of the NW¹/₄SW¹/₄, NE¹/₄NW¹/₄, and W¹/₂NW¹/₄ lying southeasterly of El Paso/Rand SRMA 18.
- T. 27 S., R. 37 E.,
Sec. 1, those portions of the N¹/₂ lying southwesterly of California State Highway 178 and easterly of BLM Kiavah Wilderness Area, and that portion of the SW¹/₄ lying easterly of BLM Kiavah Wilderness Area;
Sec. 11, that portion lying southeasterly of BLM Kiavah Wilderness Area;
Sec. 12, that portion lying easterly of BLM Kiavah Wilderness Area;
Sec. 13;
Secs. 14 and 15, those portions lying southerly of the BLM Kiavah Wilderness Area;
Sec. 16, that portion of the SE¹/₄ SE¹/₄ lying southeasterly of BLM Kiavah Wilderness Area;
Sec. 18, lot 4;
Sec. 19, NW¹/₄, that portion of E¹/₂NE¹/₄ lying southerly, that portion of E¹/₂SE¹/₄ lying northeasterly, and that portion of the SW¹/₄ lying southwesterly and southeasterly of BLM Kiavah Wilderness Area;
Sec. 20, that portion lying southerly of BLM Kiavah Wilderness Area;
Sec. 21, that portion lying southeasterly of BLM Kiavah Wilderness Area;
Secs. 22 thru 29;
Sec. 30, the S¹/₂, those portions of the NE¹/₄ lying northeasterly and southwesterly, and those portions of NW¹/₄ lying southeasterly and southwesterly of BLM Kiavah Wilderness Area;
Sec. 31, that portion lying northerly, easterly and southerly of BLM Kiavah Wilderness Area;
Secs. 32 thru 35;
Sec. 36, N¹/₂ and E¹/₂SE¹/₄.
- T. 25 S., R. 37 E.,
Sec. 26, that portion lying southeasterly and southwesterly of BLM Owens Peak Wilderness Area;
- Sec. 35, that portion lying easterly and westerly of BLM Owens Peak Wilderness Area;
- Sec. 36, that portion lying southerly of BLM Owens Peak Wilderness Area.
- T. 26 S., R. 37 E.,
Sec. 1, that portion lying northwesterly of BLM Owens Peak Wilderness Area;
- Sec. 2, that portion lying easterly of BLM Owens Peak Wilderness Area.
- T. 23 S., R. 37 E.,
Sec. 1, that portion lying northeasterly of BLM Sacatar Trail Wilderness Area;
Sec. 2, that portion lying northeasterly of BLM Sacatar Trail Wilderness Area.
- T. 22 S., R. 37 E.,
Sec. 4, that portion lying southeasterly of BLM Sacatar Trail Wilderness Area;
Sec. 9, that portion lying easterly of BLM Sacatar Trail Wilderness Area;
Sec. 10, E¹/₂, SW¹/₄, and E¹/₂NW¹/₄;
Secs. 11 thru 12, those portions lying westerly of U.S. Highway 395;
Sec. 13;
Sec. 14, that portion lying northeasterly of BLM Sacatar Trail Wilderness Area;
Sec. 15, that portion lying easterly and northwesterly of BLM Sacatar Trail Wilderness Area;
Sec. 16, that portion lying northeasterly and southeasterly of BLM Sacatar Trail Wilderness Area;
Sec. 21, that portion lying northeasterly of BLM Sacatar Trail Wilderness Area;
Sec. 22, that portion lying northwesterly of BLM Sacatar Trail Wilderness Area;
Sec. 23, that portion lying easterly of BLM Sacatar Trail Wilderness Area;
Sec. 24, SE¹/₄ and W¹/₂;
Sec. 25, NE¹/₄, N¹/₂SE¹/₄, E¹/₂NW¹/₄, and those portions of the SE¹/₄SE¹/₄ and NE¹/₄SW¹/₄ lying easterly of El Paso/Rand SRMA 1;
Sec. 26, that portion lying easterly of BLM Sacatar Trail Wilderness Area;
Sec. 35, that portion lying easterly of BLM Sacatar Trail Wilderness Area;
Sec. 36, that portion lying westerly of DFA 38.
- T. 21 S., R. 37 E.,
Sec. 1, E¹/₂, E¹/₂SW¹/₄, and E¹/₂NW¹/₄;
Sec. 2, S¹/₂SE¹/₄SW¹/₄, W¹/₂SW¹/₄, and W¹/₂NW¹/₄;
Secs. 3, 4, 9, and 10;
Sec. 11, N¹/₂NW¹/₄SW¹/₄NW¹/₄NE¹/₄, W¹/₂NW¹/₄NW¹/₄NE¹/₄, that portion of W¹/₂ lying westerly of the 2nd Los Angeles Aqueduct, and that portion of W¹/₂ lying easterly of the 2nd Los Angeles Aqueduct and northeasterly of DFA 171;
Sec. 12;
Sec. 13, that portion lying northerly of DFA 171;
Sec. 14, W¹/₂NW¹/₄, that portion of the E¹/₂ lying northerly of DFA 171, that portion of W¹/₂SW¹/₄ lying northwesterly of DFA 171, and that portion of the E¹/₂NW¹/₄ lying westerly of the Los Angeles Aqueduct and the 2nd Los Angeles Aqueduct;
Sec. 15, N¹/₂, SW¹/₄, and that portion of SW¹/₄SE¹/₄ lying southwesterly of U.S. Highway 395;
Sec. 16, N¹/₂NE¹/₄, SE¹/₄, and W¹/₂;
Sec. 21;
- Sec. 22, NW¹/₄NE¹/₄, N¹/₂SW¹/₄SE¹/₄, NE¹/₄SW¹/₄, W¹/₂SW¹/₄, NW¹/₄, those portions of the S¹/₂NE¹/₄, N¹/₂SE¹/₄, and SE¹/₄SE¹/₄ lying southwesterly of U.S. Highway 395;
Sec. 23, that portion of the N¹/₂SW¹/₄SW¹/₄ lying southwesterly of U.S. Highway 395;
Sec. 24, that portion lying northeasterly of DFA 171;
Sec. 28;
Sec. 33, that portion lying northerly and easterly of DFA171.
- T. 20 S., R. 37 E.,
Sec. 1, that portion of E¹/₂ lying southwesterly of BLM Coso Range Wilderness Area;
Sec. 2, SW¹/₄NE¹/₄ and SE¹/₄NW¹/₄;
Sec. 3, E¹/₂;
Sec. 4, W¹/₂NE¹/₄, W¹/₂SE¹/₄, and W¹/₂;
Secs. 5 and 6;
Sec. 7, NE¹/₄, W¹/₂SE¹/₄, SE¹/₄SW¹/₄, NW¹/₄SW¹/₄, and SW¹/₄NW¹/₄;
Sec. 8, N¹/₂, SE¹/₄SE¹/₄, W¹/₂SE¹/₄, E¹/₂SW¹/₄, and SW¹/₄SW¹/₄;
Sec. 10, E¹/₂NE¹/₄, NW¹/₄NE¹/₄, and E¹/₂SE¹/₄;
Sec. 12, that portion of E¹/₂ lying southwesterly of BLM Coso Range Wilderness area;
Sec. 13, E¹/₂;
Sec. 15, NE¹/₄NE¹/₄, S¹/₂NE¹/₄, and NE¹/₄SE¹/₄;
Sec. 17;
Sec. 18, E¹/₂, NE¹/₄SW¹/₄, S¹/₂SW¹/₄, and E¹/₂NW¹/₄;
Secs. 19 and 20;
Sec. 21, NW¹/₄SE¹/₄, S¹/₂SW¹/₄, and NW¹/₄SW¹/₄;
Sec. 23, E¹/₂SW¹/₄ and NW¹/₄SW¹/₄;
Sec. 24, E¹/₂;
Sec. 25;
Sec. 26, NE¹/₄, E¹/₂SE¹/₄, E¹/₂NW¹/₄, and NW¹/₄NW¹/₄;
Secs. 28 thru 33;
Sec. 34, S¹/₂SW¹/₄, NW¹/₄SW¹/₄, and NW¹/₄;
Sec. 35, E¹/₂NE¹/₄ and SE¹/₄;
Sec. 36, N¹/₂ and SW¹/₄.
- T. 19 S., R. 37 E.,
Sec. 1, that portion lying westerly of BLM Coso Range Wilderness Area;
Secs. 2 and 3;
Sec. 4, SE¹/₄ and SE¹/₄SW¹/₄;
Sec. 8, that portion of E¹/₂ lying southeasterly of California State Highway 190;
Sec. 9, those portions of E¹/₂, SW¹/₄, S¹/₂NW¹/₄, and NE¹/₄NW¹/₄ lying northeasterly, southeasterly, and westerly of Olancha SRMA 13;
Sec. 10, that portion lying easterly of Olancha SRMA 13;
Sec. 11;
Sec. 12, that portion lying southwesterly of BLM Coso Range Wilderness Area;
Sec. 13, that portion lying northwesterly and southwesterly of BLM Coso Range Wilderness Area;
Secs. 14 and 15;
Sec. 19, SW¹/₄SE¹/₄, SW¹/₄, S¹/₂NW¹/₄, and NW¹/₄NW¹/₄;
Sec. 20, E¹/₂SE¹/₄;
Sec. 21, SE¹/₄;
Sec. 22;
Sec. 23, that portion lying westerly of BLM Coso Range Wilderness Area;

Sec. 24, that portion lying northeasterly and northwesterly of BLM Coso Range Wilderness Area;

Sec. 26, $W\frac{1}{2}NE\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}$, and $W\frac{1}{2}$;

Sec. 27;

Sec. 28, $NE\frac{1}{4}$ and $E\frac{1}{2}SE\frac{1}{4}$;

Sec. 29, that portion lying northeasterly, southerly, and northerly of East Sierra SRMA 1, and southwesterly of U.S. Highway 395;

Sec. 30, $NW\frac{1}{4}NE\frac{1}{4}$, $S\frac{1}{2}SE\frac{1}{4}$, and $W\frac{1}{2}$;

Sec. 31;

Sec. 32, $W\frac{1}{2}$, $N\frac{1}{2}NE\frac{1}{4}$, and $S\frac{1}{2}SE\frac{1}{4}$;

Sec. 33, $NE\frac{1}{4}NE\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}SE\frac{1}{4}$, and $W\frac{1}{2}$;

Sec. 34, $N\frac{1}{2}$ and $SE\frac{1}{4}$;

Sec. 35, that portion lying westerly of BLM Coso Range Wilderness Area;

T. 18 S., R. 37 E.,

Secs. 24 and 25, those portions lying southeasterly of California State Highway 190;

Sec. 34, those portions of $S\frac{1}{2}SE\frac{1}{4}$, $NW\frac{1}{4}SW\frac{1}{4}$, and $SE\frac{1}{4}SW\frac{1}{4}$ lying southeasterly of California State Highway 190;

Sec. 35, those portions of $E\frac{1}{2}$, $SW\frac{1}{4}$, and $S\frac{1}{2}NW\frac{1}{4}$ lying southeasterly of California State Highway 190;

T. 28 S., R. 36 E.,

Sec. 1, that portion lying easterly of the BLM Kiavah Wilderness Area;

Sec. 3, that portion lying westerly of the BLM Kiavah Wilderness Area;

Secs. 4 thru 9;

Secs. 10 and 11, that portion lying southwesterly of the BLM Kiavah Wilderness Area;

Sec. 12, that portion lying southerly and easterly of the BLM Kiavah Wilderness Area;

Sec. 13;

Sec. 14, $E\frac{1}{2}$, $E\frac{1}{2}SW\frac{1}{4}$, $SW\frac{1}{4}SW\frac{1}{4}$, $W\frac{1}{2}NW\frac{1}{4}$, and $NW\frac{1}{4}NW\frac{1}{4}$;

Sec. 15, $NE\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}$, and $W\frac{1}{2}$;

Secs. 16 thru 23, and Sec. 26;

Sec. 27, $E\frac{1}{2}$, $E\frac{1}{2}SW\frac{1}{4}$, $NW\frac{1}{4}SW\frac{1}{4}$, and $NW\frac{1}{4}$;

Secs. 28 thru 35.

T. 27 S., R. 36 E.,

Sec. 13, $E\frac{1}{2}SE\frac{1}{4}$, $SW\frac{1}{4}SE\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}$, $NW\frac{1}{4}SW\frac{1}{4}$, and $SW\frac{1}{4}NW\frac{1}{4}$;

Sec. 19, that portion lying southerly of BLM Kiavah Wilderness Area;

Sec. 24, $N\frac{1}{2}NE\frac{1}{4}$;

Sec. 25, $S\frac{1}{2}$, $W\frac{1}{2}NW\frac{1}{4}$, those portions of $NE\frac{1}{4}$ and $E\frac{1}{2}NW\frac{1}{4}$ lying southerly of BLM Kiavah Wilderness Area;

Secs. 28 thru 29, those portions lying southwesterly of BLM Kiavah Wilderness Area;

Sec. 30, that portion lying southerly and southwesterly of BLM Kiavah Wilderness Area;

Secs. 31 and 32;

Secs. 33 thru 34, those portions lying southwesterly of BLM Kiavah Wilderness Area;

Sec. 36, those portions lying northeasterly and southeasterly of BLM Kiavah Wilderness Area.

T. 19 S., R. 36 E.,

Secs. 24 thru 25;

Sec. 36, $S\frac{1}{2}NE\frac{1}{4}$, $S\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}SE\frac{1}{4}$, and lots 1 thru 4.

T. 28 S., R. 35 E.,

Sec. 1;

Sec. 2, lots 5, 6, 11, and 12, $S\frac{1}{2}NE\frac{1}{4}$, $SE\frac{1}{4}$, and $W\frac{1}{2}$;

Sec. 3, lots 17 and 18, $NE\frac{1}{4}$, and $N\frac{1}{2}SE\frac{1}{4}$;

Sec. 4, those portions of lots 6, 10, 11, 14, 16, and 17 lying easterly of BLM Bright Star Wilderness Area;

Sec. 9, that portion lying easterly of BLM Bright Star Wilderness Area;

Sec. 10, lots 4, 5, 7, and 8, and $SE\frac{1}{4}$;

Sec. 11;

Sec. 12, lots 1 thru 4, $N\frac{1}{2}NE\frac{1}{4}$, $SE\frac{1}{4}NE\frac{1}{4}$, $NE\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}SE\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}$, $NW\frac{1}{4}SW\frac{1}{4}$, $N\frac{1}{2}NW\frac{1}{4}$, and $SW\frac{1}{4}NW\frac{1}{4}$;

Secs. 13 and 14;

Sec. 15, $E\frac{1}{2}$, $W\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}SW\frac{1}{4}$, $SE\frac{1}{4}NE\frac{1}{4}SW\frac{1}{4}$, $W\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$, $SE\frac{1}{4}SW\frac{1}{4}$, $E\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}SW\frac{1}{4}$, $SE\frac{1}{4}NE\frac{1}{4}SW\frac{1}{4}SW\frac{1}{4}$, $NE\frac{1}{4}NW\frac{1}{4}$, and $SE\frac{1}{4}NW\frac{1}{4}$;

Sec. 20, $SE\frac{1}{4}SE\frac{1}{4}$, and those portions of the $SE\frac{1}{4}NE\frac{1}{4}$, $NE\frac{1}{4}SE\frac{1}{4}$, and $SW\frac{1}{4}$ lying southerly of BLM Bright Star Wilderness Area;

Sec. 21, those portions of $NW\frac{1}{4}NE\frac{1}{4}$ and $W\frac{1}{2}$ lying southerly and easterly of BLM Bright Star Wilderness Area;

Secs. 22 thru 27;

Sec. 28, $SW\frac{1}{4}NE\frac{1}{4}$, $S\frac{1}{2}$, and $S\frac{1}{2}NW\frac{1}{4}$;

Sec. 29, $S\frac{1}{2}NE\frac{1}{4}$, $S\frac{1}{2}$, and $NW\frac{1}{4}$;

Secs. 30 thru 36.

T. 27 S., R. 35 E.,

Secs. 24 and 25, those portions lying southerly of BLM Kiavah Wilderness Area and Jawbone SMRA 40;

Sec. 26, that portion southerly of Jawbone SMRA 40;

Sec. 27, $SE\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}$, and those portions of $NE\frac{1}{4}SE\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}$, and $S\frac{1}{2}NW\frac{1}{4}SW\frac{1}{4}$ lying southerly of Jawbone SMRA 40;

Sec. 33, those portions lying easterly, northeasterly, and southwesterly of BLM Bright Star Wilderness Area;

Sec. 34, $E\frac{1}{2}NE\frac{1}{4}$, $SW\frac{1}{4}NE\frac{1}{4}$, $N\frac{1}{2}SW\frac{1}{4}$, and $W\frac{1}{2}NW\frac{1}{4}$;

Secs. 35 and 36.

T. 28 S., R. 34 E.,

Sec. 35, $SE\frac{1}{4}$;

Sec. 36, $S\frac{1}{2}$.

The Eastern Slopes-West Desert area of the California Desert National Conservation Lands described aggregates 235,604 acres in Kern and Inyo Counties.

The total areas described aggregate 1,337,904 acres in the State of California and the counties listed above, and consist of a subset of the designated California Desert National Conservation Lands.

The Assistant Secretary of the Interior for Land and Minerals Management has approved the BLM's petition. This action therefore, constitutes a withdrawal proposal of the Secretary of the Interior (43 CFR 2310.1-3(e)).

The purpose of the proposed withdrawal is to protect nationally significant landscapes with outstanding cultural, biological, and scientific values from adverse effects of locatable mineral exploration and mining.

The use of a right-of-way, interagency or cooperative agreement, or surface management by the BLM under 43 CFR

3715 or 43 CFR 3809 regulations do not adequately constrain nondiscretionary uses, which could result in the loss of nationally significant values for which the California Desert National Conservation Lands were designated.

Alternative sites for withdrawal from location and entry under the United States mining laws exist on approximately 1.6 million acres of California Desert National Conservation Lands. These California Desert National Conservation Lands are not being proposed for withdrawal at this time because their values are not as sensitive and therefore would not benefit from a withdrawal to the same degree as the proposed 1,337,904 acres. A future phase 2 withdrawal proposal may include all or a portion of the approximately 1.6 million remaining acres of California Desert National Conservation Lands.

No water rights would be needed to fulfill the purpose of the proposed withdrawal.

Records relating to the application may be examined by contacting the BLM offices listed above.

For a period until March 28, 2017, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the BLM-California State Director, 2800 Cottage Way, Rm 1623, Sacramento, CA 95825, or electronically to drecp_cdncl_withdrawal@blm.gov.

Notice is hereby given that one or more public meetings will be held in connection with the proposed withdrawal. A notice of the time and place of these public meetings will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

All comments received, within the prescribed timeframe, will be considered before any final action is taken on the withdrawal application.

This notice also opens a 90-day public scoping period for the EIS. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives in the EIS. At present, the BLM has identified the following preliminary issues for analysis: Air quality, climate, Native American resources, cultural resources, mineral resources, recreation, socio-economic conditions, soil resources, special status species, vegetation resources, visual resources, water resources, and fish and wildlife resources.

Because of the nature of a withdrawal of public lands from location and entry under the United States mining laws,

mitigation of its effects is not likely to be an issue requiring detailed analysis. However, consistent with Council on Environmental Quality regulations implementing the National Environmental Policy Act (NEPA) (40 CFR 1502.14), the BLM will consider whether to and what kind of mitigation measures may be appropriate to address the reasonably foreseeable impacts to resources from the approval of this proposed withdrawal.

The BLM will use the NEPA scoping process to help fulfill the public involvement requirements under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns,

including impacts to Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed withdrawal, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the EIS as a cooperating agency.

Comments, including names and street addresses of respondents, will be available for public review at the BLM California State Office at the address noted above, during regular business hours Monday through Friday, except Federal holidays. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to

withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

For a period until December 28, 2018, the lands described in this notice will be segregated from location and entry under the United States mining laws, subject to valid existing rights, unless the application/proposal is denied or canceled or the proposed withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or other discretionary land use authorizations may be allowed during the temporary segregative period, but only with approval of the authorized officer of the BLM.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Jerome E. Perez,

California State Director, Bureau of Land Management.

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Part III

Department of Energy

10 CFR Parts 429 and 431

Energy Conservation Program: Test Procedure for Walk-in Coolers and Walk-in Freezers; Final Rule

DEPARTMENT OF ENERGY**10 CFR Parts 429 and 431****[Docket No. EERE-2016-BT-TP-0030]****RIN 1904-AD72****Energy Conservation Program: Test Procedure for Walk-in Coolers and Walk-in Freezers****AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.**ACTION:** Final rule.

SUMMARY: This final rule amends the test procedure for certain walk-in cooler and freezer components by improving the procedure's clarity, updating related certification and enforcement provisions to address the performance-based energy conservation standards for walk-in cooler and freezer equipment, and establishing labeling requirements to aid manufacturers in determining compliance with the relevant standards for walk-in cooler and freezer applications. The amendments consist of provisions specific to certain walk-in cooler and freezer refrigeration systems, including product-specific definitions, removal of a performance credit for hot gas defrost, and a method to accommodate refrigeration equipment that use adaptive defrost and on-cycle variable-speed evaporator fan control.

DATES: The effective date of this rule is January 27, 2017. The final rule changes will be mandatory for representations starting June 26, 2017. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on January 27, 2017.

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

A link to the docket Web page can be found at www.regulations.gov/#!docketDetail;D=EERE-2016-BT-TP-0030. The docket Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building

Technologies Office, EE-2J, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-6590. Email: Ashley.Armstrong@ee.doe.gov.

SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following industry standards into 10 CFR part 431:

(1) AHRI Standard 420-2008 ("AHRI 420-2008"), "Performance Rating of Forced-Circulation Free-Delivery Unit Coolers for Refrigeration," copyright 2008.

(2) AHRI Standard 1250-2009 ("AHRI 1250-2009"), "Standard for Performance Rating of Walk-in Coolers and Freezers," approved 2009.

(3) ASHRAE Standard 23.1-2010 ("ASHRAE 23.1-2010"), "Methods of Testing for Rating the Performance of Positive Displacement Refrigerant Compressors and Condensing Units that Operate at Subcritical Temperatures of the Refrigerant," ANSI approved January 28, 2010.

(4) ASTM C518-04 ("ASTM C518"), Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus, approved May 1, 2004.

Copies of AHRI Standard 420-2008 and AHRI Standard 1250-2009 may be purchased from AHRI at 2111 Wilson Boulevard, Suite 500, Arlington, VA 22201, or by going to www.ahrinet.org.

Copies of ASHRAE 23.1-2010 may be purchased from ASHRAE at 1971 Tullie Circle NE., Atlanta, GA 30329, or by going to www.ashrae.org.

Copies of ASTM C518 may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, (610) 832-9500.

For a further discussion of these standards, see section IV.N.

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I. Authority and Background

Walk-in coolers and walk-in freezers (collectively, "walk-ins" or "WICFs") are included in the list of "covered equipment" for which the U.S. Department of Energy ("DOE") is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(G)) By definition, a walk-in is an enclosed storage space of less than 3,000 square feet that can be walked into and is refrigerated to prescribed temperatures based on whether the given unit is a cooler or a freezer. See generally 42 U.S.C. 6311(20). In simple terms, a walk-in is an insulated box (or envelope) serviced by a refrigerated system that feeds cold air to the box's

interior. DOE's energy conservation standards and test procedures for walk-ins are currently prescribed at 10 CFR 431.306 and 10 CFR 431.304, respectively. The following sections discuss DOE's authority to establish test procedures for walk-ins and relevant background information regarding DOE's consideration of test procedures for this equipment.

A. Authority

Title III, Part C¹ of the Energy Policy and Conservation Act of 1975 ("EPCA" or, in context, "the Act"), Public Law 94-163, as amended (codified as 42 U.S.C. 6311-6317) established the Energy Conservation Program for Certain Industrial Equipment, a program covering certain industrial equipment, including walk-ins, the subject of this document. (42 U.S.C. 6311(1)(G))

In general, this program addresses the energy efficiency of certain types of commercial and industrial equipment. Relevant provisions of the Act specifically include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316 and 6296(d)). Manufacturers of covered equipment must use the prescribed DOE test procedure as the basis for making representations to the public regarding the energy use or efficiency of such equipment. (42 U.S.C. 6314(d))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results that measure the energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. See 42 U.S.C. 6314(a)(2) (detailing criteria for setting test procedures for industrial equipment).

DOE also generally periodically reviews its test procedures and if it determines that an amendment is warranted, DOE publishes a proposal to amend them and offers the public an opportunity to present oral and written comments on that proposal. (See generally 42 U.S.C. 6314(b)) DOE also generally determines the extent, if any,

to which the test procedure amendment(s) would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) For purposes of this rulemaking, DOE has made this determination through its conducting of a parallel rulemaking setting standards for certain classes of walk-in refrigeration systems.

B. Background

Section 312 of the Energy Independence and Security Act of 2007, Public Law 110-140 (December 19, 2007), required DOE to establish test procedures to measure walk-in energy use. On April 15, 2011, DOE published test procedures for the principal components that make up a walk-in: panels, doors, and refrigeration systems. DOE took this component-based testing approach after carefully considering a significant body of feedback from interested parties that requiring a single test procedure for an entire walk-in would be impractical because most walk-ins are assembled on-site with components from different manufacturers. 76 FR 21580, 21582 (April 15, 2011).

On February 20, 2014, DOE initiated another test procedure rulemaking for walk-ins to clarify and modify the test procedures published in April 2011. DOE also proposed to revise the existing regulations for walk-ins to allow manufacturers, once certain qualifications are met, to use an alternative efficiency determination method ("AEDM") to certify compliance and report ratings. That effort, which came in the form of a supplemental notice of proposed rulemaking ("SNOPR"), solicited public comments, data, and information on the proposed test procedure modifications. 79 FR 9818 (February 20, 2014). DOE published a final rule codifying the AEDM provisions and amendments to the test procedure for walk-ins on May 13, 2014. 79 FR 27388.

DOE also published a notice of proposed rulemaking ("NOPR") to establish new performance-based energy conservation standards for walk-ins on September 11, 2013. ("September 2013 NOPR") 78 FR 55782. That NOPR addressed the comments received during earlier stages of the rulemaking and proposed new energy conservation standards for this equipment. In conjunction with the September 2013 NOPR, DOE published a technical support document ("TSD") to accompany the proposed rule along with spreadsheets addressing aspects of DOE's engineering analysis,

Government Regulatory Impact Model ("GRIM"), life cycle cost ("LCC"), and national impact analysis ("NIA"). See Docket No. EERE-2008-BT-STD-0015. DOE proposed standards for eight dedicated condensing classes of refrigeration systems, two multiplex condensing classes of refrigeration systems, three classes of panels, four classes of non-display doors, and two classes of display doors. (The proposed refrigeration system standards used the metric "annual walk-in energy factor" ("AWEF"), and the door standards used the metric maximum energy consumption that incorporates thermal insulating ability and electrical energy used by the door. The proposed panel standards were equivalent to those previously established by Congress and use a measurement of thermal insulation—or "R-value"—to represent the energy efficiency of these components.) DOE published a final rule adopting these new standards on June 3, 2014 ("June 2014 final rule"). 79 FR 32050. Except for the equipment class standards that were vacated, as described below, compliance with the standards adopted in the June 2014 final rule is required starting on June 5, 2017.

After publication of the June 2014 final rule, the Air-Conditioning, Heating and Refrigeration Institute ("AHRI") and Lennox International, Inc. (a manufacturer of walk-in refrigeration systems) filed petitions for review of DOE's final rule and DOE's subsequent denial of a petition for reconsideration of the rule (79 FR 59090 (October 1, 2014)) with the United States Court of Appeals for the Fifth Circuit. *Lennox Int'l v. Dep't of Energy*, Case No. 14-60535 (5th Cir.). Other walk-in refrigeration system manufacturers—Rheem Manufacturing Co. (owner of Heat Transfer Products Group) and Hussmann Corp.—along with the Air Conditioning Contractors of America (a trade association representing contractors who assemble walk-in refrigeration systems) intervened on the petitioners' behalf, while the Natural Resources Defense Council ("NRDC")—representing itself, the American Council for an Energy-Efficient Economy, and the Texas Ratepayers' Organization to Save Energy—intervened on behalf of DOE. As a result of this litigation, a settlement agreement was reached that addressed, among other things, six of the refrigeration system standards—the standards for low-temperature dedicated condensing equipment classes and both medium- and low-temperature multiplex condensing equipment classes.

A controlling Order from the United States Court of Appeals for the Fifth

¹ For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A-1.

Circuit, issued on August 10, 2015, vacated those six standards. On November 12, 2015, DOE amended the CFR to reflect this Order. 80 FR 69837. The remaining standards promulgated by the June 2014 final rule—*i.e.*, the (1) Four standards applicable to dedicated condensing refrigeration systems operating at medium-temperatures, (2) three standards applicable to panels, and (3) six standards applicable to doors—were not vacated and continue to remain subject to the June 5, 2017 compliance date prescribed in the June 2014 final rule. See 79 FR at 32051–32052 (Table I.1) and 32123–32124 (codified at 10 CFR 431.306(a), (c)–(e)).

To address the vacated standards, DOE established a Working Group to negotiate proposed energy conservation

standards to replace them. Specifically, on August 5, 2015, DOE published a notice of intent to establish a Working Group for Certain Equipment Classes of Refrigeration Systems of Walk-in Coolers and Freezers to Negotiate a Notice of Proposed Rulemaking for Energy Conservation Standards (“Working Group”). 80 FR 46521. The Working Group was established under the Appliance Standards and Rulemaking Federal Advisory Committee (“ASRAC”) in accordance with the Federal Advisory Committee Act (“FACA”) and the Negotiated Rulemaking Act (“NRA”). (5 U.S.C. App. 2; 5 U.S.C. 561–570, Pub. L. 104–320.) The purpose of the Working Group was to discuss and, if possible, reach consensus on proposed standard levels

for the energy efficiency of the affected classes of walk-in refrigeration systems. The Working Group consisted of 12 representatives of parties having a defined stake in the outcome of the proposed standards and one DOE representative (see Table 1). All of the meetings were open to the public and broadcast via webinar. Several people who were not members of the Working Group attended the meetings and were given the opportunity to comment on the proceedings. Non-Working Group meeting attendees are listed in Table 2. The Working Group consulted as appropriate with a range of experts on technical issues. The Working Group met in-person on 13 days of meetings held between August 27 and December 15, 2015.

TABLE 1—WALK-IN REFRIGERATION SYSTEMS NEGOTIATED RULEMAKING WORKING GROUP

Full name	Affiliation
Ashley Armstrong	U.S. Department of Energy.
Lane Burt	Natural Resources Defense Council.
Mary Dane	Traulsen.
Cyril Fowble	Lennox International, Inc.
Sean Gouw	CA Investor-Owned Utilities.
Andrew Haala	Hussmann Corp.
Armin Hauer	ebm-papst, Inc.
John Koon	Manitowoc Company.
Joanna Mauer	Appliance Standards Awareness Project.
Charlie McCrudden	Air Conditioning Contractors of America.
Louis Starr	Northwest Energy Efficiency Alliance.
Michael Straub	Rheem Manufacturing.
Wayne Warner	Emerson Climate Technologies.

TABLE 2—OTHER ASRAC WALK-IN COOLERS AND FREEZERS MEETING ATTENDEES AND AFFILIATIONS

Full name	Affiliation
Akash Bhatia	Tecumseh Products Company.
Bryan Eisenhower	VaCom Technologies.
Dean Groff	Danfoss.
Brian Lamberty	Unknown.
Michael Layne	Turbo Air.
Jon McHugh	McHugh Energy.
Yonghui (Frank) Xu	National Coil Company.
Vince Zolli	KeepRite Refrigeration.

On December 15, 2015, the Working Group reached consensus on, among other things, a series of energy conservation standards to replace those that were vacated as a result of the litigation. The Working Group assembled their recommendations into a single Term Sheet (See Docket EERE–2015–BT–STD–0016, No. 56) that was presented to, and approved by, the ASRAC on December 18, 2015. DOE anticipates adopting in a separate rulemaking document energy conservation standards consistent with the Working Group’s Term Sheet for those classes of walk-in refrigeration systems whose standards were vacated.

See Docket No. EERE–2015–BT–STD–0016 for all background documents on the negotiated rulemaking.

While the Working Group’s focus centered primarily on addressing the six energy conservation standards for low-temperature dedicated condensing equipment classes and both medium- and low-temperature multiplex condensing equipment classes, (see Docket No. EERE–2015–BT–STD–0016, No. 1 and 2), the Term Sheet also included recommendations that DOE consider making certain amendments to the walk-in test procedure. These recommendations included technical corrections to the test procedure itself,

definitions for certain terms to provide clarity regarding the applicability of the standards (and, relatedly, the test procedure), and other changes that the Working Group deemed necessary in order to implement the agreed-upon refrigeration system standards.² DOE

² The recommended changes to the test procedure deal exclusively with efficiency measurement and certification for the classes of refrigeration systems that were the subject of the negotiations. These changes do not affect the test procedures for the refrigeration system standards that were not vacated. They specifically address removing test procedure provisions, including hot gas defrost, and adding requirements that certified efficiency levels for evaluating standards compliance would not rely on the current test procedure provisions for

considered the approved Term Sheet, along with other comments received during the negotiated rulemaking process, and proposed several test procedure amendments addressing these Term Sheet recommendation in a NOPR published August 17, 2016 (“August 2016 NOPR”). 81 FR 54926. The NOPR also included additional proposals to facilitate implementation of energy conservation standards for WICF components. DOE held a public meeting to discuss the NOPR on September 12, 2016 and accepted written comments during a comment period that ended October 17, 2016. DOE considered these comments when developing this final rule.

DOE is requiring manufacturers to use the prescribed test procedure described in this document when making representations regarding the energy use or efficiency of covered equipment. Manufacturers will have 180 days after the final rule’s publication date to ensure that these representations are based on this test procedure. (42 U.S.C. 6314(d))

The amendments adopted in this final rule will not change the measured energy use of the classes of refrigeration systems whose standards were not vacated.³ As such, all test procedure amendments adopted in this final rule are effective 30 days after publication in the **Federal Register** and required for representations regarding the energy consumption of covered equipment 180 days after publication of this final rule in the **Federal Register**. The compliance dates for labeling requirements are aligned with the corresponding energy conservation standards compliance dates, *i.e.*, June 2017 for the standards established by the June 2014 final rule that were not vacated, and January 2020 for the refrigeration system standards for unit coolers and low-temperature dedicated condensing units.

In addition to implementing the recommendations detailed in the Term Sheet developed as part of the ASRAC negotiated rulemaking meetings, this final rule fulfills DOE’s obligation to periodically review its test procedures under 42 U.S.C. 6314(a). DOE also

reviewed other aspects of the WICF test procedure and ultimately concluded that, with the exception of the amendments being made in this final rule, no other changes are needed at this point in time. DOE anticipates that its next evaluation of this test procedure (and the addressing of any remaining issues detailed in the Term Sheet that relate to the WICF test procedure) will occur in a manner consistent with this provision. (Term Sheet at EERE–2015–BT–STD–0016, No. 56, Recommendation #6)

II. Synopsis of the Final Rule

In this final rule, DOE amends 10 CFR 431.304, “Uniform test method for the measurement of energy consumption of walk-in coolers and walk-in freezers,” and related certification, compliance, and enforcement provisions of 10 CFR part 429. The amendments fall into two groups.

The first group consists of test procedure modifications and other additions to the regulatory text recommended by the Working Group and listed in the Term Sheet, including the following:

(1) Adding definitions for the terms “dedicated condensing unit,” “outdoor dedicated condensing refrigeration system,” “indoor dedicated condensing refrigeration system,” “adaptive defrost,” “process cooling,” and “refrigerated storage space.” DOE also is adding definitions for “dedicated condensing refrigeration system,” “single-package dedicated system,” “matched condensing unit,” “matched refrigeration system,” and modifying the definition of “refrigeration system” to complete a comprehensive structure for defining all relevant terms discussed in the test procedure.

(2) Removing the method for calculating defrost energy and defrost heat load of a system with hot gas defrost and establish a method to test hot gas defrost refrigeration systems to obtain AWEF ratings equivalent to those of electric defrost refrigeration systems.

(3) Establishing a regulatory approach for refrigeration systems with adaptive defrost and/or on-cycle variable-speed evaporator fan control that requires that these features be deactivated when such units are tested to demonstrate compliance with the standard, while allowing for representations of their improved performance when using these features.

The second group of amendments consists of test procedure modifications and certification, compliance, and enforcement provisions that, while not part of the Term Sheet, are necessary for implementing the energy conservation standards. This group of changes includes the following:

(1) Re-organizing the test procedure provisions in 10 CFR 431.304 to improve clarity, and correct typographical errors in the rule language.

(2) Clarifying section 3.0 “Additional Definitions” in appendix A to subpart R of part 431.

(3) Modifying the current walk-in certification and reporting requirements in 10 CFR 429.53 to clarify applicability of walk-in test procedures to certain equipment classes and add provisions for reporting additional rating metrics.

(4) Adding walk-in refrigeration systems, panels, and doors to the list of products and equipment included as part of the enforcement testing requirements prescribed in 10 CFR 429.110(e)(2).

(5) Adding product specific enforcement provisions for walk-ins.

(6) Adding labeling requirements for walk-in refrigeration systems, panels, and doors.

III. Discussion

This final rule stems from the detailed discussions and suggestions offered by Working Group participants during the walk-in negotiated rulemaking. These participants, in addition to providing detailed technical feedback on replacing the vacated standards, also offered detailed recommendations regarding the walk-in test procedures. These recommendations were offered as a means to address questions related to the treatment of certain types of features or components that may be present in a given walk-in refrigeration system. DOE developed specific proposals to incorporate the Working Group recommendations into its test procedures, resulting in the August 2016 NOPR. 81 FR 54926. DOE received comments from a number of interested parties. A list of these parties is included in Table 3—Interested Parties Who Commented on the WICF NOPR. The comments received and DOE’s decisions regarding finalization of the test procedure amendments are discussed in the sections that follow.

adaptive defrost or on-cycle variable-speed evaporator fans.

³ DOE anticipates adopting performance-based energy conservation standards for certain classes of refrigeration systems for walk-ins in a separate rulemaking—those standards would replace the standards vacated by the Fifth Circuit court order. See Docket No. EERE–2015–BT–STD–0016.

TABLE 3—INTERESTED PARTIES WHO COMMENTED ON THE WICF NOPR

Commenter	Acronym	Affiliation	Comment No. (Docket Reference) ¹
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	Trade Association	11, 23
American Panel Corporation	APC, American Panel	Manufacturer	7, 23
Appliance Standards Awareness Project and Northwest Energy Efficiency Alliance	ASAP and NEEA	Efficiency Organizations	19
Bally Refrigerated Boxes, Inc.	Bally	Manufacturer	22, 23
California Investor Owned Utilities	CA IOUs	Utility Association	21
CrownTonka	CrownTonka	Manufacturer	23
Dow Chemical Company	Dow	Component/Material Supplier	9
Emerson Climate Technologies	Emerson	Manufacturer	*
EPS Industry Alliance	EPS-IA	Trade Association	12
Heat Controller Inc. ²	Heat Controller	Manufacturer	23
Hussmann Corporation	Hussmann	Manufacturer	20, 23
Imperial Brown Inc.	IB	Manufacturer	23
KeepRite Refrigeration	KeepRite	Manufacturer	17
KPS Global LLC	KPS	Manufacturer	8
Lennox International, Inc. and Heatcraft Refrigeration Products, LLC.	Lennox	Manufacturer	13, 23
Manitowoc Company	Manitowoc	Manufacturer	10
National Coil Company	NCC	Component/Material Supplier	16, 23
North American Association of Food Equipment Manufacturers	NAFEM	Trade Association	14
Panasonic Corporation	Panasonic	Manufacturer	*
Rheem Manufacturing Company and Heat Transfer Products Group, LLC.	Rheem	Manufacturer	18, 23
Ron Shebiu	Shebiu	Individual	*
U.S. Department of Health and Human Services, Office of Inspector General.	DHHS OIG	Federal Agency/Association	*
The Delfield Company	Delfield	Manufacturer	*
Zero Zone, Inc.	Zero Zone	Manufacturer	15

Notes:

1. Comment number 23 indicates the party commented during the public meeting.

2. This commenter is listed as Roxanne Scott in the public meeting transcript.

* These commenters were present at the public meeting but did not make comments at the meeting or submit written comments.

A. Actions in Response to ASRAC Negotiated Terms

1. Definitions

The Working Group recommended that DOE define the terms “dedicated condensing unit,” “matched condensing unit,” and “outdoor condensing unit” (Term Sheet at EERE-2015-BT-STD-0016, No. 56, Recommendation #1); “adaptive defrost” (Term Sheet at EERE-2015-BT-STD-0016, No. 56, Recommendation #2); and “process cooling,” “preparation room refrigeration,” and “storage space.” (Term Sheet at EERE-2015-BT-STD-0016, No. 56, Recommendation #7) DOE sought to define these terms to more clearly identify the categories of equipment that are covered and to clarify the application of the test procedures and standards to these equipment. To this end, DOE proposed definitions for these terms along with several others, notably, the terms “dedicated condensing refrigeration system,” “outdoor dedicated condensing refrigeration system,” “indoor dedicated condensing refrigeration system,” “matched

refrigeration system,” “unit cooler,” and “packaged dedicated system.” These supplemental definitions were developed to help enhance the clarity of the walk-in regulatory framework and to assist manufacturers in readily ascertaining how to classify (and certify for compliance purposes) the myriad of refrigeration systems they produce. Finally, DOE proposed to modify the current definition of “refrigeration system” to align it more closely with the terminology being defined. See 81 FR at 54929-54932. The following sections discuss the proposed definitions and comments received from stakeholders regarding the proposals. The precise text for the final definitions, which will all appear in 10 CFR 431.302, is contained in the regulatory text appearing at the end of this document.

a. Dedicated Condensing Unit and Dedicated Condensing Refrigeration System

DOE proposed to define the dedicated condensing equipment class to address three refrigeration system configurations—(1) a dedicated condensing unit; (2) a packaged

dedicated system; and (3) a matched refrigeration system. DOE proposed defining what a dedicated condensing refrigeration system is to clarify the scope of this equipment class. Consistent with Lennox’s assertion that single-package refrigeration systems are a type of dedicated condensing system (Docket No. EERE-2015-BT-STD-0016, DOE and Lennox, Public Meeting Transcript (October 16, 2015), No. 63 at pp. 249-251), DOE proposed to include this configuration in the proposed definition. DOE also proposed that a matched condensing system—consisting of a dedicated condensing unit that is distributed in commerce with one or more specific unit coolers—would also be treated as a dedicated condensing system. Finally, DOE also proposed to treat as a dedicated condensing system a dedicated condensing unit sold separately from any unit cooler. This proposed clarification underpins DOE’s certification approach of allowing manufacturers to test and rate condensing units separately when certifying compliance with the dedicated condensing standard, without having to distribute their condensing

units in commerce with one or more specific unit coolers. 81 FR at 54929–54930.

DOE's proposed definition for "dedicated condensing unit" reflected each of these elements. Under the proposed definition, such a unit would be a positive displacement condensing unit that is part of a refrigeration system (as defined in 10 CFR 431.302) and is an assembly that (1) includes 1 or more compressors, a condenser, and one refrigeration circuit and (2) is designed to serve one refrigerated load. The term "factory-made" was omitted from the proposed definition to avoid suggesting that such an assembly is not a condensing unit (and thus not covered by DOE regulations) if it happens to be assembled from its subcomponents after shipment from the factory. *Id.*

Lennox, KeepRite, Rheem, ASAP and NEEA agreed with the proposed definition of "dedicated condensing unit." (Lennox, No. 13 at p. 6; KeepRite, No. 17 at p. 1; Rheem, No. 18 at p. 2; ASAP and NEEA, No. 19 at p. 1)

DOE did not receive any opposing comments regarding its proposed definition for "dedicated condensing unit." Accordingly, DOE is adopting this definition as proposed.

Additionally, DOE proposed to define "dedicated condensing refrigeration system" as referring to a (a) dedicated condensing unit, (b) packaged dedicated system, or (c) matched refrigeration system. 81 FR at 54930.

ASAP and NEEA supported this proposed definition. (ASAP and NEEA, No. 19 at p. 1) Others, however, challenged the inclusion of packaged dedicated systems within the proposed definition (e.g., Rheem, No. 18 at p. 1). Comments addressing packaged dedicated systems are addressed in section III.A.1.b, including DOE's conclusion that these systems, which are being renamed as "single-package dedicated systems," fall within the dedicated condensing refrigeration system class. In finalizing this definition, DOE made no other changes.

b. Single-package Dedicated System

DOE proposed to treat a packaged dedicated system as a type of dedicated condensing refrigeration system. These systems are factory-assembled equipment where the components serving the compressor, condenser, and evaporator functions are "packaged" into a single piece of equipment. The system is then installed as part of a walk-in application, with the compressor and condenser located on the outside of the walk-in envelope (*i.e.*, the boxed storage enclosure) and the evaporator on the inside. Walk-ins that

use such a system include a hole in one of the walls or ceiling of the insulated enclosure into which the packaged system is mounted. The use of this equipment is necessarily limited to small-capacity walk-ins due to load-bearing limitations of the walk-in envelope. DOE proposed to define "packaged dedicated systems" by combining elements of the proposed definition for "dedicated condensing unit" (see section III.A.1.a) and the definition for "forced-circulation free-delivery unit cooler (unit cooler)" from AHRI-1250-2009. Consequently, DOE proposed to define a "packaged dedicated system" as "a refrigeration system (as defined in 10 CFR 431.302) that is a single-package assembly that includes one or more compressors, a condenser, a means for forced circulation of refrigerated air, and elements by which heat is transferred from air to refrigerant, without any element external to the system imposing resistance to flow of the refrigerated air." DOE did not include the term "factory-made" in the proposed definition for the same reasons that the term was omitted from the "dedicated condensing unit" definition, as explained earlier. See 81 FR at 54930–54931.

Rheem and American Panel commented that a "packaged dedicated system" leaves the factory as a complete system, with only power hookup and air inlet and outlet to be configured on-site. Consequently, they suggested adding the clause "factory-assembled" to the definition for a packaged dedicated system. (Rheem, Public Meeting Transcript, No. 23 at pp. 19–21; American Panel, Public Meeting Transcript, No. 23 at p. 22)

Public meeting and written comments submitted to DOE from several manufacturers and AHRI indicated that there is no viable test procedure for packaged systems. Commenters requested that DOE clarify how to test and rate this equipment. The commenters pointed out the necessity of disassembling the unit to install mass flow meters and to install the evaporator and condenser sections in separate environmental chambers when testing packaged systems under the current test procedure. The commenters suggested that packaged systems should be exempt from the scope of the WICF standards because there is no test procedure for them. Further, Rheem, Manitowoc, and AHRI stated that it was their understanding from the ASRAC Working Group meeting that packaged systems do not fall within the definition of dedicated condensing unit, and are not subject to the dedicating condensing

class standards. (Rheem, Public Meeting Transcript, No. 23 at pp. 16–17; Lennox, Public Meeting Transcript, No. 23 at p. 18; Manitowoc, No. 10 at pp. 3–4; Rheem, No. 18 at pp. 1–2; Hussmann, No. 20 at p. 1; AHRI, No. 11 at p. 6) The CA IOUs disagreed with manufacturers' claims that AHRI 1250-2009 is not an appropriate test procedure for packaged dedicated system WICF systems, noting that AHRI 1250-2009 specifically cites "integrated single package refrigeration units" as part of its scope. In addition, the CA IOUs recommended that DOE change the term, "packaged dedicated system," to "single-package dedicated system," or "self-contained units". (CA IOUs, No. 21 at pp. 2–3)

DOE notes that the definition for "refrigeration system" was established in the context of walk-ins to include "(1) [a] packaged dedicated system where the unit cooler and condensing unit are integrated into a single piece of equipment" in the April 15, 2011 final rule establishing test procedures for WICFs. 76 FR at 21605. In DOE's view, packaged systems are walk-in refrigeration systems and are subject to the applicable prescriptive standards established by Congress through EISA 2007 along with the performance standards that DOE prescribes for these systems.⁴ DOE notes that this view is not restricted to DOE, as two manufacturers confirmed that a single-package refrigeration system is a type of dedicated condensing system on two occasions during the Working Group meetings. (Docket No. EERE-2015-BT-STD-0016; Lennox, Public Meeting Transcript (October 16, 2015), No. 63 at pp. 249–251; Rheem, Public Meeting Transcript (December 3, 2015), No. 57 at p. 157) Thus, DOE does not support the position that these systems are not considered to be WICF refrigeration systems subject to WICF standards, including the prescriptive standards mandated by EPCA.

DOE notes that section 2.1 of AHRI 1250-2009 describes the scope of this testing standard as applying "to mechanical refrigeration equipment consisting of an integrated single package refrigeration unit, or separate

⁴ With respect to these prescriptive requirements, DOE notes that relevant statutory provision does not indicate that the promulgation of performance standards supplants those standards that Congress already mandated through its enactment of EISA 2007. Accordingly, because there is no explicit authority in this instance for DOE to override a statutorily-prescribed standard, the initial design requirements established by Congress continue to apply. See 42 U.S.C. 6313(f)(1)–(5) (detailing prescriptive design requirements for certain walk-in components and the process by which DOE must prescribe separate walk-in performance-based standards).

unit cooler and condensing unit sections, where the condensing section can be located either outdoor or indoor.” The testing standard further explains that these controls “may be integral, or can be provided by a separate party as long as performance is tested and certified with the listed mechanical equipment accordingly.” AHRI 1250–2009, section 2.1.

Further, the possibility that the equipment has one or more design characteristics that prevent testing according to the prescribed test procedures does not exempt manufacturers from coverage under the standards. DOE has established the waiver process to address such circumstances. See 10 CFR 431.401. While DOE acknowledges stakeholders’ comments that the configurations of certain models of refrigeration systems may prevent testing according to the prescribed test procedures, manufacturers may avail themselves of the procedures under 10 CFR 431.401 to obtain a waiver that would enable them to test this equipment using an alternative test procedure. This process requires, among other things, that manufacturers include in a petition for waiver any alternate test procedures known to evaluate the performance of the equipment in a manner representative of the energy consumption characteristics of the basic model (10 CFR 431.401(b)(1)(iii)). The filing of the waiver does not exempt a manufacturer from compliance with standards or certification requirements. (10 CFR 431.401(a)(2))

In response to comments that “factory-assembled” should be part of the definition for single-package dedicated system, DOE notes that DOE omitted this clause from several of the definitions to avoid implying that a piece of equipment that otherwise meets the definition does not meet it if part of the assembly occurs outside a factory. An example of this is a refrigeration system that is shipped from the factory in multiple boxes and then assembled in the field. DOE agrees that it is likely that nearly all such single-package systems are fully assembled in a factory. However, DOE believes that any such refrigeration system that is not fully assembled in a factory, for example, by having the condenser fan assembly mounted to the unit in the field, should still be considered a single-package refrigeration system and regulated under the relevant requirements under the dedicated condensing refrigeration system equipment class. Hence, DOE is not adopting the suggested change.

Regarding the CA IOUs’ suggestion that the term “packaged dedicated

system” be changed to “single-package dedicated system” for purposes of DOE’s regulatory definitions, DOE surveyed manufacturer literature, and found that packaged dedicated systems are marketed as “Packaged Systems” or “Packaged Refrigeration Systems”. (Master-Bilt product specification sheet, No. 32 at p. 7; Lennox product catalog, No. 31 at p. 190; and Rheem product specification, No. 30) However, DOE believes that the suggested use of the term “single-package dedicated refrigeration system” would provide further clarity, indicating more precisely what this equipment is, and would be consistent with the approach already used for air-conditioning units. This consistency is significant since walk-in refrigeration systems are generally very similar in classification and operation to air conditioning systems. Accordingly, the use of the term “single-package” in the walk-in context would help clarify the categorization of this equipment and reduce the potential for industry and market confusion. To reduce the risk of confusion, DOE is adopting the suggested change from the CA–IOUs and is renaming the “packaged dedicated systems” category as “single-package dedicated refrigeration systems.”

c. Matched Condensing Unit and Matched Refrigeration System

DOE proposed to define a “matched condensing unit” as “a dedicated condensing unit that is distributed in commerce with one or more unit cooler(s) specified by the condensing unit manufacturer.” DOE also proposed to define “matched refrigeration system” (also called “matched-pair”) as “a refrigeration system including the matched condensing unit and the one or more unit coolers with which it is distributed in commerce.” 81 FR at 54931.

KeepRite supported the proposed definitions for matched condensing unit and matched refrigeration system. (KeepRite, No. 17 at p. 1) DOE did not receive any other comments regarding this definition and therefore is adopting it as proposed.

d. Outdoor and Indoor Dedicated Condensing Refrigeration Systems

DOE has established separate equipment classes for indoor and outdoor dedicated condensing refrigeration systems. See, e.g. 10 CFR 431.306(e) (breaking out dedicated condensing refrigeration system classes based on whether they are indoor/outdoor units and capacity). DOE proposed to define an “outdoor dedicated condensing refrigeration

system” as a system that is encased and capable of maintaining a net capacity at the 35 °F outdoor temperature condition that is no less than 65 percent of the net capacity measured at the 95 °F outdoor temperature condition for a period of no less than one hour. See 81 FR at 54931. This approach differed from the WICF Term Sheet definition, which focused on a given unit’s ability to operate in a 35 °F ambient condition—*i.e.*, the unit “is capable of maintaining the medium temperature or low temperature DOE test procedure box conditions (as specified in 10 CFR 431.304) for an extended period at the 35 °F outdoor temperature condition.” (Term Sheet at EERE–2015–BT–STD–0016, No. 56, Recommendation #1) DOE explained that it modified this part of the definition to clarify the meaning of the phrases “maintaining the . . . box conditions” and “extended period.” See 81 FR at 54931. DOE also proposed to define an “indoor dedicated condensing refrigeration system” as a system that is not an outdoor dedicated refrigeration system. See 81 FR at 54932.

Rheem and Lennox commented that 65 percent of net capacity at 95 °F would not be an effective metric for differentiating models. (Rheem, No. 18 at p. 2; Lennox, No. 13 at p. 6) Rheem further indicated that box load and condensing unit capacity are not the same and that as ambient temperature is lowered, the condensing unit capacity increases, which means overall capacity will be higher at a 65 °F ambient temperature than at a 95 °F ambient temperature. (Rheem, Public Meeting Transcript, No. 23 at pp. 24–25) Manitowoc, Rheem, Lennox, KeepRite and AHRI also suggested that the definition should reference existing test conditions from the test procedure rather than the proposed conditions—the use of which, some manufacturers suggested, has not been supported with substantiating data in the record. (Manitowoc, No. 10 at p. 4; Rheem, No. 18 at p. 2; Lennox, No. 13 at p. 6; KeepRite, No. 17 at p. 1; AHRI, No. 11 at p. 7)

AHRI, Manitowoc, Lennox, and Rheem supported the inclusion of “no less than one hour” in the proposed “outdoor dedicated condensing refrigeration system” definition. (AHRI, No. 11 at p. 7; Manitowoc, No. 10 at p. 4; Lennox, No. 13 at p. 6; Rheem, No. 18 at p. 2)

Finally, Manitowoc, Rheem, and AHRI also requested that the term “packaged dedicated systems” be removed from both the proposed definition and the test procedure. (Manitowoc, No. 10 at p. 4; Rheem, No. 18 at p. 2; AHRI, No. 11 at p. 7)

As addressed in section III.A.1.b, DOE considers the renamed “single-package dedicated systems” to be part of the dedicated condensing refrigeration system class, and does not agree with these commenters’ suggestion to remove this category of equipment from the “outdoor” definition, since such units can be designed for outdoor use. Other than the name change for this equipment, which was discussed earlier in section III.A.1.b, the “outdoor dedicated condensing refrigeration system” definition adopted in this final rule retains this term.

NCC commented that some condensing units could be used with both outdoor and indoor applications. (NCC, Public Meeting Transcript, No. 23 at p. 26) Rheem commented that, because the outdoor requirements are more demanding, units that have passed outdoor certification testing should be able to apply for indoor certification without retesting. (Rheem, Public Meeting Transcript, No. 23 at p. 27) Heat Controller noted that often in the field a unit that is marketed and sold as an indoor unit will be fitted with an aftermarket weather covering and installed in an outdoor environment by a contractor. Heat Controller also commented that the manufacturer typically provides performance characteristics for its units at a range of ambient temperatures and installers will use these data to verify the unit’s performance in an outdoor environment. (Heat Controller, Public Meeting Transcript, No. 23 at pp. 28–30) Rheem expressed concern about how DOE would enforce the regulation in this scenario, where a unit labeled and certified for indoor use is installed in an outdoor environment. (Rheem, Public Meeting Transcript, No. 23 at pp. 30–31)

ASAP and NEEA noted that outdoor units have certain design options (*e.g.*, floating head pressure control, variable-speed condenser fans, ambient sub-cooling) that allow them to perform more efficiently in outdoor environments. They argued that a test procedure that would permit a “loophole” allowing units designed and tested for indoor conditions to be used for outdoor applications would result in lost energy savings. ASAP and NEEA advocated creating a definition that prevents these “loopholes”. (ASAP and NEEA, No. 19 at p. 2)

Hussmann noted that, given that some condensing units already in the market are sold for outdoor applications without an enclosure, the term “encased” should be removed from the proposed “outdoor dedicated condensing refrigeration system” definition. (Hussmann, No. 20 at p. 2)

However, in light of the comments discussed above indicating that indoor units are often installed in outdoor applications, it is not clear whether this comment suggests that units designed for outdoor use do not have enclosures or whether it is confirming that indoor units are installed outdoors.

The CA IOUs commented that indoor units should be labeled for “indoor use only” to help contractors, building inspectors, and building owners verify that the equipment complies with standards. The CA IOUs also explained that since indoor units have less stringent AWEF requirements and are not designed to adjust to the wide fluctuations in outdoor temperature, they are generally less costly to purchase. They speculated that this price difference could lead to increased energy consumption, incentivizing customers to buy less efficient, more affordable indoor units for outdoor applications. (CA IOUs, No. 21 at p. 4) ASAP and NEEA also encouraged DOE to consider whether labeling requirements and/or marketing restrictions could help prevent equipment certified for indoor use from being used in outdoor applications. (ASAP and NEEA, No. 19 at p. 2)

DOE notes that the industry comments recommended changing the definition to more closely adhere to the wording provided in the Term Sheet, particularly, “maintaining box conditions” with respect to the interior of the walk-in enclosure. (KeepRite, No. 17 at p. 1; Manitowoc, No. 10 at p. 4; AHRI, No. 11 at pp. 6–7; Lennox, No. 13 at p. 6; Rheem, No. 18 at p. 2) However, the commenters were unable to offer any clarity in applying the phrase “maintaining box temperature”—a central concern raised in DOE’s request for comments. DOE’s proposed definition attempted to provide a measurable criterion to clarify what maintaining box conditions entails. Specifically, DOE recognized that during a WICF refrigeration system test, the test room conditioning system would maintain the box conditions if the unit under test did not. 81 FR at 54931. DOE considered what it would mean for a refrigeration system to be maintaining box conditions if it is refrigerating a walk-in under the specified ambient temperature (35 °F), and concluded that the ability to maintain box conditions would depend on the load on the refrigeration system. If the thermal load exceeds the capacity of the unit, the unit will not maintain box conditions. DOE considered that the test procedure temperatures and specified loads in AHRI 1250–2009 might be a reasonable reference

regarding the typical box thermal load. DOE notes that AHRI developed the industry test procedure, AHRI 1250, in 2009, with input from a working group consisting of industry and other stakeholders. Among other elements of the test procedure, the box load equations were developed through working group consensus and based on a comprehensive load analysis incorporating all key elements of the expected heat load. In developing the equations, that working group assumed a load of 70% of the capacity at 95 °F for coolers, and 80% of the capacity at 95 °F for freezers based on industry input. DOE used the box load equations in AHRI 1250–2009 (Equation 3 for medium-temperature and Equation 7 for low-temperature) in developing the proposed outdoor unit definition. DOE notes that commenters asserted that DOE provided no data, but the commenters did not dispute the suggestion that AHRI 1250–2009 might provide a reasonable indication of box loads, nor did they provide any alternative suggestion regarding what the box load might be at 35 °F. Hence, DOE believes that its proposed approach is appropriate to clarify the meaning of maintaining the box temperature and does not require additional data to substantiate it.

In response to Rheem’s observation that the box load and the condensing unit capacities are not the same, DOE agrees. DOE considered that the box load equations specified in the industry standard AHRI 1250–2009 test procedure, which are the basis of the AWEF efficiency metric, would be a good representation of the relationship between the box load and the net capacity (in 95 °F test conditions) of a properly-sized condensing unit. DOE calculated the box load for a walk-in located in 35 °F ambient outdoor temperature conditions by using these equations specified in AHRI 1250–2009. For both medium-temperature and low-temperature units, the calculated box load is approximately 65% of the net capacity measured in 95 °F conditions. As mentioned above, in order to “maintain box conditions”, the capacity must be equal to the box load—hence, DOE proposed that maintaining the box load in 35 °F ambient conditions is equivalent to having a capacity in this ambient temperature that is 65% of the capacity in 95 °F conditions. Hence, DOE believes that the proposed definition is equivalent to both the Term Sheet recommendation and addressed comments that the definition for indoor/outdoor dedicated condensing unit

should include language to “maintain box conditions.”

However, given the comments provided on the proposed definition, DOE is concerned that the definition (as proposed) would not be sufficient to clearly distinguish outdoor units from indoor units. DOE agrees that unit capacity at 35 °F may exceed the capacity at 95 °F. However, if this is true for an indoor unit, the indoor unit would be able to maintain box conditions in a 35 °F ambient temperature, and in this case, the ability to “maintain box conditions” would not distinguish outdoor units from indoor units—which would undercut its value as a means of distinguishing outdoor condensing unit from an indoor unit. Regarding Hussmann’s comment regarding enclosures, DOE is not certain whether it meant that true outdoor units are sometimes sold without enclosures. DOE’s research has not identified any condensing units marketed for outdoor use that do not have enclosures, but agrees that it is possible for a system without an enclosure to be marketed for outdoor use. In recognition of this possibility, DOE’s finalized definition does not include this requirement.

Given all of these considerations, DOE is unconvinced that the proposed definition, or the alternatives recommended by commenters, would be sufficient to clearly distinguish outdoor units from indoor units. Thus, DOE is taking a third approach in this final rule, allowing the designation of indoor or outdoor to be provided by the manufacturer. However, in order to help ensure that dedicated condensing systems are installed and used appropriately, DOE is adopting the CA IOUs recommendation and will require that dedicated condensing units not designated for outdoor use will be labeled “indoor use only”. While DOE does not believe, as suggested by the CA IOUs, that the indoor system standard is less stringent than the outdoor system standard (see further discussion regarding this issue below), DOE does have concerns that refrigeration systems that are not designed for outdoor use may not operate properly when installed outdoors, and thus use more energy.

The “indoor use only” label will help prevent the use of indoor units in outdoor applications, for which they are not suited. Further, DOE will allow a manufacturer to designate a unit for both outdoor and indoor use, thus acknowledging that condensing units suitable for outdoor units may be acceptable for use in indoor applications, as indicated by Rheem.

(Rheem, Public Meeting Transcript, No. 23 at p. 27)

Accordingly, DOE is finalizing the definition of an outdoor dedicated condensing refrigeration system as a dedicated condensing refrigeration system designated by the manufacturer for outdoor use and is also finalizing the definition of an indoor dedicated condensing refrigeration system as a dedicated condensing refrigeration system designated by the manufacturer for indoor use or for which there is no designation regarding the use location.

DOE notes that “designated” in these definitions means any form of representation that the system may be used in the given location—this includes representations made in brochures, online product information, technical bulletins, installation instructions, labels, and other related materials. DOE notes that a dedicated condensing refrigeration system may be both an outdoor system and an indoor system according to the DOE definitions—but system cannot avoid classification by having no designation.

Regarding Rheem’s comment that any outdoor dedicated condensing unit should also be allowed to be certified as an indoor dedicated condensing unit without additional testing, DOE believes that outdoor systems should be allowed to be sold as indoor systems if they comply with both the indoor and outdoor standards. A manufacturer choosing this approach would need to certify the system both as an indoor and as an outdoor system. It would also need to test that system at different requisite conditions related to outdoor and indoor use in accordance with the applicable test procedure provisions—specifically, tests for an outdoor unit are conducted at 95 °F, 59 °F, and 35 °F outdoor temperatures, while the active mode (*i.e.*, while the compressor is operating) test for an indoor unit is conducted in a 90 °F environment. (See, *e.g.*, Table 3 of AHRI–1250–2009 for test conditions for indoor matched-pair dedicated condensing medium-temperature units and Table 4 for outdoor indoor matched-pair dedicated condensing medium-temperature units.) DOE notes that the higher AWEF level and the typically more complicated design of outdoor units (*i.e.*, they are designed with provisions to maintain elevated condensing temperature for operating in cooler outdoor temperatures) do not necessarily mean that the outdoor standard is more stringent. The outdoor AWEF is higher in part because it is calculated on the basis of many hours of operation in cool outdoor ambient temperatures. Consequently, this fact indicates that a

given basic model’s compliance with an outdoor dedicated condensing system standard level does not imply compliance with the corresponding indoor standard—thereby undercutting Rheem’s implied contention that a compliant outdoor system would always comply with the applicable indoor standard when tested using the indoor test. Generally, equipment meeting the definition of multiple equipment classes when operated would have to be tested and certified as each of these equipment classes to demonstrate compliance with DOE’s energy conservation standards. Hence, in the case of outdoor dedicated condensing units that also meet the indoor definition (because they are also designated for indoor use), to ensure that no potential loopholes exist with outdoor units, compliance with both the outdoor and indoor standard must be adequately demonstrated by testing in accordance with the applicable test procedure (and sampling plan) or by applying an AEDM that meets DOE’s regulatory requirements.

e. Unit Cooler

In addition to dedicated condensing systems, the definition of “refrigeration system” in 10 CFR 431.302 also includes unit coolers connected to a multiplex condensing system. DOE previously referred to this class of equipment as “multiplex condensing,” abbreviated as “MC.” DOE proposed to drop the term “multiplex condensing” and rename this class of equipment as “unit coolers” (*i.e.*, “UC”), in order to align the term with this equipment’s actual use. DOE also proposed to define unit coolers as “an assembly, including the means for forced air circulation and elements by which heat is transferred from air to refrigerant without any element external to the cooler imposing air resistance.” 81 FR at 54954. This definition intentionally omits the term “factory-made” to avoid suggesting that an assembly that is assembled from its subcomponents after shipment from the factory is not a unit cooler (and thus not covered by DOE’s regulations).

Lennox, KeepRite, Rheem, ASAP and NEEA supported the proposed definition. (Lennox, No. 13 at p. 7; KeepRite, No. 17 at p. 1; Rheem, Public Meeting Transcript, No. 23 at p. 33; Rheem, No. 18 at p. 2; ASAP and NEEA, No. 19 at p. 1) Hussmann commented that the proposed definition could be applied to a condenser, if, the phrase “transferred from air to refrigerant” is interpreted as potentially referring to either heating or cooling the air. (Hussmann, Public Meeting Transcript, No. 23 at pp. 32–33)

In response to Hussmann's concern, DOE is modifying its proposal by adding "thus cooling the air" to the definition of unit cooler to clarify the direction of heat transfer. DOE believes this clarification will exclude condenser applications from the definition, since they heat rather than cool the air that passes through them. Accordingly, the definition for unit cooler refers to "an assembly, including means for forced air circulation and elements by which heat is transferred from air to refrigerant, thus cooling the air, without any element external to the cooler imposing air resistance."

f. Refrigeration System

DOE proposed defining a "refrigeration system" as "the mechanism (including all controls and other components integral to the system's operation) used to create the refrigerated environment in the interior of a walk-in cooler or freezer, consisting of: (1) A dedicated condensing refrigeration system (as defined in 10 CFR 431.302); or (2) A unit cooler." 81 FR at 54932.

Rheem, Manitowoc, and KeepRite commented that the use of "or" between proposed clauses (1) and (2) in the definition would imply that a unit cooler would be considered a full refrigeration system, while, in reality, a unit cooler must be matched with a condensing unit to function as a full refrigeration system. Manitowoc and KeepRite recommended replacing "or" with "and" in the proposed definition. (Rheem, Public Meeting Transcript, No. 23 at pp. 34–35; Manitowoc, No. 10 at p. 4; KeepRite, No. 17 at p. 2)

DOE initially defined "refrigeration system" to set out the scope of coverage of this equipment in the April 2011 test procedure final rule for walk-ins. 76 FR at 21596–21597. However, DOE's test procedure for walk-in refrigeration systems has since been adjusted to permit manufacturers to certify compliance on a component basis, *i.e.*, manufacturers may separately certify their condensing units and unit coolers, if their equipment is distributed in commerce on this basis. The "refrigeration system" definition was never intended to be a technical term that implied that the defined item included a complete refrigeration circuit, including the compressor, condenser, expansion device, and evaporator.

DOE notes that if the "or" is replaced by "and" as suggested in the written comments, the scope of coverage would be reduced to only pairs including a dedicated condensing system combined with a unit cooler. However, as

mentioned earlier in this discussion, by defining this term, DOE seeks to clearly set out the scope of regulatory coverage for this equipment, which could extend to an individual unit cooler or an individual condensing unit. Therefore, consistent with this approach, DOE is adopting the proposed definition in this rule.

g. Adaptive Defrost

Consistent with the Term Sheet, DOE proposed to define "adaptive defrost" as a defrost control system that reduces defrost frequency by initiating defrosts or adjusting the number of defrosts per day in response to operating conditions (*e.g.*, moisture levels in the refrigerated space, measurements that represent coil frost load) rather than initiating defrost strictly based on compressor run time or clock time. See 81 FR at 54932–54934.

KeepRite and Rheem supported the proposed definition. (KeepRite, No. 17 at p. 7; Rheem, No. 18 at p. 3) Lennox agreed with DOE's proposed definition but noted that the proposed definition does not specifically indicate the unit construction (*e.g.*, presence of a defrost control) that must be in place to receive the credit. As a result, Lennox expressed concern that the credit may be applied to units that are not able to achieve the represented efficiency level and whose unit rating cannot be verified because adaptive defrost construction is not physically installed on the unit. Therefore, Lennox recommended revising the language of the adaptive defrost definition to indicate that representation of energy use improvements associated with adaptive defrost can only be applied to equipment that has adaptive defrost already included with the unit from the factory. (Lennox, No. 13 at p. 7)

As DOE noted in the August 2016 NOPR, this proposed definition is consistent with the Working Group's agreement that manufacturers should rate their systems for compliance purposes without the adaptive defrost credit, but that the test procedure would continue to retain its current method for calculating the benefit of adaptive defrost to permit manufacturers to make representations of system efficiency with this feature included. As indicated in the NOPR, the Working Group discussed this topic extensively. (See, *e.g.*, manufacturer discussion expressing concerns that DOE had not adequately defined adaptive defrost and that the test procedure could permit a manufacturer to claim the energy efficiency credit for systems with this feature even if those systems may not necessarily yield the efficiency performance improvement consistent

with the credit provided by the test procedure—Docket No. EERE–2015–BT–STD–0016; Lennox, Public Meeting Transcript (September 11, 2015), No. 61 at p. 87; Lennox and Rheem, Public Meeting Transcript (September 30, 2015), No. 67 at pp. 138–144.) After settling on the certification approach for adaptive defrost, the Working Group agreed on a definition of adaptive defrost without resolving the question of how DOE would verify that a unit cooler or condensing unit has adaptive defrost capability. 81 FR at 54933. DOE agrees with Lennox's assertion that representation of energy use improvement associated with adaptive defrost should be allowed only for units that actually have the technology installed on the unit. The requirement that the manufacturer certify to DOE the improved AWEF of such an adaptive defrost model suggests that these models are manufactured with adaptive defrost controls and are shipped from the factory with such controls already installed, rather than being an option installed after shipping. For this reason, DOE is including the phrase "factory-installed" in the definition to help ensure that those models with improved AWEF representations all have adaptive defrost technology installed. Thus, DOE is modifying the definition consistent with this approach by defining adaptive defrost as referring to a *factory-installed* defrost control system that reduces defrost frequency by initiating defrosts or adjusting the number of defrosts per day in response to operating conditions rather than initiating defrost strictly based on compressor run time or clock time.

h. Process Cooling

Background

EPCA defines a walk-in as "an enclosed storage space," that can be walked into, which has a total area of less than 3,000 square feet, but does not include products designed and marketed exclusively for medical, scientific, or research purposes. (42 U.S.C. 6311(20)) The use of the term "storage space" in the definition raises questions about which refrigerated spaces would qualify as a "storage space" and thereby comprise equipment subject to the walk-in standards. DOE has discussed the scope of this definition throughout its rulemakings to develop test procedures and energy conservation standards for walk-ins—most recently, the August 2016 NOPR addressed whether the scope extends to process cooling equipment such as blast chillers and blast freezers that can be walked into. 81 FR at 54934–54936.

In the August 2016 NOPR, DOE described the background leading to the proposal of a definition for walk-in process cooling refrigeration equipment. 81 FR at 54934. As described in that document, interested parties requested that DOE clarify the applicability of standards to this equipment as part of the initial standards rulemaking that DOE conducted for developing walk-in performance-based standards. The discussions in that prior rulemaking led DOE to conclude in the June 2014 final rule that equipment used solely for process cooling would not be required to meet the walk-in standards, but that products used for “both process and storage” applications could not categorically be excluded from coverage. 79 FR at 32068. The August 2016 NOPR noted also the October 2014 meeting to clarify aspects of the test procedure, during which DOE again stated that blast chillers and blast freezers did not fall within the scope of the energy conservation standards established for walk-ins in the June 2014 final rule. However, DOE acknowledged at the time that it did not have a definition for “process” cooling in the context of walk-ins. (Docket No. EERE–2011–BT–TP–0024, Heatcraft and DOE, Public Meeting Transcript (October 22, 2014), No. 0117 at pp. 23, 61–63) The question of process cooling arose again during the Walk-in Working Group meetings, during which meeting participants asked DOE to add definitions to clarify the meaning of process cooling (See Docket No. EERE–2015–BT–STD–0016: Manufacturer-submitted material, No. 6 at p. 2; Lennox, Public Meeting Transcript (August 27, 2015), No. 15 at pp. 96–97; AHRI, Public Meeting Transcript (December 15, 2015), No. 60 at pp. 141–142; and Term Sheet, No. 56, Recommendation #7)

The August 2016 NOPR explained that DOE considered process cooling more carefully in light of the Working Group’s request to develop clarifying definitions and concluded that its initial statements in the 2014 final rule that blast chillers and blast freezers are not walk-ins were in error. DOE observed that, although the EPCA definition refers to a walk-in as an “enclosed storage space”, there is no clarity regarding the meaning of “storage” or the minimum duration for an item to remain in an enclosure to be considered in “storage”. Hence, DOE now believes that these categories of equipment, referred to as “process cooling equipment” do fall under the EPCA definition for walk-ins and are, subject to standards. 81 FR at 54934.

The August 2016 NOPR went on to discuss DOE’s proposal for defining a

walk-in process cooling refrigeration system. DOE specifically developed this proposal, acknowledging the different energy use characteristics of process cooling refrigeration systems as well as their different equipment attributes (as compared to other walk-in refrigeration systems), to exclude such equipment from being subject to walk-in refrigeration system performance standards. (Because DOE now regards process cooling systems as “walk-in coolers or freezers,” they will be subject to the statutory design requirements.) DOE proposed defining a “walk-in process cooling refrigeration system” as “a refrigeration system that is used exclusively for cooling food or other substances from one temperature to another.” 81 FR at 54936. The proposed definition specified that a process cooling refrigeration system must either be (1) distributed in commerce with an enclosure consisting of panels and door(s) such that the assembled product has a refrigerating capacity of at least 100 Btu/h per cubic foot of enclosed internal volume or (2) a unit cooler having an evaporator coil that is at least four-and-one-half (4.5) feet in height and whose height is at least one-and-one-half (1.5) times the width. This proposed definition would cover process cooling systems that are distributed in commerce as part of a complete assembly, process cooling unit coolers that are distributed separately from the enclosure, and refrigeration systems—including unit coolers meeting the process cooling definition. 81 FR at 54954.

DOE noted in the NOPR that it proposed to consider process cooling refrigerated insulated enclosures to be walk-ins that are subject to the prescriptive statutory requirements for walk-ins. DOE also notes that its discussion and proposals focused on process cooling refrigeration systems rather than the panels and doors that make up the insulated enclosure. Hence, DOE intended the exclusions associated with the proposals to apply only to refrigeration systems that meet the process cooling definition, and that the exclusions would be associated with walk-in refrigeration system performance standards. *Id.* at 54934–54936. DOE also provided a table in the public meeting presentation to clarify its interpretation of the applicability of walk-in standards to different components of process cooling equipment. (Public Meeting Presentation, No. 3 at p. 30) This table indicated that the proposed exclusion for process cooling refrigeration systems would apply to, among other things,

dedicated condensing units that are exclusively distributed in commerce with unit coolers meeting the unit cooler portion of the process cooling definition. DOE notes that this exclusion was not explicit in the proposed definition and is clarifying it to explicitly include such dedicated condensing units in the definition.

Importance of Coverage for Process Cooling Equipment

DOE explained in the August 2016 NOPR the reasons it believed that walk-in process cooling equipment should be considered to be covered under the walk-in definition. See 81 FR 54934–54936. DOE discusses comments responding to this position, and DOE’s responses to them. DOE ultimately concludes that this equipment should be covered as walk-in equipment. In DOE’s view, covering this equipment as a class of walk-in is important in furthering DOE’s goals for reducing and limiting energy use because this equipment represents a growing sector of the refrigeration industry. Process cooling equipment emerged on the market relatively recently in 1990 to serve a range of food sales and service applications. (Master-Bilt Blast Chillers, No. 25 at pp. 2, 3, 10) The global blast chiller market is expected to grow by an estimated 4.62% per year from 2016–2020 and North America is expected to remain a dominant portion of this market.⁵ This growth is the expected result of increased demand in the food service industry (*e.g.*, restaurants, bakeries, catering) and meat processing industry and growth in the frozen food market.⁶ Hence, DOE believes that there will be a robust market for process cooling equipment to serve this growing market need, and that there is a large potential growth in energy use associated with this market.

Process Cooling Equipment Status as Walk-In Equipment

Many commenters argued that process cooling equipment does not fall under the walk-in definition. Several of these comments argued that food is not “stored” in this equipment and/or the temperature within it is not “held” at a given temperature for storage purposes.

⁵ Infinity Research Limited (Technavio), Global Commercial Blast Chillers Market 2016–2020; Published November 2016; Accessed November 2016 at www.technavio.com/report/global-miscellaneous-global-commercial-blast-chillers-market-2016-2020.

⁶ Hexa Research, Frozen Food Market Analysis By Product (Ready Meals, Meat, Seafood, Fruits & Vegetables, Potatoes, Soup) And Segment Forecasts To 2020; Published November 2014; Accessed November 2016 at www.hexaresearch.com/research-report/frozen-food-industry/.

AHRI, Manitowoc, KeepRite, Rheem, and Hussmann stated that process refrigeration systems are not used for storage and therefore do not satisfy the statutory definition for a walk-in as an “enclosed storage space.” (AHRI, No. 11 at p. 5; Manitowoc, No. 10 at p. 3; KeepRite, No. 17 at p. 2; Rheem, No. 18 at p. 3; Hussmann, No. 20 at p. 4) Similarly, Zero Zone argued that the purpose of process refrigeration systems conflicts with the dictionary definition of “storage.” (Zero Zone, No. 15 at p. 1) American Panel also explained that product could be dehydrated and damaged if left in the process cooling equipment for an extended period of time. In its view, this fact should disqualify process cooling equipment from being considered as storage space—one of the key elements of the walk-in definition. (American Panel, No. 7 at p. 1) AHRI added that the Term Sheet included the recommendation that DOE define process cooling for the purpose of clarifying that process cooling equipment are not included in the scope of WICFs. (AHRI, No. 11 at p. 5)

EPCA defines “walk-in cooler” and “walk-in freezer” as an enclosed storage space refrigerated to temperatures, respectively, above, and at or below 32 degrees Fahrenheit that can be walked into, and has a total chilled storage area of less than 3,000 square feet. (42 U.S.C. 6311(20)(A)) While EPCA does not define the component terms “storage” or “can be walked into” used in the walk-in definition, it does expressly exclude certain equipment from the definition (*i.e.* equipment designed and marketed exclusively for medical, scientific, or research purposes). (42 U.S.C. 6311(20)(B))

Commenters appear to be arguing that a unit must hold contents for some minimum time-period to meet the “storage” element of the definition but offered no suggested time period for DOE to consider in applying this definition. The statutory definition of “walk-in cooler and walk-in freezer” does not indicate a specific timing requirement or provide further information about when the use of a space constitutes storage. Further, although dictionary definitions of “storage” indicate that the contents be kept for some period of time, no specific period is provided.⁷ As noted in the

NOPR, the Working Group recommended that DOE define “storage space”—which suggests that the term is ambiguous. 81 FR at 54934. DOE acknowledges that the role of a process cooler or freezer is to chill food rapidly (to approach the temperature of the cooler or freezer, respectively), and one could interpret “storage space” to mean a space the primary purpose of which is storage. However, that understanding of “storage space” would be incongruous in the context of walk-in coolers and freezers. The purpose of such equipment is not simply storage *per se*, like a warehouse; it is storage at cold temperatures. Storage at cold temperatures necessarily encompasses chilling the items to be stored until they reach the temperature of the storage space, because items are rarely at exactly the storage temperature when they arrive to a walk-in cooler or freezer. A process cooler or freezer chills items more quickly than many walk-ins, but DOE regards that difference as being a difference in degree, not a fundamental difference in kind that makes a process cooler “chilling” equipment and not “storage” equipment.

DOE notes that Recommendation #7 from WICF Term Sheet (which contains the only mention of process cooling in the Term Sheet) recommended that DOE add “WICF specific definitions for process cooling, preparation room refrigeration, and storage space.” (Docket EERE–2015–BT–STD–0016, Term Sheet, No. 56 at p. 3) This recommendation does not state that these categories of equipment are excluded from the scope of WICFs. In fact, a comment received in response to the initial 2013 notice of proposed rulemaking for energy conservation standards stated that process cooling equipment would appear to fall within the walk-in definition. (Docket No. EERE–2008–BT–STD–0015, Hussmann, No. 93 at pp. 2, 8–9) In re-examining that comment, along with other information and materials since the publication of the June 2014 rule, DOE has reconsidered its prior views on process cooling equipment.

As noted in the NOPR, contents are placed in process cooling equipment for at least a brief period of time to reduce their temperature. 81 FR at 54934. When asked during the public meeting how long the products remain in a process cooling system when they are being cooled, American Panel noted that, although the Food and Drug

Administration and NSF International issue recommended maximum processing times, there is no industry-specified minimum or maximum processing duration for blast chillers or blast freezers. (American Panel, Public Meeting Transcript, No. 23 at p. 48) DOE notes that the 2013 FDA Food Code requires that food starting at 135 °F be cooled to 70 °F within 2 hours and to 41 °F within 6 hours (FDA 2013 Food Code, Chapter 3, Section 501.14(A)), while NSF requires that rapid pulldown refrigerators and freezers be able to reduce food temperature from 135 °F to 40 °F in 4-hours. (NSF/ANSI 7–2009, section 10.5.1) These time periods differ significantly and are substantially longer than the 90-minute pulldown times discussed in the June 2014 final rule. (79 FR at 32068). This observation underscores American Panel’s statement that there is no standard maximum processing time. Also, while DOE recognizes that product may remain in process cooling equipment for a short period of time, this fact alone does not necessarily clarify that the equipment cannot be considered to have a storage function. The period of time a product can be held in a cooler or freezer without sustaining some damage can be expected to vary product by product, depending on a variety of factors including, whether the product is chilled or frozen, its packaging when inserted into the equipment (*e.g.*, what type and size container it is in, whether or not it is covered, etc.), moisture content, size of the individual food pieces, and other factors. Commenters did not provide any indication of how long food products can remain in process cooling equipment after completion of cooldown before they must be removed to avoid damage—hence, making it difficult to draw clear distinctions between residence time in this equipment and lengths of time that would be associated with “storage.”

Absent a definitive time-period to delineate the use of space as storage space, DOE considered the design and operation of process cooling equipment with other equipment falling within the WICF definition. DOE considers that design and operation are reflective of the function of equipment (*i.e.* whether it constitutes storage space) because these two elements are necessary components in determining the function or purpose of a given type of equipment.

Manitowoc and AHRI argued that the panels and doors used by process cooling systems are not the same as those used in other WICF systems and therefore the WICF prescriptive requirements should not apply. (Manitowoc, No. 10 at p. 3; AHRI, No.

⁷ “Storage: 1. the act of storing; state or fact of being stored. 2. capacity or space for storing. 3. a place, as a room or building, for storing. 4. Computers. memory (def 11). 5. the price charged for storing goods.” *en.oxforddictionaries.com/definition/storage*. “Storage: 1a: space or a place for storing b: an amount stored c: memory; 2a: the act of storing; the state of being stored; especially: the

safekeeping of goods in a depository (as a warehouse) b: the price charged for keeping goods in a storehouse.” *www.merriam-webster.com/dictionary/storage*.

11 at p. 5) Manitowoc and AHRI did not clarify how the panels and doors are different, and provided no indication that process coolers needed specific utility features that would justify the use of different efficiency levels or be the basis for relief from the performance requirements that are already in place. DOE notes that this discussion of panels and doors did not provide any clarity as to whether process cooling equipment provides any storage function.

In the context of blast chillers, American Panel noted that while the panels and doors for this equipment were similar to those used in other walk-ins, the refrigeration systems used in blast chillers are designed and used very differently from walk-ins—a fact that, in its view, necessitated that these (and similar process cooling equipment) be treated separately from walk-ins. (American Panel, No. 7 at p. 1) American Panel did not clarify how the refrigeration systems are designed differently, in spite of DOE's request for data or information on the qualities, characteristics, or features specific to the refrigeration system that would cause a process refrigeration system to be unable to meet a walk-in refrigeration system standard. See 81 FR at 54950.

American Panel, however, asserted that blast chillers and shock freezers differ from walk-ins in that they have an on/off switch, they do not reach a stable condition until the pulldown cycle ends, either automatically or manually, and they rely on the user to stop and restart the cycle. (American Panel, No. 7 at p. 1) In its view, all of these features differed from the operation of walk-ins, which typically operate continuously and independent of user action, being connected to power at all times. DOE notes that this description of refrigeration equipment operation also applies to other walk-in systems. The walk-in refrigeration system is sized so that its capacity is greater than the walk-in box load. Equation 1, for example, in AHRI 1250–2009, indicates that the box load for a walk-in is 70 percent of the net refrigeration system capacity at the design temperature for conditions outside the box. Hence, a walk-in refrigeration system does not achieve steady state operation—it relies on a thermostat to shut the system off at the desired internal temperature (e.g., 35 °F for a walk-in cooler) as the refrigeration system is pulling down temperature to what would be a lower steady-state temperature. As American Panel indicated, a process cooling system does not reach stable operation until the pulldown cycle has ended and an automatic control may end the cycle to transition the system from the pulldown

cycle into stable operation. This ending of the pulldown with an automatic control is the same as a walk-in system's pulldown cycle ending by a thermostat. Hence, in DOE's view, American Panel's observations do not provide a clear distinction between process cooling and other walk-in equipment since the fundamental operational characteristics remain the same.

American Panel also contended that, because a blast chiller's operation changes continuously and the equipment exhibits no stable operating condition, it cannot be tested to a rated AWEF and a test procedure cannot be applied. (American Panel, Public Meeting Transcript, No. 23 at pp. 46–47, 56, 78) American Panel added that, if the test procedure were to be updated to include blast chiller performance testing, the food industry would support using NSF's testing methods for rapid pulldown refrigeration as a starting point. (American Panel, No. 07 at p. 2) DOE notes first that a performance-based test procedure requiring steady state operation is not necessary for process cooling refrigeration systems, because equipment meeting the definition is excluded from the walk-in refrigeration system performance standards,⁸ and, hence, a method for measuring AWEF for such equipment is not needed. However, DOE notes also that a blast chiller refrigeration system appears to have no steady operating condition because its capacity is so much larger per insulated box internal volume than for other walk-ins. Once the products have been pulled down to the specified temperature, the walls of the box do not transmit sufficient load to prevent the internal box temperature from dropping further—*i.e.* the box does not absorb enough heat to prevent its interior from becoming colder. If the same refrigeration system were serving a much larger box, the internal temperature may very well stabilize to a steady-state operating temperature. Conducting a test to determine the system's AWEF would require testing the equipment with a test chamber whose indoor-room conditioning system has enough heating capacity to balance the refrigeration system's cooling capacity. Hence, the difference between a process cooling refrigeration system and other walk-in refrigeration systems is a function of the magnitude of capacity, rather than any fundamental difference in the operation of the

equipment. While the magnitude of capacity is relevant to how quickly a unit lowers the temperature of its contents, and may be instructive as to the duration of storage, it does not inform the fundamental consideration of whether a unit provides any storage.

Process cooling equipment such as blast chillers and blast freezers, despite any asserted differences, have several characteristics in common with more conventional walk-ins that make them capable of serving the function of refrigerated product storage. These characteristics include having an insulated enclosure made of insulated panels and a door (or doors) sufficiently large that the enclosure can be walked into, and being cooled with a refrigeration system consisting of a dedicated condensing unit and a refrigerant evaporator that operates using forced convection heat transfer (*i.e.*, enhanced by air movement created by a fan). The panels and doors are fabricated with a sheet metal exterior shell around insulation that serves as a thermal barrier. The panels and/or door also may also have a multi-pane window to allow viewing of the interior of the enclosure from the outside. The doors have hinges or another mechanism to allow opening for access to the enclosure interior, with a latching mechanism to ensure positive closure when shut. The refrigeration system can operate to cool the enclosure to refrigerated temperatures. Product can be placed in the refrigerated enclosure. If the product is not already at the temperature of the internal refrigerated space, the product's temperature will drop, approaching the temperature of the interior, due to transfer of heat to the air within the enclosure; otherwise the product temperature remains at the average internal temperature until removed from the enclosure. As discussed above, while some of the details of the design of such systems differ from other walk-ins, these equipment generally resemble all walk-ins and are capable of serving the function of refrigerated product storage.

AHRI, Manitowoc, and Rheem also asserted that process cooling equipment is inconsistent with the term “walk-in” because a person cannot walk into a process cooling enclosure during operation. (AHRI, No. 11 at p. 5; Manitowoc, No. 10 at p. 3; Rheem, No. 18 at p. 3) However, DOE notes that the walk-in definition does not specify when the equipment can be walked into—it simply states that the equipment must be one “that can be walked into.” (42 U.S.C. 6311(20)(A))

In interpreting the “walk-in cooler and freezer” definition, DOE also

⁸ DOE notes that this exclusion does not apply to condensing units distributed in commerce individually, because, as discussed elsewhere in this section, they are indistinguishable from other walk-in refrigeration systems.

considered the terms in the context of EPCA's WICF provisions as a whole. EPCA establishes a number of prescriptive requirements for WICFs. (42 U.S.C. 6313(f)(1)) While not dispositive, none of the prescriptive requirements conflicts with including process cooling equipment as a class of walk-in. Additionally, Congress has already spoken to the groups of equipment that are excluded from the walk-in definition by listing specific equipment (*i.e.* ones designed and marketed exclusively for medical, scientific, or research purposes) that would be walk-ins. (42 U.S.C. 6311(20)(B)) Process cooling equipment is not part of this listing, which suggests that Congress did not contemplate that this equipment would be excluded from being treated as a class of walk-in equipment.

In consideration of these factors, DOE has determined that process cooling equipment falls within the EPCA definition of "walk-in cooler" and "walk-in freezer." While products may not be able to be stored in process cooling equipment on a long-term basis, products are still stored in process cooling equipment at least for the duration they are cooled. If Congress had intended to limit the application of the walk-in definition to include only long-term storage, it could have done so when crafting the final language of the statute. Congress, in fact, did not limit what comprises storage space. Moreover, when comparing the design and function of process cooling equipment with other WICFs, DOE was unable to determine a distinction with regard to storage.

AHRI, Manitowoc, KeepRite, Rheem, and Hussmann argued that including process cooling equipment in the definitions of walk-in cooler and walk-in freezer would be inconsistent with DOE's proposed definition for refrigerated storage space, "as space held at refrigerated temperatures" since process cooling equipment does not hold a specific temperature but changes the temperature of the contents. (AHRI, No. 11 at p. 5; Manitowoc, No. 10 at p. 3; KeepRite, No. 17 at p. 2; Rheem, No. 18 at p. 3; Hussmann, No. 20 at p. 4) DOE notes that comments submitted by Bally describe process cooling equipment as operating at "cold temperatures (min. of 5 °F)" and having "doors [that] must stay condensate free while the air temperature is at 5 °F." (Bally, No. 22 at p. 1) These descriptions suggest control of temperature within the blast chiller is held at the minimum 5 °F—in other words, the interior is held at a temperature near 5 °F. This fact suggests that process cooling equipment

can (and do) hold temperatures, contrary to the comments. Nevertheless, DOE notes that the proposed definition for refrigerated storage space as "space held at refrigerated temperatures" does not require that the temperature be held at a discrete constant value—instead, it only requires that the space is held at a temperature consistent with "refrigerated," *i.e.*, "held at a temperature at or below 55 °F". The spaces within blast chillers and freezers are held below 55 °F and, thus are consistent with the definition of "refrigerated storage space."

NAFEM also weighed in on this issue generally, arguing that blast chillers should not be considered within the scope of the walk-in definition because there is no appropriate test procedure for blast chillers. (NAFEM, No. 14 at p. 1) However, EPCA's walk-in definition does not stipulate that its scope extends only to equipment for which there is a test procedure. In fact, EPCA mandated prescriptive standards for walk-ins that took effect (on January 1, 2009, see 42 U.S.C. 6313(f)(1)) before DOE finalized a test procedure on April 15, 2011 for measuring a given unit's energy efficiency. 76 FR 21580. Similarly, in response to American Panel's comment that a process cooling refrigeration system is not a walk-in because it cannot be rated with an AWEF, satisfaction of the separate statutory prescriptive requirements specified in the statute (*e.g.* use of certain componentry, satisfaction of certain thermal insulation thresholds for doors and panels, and installation of devices to minimize infiltration) have no direct bearing on the AWEF value of a given refrigeration system. Hence, the question of whether a given walk-in refrigeration system can be rated with this metric has no bearing on whether the equipment is a walk-in.

Manitowoc, Rheem, and AHRI also noted that an ASHRAE Special Project Committee ("SPC") has been formed to draft a relevant testing standard titled, "Method of Testing for (Rating) Small Commercial Blast Chillers, Chiller/Freezers, and Freezers." They argued that in light of this work, it is premature to define process cooling systems while this new industry standard is still under development. (Manitowoc, No. 10 at p. 3; Rheem, No. 18 at p. 3; AHRI, No. 11 at p. 5) DOE notes that the WICF Working Group, which included Manitowoc and Rheem, requested that DOE develop a definition for process cooling. Before the finalization of the WICF Term Sheet on December 15, 2015, DOE was not aware of any announcement from ASHRAE SPC regarding the start of its work.

Nevertheless, the SPC has not finished its work, and the commenters did not provide any indication of what equipment definitions the SPC is considering. Accordingly, DOE has finalized its definition in the manner proposed, based on the industry input provided. DOE may consider revising its "process cooling" definition if necessary once the ASHRAE rating method for blast chillers, chiller/freezers, and freezers is complete.

Finally, DOE notes that the CA IOUs supported treating process cooling as a subset category of WICF equipment. Further, they supported requiring process cooling panels, doors, and dedicated condensing units not sold as part of a "matched-pair with a unit cooler" to meet the 2014 final rule WICF standards and the proposed standards under consideration. (CA IOUs, No. 21 at p. 2)

As described in the NOPR, DOE concluded that while process cooling enclosures that resemble walk-ins are within the scope of walk-ins, it proposed to exclude some of the refrigeration systems of these process cooler walk-ins from the performance-based standards established and in development for WICF refrigeration systems. 81 FR at 54934–54937. For the reasons described earlier, DOE has not revised its proposed approach after review of the comments, and believes that its definition, as adopted in this rule, satisfies the recommendations of the Working Group Term Sheet.

Distinguishing Characteristics of Process Cooling Refrigeration Systems

DOE received few comments regarding the distinguishing characteristics proposed for process cooling refrigeration systems. In fact, only one of the commenters mentioned any characteristic of the refrigeration system condensing unit of a process cooling system that might distinguish it from the equipment serving other walk-ins—Bally commented that the condensing units are not unique to blast chillers, except with respect to extra receiver capacity. (Bally, No. 22 at p. 1) However, DOE would not consider a larger receiver to be a sufficient difference to distinguish these condensing units since using a larger receiver would not affect steady state energy use as measured by the test procedure, since the receiver itself does not consume energy and does not contribute significantly to the heat transfer function of the condenser. Furthermore, there is a range of refrigerant receiver capacities used in walk-in refrigeration systems and it is not clear that there is an appropriate

receiver capacity threshold that would indicate that a condensing unit is used for process cooling rather than for other walk-in functions—neither Bally nor other commenters suggested such a threshold value. Consequently, DOE would not consider a larger receiver to distinguish process cooling condensing units. Absent any other clear distinguishing feature, DOE must conclude that the condensing units used for process cooling are no different than those used for other walk-ins.

Lennox recommended that the evaporator coil height, width, and depth be defined on a diagram accompanying the proposed definition to prevent a misinterpretation of the dimensions. (Lennox, Public Meeting Transcript, No. 23 at p. 40) Lennox provided a diagram to illustrate this in its written comments (Lennox, No. 13 at p. 8) In reviewing this diagram, DOE agrees that the dimensions shown in the provided diagram are consistent with the proposed definition's intent and agrees that a diagram would be useful to clarify the applicable dimensions. Accordingly, the final rule incorporates a diagram based on the one submitted by Lennox to clarify the process cooling definition.

With respect to blast freezers, Bally noted that some of these equipment use horizontally-oriented evaporator units and some non-process cooling refrigeration systems chill their contents using a circular pattern. In its view, because of the absence of any standard orientation or chilling pattern for process cooling and non-process cooling refrigeration systems, these design characteristics are not useful for differentiating process refrigeration systems. (Bally, Public Meeting Transcript, No. 23 at pp. 41–42) DOE notes that a horizontally-oriented evaporator that is not part of a unit cooler as defined would not be subject to the unit cooler standards, nor would it, as a matched pair with a dedicated condensing unit, be subject to the dedicated condensing unit standards. In order to clarify the extension of this exclusion to matched pairs including such evaporators, DOE has modified the process cooling refrigeration system definition to explicitly list dedicated condensing units that are distributed in commerce exclusively with evaporators that are not unit coolers.

Alternatively, Bally suggested that airflow rate may be a good characteristic for differentiating process refrigeration systems from other walk-in refrigeration systems. (Bally, Public Meeting Transcript, No. 23 at p. 44) American Panel expressed concern with the use of a cooling capacity per enclosed volume rating to differentiate process cooling

equipment because the equipment may be used to process different quantities or densities of product at different times—a condition which may prevent a given blast chiller from satisfying a definition based on cooling capacity per enclosed volume. (American Panel, Public Meeting Transcript, No. 23 at pp. 38–39) DOE had considered airflow rate or air velocity to distinguish process cooling evaporators, noting that evaporator fan power, velocity, or air flow of a unit cooler could be atypically high for a number of reasons, including the use of inefficient fans or motors, long air “throw” distance, and other factors. (See 81 FR at 54936) For example, DOE's investigation of evaporator fan horsepower showed that the horsepower for process cooling evaporator fans, although generally higher than for other walk-in evaporators, is not always higher than all such other walk-in evaporators—a potential overlapping fact that lessens the value of using horsepower as a clear distinguishing characteristic. Hence, DOE concluded that there would be too much overlap with other WICF unit coolers on the basis of these parameters. DOE notes that Bally's submission did not provide sufficient information or data that would support the use of a specific air flow rate on which DOE could rely that would serve as the basis for distinguishing process coolers from other walk-in refrigeration systems. With respect to American Panel's concerns, DOE notes that its comments provided no alternative value of cooling load per volume for DOE to consider that would enable one to readily distinguish process cooling refrigeration systems from non-process cooling refrigeration systems. While American Panel seems to suggest that the capacity of the refrigeration system would depend on the load inserted into a process cooler, DOE disagrees, because the capacity cited in the proposed definition is the refrigeration system's net capacity when determined in a manner consistent with the prescribed walk-in test conditions—this capacity depends on the refrigeration system characteristics, not on how much product is being cooled. Specifically, when testing a condensing unit alone, the test calls for maintaining certain operating conditions (see, e.g., tables 11 through 14 of AHRI 1250–2009, which specify air and refrigerant entering conditions and refrigerant exiting subcooling condition, but nothing about the quantity of product being cooled). No commenters provided specific suggestions regarding the appropriateness of the proposed 100

Btu/h per cubic foot, *i.e.*, what lower value would be more appropriate. Additionally, commenters provided no other suggestions regarding more appropriate distinguishing characteristics to use for process cooling refrigeration systems, and none provided specific quantified values for recommended parameters to use in the definition. Hence, DOE is largely adopting the approach contained in its proposed definition.

However, to address the comments regarding the inconsistency of the “storage” aspect of walk-ins with the pulldown of product temperature in process cooling equipment, DOE will modify the definition to identify refrigeration systems that are “capable of rapidly cooling food or other substances” rather than systems that are “used exclusively” for this purpose. Also, in order to clarify that the enclosure that uses these refrigeration systems is insulated, DOE will insert “insulated” before the word “enclosure” in the definition.

KPS raised concern regarding the precision of the process cooling definition, indicating that “blast chillers” and “blast freezers” are used by customers and manufacturers to describe a range of product types. (KPS, No. 8 at p. 1) KPS did not, however, elaborate on what other types of equipment should be addressed (or excluded) by DOE's proposed definition. DOE is aware, for example, of blast chillers and freezers that are smaller than walk-ins and that might be considered “reach-in process cooling equipment,” *i.e.*, process cooling equipment which the user reaches into rather than walks into to insert or remove product. This terminology is consistent with the term “reach-in” used with commercial refrigeration equipment (see, e.g., Reach In Refrigerator, No. 26) However, DOE is not concerned that such equipment would be confused with walk-in process cooling equipment, because such reach-in equipment cannot be walked into.

Other Comments From Manufacturers of Process Cooling Equipment

Bally noted that blast chillers are built in small quantities with uniquely designed electronically commutated motors (“ECMs”) and expressed concern with how the proposed regulations would affect the ECM supply chain. (Bally, Public Meeting Transcript, No. 23 at pp. 42–43) Bally elaborated in written comments that ECM orders can have up to 15 weeks of lead-time and have to be ordered in small batches. (Bally, No. 22 at pp. 1–2) Accordingly, Bally suggested that the proposed 60-

day enforcement delay be extended to allow for changes in the refrigeration equipment industry to meet the new regulations. (Bally, Public Meeting Transcript, No. 23 at p. 50) Given the 15-week lead-time indicated in the comment, DOE plans to issue a policy stating that DOE will exercise its enforcement discretion for 120 days after publication of the final rule, to allow manufacturers of walk-in refrigeration systems that are used exclusively in process cooling applications to comply and to certify compliance with the applicable statutory standard.

With respect to the proposed definition for process cooling refrigeration systems, Bally suggested that the definition specify that the doors used with this equipment be freezer doors. (Bally, Public Meeting Transcript, No. 23 at p. 53) Bally reiterated this comment in its written submission, indicating that the 5 °F temperature inside a blast chiller makes it challenging to prevent the formation of condensation. (Bally, No. 22 at p. 1) In response, DOE notes that a walk-in with a 5 °F internal temperature is technically a freezer (see *e.g.*, the definition for walk-in cooler and walk-in freezer, which states that freezers are refrigerated to temperatures below 32 °F, 42 U.S.C 6311(20)(A)), and hence, the door standards applicable to freezer doors would apply for such equipment.

Bally also requested that there be no requirement for floor insulation for process equipment. It noted that tray carts must roll in and out of the enclosure, which means that they cannot use ramps, and that building a pit to accommodate the necessary insulation would be expensive and could pose structural issues. (Bally, No. 22 at p. 1) Consistent with DOE's view, as discussed elsewhere in this discussion, that the process cooling enclosures discussed by Bally would be considered to be walk-in freezers, DOE notes that the statutory prescriptive requirements already require floor insulation of R–28. (42 U.S.C. 6311(f)(1)(D)) Given this requirement, DOE has no discretion regarding the applicability of the floor insulation requirement, which is imposed by statute.

i. Preparation Room Refrigeration

DOE proposed defining “preparation room refrigeration” as comprising applications that use “a unit cooler that is designed for use in a room occupied by personnel who are preparing food and that is characterized by low outlet air velocity, evaporator temperature between 30 and 55 degrees Fahrenheit,

and electric or hot gas defrost.” 81 FR at 54937. While DOE proposed to define this type of refrigeration system for the purpose of enhancing clarity, this equipment would not be exempt from the applicable standards that were already prescribed by Congress with respect to walk-ins. DOE requested comment on any other characteristics of preparation room refrigeration that would (1) clearly distinguish it from other walk-in refrigeration systems and (2) otherwise make this equipment unable to meet a given walk-in refrigeration standard.

Preparation Room Equipment Status as Walk-in Equipment

Commenters addressed whether preparation room equipment falls under the scope of walk-ins. As mentioned in section III.A.1.h, AHRI noted that preparation room refrigeration was included in the WICF Term Sheet in order to exclude this equipment from the scope of walk-ins. (AHRI, No. 11 at p. 5) However, as noted in the discussion of that section, the Term Sheet did not provide any guidance regarding whether preparation room refrigeration falls within the scope of walk-ins. (Docket EERE–2015–BT–STD–0016, Term Sheet, No. 56 at p. 3)

AHRI, Lennox, Manitowoc, Hussmann, Rheem, and KeepRite asserted that preparation rooms fall outside the scope of walk-ins and urged DOE to exclude them. (AHRI, No. 11 at pp. 4–5; Lennox, No. 13 at pp. 8–9; Manitowoc, No. 10 at p. 3; Hussmann, No. 20 at p. 4; Rheem, No. 18 at p. 4; KeepRite, No. 17 at p. 2) Commenters provided several reasons why preparation room equipment should not be considered within the scope of walk-ins. AHRI stated that “these systems are not commonly enclosed” and that they are not for storage. (AHRI, No. 11 at p. 4) Other stakeholders provided variations on the “not enclosed” theme, including, for example, Rheem (“not always an enclosed space”), Hussmann (“often not enclosed,” but also discusses the possibility that they are enclosed, *i.e.*, “when enclosed, these are rooms where . . .”), KeepRite and Manitowoc (“not commonly enclosed”), and Lennox (“are not ‘enclosed storage spaces’”). (Rheem, Public Meeting Transcript, No. 23 at p. 58; Hussmann, No. 20 at p. 4; KeepRite, No. 17 at p. 2; Manitowoc, No. 10 at p. 2; Lennox, No. 13 at p. 8)

Regarding the issue of equipment use for food storage, Lennox commented that preparation rooms are areas where humans occupy the space to prepare and package food. (Lennox, No. 13 at p. 8) Hussmann commented that

preparation rooms are places where work is being performed on the product, not places where finalized goods are stored. (Hussmann, No. 20 at p. 4) Other commenters, including Manitowoc, AHRI, KeepRite, and Rheem also stated that preparation rooms are not used for storage. (Manitowoc, No. 10 at p. 2; AHRI, No. 11 at p. 4; KeepRite, No. 17 at p. 2; Rheem, No. 18 at p. 3)

Several commenters suggested that DOE consider an alternative definition: “An open space or space without a sealed door (as defined in 10 CFR part 431.302) that separates the interior volume of a unit of commercial refrigeration equipment from the ambient environment, designed for use in a room occupied by personnel who are preparing and packaging food. A preparation room is not designed for storage.” (AHRI, No. 11 at p. 4) Similar definitions of preparation room or preparation space were suggested by Lennox, Rheem, and Manitowoc. (Lennox, No. 13 at p. 8; Rheem, No. 18 at p. 3; Manitowoc, No. 10 at pp. 2–3)

DOE notes that the WICF Term Sheet recommended that DOE develop a definition for “preparation room refrigeration” to focus on the refrigeration system, rather than preparation spaces in general. (Docket EERE–2015–BT–STD–0016, Term Sheet, No. 56 at p. 3) This approach is reinforced by the agenda for the WICF Working Group meetings, which included as key issues, (a) proposed energy conservation standards for six classes of refrigeration systems, and (b) potential impacts on installers, neither of which addresses preparation spaces generally. 80 FR at 46523. Hence, DOE's intent in requesting comment on its definition of preparation room refrigeration was to solicit information regarding the characteristics of this equipment that would distinguish it from walk-in refrigeration systems. Discussion of the proposed characteristics appears below, but DOE notes that none of the comments received provided information regarding features that distinguish preparation room refrigeration systems from walk-in refrigeration systems. The emphasis of the commenters on the lack of an enclosure or the use of preparation room space for purposes other than storage does not represent any feature that distinguishes the refrigeration systems used in these two groups of equipment. As indicated in the NOPR, DOE had not identified any characteristics of preparation room refrigeration systems that would distinguish them from other walk-in refrigeration systems. The definition was primarily proposed in order to explore the recommendation of

the WICF Working Group and to solicit information regarding distinguishing characteristics of this equipment. The definition was not proposed as the basis for an exclusion. 81 FR at 54937.

Comments regarding the proposed distinguishing characteristics for this equipment are described in more detail below, but DOE notes that commenters did not believe the proposed characteristics could be used as the basis for distinguishing this equipment from other walk-in refrigeration equipment. Nor, as mentioned, did they provide alternative characteristics that could be used for this distinction. With this final rule notice, DOE confirms, based on comments received, that the initial conclusion was correct that there are no clear distinguishing characteristics of preparation room refrigeration systems and other walk-in refrigeration.

Regarding the suggested alternative definitions based on non-refrigeration system-based characteristics, in DOE's view, these characteristics play no role in distinguishing those refrigeration systems used in preparation room applications from non-preparation room applications, since they describe preparation room space but do not address the refrigeration systems used for these spaces. Accordingly, DOE is declining to adopt these suggested changes to the proposed definition. Comments regarding the proposed distinguishing characteristics and DOE's responses are discussed in more detail below.

Distinguishing Characteristics of Preparation Room Refrigeration Systems

DOE received several comments regarding the characteristics it proposed including as part of the proposed definition of preparation room refrigeration to distinguish this equipment from non-preparation room refrigeration systems. AHRI stated that DOE's proposed definition is unclear and incorrect because the evaporator temperature specification does not indicate whether it is ambient or suction temperature, there is no quantified specification for "low outlet air velocity," and because these systems do not exclusively use electric or hot gas defrost. (AHRI, No. 11 at p. 4) Others made these same points. Manitowoc indicated that specifying the evaporator temperature does not clarify whether the temperature is ambient or suction temperature. (Manitowoc, No. 10 at p. 3) Rheem and Lennox suggested that the evaporator temperature in the definition be clarified as the "saturated suction temperature". (Rheem, Public Meeting Transcript, No. 23 at p. 57; Lennox,

Public Meeting Transcript, No. 23 at p. 58) Rheem, Manitowoc, Lennox, and KeepRite also commented that preparation room refrigeration systems may use air defrost, which argues in favor of not limiting the definition to gas or electric defrost units. Finally, Rheem, Manitowoc, Lennox, and KeepRite suggested that the "low air velocity" cited in the proposed definition should be more specifically defined. (Rheem, Public Meeting Transcript, No. 23 at p. 58; Rheem, No. 18 at p. 4; Manitowoc, No. 10 at p. 3; Lennox, No. 13 at p. 9; KeepRite, No. 17 at p. 2)

AHRI also requested that information related to preparation room refrigeration systems (beyond its suggested alternative definition) be removed in the final rule. (AHRI, No. 11 at pp. 4–5) Manitowoc also requested that DOE exclude all information related to preparation room refrigeration from the scope of this rulemaking. (Manitowoc, No. 10 at p. 3) Regarding the characteristics of preparation room refrigeration systems, in light of some of the limitations with the proposed definition and the absence of any specifications from commenters that would help with its clarification (*e.g.*, specifying a "low outlet air velocity"), DOE is declining to adopt a definition for preparation room refrigeration at this time. In DOE's view, the alternative definitions suggested by commenters were insufficient since they failed to address the refrigeration system itself—*i.e.*, the item which DOE sought to define. Accordingly, because of the absence of any meaningful way to distinguish these systems from non-preparation refrigeration systems, DOE will treat preparation room refrigeration systems as falling within the scope of walk-in refrigeration systems and being subject to the standards and reporting requirements that apply. DOE may revisit this issue in the future if an appropriate definition distinguishing such equipment can be developed.

j. Storage Space

Consistent with the Term Sheet, DOE proposed to define "refrigerated storage space" in the context of the current definition for a walk-in as "a space held at refrigerated (as defined in 10 CFR 431.302) temperatures." 81 FR at 54937.

Hussmann suggested modifying the proposed "refrigerated storage space" definition to reflect WICF room intent, which is to "maintain product at a specific temperature for storage purposes." 81 FR at 54937. Hussmann argued that making this change would help clarify the difference between WICF rooms and process rooms, because, in its view, the term

"maintain" would specify the presence of a holding area with the equipment—rather than equipment that imparts any changes on the products placed inside of it.

While the proposed definition does not delineate a difference between equipment that is subject to standards and equipment that is not subject to standards, as discussed earlier in section III.A.1.h of this final rule, DOE does not interpret the phrase "held at temperatures" to mean that the equipment is held at a constant temperature. Instead, DOE views this term as referring to a temperature at or below the 55 °F specified for "refrigerated" as defined in 10 CFR 431.302. Accordingly, DOE is finalizing the definition as proposed.

2. Refrigeration System Test Procedure Modifications

a. Hot Gas Defrost

Reflecting Recommendation #3 of the WICF Term Sheet (Docket EERE–2015–BT–STD–0016, Term Sheet, No. 56 at p. 2), DOE proposed to amend the test procedure by removing the method for calculating the defrost energy and heat load of a system with hot gas defrost. 81 FR at 54937–54938. With this change, manufacturers of refrigeration systems with hot gas defrost would be unable to take account of that feature in testing or rating their systems when using the DOE test procedure. *Id.*

All commenters agreed with the proposed removal of the hot gas defrost credit in the test procedure. Rheem and Heat Controller agreed that the credit should be removed from the efficiency calculation because it unfairly favored systems using hot gas defrost over comparable electric defrost systems. (Rheem, Public Meeting Transcript, No. 23 at p. 64; Heat Controller, Public Meeting Transcript, No. 23 at p. 66) Lennox and KeepRite also agreed with removing the hot gas defrost credit. (Lennox, No. 13 at p. 9; KeepRite, No. 17 at p. 2)

However, Rheem and the CA IOUs also argued that, because the proposed approach would fail to quantify the energy used by hot gas systems during the defrost cycle, thereby eliminating any accounting of the energy use contribution for defrost in the test procedure calculations, the proposed change would still unfairly favor hot gas defrost systems. (Rheem, Public Meeting Transcript, No. 23 at pp. 60–61; CA IOUs, No. 21 at p. 3) The CA IOUs encouraged DOE to ensure that WICF equipment with hot gas defrost and electric defrost are treated fairly within the test procedure. (CA IOUs, No. 21 at

p. 3) ASAP and NEEA agreed, adding that unit coolers with only hot gas defrost should be required to meet a performance level equivalent to unit coolers with improved evaporator fan blades and off-cycle variable-speed evaporator fans. (ASAP and NEEA, No. 19 at p. 3)

Rheem and Manitowoc asserted their belief that the removal of the hot gas defrost credit would correspondingly remove the need for manufacturers to certify the performance of this equipment. (Rheem, Public Meeting Transcript, No. 23 at p. 63; Manitowoc, No. 10 at p. 3) KeepRite also supported the removal of the certification requirements for these systems. (KeepRite, No. 17 at p. 2) In response, DOE notes that the requirement to test and certify hot gas defrost walk-in refrigeration systems was adopted by the May 2014 test procedure final rule and the June 2014 energy conservation standard final rule—this is not a new requirement. The Fifth Circuit Order did not strike the requirement for certification of performance for any refrigeration systems on or after their standards compliance date. The discussions during the Working Group meetings did not address relief of testing and certification requirements for this equipment—hence, these requirements still stand, regardless of the removal of the hot gas defrost credit.

DOE notes that the NOPR public meeting attendees briefly discussed ways to assign an AWEF level to a hot gas defrost refrigeration system during the public meeting and in a separate meeting between DOE and industry representatives (Ex Parte Communication of September 29, 2016 Meeting, No. 6). When asked whether there would generally be an equivalent electric defrost model whose AWEF rating could be used for any given hot gas defrost model, Rheem noted that most hot gas defrost models have a comparable electric defrost model. (Rheem, Public Meeting Transcript, No. 23 at p. 62) However, Bally commented that the individual models sometimes are part of different basic models. Rheem and Bally added that significant clarification would be needed to specify how a proxy rating system would work to avoid misinterpreting the regulation. (Rheem, Public Meeting Transcript, No. 23 at p. 62; Bally, Public Meeting Transcript, No. 23 at p. 64)

Commenters suggested ways to assign an AWEF value for hot gas defrost units. AHRI and Hussmann suggested permitting manufacturers to assign the minimum allowable AWEF to a hot gas refrigeration system. (AHRI, No. 11 at p. 5; Hussmann, No. 20 at p. 4) However,

commenters also offered an alternative to this approach, which would allow manufacturers to assign the AWEF value of an equivalent electric defrost unit to the hot gas defrost unit. AHRI and multiple manufacturers suggested, without offering any supporting details or reasoning, that equivalence in this context be defined as an electric defrost system within 10 percent of the rated net capacity of the hot gas defrost unit. (AHRI, No. 11 at p. 6; Manitowoc, No. 10 at p. 3; NCC, No. 16 at p. 2; Lennox, No. 13 at p. 4; Rheem, No. 18 at p. 4; Hussmann, No. 20 at p. 4) ASAP and NEEA agreed that using equivalent electric defrost units as surrogates for rating hot gas defrost units would address the concerns with the proposed test procedure. (ASAP and NEEA, No. 19 at p. 3) The CA IOUs also agreed with this approach, but presented another alternative: Apply a default defrost energy consumption value for hot defrost units based on their refrigeration capacity. (CA IOUs, No. 21 at p. 3) The CA IOUs offered no further detail on how to determine this value.⁹ KeepRite suggested that the hot gas defrost unit should be assigned the AWEF of an equivalent electric defrost unit and also be part of the same basic model as that electric defrost unit. (KeepRite, No. 17 at p. 2) ASAP, NEEA, the CA IOUs, and KeepRite did not offer any definition for equivalence. AHRI and Rheem noted that if being a part of the same basic model were a requirement of equivalence, the definition for basic model would have to be altered, because the defrost type affects the equipment's energy consumption (see definition in 10 CFR 431.302). (AHRI, No. 11 at p. 6; Rheem, No. 18 at p. 2)

Commenters also offered a few methods for dealing with cases where there is no equivalent unit. Manitowoc suggested that, in these cases, the AWEF value be determined based on interpolation between electric defrost units with higher and lower capacities—which would create a weighted average of the AWEFs of the two electric defrost units). (Manitowoc, No. 10 at p. 3) Lennox suggested using an AEDM, which would use a calculated energy contribution for defrost and apply it to the hot gas defrost unit's calculated performance as if it were an electric defrost unit. (Lennox, No. 13 at p. 4) AHRI and Rheem argued that the model

⁹ DOE suspects that the CA IOUs may have meant to suggest using an approach similar to the assignment of electric defrost energy use and heat load that is used for testing of dedicated condensing units (see paragraphs 3.4.2.4 and 3.4.2.5 of subpart R, appendix C of 10 CFR part 431, as finalized in this document).

should be rated with the minimum AWEF value (as defined in 10 CFR 431.306) in these cases. (Rheem, No. 18 at p. 2; AHRI, No. 11 at p. 6)

Some commenters recommended separate approaches for condensing units and unit coolers. NCC suggested that a hot gas defrost condensing unit should be tested as an electric defrost model by first removing all mechanical components associated with hot gas defrost functions. (NCC, No. 16 at p. 1) For this approach, the proposed test procedure would specify standardized values for the electric defrost energy use and heat addition. See, e.g., 10 CFR part 431, subpart R, appendix C, section 3.4.2.4 as proposed, 81 FR at 54958. For a unit cooler, NCC recommended using the AWEF of an equivalent electric defrost model, which it defined as an electric defrost model having a net capacity within 10 percent of that of the hot gas defrost unit, and that also belongs to the same basic model group. If an equivalent model is not available, NCC recommended that the manufacturer petition DOE for a test procedure waiver. (NCC, No. 16 at p. 2)

Regarding the suggestions that AWEF ratings for hot gas defrost units not be required, in DOE's view, such an approach would likely remove any incentive for manufacturers to design and build hot gas defrost equipment that would maintain steady state efficiency in a manner consistent with the standards that apply to electric defrost systems since, under this approach, the unit's design has no influence on whether it complies with the applicable electric defrost system standard. Similarly, simply assigning a baseline AWEF value to the unit fails to impose any requirements on the units' efficiencies, since a default value would be applied to this equipment, which again would make compliance unrelated to the unit's design.

Further, while using the AWEF of an equivalent electric defrost unit to rate hot gas defrost units may have merit, DOE does not have, and the commenters did not provide, any information demonstrating how the use of the suggested 10-percent range would impact manufacturer incentives to use efficient designs. This suggested equivalence criterion, if adopted, would play little to no role with respect to the energy use of the unit's components, such as the energy use of a unit cooler's evaporator fan. A smaller evaporator coil with greater fan power and more air flow could provide the same net capacity as a larger coil with less fan power and air flow, but use more fan power to do it.

In addition, comparing the net capacity of the hot gas defrost unit with those of electric defrost units to test equivalency implies that it is understood how to determine that value. As discussed in the comments, net capacity as measured in the test procedure is not the same as capacity reported for application ratings. See, e.g., AHRI, No. 0011 at p. 3 (discussing application temperature points). A manufacturer using the suggested approach could claim an unlikely net capacity in order to be within 10% of the net capacity of an electric defrost unit with a high AWEF. Further, a manufacturer could (without any verification) select the highest AWEF of electric defrost units within the ± 10 percent range. But since the design of the unit also has little or no bearing on whether it is compliant with the standards under this approach, it only shows that a given hot gas defrost unit has a claimed net capacity within ten percent of the net capacity of a compliant electric defrost unit.

Regarding the suggested use of an AEDM along with a prescribed value for the energy consumption from defrost usage, DOE notes that an AEDM simulates a unit's performance during testing, which requires that there first be a test procedure that the AEDM would simulate. Because there is no hot gas defrost test procedure, this approach would also be unworkable unless a test procedure were first developed and defined. In short, DOE agrees with Rheem and Bally that significant clarification would be needed to specify how a proxy rating system would work to avoid misinterpreting the regulation. For the reasons described earlier, however, DOE is not convinced that the suggested "within 10 percent of net capacity" provides sufficient clarification.

NCC's comment addressed possible approaches for testing hot gas defrost condensing units and unit coolers. But because coverage also extends to matched-pair or single-package systems, a hot gas defrost test approach must also be developed for these system categories.

After considering various possibilities for developing procedures to test hot gas defrost features, as discussed above, DOE continues to believe a test that measures the energy benefits of hot-gas defrost is not warranted at this time. Accordingly, DOE is adopting, in this respect, an approach consistent with the intent of the one set forth in the NOPR. Namely, a manufacturer will test a hot gas defrost condensing unit without measuring the impacts of the hot gas defrost feature, and that feature will not

affect the rated efficiency either positively or negatively. In that sense, the test procedure for units with hot gas defrost will be the same as the test procedure for units with electric defrost.

DOE is clarifying one aspect of the test procedure with respect to hot gas defrost. DOE recognizes that the hot gas defrost components can impose pressure drop on the refrigerant lines during the test, which can reduce performance. This issue was discussed in the WICF Working Group meetings, where the addition of a pressure drop equivalent to 3 °F dew point reduction in the suction line was included in the initial engineering analysis developed for hot gas defrost units to reflect this issue. (Docket EERE-2015-BT-STD-0016, Working Group Meeting Presentation, Fifth and Sixth Meetings: Engineering Analysis, No. 26 at p. 34) (The hot gas defrost calculations were subsequently removed from the engineering analysis because hot gas defrost was not considered as a design option.) Thus, the presence of hot gas defrost components would cause the hot gas defrost feature to detract from a model's rated efficiency. That outcome would be inconsistent with the approach DOE set forth in the NOPR, the purpose of which was to make rated efficiencies neutral with respect to the presence of hot gas defrost. While DOE does not have information to support a general presumption that hot gas defrost increases efficiency by a particular amount, it does not believe that hot gas defrost ordinarily decreases efficiency in operation. Accordingly, DOE will permit a manufacturer to remove the hot gas defrost components. Thus, incorporating hot gas defrost in a condensing unit will not cause a decrease in the unit's rated efficiency under the test procedure.

However, DOE recognizes that simply removing the hot gas defrost components may not be sufficient to set up a condensing unit for a test, since removal of a component may leave pipe ends open to the surroundings. Some of these pipe ends may have to be capped or connected with each other, and at least two ends represent the suction inlet and liquid outlet of the condensing unit. Also, some of the hot gas defrost components may make little impact to the operation of the system and accompanying measurement—which would encourage a manufacturer not to remove those components. To ensure that any third party testing is conducted consistently with manufacturer testing or its recommendations for testing, information to clarify which components are removed and the subsequent piping connections may

have to be provided. DOE will consider proposing in a future rulemaking that certification reporting for hot gas defrost units include as non-public information a list of the hot-gas-defrost components that must be removed for the test and instructions for piping connections to allow proper testing. DOE may also consider allowing any such instructions to be provided in pdf form as supplementary test information. The regulations being adopted are generic in nature such that manufacturers (and other stakeholders that utilize the test procedure) should have sufficient instruction on how to test all basic models that have hot-gas defrost components.

Further, DOE is also adopting this approach for testing hot gas defrost unit coolers, matched-pairs, or single-package refrigeration systems. For these systems, the hot gas defrost components would also be removed from the system, and pipes reconnected as required. The units would be tested measuring steady state performance, but frosting or defrost tests would not be feasible under this approach and they would not be run. Using this procedure, the test chambers would have to be operated with low moisture levels to prevent frost formation during testing. Performing this test will generally require using test facilities with conditioning systems that can cool down the indoor room and remove its moisture before operation of the unit under test can start to ensure that the test unit does not collect any moisture from the room. It also requires that infiltration into the indoor room be minimized. The defrost heat and energy use for the test would be calculated in the same manner as for an electric defrost condensing unit tested alone, thus allowing determination of equivalent AWEF. DOE has adopted this approach for hot gas defrost refrigeration systems in 10 CFR part 431, subpart R, appendix C.

Although some test facilities may not be equipped with conditioning systems that would allow cooling of the indoor room and removal of moisture prior to start of the test unit, DOE expects that some manufacturers will develop performance representations for their hot gas defrost units using AEDMs, as suggested by some of the comments, and that there may be limited need for the actual testing of hot gas defrost unit coolers and matched-pairs under this approach. The AEDMs would only need to be able to estimate the steady state performance of the systems in refrigerating mode, since they would, like the test, use the standardized contributions for hot gas defrost energy input and heat addition.

Heat Controller emphasized the need to develop a test method to quantify the differences between various defrost technologies. (Heat Controller, Public Meeting Transcript, No. 23 at p. 66) Lennox also supported the development of a method to determine the AWEF for hot gas defrost models. (Lennox, No. 13 at p. 4) DOE notes that WICF Term Sheet Recommendation #6 would involve DOE initiating a future test procedure rulemaking to adopt test procedure provisions for several items, including hot gas defrost. Developing and adopting such a test procedure would enable one to differentiate between technologies. DOE plans to address this issue in the future.

b. Adaptive Defrost

Consistent with the Recommendation #4 of the WICF Term Sheet (Docket EERE-2015-BT-STD-0016, Term Sheet, No. 56 at p. 2), DOE proposed to amend the test procedure so that the provisions for assigning a benefit to adaptive defrost cannot be used to certify compliance with the energy conservation standard. 81 FR at 54938-54939.

DOE did not receive any comments regarding this proposal and is adopting the proposed amendment.

c. On-Cycle Variable-Speed Evaporator Fan Control

Consistent with Recommendation #4 of the WICF Term Sheet (Docket EERE-2015-BT-STD-0016, Term Sheet, No. 56 at p. 2), DOE proposed to amend the test procedure so that unit cooler compliance with the applicable walk-in refrigeration system standard would be assessed without using on-cycle variable-speed evaporator fans. As part of this approach, manufacturers would be permitted to make representations of the energy efficiency or consumption for a unit cooler basic model using on-cycle variable-speed fans as measured in accordance with the DOE test procedure, provided that the additional represented value has been certified to DOE per 10 CFR 429.12.

DOE did not receive any comments regarding this proposal and is adopting it in this final rule.

B. Actions To Facilitate Implementation of Energy Conservation Standards

1. Re-Organization and Clarification of the Test Procedure for Walk-In Refrigeration Systems, Doors, and Panels

DOE proposed to re-organize the walk-in test procedure found at 10 CFR 431.304 into three separate appendices, one for each metric corresponding to the

regulated component. DOE proposed to revise Appendix A to Subpart R of Part 431 by designating it as, and retaining only the procedure for, measuring the energy consumption (in kWh/day) for walk-in doors. DOE also proposed to create a new Appendix B to Subpart R of Part 431, which would contain the method of measuring the R-value, which would apply to walk-in doors and panels. Lastly, DOE proposed creating a new Appendix C to Subpart R of Part 431, which would contain the test method for refrigeration systems. In addition, DOE proposed to clarify some of the definitions and terminology used in the test procedure.

Specifically, DOE proposed to revise Appendix A to Subpart R of Part 431, which contains the procedure for measuring energy consumption (in kWh/day) for display and non-display doors, by removing the definitions and references related to walk-in panels. DOE proposed to (1) remove the definition of "core region," (2) move the definition of "edge region" to the proposed Appendix B, and (3) remove the prescribed subfloor temperature listed in Table A.1 of Appendix A. Further, DOE proposed to amend the definition of "surface area" by removing the currently inserted example referencing walk-in panels and modifying the definition of "rating condition" by removing the discussion of internal walk-in components. 81 FR at 54939. These amendments were intended to clarify Appendix A and did not substantively change the DOE test procedure for measuring the energy consumption of walk-in doors.

To clarify how to calculate door power usage, DOE proposed defining "rated power" as the electricity-consuming device's power as specified on the device's nameplate. If the device does not have a nameplate or such nameplate does not list the device's power, then the rated power must be read from the device's product data sheet. See 81 FR at 54939. In addition, DOE proposed that, for each basic model of walk-in door that has an electricity consuming device(s) for which rated power is taken from a product data sheet, the walk-in door manufacturer must retain the product data sheet as part of the test data underlying the walk-in door's certification report. 81 FR at 54939.

Hussmann expressed concern about how to calculate the rated power for certain variable-power door components, like variable-resistance heaters and door-opening devices. In its view, the proposed definition for rated power, which would require manufacturers to use 100% of a device's

rated power, does not make sense when applied to variable power devices that have a lower average power. (Hussmann, Public Meeting Transcript, No. 23 at pp. 73-74) In sections 4.4.2 and 4.5.2 of Appendix A to Subpart R to Part 431, DOE's current test procedure details how to calculate the power usage for each type of electricity consuming device used in a walk-in door. The procedure includes percent time off values to account for energy saving features like timers, control system, or other auto-shut-off system. These values also reduce the calculated power usage for features that are not constantly operational, e.g., lighting without controls is assigned a 25% percent time off. As a result, in DOE's view, the procedure, as modified by the proposal, would sufficiently account for the lower energy use conditions identified by Hussmann. Accordingly, DOE is adopting its proposed definition for rated power. DOE notes that if a manufacturer believes that the test procedure is unrepresentative of a walk-in door basic model's energy use, it may avail itself of the test procedure waiver provisions of 10 CFR 431.401 to obtain approval to use an alternative test procedure when measuring the energy efficiency of its equipment.

Additionally, DOE proposed adding a new Appendix B to Subpart R of Part 431 to improve the clarity of the walk-in test procedure. This appendix would include the currently prescribed method of measuring the R-value found in 10 CFR 431.304. Specifically, DOE proposed to move the provisions found at 10 CFR 431.304(b) and (c) into Appendix B. DOE also proposed to add the definition of "edge region" that was previously located in Appendix A to Subpart R of Part 431 to Appendix B, as this definition is relevant to the R-value test method.

Dow supported the creation of Appendix B to Subpart R of Part 431, commenting that this change would help highlight the fundamental differences between doors and panels and clarify how each are treated in the proposed and future test procedures. (Dow, No. 9 at p. 2) In addition, Dow commented that it understood that the R-value for insulation used in WICF-related panels and doors must be determined in accordance with the WICF test procedures in Appendix B to Subpart R of Section 431 and sought confirmation of the accuracy of this understanding from DOE. (Dow, No. 9 at p. 3)

DOE did not receive any negative comments regarding the re-organization of Appendix A and proposed addition

of a new Appendix B to Subpart R of Part 431.

Appendix B to Subpart R of Section 431 as adopted in this final rule contains the test method for measuring the R-value of insulation. This test method must be used when determining the R-value for walk-in panels and doors.

With respect to the proposed amendments regarding Appendices A and B, Dow supported the inclusion of ASTM C518–04 in the test procedure but recommend updating the procedure to reference the new version of this standard, ASTM C518–10. (Dow, No. 9 at p. 2) In this rulemaking, DOE proposed to make only editorial changes to the test procedure for measuring R-value but may consider Dow's suggestion to reference the most recent version of ASTM C518 in a future rulemaking.

DOE also proposed to add a new Appendix C to Subpart R of Part 431 and include the test method for refrigeration systems in this appendix. Within Appendix C, DOE further organized its discussion of test procedures in terms of the refrigeration system configuration types—*i.e.*, matched-pairs, single-package dedicated systems, individually distributed unit coolers and condensing units. Within Appendix C, DOE proposed to incorporate the (1) provisions that are currently included in 10 CFR 431.304, sections (10) through (12), which specify that walk-in refrigeration systems be tested using AHRI 1250–2009—the test procedure incorporated by reference in 10 CFR 431.303—and (2) clarify and modify certain provisions of the test procedure. One subsection would contain the general modifications to the test conditions and tolerances applied to the industry test procedure that were incorporated into DOE's May 2014 test procedure rule. 79 FR at 27399–27403. A second subsection would contain proposed modifications to the method of test and the remaining subsections addressed proposed modifications specific to the system configuration types. 79 FR at 27398–27399. The NOPR also proposed, and this final rule adopts, adding to Appendix C the modifications to the test procedure for walk-in refrigeration systems that are discussed in section III.A.2. See 81 FR at 54956–54958.

DOE also proposed to correct typographical errors in the regulatory text contained in the proposed Appendix C. DOE proposed to correct the saturated suction A and saturated suction B temperatures to be -20°F and -26°F , respectively, in the table currently in 10 CFR 431.304(c)(10)(xv).

81 FR at 54939. DOE also proposed correcting an equation for defrost heat load contribution currently at 10 CFR 431.304(c)(12)(ii). The equation for defrost heat load contribution currently specifies that this contribution should be divided by 3.412 Btu/W-h, but it should instead be multiplied by 3.412 Btu/W-h. 81 FR at 54939–54940.

DOE did not receive any comments regarding its proposal to add a new Appendix C to Subpart R of Part 431 or its proposal to include the test method for refrigeration systems in this same appendix. DOE did not receive any comments in response to its proposal to correct typographical errors within the test procedure language or equation that would become part of the proposed Appendix C. Therefore, DOE is adopting its proposed changes in this final rule.

2. Representation Requirements

DOE proposed to amend the representation requirements for refrigeration systems to clarify how to apply the test procedure to the range of possible kinds of refrigeration systems. Specifically, DOE proposed to direct manufacturers of unit coolers, dedicated condensing units, single-package dedicated systems, and matched refrigeration systems to the appropriate subsections of Appendix C to Subpart R of Part 431—the DOE test procedure for refrigeration systems. DOE also proposed not to require the rating of a matched refrigeration system if the constituent unit cooler(s) and dedicated condensing unit have been tested and rated separately. However, if a manufacturer wished to represent the efficiency of the matched refrigeration system separately from the efficiency of either constituent component, or if the manufacturer cannot rate one or both of the constituent components using the specified method (*e.g.*, if the system has a variable-capacity condensing unit, thereby preventing the manufacturer from being able to test the condensing unit individually), the manufacturer must test, represent, and certify the matched refrigeration system as specified in this section. A component that is part of a certified matched-pair and that has not been rated individually cannot be sold individually, nor can it be sold as part of a different matched-pair (that is, with a different component matched to it) unless that new matched-pair has also been tested and certified. DOE did not receive any comments on these proposed requirements and is adopting them in this final rule.

3. Certification and Compliance Requirements

DOE explained in its proposal that a manufacturer of a walk-in cooler or walk-in freezer is any person who: (1) Manufactures a component of a walk-in cooler or walk-in freezer that affects energy consumption, including, but not limited to, refrigeration, doors, lights, windows, or walls; or (2) manufactures or assembles the complete walk-in cooler or walk-in freezer. 10 CFR 431.302.

Several of the statutory standards, as well as DOE's 2014 standards and any energy conservation standards that DOE may adopt in its separate ongoing rulemaking (see Docket No. EERE–2015–BT–STD–0016), apply to specific components of a walk-in. A manufacturer of a walk-in component (*i.e.*, part 1 of the definition of a manufacturer of a walk-in cooler or walk-in freezer) is the entity that manufactures, produces, assembles or imports a walk-in panel, door or refrigeration system. A manufacturer of a walk-in component is responsible for ensuring the compliance of the component(s) it manufactures. DOE requires a manufacturer of a walk-in component to certify the compliance of the components it manufactures.

A manufacturer of a complete walk-in (*i.e.*, part 2 of the definition of a manufacturer of a walk-in cooler or walk-in freezer) is the entity that manufactures, produces, assembles or imports a walk-in cooler or freezer (*i.e.*, an enclosed storage space meeting the definition of a walk-in cooler or freezer). This includes “installers” of complete walk-ins. Although DOE does not require a manufacturer of a complete walk-in to certify the compliance of the “box” as a whole, a manufacturer of a complete walk-in must ensure that the walk-in, including all of its regulated constituent components, meets applicable statutory and/or regulatory standards. After the compliance date of any amended performance-based walk-in cooler or freezer standard (*i.e.*, either those noted in the concurrent WICF refrigeration system standards rulemaking or those currently in the regulation for which compliance is required in 2017), manufacturers of complete walk-ins may continue to assemble and install walk-ins using components remaining in inventory that were manufactured before the compliance date for the amended performance-based component standards. DOE emphasizes that the components must have been compliant with all requirements and certified to DOE before the compliance date of such

component's amended standard. A more detailed discussion of this will appear in the related standards final rule. See Docket No. EERE-2015-BT-STD-0016. If a manufacturer of a complete walk-in also meets part 1 of the definition (*i.e.*, it also manufactures individual components), then it must certify the compliance of the components it manufactures. Compliance responsibilities for manufacturers of complete walk-ins are discussed in more detail later in this section.

Dow stated that the certification and compliance requirement language regarding doors, walls, ceiling, and floor panels/components is not clear. It noted that some WICF floors, which are considered "panels" under DOE's regulations are not, in fact, separate pre-assembled panels but are built into the floor of the building in which the WICF is located. In this case, Dow noted that the floor would be a component of the WICF but not a "panel." (Dow, No. 9 at p. 1) Dow also noted that, although WICF panels consist of an assembly of materials (metal skins, insulation, fasteners, etc.), the text refers to insulation material alone as a panel, which, in its view, adds confusion on how to apply the test procedure. (Dow, No. 9 at p. 2)

DOE agrees with Dow's comments that a WICF floor may comprise pre-assembled panels or layer(s) of insulation and/or some other floor covering material (*e.g.*, concrete). DOE notes that the definition for "panel" includes any "construction component that is not a door and is used to construct the envelope of the walk-in, *i.e.*, elements that separate the interior refrigerated environment of the walk-in from the exterior." (10 CFR 431.302) Therefore, a WICF floor built from layer(s) of insulation and floor-covering material would satisfy the definition since it contains "elements that separate the interior refrigerated environment of the walk-in from the exterior." *Id.*

a. Manufacturers of Walk-In Components

A manufacturer of a walk-in component must ensure that the component meets the applicable standard. In the August 2016 NOPR, DOE proposed to modify this current approach (detailed at 10 CFR 429.12(b)(6)) by requiring that for each brand name, a walk-in manufacturer must submit both the basic model number and the manufacturer's individual model number(s). When it first established reporting requirements for walk-ins, DOE explained that it was adopting a limited approach since it did not have sufficient information at the

time to determine whether reporting individual model numbers for walk-in components was feasible. See 76 FR 12422, 12466 (March 7, 2011) ("March 2011 CCE Rule"). DOE noted that it would revisit this issue in the future. *Id.* As part of their certification of compliance responsibilities, manufacturers have routinely submitted both basic model numbers and individual model numbers for walk-in refrigeration systems, panels, and doors. These submissions suggest that it is feasible for manufacturers to certify both basic model numbers and individual model numbers for each brand. Accordingly, DOE proposed to require that a walk-in manufacturer include individual model number(s) as part of its reporting submission.

AHRI, Manitowoc, Rheem, Zero Zone, NCC, and KeepRite opposed DOE's proposal to expand the model number reporting requirements. (AHRI, No. 11 at p. 3; Manitowoc, No. 10 at p. 2; Rheem, No. 18 at p. 6; Zero Zone, No. 15 at p. 2; NCC, No. 16 at p. 6; KeepRite, No. 17 at p. 2) AHRI, Manitowoc, and Rheem disagreed with DOE's observation that manufacturers routinely submit both basic and individual model numbers for WICF systems, noting that this is not the case for all manufacturers or types of equipment. (AHRI, No. 11 at p. 3; Manitowoc, No. 10 at p. 2; Rheem, No. 18 at p. 5) AHRI, Manitowoc, Rheem, NCC, and KeepRite also noted that the proposed reporting change will greatly increase the number of models listed in DOE's Certification Compliance Management System ("CCMS") because there may be hundreds of combinations for a given basic model, and make the database more difficult for customers to navigate. (AHRI, No. 11 at p. 3; Manitowoc, No. 10 at p. 2; Rheem, No. 18 at pp. 5-6; NCC, No. 16 at p. 6; KeepRite, No. 17 at p. 2) Bally commented that DOE also needs to consider the effect of an increase in door basic models as a result of the new energy conservation standard going into effect on June 3, 2017. Once the maximum energy consumption metric becomes effective many variables such as door area, U-value, and power consumption will impact door basic models. Separating its models by door area alone, Bally states that it has 63 different combinations. (Bally, No. 22 at p. 1) NCC asserted that it may have to recertify daily because it manufactures so many custom products. (NCC, No. 16 at p. 6) Hussmann and KeepRite commented that the proposed requirement would significantly increase the complexity of reporting, which would result in the reporting of

hundreds of model numbers. (Hussmann, No. 20 at p. 3; KeepRite, No. 17 at p. 2) Zero Zone commented that the additional model number reporting requirements would increase paper work for the manufacturers without providing any value to customers. (Zero Zone, No. 15 at p. 2)

Lennox argued that the proposed individual model number reporting requirement would be burdensome unless it was allowed to group its individual model numbers using the "wildcard" digit placeholders it currently uses when reporting. (Lennox, Public Meeting Transcript, No. 23 at pp. 70-71) Hussmann added that allowing placeholder digits ("wildcards") for both AWEF-altering and AWEF-agnostic model changes would simplify the reporting process, allow for a clean transition to marketing materials, and clarify the rating system for consumers. (Hussmann, No. 20 at p. 3) Rheem and NCC similarly advocated for the use of placeholder characters (*e.g.*, "***") in model numbers to represent design options that do not materially affect the reported efficiency performance. (Rheem, No. 18 at p. 5; NCC, No. 16 at p. 6) NCC also requested clarification on the use of wildcards for individual model numbers and basic model numbers. (NCC, Public Meeting Transcript, No. 23 at pp. 76-77)

DOE acknowledges that its proposal requiring manufacturers to report the basic model number and individual model number(s) for each brand distributed in commerce may result in an increase in reporting burden. However, as explained in the August 2016 NOPR, DOE believes the additional burden to be minimal. 81 FR at 54940. DOE disagrees with the comments from AHRI, Manitowoc, and Rheem that manufacturers are not currently reporting individual model numbers. As of October 2016, each basic model listed in DOE's Compliance Certification Database¹⁰ lists an individual model number. Examples of certifications that have both basic model numbers and individual model numbers can be found in this rulemaking's docket. (See EERE—Compliance Certification Database, Walk-In Coolers and Freezers Refrigeration Systems Screenshots, No. 27 at p. 1) Further, as all certifications appearing in DOE's Compliance Certification Database already include a basic model and individual model number, DOE does not agree with AHRI, Manitowoc, Rheem, NCC, and KeepRite that the proposed

¹⁰ DOE's Compliance Certification Database can be found at: www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A*.

reporting change will greatly increase the number of models.

However, as requested by Lennox, Hussmann, and NCC, manufacturers may use wildcards to represent non-energy consuming features when certifying individual model numbers. Wildcards may not be used to represent energy consuming components that would result in a different representative value, but manufacturers may elect to group those individual models into one basic model at their discretion. Based on the comments received from Lennox and Hussmann, DOE understands that allowing wildcards will simplify the requirement to report individual models and will alleviate the concerns noted by AHRI, Manitowoc Foodservice, Rheem, Zero Zone, NCC, KeepRite, Bally, and Hussmann. Therefore, with the clarifications noted in this paragraph, this rule will require walk-in component manufacturers to submit both the basic model number and the manufacturer's individual model number(s).

With respect to the issue of energy-consuming components, Hussmann questioned whether individual models with design differences that are small but affect the units' energy consumption (e.g., one model with full electric heaters and another model with only a drain pan heater) could be grouped under the same basic model number under the lowest AWEF rating in the group. (Hussmann, Public Meeting Transcript, No. 23 at pp. 71–72) DOE refers Hussmann to the March 2011 CCE Rule where it established the basic model concept for walk-in coolers and freezers. That rule explained that the basic model concept permits flexibility in determining how manufacturers choose to group individual models with essentially, but not exactly, identical energy efficiency characteristics. DOE encouraged manufacturers to adopt a reasonable approach to basic model groupings and to certify as a single basic model those individual models that possessed only superficial differences, such as product finishes. The Department clarified that all models identified in a certification report as being the same basic model must have the same certified energy efficiency or consumption rating. Additionally, any individual model that is modified in a manner resulting in performance that is less efficient (or more consumptive) than the rated level when tested in accordance with the DOE test procedures in Parts 430 and 431 and the applicable sampling plans in Part 429 must be re-rated as a new basic model and certified to DOE. Certified ratings

must be supported by tested values that are at least as efficient as the rating when the applicable sampling plans in Part 429 are applied. 76 FR at 12429.

DOE also proposed adding reporting requirements for both the standards promulgated in the June 2014 final rule (with a June 2017 compliance date) and for the standards for certain equipment classes of walk-in refrigeration systems that will be defined in a separate energy conservation standards rulemaking (see Docket No. EERE–2015–BT–STD–0016).

In addition to the reporting requirements defined in 10 CFR 429.53(b), DOE proposed requiring certification reports to include the following product-specific information to show compliance with the amended energy conservation standards:

—Doors: Rated energy consumption, rated surface area in square feet, the rated power of each light, heater wire, and/or other electricity consuming device associated with each basic model of display and non-display door, and whether such device(s) has a timer, control system, or other demand-based control reducing the device's power consumption.

—Refrigeration systems: Rated annual walk-in energy factor (AWEF), rated net capacity, and the configuration tested for certification (e.g., condensing unit only, unit cooler only, or matched-pair).

ASAP and NEEA supported the proposed expansion of reporting requirements for doors and other WICF components, and agreed with DOE that this information is necessary to allow DOE to verify the door's rated energy consumption. (ASAP and NEEA, No. 19 at p. 3)

KPS commented that the new reporting requirements are burdensome to WICF OEMs that do not manufacture all door options and other power-rated accessories or any nonstandard option. In its view, this information is dynamic and may change with each order. KPS asked if the WICF OEM can rely on each of the relevant vendors to meet the component testing requirements and be in compliance with DOE. (KPS, No. 8 at p. 1) A manufacturer of a walk-in component (i.e., the entity that manufactures, produces, assembles or imports a walk-in panel, door or refrigeration system) is responsible for ensuring the compliance of the component(s) it manufactures. A manufacturer of a complete walk-in must ensure that the walk-in, including all regulated constituent components, meets applicable statutory and/or regulatory standards. That is, a manufacturer of a complete walk-in is required to use components that comply with the applicable standards and have

been certified as compliant, and must ensure the final product satisfies the statutory design requirements.

Bally suggested that manufacturers of door components (e.g., display windows) should be responsible for verifying the U-value of their products, rather than having the testing burden rest with refrigeration door manufacturers. (Bally, Public Meeting Transcript, No. 23 at p. 75) Similarly, as noted earlier, Dow commented that it understood from the proposal that the insulation supplier is not responsible for certifying and reporting the R-value of the finished panels, but is responsible for providing the panel or component manufacturer with accurate R-value testing results of the insulation supplier's material. Dow requested that DOE further clarify the role of the insulation supplier in the certification and compliance process. (Dow, No. 9 at p. 3)

Walk-in cooler and walk-in freezer manufacturers may rely on test data developed by other entities that supply sub-assemblies of a walk-in component (e.g., insulation suppliers or display window suppliers). However, the manufacturer of a walk-in component (i.e., the entity that manufactures, produces, assembles or imports a walk-in panel, door or refrigeration system) is responsible for ensuring the compliance of the component(s) it manufactures.

DOE's new certification requirements will provide comprehensive, up-to-date efficiency information about walk-in equipment sold in the United States at any given time—a necessary predicate to an effective enforcement program. This rule adopts these new certification regulations for walk-in doors and refrigeration systems to ensure that DOE has the information it needs to ensure that regulated products sold in the United States comply with the law. As discussed in section III.A.1.d of this final rule, DOE is also requiring indoor dedicated condensing units to specify if the basic model is also certified as an outdoor dedicated condensing unit and, if so, the basic model number for the outdoor dedicated condensing unit.

Hussmann expressed concern regarding how doors from a walk-in system manufactured before the current standard would be replaced, suggesting that there may be challenges retrofitting compliant doors to these older systems. (Hussmann, Public Meeting Transcript, No. 23 at p. 111–112) DOE clarifies that all walk-in doors manufactured on or after June 5, 2017 must comply with applicable energy conservation standards. 10 CFR 431.306(c)–(d) DOE does not provide an exclusion for retrofit or replacement doors.

b. Manufacturers of Complete Walk-ins

In the August 2016 NOPR, DOE explained that while it does not require manufacturers of complete walk-ins to submit certification reports for the complete walk-in itself, a manufacturer of a complete walk-in must ensure that each walk-in it manufactures meets the various statutory and regulatory standards. That is, a manufacturer of a complete walk-in is required to use components that comply with the applicable standards and to ensure the final product fulfills the statutory design requirements.

For example, consider an installer deciding which panels to use. The installer could assemble a compliant walk-in in several ways. The installer could build a panel, test it, and certify it as the component manufacturer. The installer could use an uncertified panel with a claimed compliant R-value and accept responsibility for its compliance. The installer could use a certified panel with a label that meets DOE requirements and bear no responsibility for the testing and certification of the panel. In any of these situations, the installer must use compliant panels. The only difference between the three scenarios is that in the third scenario the installer is permitted to rely upon the representations of the manufacturer of a WICF component to ensure compliance of the component; if those representations turn out to be false, the component manufacturer is responsible.

As discussed in more detail in III.B.5 of this final rule, DOE proposed several labeling provisions to help manufacturers of complete walk-ins, who are not manufacturers of walk-in components, ensure compliance with the standards. In addition to the component-based regulations requiring certification (doors, panels, and refrigeration systems), walk-ins generally must: have automatic door closers; have strip doors, spring hinged doors, or some other method of minimizing infiltration when doors are open; and for all interior lights, use light sources with an efficacy of 40 lumens per watt or more. It is the responsibility of the manufacturer of the complete walk-in to ensure that the walk-in incorporates these design features.

At the public meeting discussing the proposed test procedure, Bally remarked that it seems unlikely that an installer could use an uncertified panel with a claimed compliant R-value because component manufacturers cannot distribute panels that are uncertified. (Bally, Public Meeting Transcript, No. 23 at p. 110) DOE clarified that its proposal covers a scenario where a

walk-in is built out of insulated building materials designed for applications other than walk-in coolers and freezers. In this scenario, the manufacturer of a complete walk-in is responsible for the compliance of the walk-in that it assembled and ensuring that the insulated building materials used to construct the walk-in meet the applicable R-value standards.

c. Compliance Date

Commenters raised questions regarding the compliance dates for walk-in refrigeration energy conservation standards and related refrigeration system reporting requirements.

Hussmann requested that the enforcement date for medium temperature condensing units be pushed back to align with that of the other WICF refrigeration systems. Hussmann argued that these systems often share components and this change would allow manufacturers the flexibility to work with all equipment classes at one time. (Hussmann, No. 20 at p. 3)

DOE issued an enforcement policy on February 1, 2016, explaining that DOE will not seek civil penalties or injunctive relief concerning violations of the four energy conservation standards applicable to dedicated condensing refrigeration systems operating at medium temperatures detailed at 10 CFR 431.306(e). DOE will not seek civil penalties or injunctive relief in these cases provided that the violations relate to the distribution in commerce of WICF refrigeration system components manufactured prior to January 1, 2020.¹¹

Lennox asked that DOE explicitly align the reporting requirements for medium temperature condensing units with the January 1, 2020 enforcement date (*i.e.*, delay reporting to January 1, 2020). (Lennox, No. 13 at p. 6) DOE did not waive the certification requirements for dedicated condensing refrigeration systems operating at medium temperatures that are promulgated at 10 CFR 431.306(e). Accordingly, manufacturers must certify compliance in a manner consistent with the applicable compliance date specified in that provision. Only those models properly certified as compliant with applicable standards will be posted on DOE's CCMS public database.

¹¹ DOE's enforcement guidance can be found at: <http://energy.gov/sites/prod/files/2016/02/f29/Enforcement%20Policy%20Statement%20-%20WICF%2002-01-16.pdf>.

4. Enforcement Provisions

a. Sampling Plan for Enforcement Testing of Covered Equipment and Certain Low-Volume Covered Products

DOE proposed to include walk-ins to the list of equipment subject to the enforcement testing sampling plan for covered equipment found in Appendix B of Subpart C of Part 429. DOE received no comments on this proposal and is adopting it in this final rule.

b. Equipment-Specific Enforcement Provisions

DOE proposed to add specific enforcement provisions for walk-in refrigeration systems and doors to 10 CFR 429.134. Specifically, DOE proposed to clarify which entity or entities are liable for the distribution of noncompliant units in commerce and how to verify the refrigeration capacity for walk-in refrigeration systems and surface area of walk-in doors.

If DOE determines that a basic model of a panel, door, or refrigeration system for walk-ins fails to meet an applicable energy conservation standard, then the manufacturer of that basic model is responsible for that noncompliance. If DOE determines that a complete walk-in cooler or walk-in freezer or any component thereof fails to meet an applicable energy conservation standard, then the manufacturer of that complete walk-in cooler or walk-in freezer is responsible for the noncompliance with the applicable standard. However, a manufacturer of a complete walk-in would not be held responsible for the use of components that were certified and labeled (in accordance with DOE labeling requirements) as compliant but later found to be noncompliant with the applicable standards. DOE did not receive any comments on this aspect of its proposal and is adopting it in this final rule.

DOE also proposed adding an explanation of how DOE verifies the refrigeration capacity for walk-in refrigeration systems to 10 CFR 429.134. Specifically, DOE proposed that the refrigeration capacity of the basic model would be measured pursuant to the test requirements of 10 CFR part 431 for each unit tested. The results of the measurement(s) would be averaged and compared to the value of refrigeration capacity certified by the manufacturer. Under this approach, the certified refrigeration capacity would be considered valid only if the average measured refrigeration capacity is within 5 percent of the certified refrigeration capacity. If the certified refrigeration capacity is found to be

valid, that refrigeration capacity will be used as the basis for calculating annual energy consumption for the basic model. If the certified refrigeration capacity is found to be invalid, the average measured refrigeration capacity will serve as the basis for calculating annual energy consumption for the basic model. See 81 FR at 54941.

Manitowoc commented in support of the 5 percent tolerance during enforcement testing. (Manitowoc, No. 10 at p. 2) AHRI and Lennox supported DOE's proposal to verify the net capacity, but suggested that "within" be replaced by "plus or minus" to provide a slightly wider range around the net capacity value. (AHRI, No. 11 at p. 4; Lennox, No. 13 at p. 10)

DOE agrees with Lennox and AHRI that specifying "plus or minus 5 percent" clarifies the regulatory text at 10 CFR 429.134(l)(2). In this rule, DOE will finalize its proposal related to the certified refrigeration capacity, but will amend it to specify that the certified net capacity will be considered valid "only if the average measured net capacity is within plus or minus five percent of the certified net capacity."

Further, DOE proposed to specify how DOE would verify the surface area for walk-in display doors and non-display doors in 10 CFR 429.134. The certified surface area would be considered valid only if the average measured surface area of the door is within 1 percent of the certified surface area. If the certified surface area is found to be valid, that surface area value would be used as the basis for calculating the maximum energy consumption for the basic model. If the certified surface area is found to be invalid, the average measured surface area would serve as the basis for calculating maximum energy consumption for the basic model. See 81 FR at 54941.

Bally commented that in some walk-in applications the door cap height is reduced by 2-inches to accommodate grout and tile used for walk-in floors, resulting in a shorter walk-in door. The 1% certified surface area will mean that for a 78" door, each 3/4" of an inch will require a new basic model number. Bally asked that DOE consider allowing these "shortened doors" to be measured to the nominal full door measurements, as compared to the door frame. (Bally, No. 22 at p. 2) DOE understands from the scenario Bally described that a 1% tolerance on door height is too stringent and would require door manufacturers to create additional basic models to allow for small changes in door height. DOE declines to adopt Bally's suggestion to use a nominal door height because nominal door height is

undefined and may allow for too much size variation. However, DOE is adopting a tolerance of 3% in this final rule to give door manufacturers more flexibility to establish basic models. A 3% tolerance allows a 78-inch door to be adjusted by 2 inches to accommodate features like raised flooring as specified by Bally. Accordingly, under the provision adopted here, which aligns with the provision adopted for refrigeration capacity tolerance, DOE will treat certified surface areas as valid "only if the average measured surface area is within plus or minus three percent of the certified surface area."

DOE also proposed to specify in 10 CFR 429.134 how it will account for the rated power (as defined in the proposal) of each electricity consuming device(s) in calculating the walk-in door energy consumption. For each basic model of walk-in cooler and walk-in freezer door, DOE would calculate the door's energy consumption using the power listed on the nameplate of each electricity-consuming device shipped with the door. If an electricity-consuming device shipped with a walk-in door does not have a nameplate or such nameplate does not list the device's power, then DOE would use the device's "rated power" included in the door's certification report. 81 FR at 54941. DOE did not receive any comments regarding this proposal and is adopting it in this final rule.

5. Labeling Requirements

If the Secretary has prescribed test procedures for any class of covered equipment, a labeling rule applicable to such class of covered equipment must be prescribed. See 42 U.S.C. 6315(a). EPCA, however, also sets out certain criteria that must be met prior to prescribing a given labeling rule. Specifically, to establish these requirements, DOE must determine that: (1) Labeling in accordance with Section 6315 is technologically and economically feasible with respect to any particular equipment class; (2) significant energy savings will likely result from such labeling; and (3) labeling in accordance with Section 6315 is likely to assist consumers in making purchasing decisions. (42 U.S.C. 6315(h))

If these criteria are met, EPCA specifies certain aspects of equipment labeling that DOE must consider in any rulemaking establishing labeling requirements for covered equipment. At a minimum, such labels must include the energy efficiency of the affected equipment, as tested under the prescribed DOE test procedure. The labeling provisions may also consider

the addition of other requirements, including: Directions for the display of the label; a requirement to display on the label additional information related to energy efficiency or energy consumption, which may include instructions for maintenance and repair of the covered equipment, as necessary, to provide adequate information to purchasers; and requirements that printed matter displayed or distributed with the equipment at the point of sale also include the information required to be placed on the label. (42 U.S.C. 6315(b) and 42 U.S.C. 6315(c))

DOE proposed labeling requirements for walk-ins—specifically, that certain information be shown on the permanent nameplates of doors, panels, and refrigeration systems. DOE also proposed to clarify requirements with respect to the disclosure of efficiency information in marketing materials and the labeling requirements for process cooling refrigeration systems. In the following sections, DOE's specific proposal and comments received regarding its proposed nameplate requirements are discussed in detail.¹²

a. EPCA Criteria To Prescribe a Labeling Rule

DOE reviewed the labeling requirements proposed in the August 2016 NOPR with respect to the three statutory prerequisites addressing the Secretary's authority to promulgate labeling rules. (42 U.S.C. 6315(h)) The following paragraphs addresses these elements and accounts for the comments responding to this aspect of DOE's proposal.

Economically Justified and Technologically Feasible

DOE found the proposed labeling recommendations would be technologically and economically feasible with respect to walk-in cooler and freezer equipment class. In general, DOE also found that walk-in refrigeration system manufacturers and display door manufacturers already include nameplates on their equipment. Typically, these nameplates include the equipment's model number.¹³ DOE explained that the inclusion of energy efficiency or energy consumption information on these labels would be technologically feasible for refrigeration

¹² In addition, consistent with 42 U.S.C. 6315, DOE also sought written input from the Federal Trade Commission. The FTC had no comments regarding DOE's labeling proposal.

¹³ Examples of walk-cooler and freezer component labels can be found in this rulemaking's docket. (See 2016–12–01 Label Examples for Walk-in Cooler and Freezer Components, No. 28, pp. 1–10.)

system and display door manufacturers to accomplish without increasing the size of the label and that the associated costs of doing so would be negligible. Accordingly, in DOE's view, the proposed labeling requirement would be economically feasible as well. 81 FR at 54942.

DOE explained in the August 2016 NOPR that it was less common for non-display doors and panels for walk-ins to have nameplates, but that it was more likely that an entire assembled walk-in may have a single nameplate. Nonetheless, DOE found that adding a permanent nameplate or permanent sticker to both walk-in non-display doors and panels would be technologically feasible, as both types of equipment have adequate useable surface to apply such labels. DOE estimated that the total cost of applying labels to non-display doors and panels would be negligible—less than a tenth of one percent of the average manufacturer's annual revenue. Accordingly, based on these facts, DOE found that the proposed labeling requirements would be economically feasible. 81 FR at 54942.

Several commenters responded to these aspects of DOE's proposal.

Bally commented that the proposed requirements for panel labeling is not technologically feasible because putting the date of manufacture on each panel is difficult. Since the labels are usually printed days or weeks before the actual manufacturing date, the proposed requirement would force manufacturers to put a second label on the panel printed on the day or day after manufacture. Further, in its view, labeling is not technologically feasible because labeling each panel requires the creation of many unique nameplates for even a small walk-in. (Bally, No. 22 at p. 2) Regarding these comments, as discussed in section III.B.5.b of this final rule, DOE is no longer requiring walk-in panel labels to include the R-value, model number, or date of manufacture. Therefore, under the approach adopted in this rule, walk-in panels will not require two labels as Bally suggested. Additionally, DOE is adopting a requirement to have a generic statement for walk-in panel labels, which eliminates the need for each panel to have a unique label.

KPS claimed the amount of information being requested for labels will increase the size of the label, and that their presence will disrupt the aesthetics of the panel because the OEM will be required to place them on each panel or door. (KPS, No. 8 at p. 1) Heat Controller also commented that, for some small equipment, the increased

size of the label due to the proposed regulation may make it difficult to place the label according to UL's requirements. (Heat Controller, Public Meeting Transcript, No. 23 at p. 96)

KPS also stated that the label must be dynamic for each unique job, and the burdens faced by manufacturers come in the form of the cost of implementing the proposed changes—namely, the cost of the change, the time to implement the labeling requirement, and the materials used to make the labels. Marketing collateral changes, required system changes, and the burden to customers will, in KPS's view, result in a cost impact much greater than \$10,000. (KPS, No. 8 at p. 1) Hussmann noted that the proposed labeling requirements would require it to develop a new label format, rewrite labeling software, and purchase new labeling machines that can handle the increased size of the label. (Hussmann, No. 20 at p. 2) Bally also expressed concern regarding the economic implications of the proposed requirements. It noted that describing the label as a "nameplate" implies higher costs than "label". (Bally, Public Meeting Transcript, No. 23 at p. 87) American Panel commented that it is not economically feasible to label each panel because label(s) would have to be high-grade Mylar/polyester in order to withstand being power washed and cleaned with harsh chemicals. The added cost to track and uniquely label each panel would bring no more benefit than having a single label for an entire walk-in. (American Panel, No. 7 at p. 1)

With respect to the labeling requirements generally, DOE notes that the requirements adopted in this rule will align with some of the labeling information already required by UL (e.g., brand name, model number, and date of manufacture). To this end, DOE believes that this alignment will make it less likely that manufacturers will need to increase the size of the labels that are already applied to walk-in panels and doors.

Regarding the remaining potential feasibility issues raised by commenters, DOE notes that the final rule reduces the amount of information required on component nameplates and the amount of information required to be disclosed in catalogs and marketing materials for walk-in panels, doors, and refrigeration systems. In light of KPS's concerns, the final rule does not require each walk-in component to have a unique label showing the applicable representative energy efficiency or energy consumption. Regarding Hussmann's comment that the proposed labeling requirements will cause manufacturers to undergo significant retooling, in

DOE's view, the reduced requirements adopted in this rule for all walk-in components will likely reduce the amount of retooling—if any—that may be required by the rule. See section III.B.4.b, *supra*. As to Bally's and American Panel's concerns on the expenses associated with using permanent nameplate materials, DOE clarifies that it is using the term "permanent" to mean that the label is not easily removable and will not become detached from the equipment under everyday wear and tear. As long as walk-in labels meet the aforementioned specifications, manufacturers may select appropriate labeling materials at their discretion.

DOE also notes that it considered the cost to manufacturers of updating their marketing materials to include efficiency information, brand, model number, and the disclosure statement on each page of the document that listed the walk-in component. See 81 FR at 54944 and 54945–54946 (discussing potential burden impacts on walk-in manufacturers, including small manufacturers). Marketing materials include literature, data sheets, selection software, sales training, and compliance documentation. In this final rule, DOE reduced the burden by removing the term "each page" from its requirement to disclosure of efficiency information in catalogs and marketing materials. Instead, DOE is requiring that all catalogs that list a regulated walk-in component and all materials used to market the component prominently display the same information that appears on the component's permanent nameplate and the applicable efficiency information. However, this information is not required to be on *each page* of such materials.

All of the changes that DOE is adopting in this final rule create less burdensome labeling requirements than those proposed in the NOPR. The labeling requirements for panels and doors are designed such that the labels can be applied across a range of basic models. Also, DOE is adopting less burdensome information display requirements for product catalogues. Reflecting the nature of these changes, DOE is estimating labeling and compliance costs on a per manufacturer basis rather than on a per model basis. Activities associated with software selection, sales training and compliance documentation are typically a one-time expense for each manufacturer and do not scale with the number of models. Further, product literature templates are generally standardized templates shared between groups of walk-in components. Therefore, updates to these materials are

more accurately scaled by manufacturer than by model. DOE estimated an investment of \$50,000 per manufacturer to produce nameplates and literature that meet the labeling requirements based on conversations with manufacturers and published literature.¹⁴

Significant Energy Savings

DOE stated in the August 2016 NOPR that the proposed labeling requirements would likely result in significant energy savings. The related energy conservation standards are expected to save approximately 3 quadrillion British thermal units (quads). DOE explained that requiring labels that include the rated value subject to the standards will increase consumer awareness of the standards. 81 FR at 54943. As a result, requiring the labels may increase consumer demand for more efficient walk-in components, thus leading to additional savings beyond that calculated for the standards. In addition, labeling requirements would both help installers, assemblers, and contractors ensure that they are selecting equipment that the component manufacturer intended to be used as part of a completed walk-in, and limit the potential compliance burden faced by these entities. For example, DOE understands from manufacturer interviews and market research that insulated metal panels may be used in other types of applications, such as communications equipment sheds.¹⁵ Labeling requirements differentiate walk-in cooler and freezer panels from other types of insulated metal panels that are not appropriate for use in walk-ins.

In the August 2016 NOPR, DOE also explained that the proposed labeling requirements are likely to assist consumers in making purchasing decisions. By including the rated metric on the nameplate and marketing materials, manufacturers are able to demonstrate to purchasers that the equipment they are purchasing meets the DOE standard and is acceptable for use in a walk-in. Additionally, consumers have the information needed to compare the energy efficiency performance between different component models, with the assurance that the ratings were calculated

according to a DOE-specified test procedure. 81 FR at 54943.

AHRI claimed that consumers will not see a label on the equipment before it is purchased, and that a label will not save energy, increase demand for more efficient walk-ins, or be used to make purchasing decisions. In addition, AHRI argued that most walk-ins are built to order and the labels will not assist customer decision making. Furthermore, it noted that customers do not want labels visible on their equipment, which is frequently displayed in a client-facing business setting. However, AHRI remarked that the ratings in CCMS and marketing materials may assist customers in purchasing decisions, but the tangible labels placed on equipment require additional cost without any consumer benefit. (AHRI, No. 11 at pp. 1–2) Manitowoc and Rheem agreed that ratings displayed in DOE's CCMS and in marketing materials may assist customers in purchasing decisions, but argued that labels would incur cost to manufacturers without any customer benefit. (Manitowoc, No. 10 at p. 1; Rheem, No. 18 at p. 5) Manitowoc, Rheem, Zero Zone, and KeepRite also commented that WICF units are usually built to order, not to sell in a retail setting, and therefore labels will not assist customers in their buying decisions. (Manitowoc, No. 10 at p. 1; Rheem, No. 18 at p. 4; Zero Zone, No. 15 at p. 2; KeepRite, No. 17 at p. 3)

Bally argued that because the customer purchases the panels before seeing them, the panel labels have less of an effect on purchasing decisions than marketing literature. (Bally, Public Meeting Transcript, No. 23 at p. 86; Bally, No. 22 at p. 3) Bally added that energy savings will not likely result from the proposed labeling regulation. Bally commented that while the test procedures for panels and doors include "short cuts" that assist manufacturers with testing, they can distort equipment comparisons. Specifically, regarding door labels, Bally noted that the rating does not reflect the range of actual uses seen in the field and the customers' actual energy use will not be accurately reflected by the energy consumption on the nameplate. Bally contended that this situation may confuse customers and cause them to misjudge the requirements of their equipment. Regarding panel labels, Bally noted that the R-value is not easily converted into cost savings. Bally also noted that manufacturers (especially of freezers) only certify that their equipment meet the minimum requirements; therefore, customers would not be able to make significant judgments from the data

displayed on the label. (Bally, No. 22 at p. 3)

In this rule, DOE is adopting labeling requirements that will likely result in significant energy savings by increasing consumers' awareness of the standards and helping installers, assemblers, and contractors ensure that the equipment they select is intended for walk-in applications. In addition, DOE's labeling requirements are likely to assist consumers in making purchasing decisions. As explained in section III.B.5.a and section III.B.5.c of this final rule, DOE modified its labeling requirements to specify that catalogs and marketing materials for each walk-in component must include each basic model's representative energy consumption or energy efficiency, as applicable. As AHRI, Manitowoc, Rheem, and Bally commented, including this information in marketing materials is beneficial to customers making purchasing decisions.

Regarding built-to-order equipment, DOE notes that energy conservation standards for walk-in components were established, in part, to address regulatory complications associated with the customization of walk-ins. Even if a complete walk-in is designed from a variety of components from different manufacturers, applying labels on walk-in equipment allows the installer verify that each component is appropriate for walk-in applications. In addition, including representative efficiency information in equipment catalogs and marketing materials allows entities designing walk-ins to compare the efficiency of walk-in components.

In response to Bally's comment that the test procedure for walk-in doors distorts energy consumption and is not indicative of energy use in the field, DOE notes that the specific rating conditions in the test procedure were established so that measured energy consumption is more equitable across the market. If a manufacturer believes that the test procedure is unrepresentative of a basic model's energy use, it may seek a test procedure waiver in accordance with the requirements in 10 CFR 431.401.

AHRI requested that DOE rescind the labeling proposal because the requirements of 42 U.S.C. 6315 have not been met. Specifically, AHRI commented that labeling will not assist customers in making purchasing decisions nor will labels save energy by increasing demand for more efficient walk-ins. (AHRI, No. 11 at p. 1–2) As explained in the preceding paragraphs, however, DOE concludes that this final rule meets the requirements of 42 U.S.C. 6315.

¹⁴ Food and Drug Administration, <http://www.fda.gov/ohrms/dockets/dockets/04n0382/04n0382-bkg0001-Tab-05-01-vol1.pdf>, page 3–13 (last accessed November 2016).

¹⁵ Examples of insulated metal panels can be found in this rulemaking's docket. (See "Examples of Insulated Panels Used in Applications Other than WICF", No. 29, pp. 1–11).

b. Information Disclosed on Permanent Nameplates

DOE proposed that the permanent nameplates of doors, panels, and refrigeration systems display certain information.

For walk-in doors, DOE proposed that the permanent nameplates of these components must be clearly marked with the rated energy consumption, brand name, model number, date of manufacture, and an application statement that states, "This door is designed and certified for use in walk-in cooler and freezer applications." Specifically, the energy consumption would need to be identified with an "EC_" immediately preceding the relevant value and the model number would need to be displayed in one of the following forms: "Model _", "Model number _", or "Model No. _". 81 FR at 54942.

With respect to panels, DOE proposed that the permanent nameplates of panels for walk-in cooler and walk-in freezers clearly display the rated R-value, brand name, model number, date of manufacture, and an application statement that states, "This panel is designed and certified for use in walk-in cooler and freezer applications." The R-value would be identified with an "R-value_" immediately preceding the relevant value. The model number would also need to be displayed in one of the following forms: "Model _", "Model number _", or "Model No. _". 81 FR at 54954.

For walk-in refrigeration systems that are not manufactured solely for process cooling applications, DOE proposed that the permanent nameplates of these components be clearly marked with the AWEF, brand name, refrigeration system model number, date of manufacture, and an application statement that states, "This refrigeration system is designed and certified for use in walk-in cooler and freezer applications." The AWEF must be identified with "AWEF_" immediately preceding the relevant value and the model number must be displayed in one of the following forms: "Model _", "Model number _", or "Model No. _". 81 FR at 54942. In addition, DOE proposed that the permanent nameplate of a refrigeration system component that can only be used as part of a process cooling refrigeration system must be marked clearly with the brand name, model number, the date of manufacture, and the statement, "This refrigeration system is designed only for use in walk-in cooler and freezer process cooling refrigeration applications." The model number would be displayed in one of the

following forms: "Model _", "Model number _", or "Model No. _". If a refrigeration system can be used for both process cooling refrigeration and non-process cooling refrigeration applications, then the refrigeration system must be clearly marked with its applicable AWEF, brand name, model number, date of manufacture, and an application statement that says, "This refrigeration system is designed and certified for use in walk-in cooler and freezer applications." 81 FR at 54942.

Finally, for each of these proposed requirements, DOE proposed that all orientation, spacing, type sizes, typefaces, and line widths used to display this required information must be the same as or similar to the display of the other performance data contained on the component's permanent nameplate. 81 FR at 54942.

DOE received general comments as well as specific concerns on its labeling proposal. ASAP and NEEA supported the proposed labeling requirements. (ASAP and NEEA, No. 19 at pp. 3–4) The CA IOUs supported the adoption of WICF component labeling requirements that would apply to each WICF component, including labels on each individual panel and door. (CA IOUs, No. 21 at p. 3) AHRI, Manitowoc, Rheem, and Zero Zone recommended that DOE drop the proposed labeling requirements for WICF refrigeration systems because labels will not help customers make purchasing decisions. (AHRI, No. 11 at p. 2; Manitowoc, No. 10 at p. 1; Rheem, No. 18 at p. 4; Zero Zone, No. 15 at p. 2; Hussmann, No. 20 at p. 2) Similarly, KeepRite requested that the labeling requirements be removed for refrigeration equipment and panels. (KeepRite, No. 17 at p. 3) Hussmann requested that there be no additional labeling requirement and added that it already labels their equipment as required by UL. (Hussmann, No. 20 at p. 2) Rheem added that potential labeling requirements should have been brought up during the ASRAC negotiation. (Rheem, No. 18 at p. 5)

With respect to the labeling of efficiency information, AHRI suggested that DOE require efficiency information to be included only in published materials. AHRI explained that customers will use marketing materials to compare energy efficiency and ensure ratings were calculated according to the DOE-specific test procedure. (AHRI, No. 11 at p. 2) Rheem argued that online resources, including the CCMS database and manufacturer's literature, are preferable to labels since these sources of information offer consumers context, meaning and the opportunity to

compare ratings—none of which are possible with the proposed physical labels. Rheem explained that because WICF's are not built to be purchased in a retail setting or for head-to-head comparison—as most WICF equipment is built to order—labels will not assist customers in making purchasing decisions. Moreover, consumers would prefer not to have labels on equipment that is for display purposes. (Rheem, No. 18 at p. 4–5)

CrownTonka, Bally, and KeepRite expressed concern about labeling each panel individually. CrownTonka commented that most of their food customers and local health officials do not want labels on each panel. (CrownTonka, Public Meeting Transcript, No. 23 at pp. 84–85) Bally commented that requiring labels for each panel model would require manufacturers to invest in in-house labeling capabilities and may impact manufacturing process times. (Bally, Public Meeting Transcript, No. 23 at pp. 102–103) Bally also noted that panels qualifying for both freezer and cooler applications would require two separate R-value labels for each operating condition. (Bally, No. 22 at p. 3) KeepRite commented that labeling every panel is not necessary, redundant and wasteful. KeepRite added that the labeling of every panel would not be aesthetically pleasing and could lead to sanitation issues. (KeepRite, No. 17 at p. 3) American Panel agreed that walk-in components should be labeled to demonstrate DOE compliance, but saw no value to the customer having labels on every walk-in insulated panel. American Panel added that labels are not seen until installation, and some panels are hidden by floor covering. (American Panel, No. 7 at p. 1) However, the CA IOUs supported requiring labels on each individual panel and door, noting that this is common practice for many construction materials (wall insulation, windows). (CA IOUs, No. 21 at p. 3)

Stakeholders also recommended alternative approaches to reduce the labeling burden. Manitowoc and KeepRite suggested that, if DOE retains the labeling requirements, then DOE should allow manufacturers to have a single label on each walk-in. (Manitowoc, No. 10 at p. 1; KeepRite, No. 17 at p. 3) KeepRite explained that a majority of panels arrive to the jobsite on the same truckload. (KeepRite, No. 17 at p. 3) CrownTonka noted that it usually provides all floor, wall, and ceiling panels for a given walk-in; IB noted that, in addition to all panels, it also usually provides passage doors. Therefore, both manufacturers suggested

a labeling system where all of the components they provide for an initial installation could be covered under a single label, and only replacement panels ordered later on would be individually labeled. (CrownTonka, Public Meeting Transcript, No. 23 at pp. 97–99; IB, Public Meeting Transcript, No. 23 at pp. 99–100) Hussmann commented that since walk-ins are assembled in the field, labeling each door or panel would be excessive and it preferred using a single label for the whole WICF. In addition, Hussmann criticized the proposed labeling statements as being long and likely to crowd the nameplate. It suggested as an alternative that a mark indicating compliance, similar to the UL or ENERGY STAR marks, be used instead. (Hussmann, No. 20 at p. 2)

Other stakeholders commented on the proposed language for inclusion on all walk-in equipment permanent nameplates—*i.e.*, “This [equipment class] is designed and certified for use in walk-in cooler and freezer applications.” Bally commented that while it supported the phrase concept, it preferred to include only this phrase on equipment labels. Bally explained that they could easily include the phrase on a UL sticker, but information like R-value, model number, or date of manufacturer would require custom label machinery. (Bally, Bally, Public Meeting Transcript, No. 23 at p. 102) Bally and CrownTonka supported using a set of three generalized labels which could be applied to a range of panel models. (Bally, Public Meeting Transcript, No. 23 at pp. 105, 101–102; CrownTonka, Public Meeting Transcript, No. 23 at p. 106) CrownTonka commented that it generally builds and sells panels with a specific design, *i.e.* cooler or freezer, in mind. (CrownTonka, Public Meeting Transcript, No. 23 at p. 105) To this end, it suggested using one of the following phrases to indicate the intended purpose of WICF doors: “Walk in (Cooler/Freezer) Door Assembly” or “Certified Walk in (Cooler/Freezer) Door.” (Bally, No. 22 at pp. 3–4) Similarly, Rheem and NCC suggested that, given the differences in freezer and cooler standards, the label’s text stating the intended use of the panel should read, “This refrigeration system is designed and certified for use in walk-in cooler or freezer applications.” (Rheem, Public Meeting Transcript, No. 23 at p. 92; NCC, Public Meeting Transcript, No. 23 at p. 91) Lennox recommended changing the required wording on the nameplate to read, “This refrigeration system is designed and

certified to DOE requirements for use in walk-in cooler and freezer applications.” (Lennox, No. 13 at p. 9)

DOE agrees with the suggestion from Bally, CrownTonka, Rheem, and NCC. Walk-in components may be designed for walk-in cooler applications, walk-in freezer applications, or both walk-in cooler and freezer applications. Therefore, DOE finds that the approach suggested by these manufacturers improves the application statement because it not only identifies that the component is designed for use in a walk-in, but also identifies the type of walk-in (cooler, freezer, or both) for which the component is designed. This additional information would help installers verify that they are using the appropriate component for a particular application. Therefore, DOE is modifying its proposed permanent nameplate requirement by requiring that the permanent nameplate indicate whether the basic model is designed and certified for use in (1) walk-in cooler applications, (2) walk-in freezer applications, or (3) both walk-in cooler and walk-in freezer applications. For example, a walk-in panel designed and certified for use only in a walk-in cooler must contain on its label the following statement, “This panel is designed and certified for use in walk-in cooler applications.” Similarly, if a walk-in panel is designed and certified for both walk-in cooler and walk-in freezer applications, then it must contain on its label the following statement, “This panel is designed and certified for use in walk-in cooler and freezer applications.” Although the “certified” language on the label pertains specifically to the certification of compliance to DOE, to minimize the labeling burden, DOE is adopting Lennox’s suggestion of dropping the proposed inclusion of the language “to DOE requirements” to the label.

Regarding the proposed labeling requirements, DOE’s intention is to adopt a limited set of labeling requirements for walk-in components that would reduce the overall burden on manufacturers, including for installers who will be relying on these labels when assembling a given walk-in. For walk-in doors, DOE is requiring that they include a permanent nameplate marked with the door brand name and, as applicable, the statement, “This door is designed and certified for use in [walk-in cooler, walk-in freezer, or walk-in cooler and freezer] applications.”

Similarly, to reduce the burden on walk-in panel manufacturers while preserving information useful for walk-in installers, DOE is requiring these

components to have a permanent nameplate that includes the brand name and, as applicable, the statement, “This panel is designed and certified for use in [walk-in cooler, walk-in freezer, or walk-in cooler and freezer] applications.”

In DOE’s view, the more limited labeling requirements being adopted in this rule will enable manufacturers to demonstrate that a given walk-in component complies with the applicable DOE energy conservation standards, while eliminating the burden of creating a different label for each basic model. These limited labeling requirements are generalized and can be applied to a range of basic models in the manner suggested by Bally and CrownTonka. Further, these limited labeling requirements reduce manufacturer burden because components designed for both walk-in cooler and freezer applications would not require two separate labels, a concern expressed by Bally.

With respect to the concept of using a single label for a completed walk-in, DOE notes that its regulatory framework for this equipment relies on the component-based statutory scheme established by Congress. As a result, applying the single, completed walk-in labeling approach suggested by Manitowoc, KeepRite, CrownTonka, IB, and Hussmann would be inconsistent with that Congressionally-enacted scheme and potentially less effective at ensuring that installers and consumers have reliable information regarding whether the walk-in components they are using comply with the applicable standards. The requirements in this final rule are intended to help manufacturers of a complete walk-in identify components that comply with the applicable standards and have been certified as such. In DOE’s view, a single label for a complete walk-in would reduce the utility of the label with respect to complete walk-in manufacturers (*e.g.*, installers) since it would offer no information regarding the performance of the walk-in’s regulated components.

DOE considers energy efficiency information an important aspect of walk-in design, advertising and purchasing and is therefore maintaining the requirement to report such information in catalogs and marketing materials. This change is consistent with the approach suggested by AHRI and Rheem. Specifically, DOE is requiring walk-in door manufacturers to include each basic model’s representative energy consumption in catalogs and marketing materials while walk-in panel manufacturers would

include each basic model's representative R-value in their catalogs and marketing materials.

Regarding door labels, Bally requested that required door labels should include units of measure that follow the maximum energy consumption metric, "kWh/day". (Bally, No. 22 at p. 3) DOE agrees with Bally that energy consumption information should be listed with the appropriate units of measure. As explained in the previous paragraphs, DOE is not requiring walk-in doors to have energy consumption marked on their nameplates. However, manufacturers must include the representative energy consumption for each basic model of walk-in door in equipment catalogs and marketing materials. Per Bally's suggestion, DOE is adding a requirement that door energy consumption must be listed with the units of measure, "kWh/day".

Lennox, NCC, Heat Controller, CrownTonka, and Bally also commented that some of the information that the proposal would require on a label is already included in current markings or is otherwise tracked and recorded by manufacturers. AHRI, Rheem, and Hussmann commented that current safety standards require WICF manufacturers to provide the brand name, date of manufacture, and model number via a label, and that this information will allow consumers to look up efficiency information online—which Hussmann asserts is the preferred method to review information because it provides context, meaning and the opportunity to compare ratings. (AHRI, No. 11 at p. 2; Rheem, No. 18 at p. 5; Hussmann, No. 20 at p. 2) Bally stated that UL labels already placed on each door include power consumption and the energy consumption labeling proposed would be redundant and confusing. (Bally, No. 22 at p. 3)

Similar to walk-in doors and panels, DOE's intention is to adopt labeling requirements for walk-in refrigeration systems that are not overly burdensome to manufacturers and that provide installers with enough information to assemble walk-ins with compliant components. In addition, based on the comments from AHRI, Rheem, and Hussmann, DOE understands that walk-in customers benefit from having brand name, date of manufacture and model number information included on refrigeration system labels because this information allows walk-in customers to look up efficiency information in CCMS or in manufacturer literature. In light of the comments received from Lennox, NCC, Heat Controller, CrownTonka, AHRI, Rheem, and Hussmann, DOE finds that refrigeration systems are

already labeled with the brand, date of manufacture, and model number information, all of which supports the view that it is technologically feasible for refrigeration systems to be labeled with this information. Further, manufacturers will have minimal financial impacts because they do not need to modify equipment nameplates in order to meet a requirement to label walk-in refrigeration systems with brand name, date of manufacturer, and model number. This rule requires walk-in cooler and freezer refrigeration systems (that are not manufactured solely for process cooling applications) to have a permanent nameplate marked with the refrigeration system's brand name, model number, date of manufacture, and the statement, "This refrigeration system is designed and certified for use in [walk-in cooler, walk-in freezer, or walk-in cooler and freezer] applications." In addition, DOE is requiring a refrigeration system that is not designated for outdoor use be labeled with the statement, "Indoor use only." See section III.A.1.d for more details. The permanent nameplate of a refrigeration system component that can only be used as part of a process cooling refrigeration system must be marked clearly with the statement, "This refrigeration system is designed for use exclusively in walk-in cooler and/or freezer process cooling refrigeration applications." DOE is requiring manufacturers of walk-in refrigeration systems to include each basic model's representative AWEF in catalogs and marketing materials.

DOE also notes that EPCA generally requires that labels prescribed by the Secretary must indicate the energy efficiency of the affected equipment, as tested under the prescribed DOE test procedure. (42 U.S.C. 6315(b)) For walk-in equipment, the labeling requirements prescribed by the Secretary shall indicate the energy efficiency of the equipment. See 42 U.S.C. 6315(e). DOE's rule requires that manufacturers disclose whether a given regulated walk-in component meets the applicable energy efficiency requirement that applies. In DOE's view, this approach satisfies the requirements of 42 U.S.C. 6315 since it discloses whether a given component meets the prescribed level of efficiency, while minimizing the associated burden requirements. DOE notes that the specific requirements of 42 U.S.C. 6315(e) do not require that a specific value be provided on the label—only that the label "indicate the energy efficiency of the equipment." In DOE's view, this final rule's labeling requirement, which would also be

coupled with a requirement that equipment catalogs prominently display the energy efficiency of regulated components, satisfies this provision since the label will readily indicate whether a given component satisfies the prescribed energy efficiency level for that component. Accordingly, DOE's adopted approach satisfies its legal obligations while balancing the interests in providing sufficient information to the public against the potential costs of requiring a label for walk-in components. DOE notes that manufacturers are free to provide additional information regarding the performance of their components should they choose to do so, see section III.B.5.b for additional details.

Given that the disclosure statement represents that the labeled component is certified as compliant with the applicable energy conservation standard, if a manufacturer has not certified to DOE that a component meets applicable standards, the components may not contain any labels indicating compliance or certification.

DOE also received comments specific to the proposed requirement that the date of manufacture be included on the label. Lennox commented that the month and year of manufacture are already included in its UL markings, while NCC noted that its UL markings indicate the manufacturing date by quarter and year. (Lennox, Public Meeting Transcript, No. 23 at p. 83; NCC, Public Meeting Transcript, No. 23 at p. 91) NCC further explained that the exact date of manufacture cannot be determined when the nameplates are printed; instead they indicate the date of manufacture by quarter within their serial numbers, as controlled by the UL safety procedure file. NCC recommended that DOE allow manufacturers to continue using the formats defined in their safety procedure files. (NCC, No. 16 at p. 2) CrownTonka commented that they print serial numbers on each component and use these numbers to keep records of the manufactured date, intended use and other details. (CrownTonka, Public Meeting Transcript, No. 23 at pp. 92–93) Bally commented that it currently prints the manufactured date, job number, and other information on each panel. (Bally, Public Meeting Transcript, No. 23 at pp. 103–104) Lennox added that it found the proposed manufacturing date labeling requirement unclear regarding the required format for the date code, and recommended that the manufacturing date labeling requirement to be represented by the date code, which is incorporated into the unit serial number. (Lennox, No. 13

at p. 9) Heat Controller commented that the proposed requirement would duplicate information that is already embedded in its product serial numbers, and that its marketing materials already show customers how to read this information. (Heat Controller, Public Meeting Transcript, No. 23 at pp. 96–97)

DOE clarifies that if manufacturers typically include model number information on the label of a walk-in panel, door, or refrigeration system, then that specific requirement is already satisfied for purposes of the labeling requirements being adopted in this rule, and no further action by a manufacturer would be needed. Regarding the issues raised by Lennox and Heat Controller, DOE agrees that if the date of manufacture is embedded in the serial number of a given regulated component, DOE will consider this approach to satisfy the manufacture date requirement. However, DOE emphasizes that a walk-in refrigeration system manufacturer is responsible for maintaining records to discern the date of manufacture from the serial number for each walk-in refrigeration system. DOE is specifying in its labeling requirements that if the date of manufacture is embedded in the unit's serial number, then the manufacturer of the refrigeration system must retain any relevant records to discern the date from the serial number.

DOE believes that the date of manufacture must reflect the month and year the unit was manufactured since the compliance date for the energy conservation standards for walk-in equipment is based on the date of manufacture. Labeling equipment with the date of manufacture enables DOE to readily determine whether a given unit is subject to the walk-in energy conservation standards. Quarterly dates of manufacture alone contain insufficient information to enable either DOE or the manufacturer to readily make this determination.

Heat Controller asked if a dedicated condensing unit had to be labeled with information specific to the dedicated condensing unit or information related to the complete refrigeration system installed in a walk-in under DOE's proposal. Heat Controller explained that they would not know where a dedicated condensing unit would end up and would not know the brand or model number under which the complete refrigeration system was sold. (Heat Controller, Public Meeting Transcript, No. 23 at p. 94) DOE clarifies that a dedicated condensing unit distributed in commerce without a matched unit cooler would only need to be labeled with information specific to the

dedicated condensing unit—*e.g.*, the model number of the dedicated condensing unit, the date the dedicated condensing unit was manufactured, etc.

In commenting on the proposed inclusion of the requirement to identify the “refrigeration system brand,” Lennox viewed this proposal as referring to the original equipment manufacturer (“OEM”) name and not the brands under which they market their products. It requested that “refrigeration system brand” be changed to “refrigeration manufacturer name” instead. Lennox stated that manufacturer name information is currently represented on all Lennox WICF equipment nameplates and DOE's proposal would pose no additional burden if implemented in this manner. (Lennox, No. 13 at p. 9) DOE agrees that either the manufacturer name or the brand name must be displayed on the label for walk-in components. In this rule, DOE is adopting labeling requirements for walk-in panels, doors, and refrigeration systems that require either the manufacturer name or brand name to be displayed on each unit.

CrownTonka requested that DOE clarify the term “permanent.” It added that making labels permanent can require different materials, different ink, different combinations of systems, with significant costs. (CrownTonka, Public Meeting Transcript, No. 23 at pp. 97–98) DOE clarifies that it is using the term “permanent” to mean that the label is not easily removable and will not become detached from the equipment or unreadable through everyday wear and tear.

In the NOPR, DOE also considered a requirement specifying the location of the permanent nameplates on doors, panels, and refrigeration systems. The NOPR proposed to require that the permanent nameplate must be visible at all times, including when the component is assembled into a complete walk-in.

ASAP and NEEA agreed that labels should be visible because it will effectively enable utilities and code inspectors to verify the installation of qualified equipment. (ASAP and NEEA, No. 19 at pp. 3–4) The CA IOUs suggested that the labels should be placed such that they would be fully visible if the walk-in were assembled in an “open air” environment, with none hidden or covered by any joints. (CA IOUs, No. 21 at p. 3)

Other commenters, however, opposed this proposed requirement. Manitowoc and Rheem noted that WICF customers do not want visible labels on their equipment, which are often client-facing. (Manitowoc, No. 10 at p. 1;

Rheem, No. 18 at p. 4) Hussmann also commented that the label should not be fully visible to the customer. Hussmann expressed concern about requiring a door label that would block view of any product, but supported using a hinge label that is visible only when the door is opened. (Hussmann, Public Meeting Transcript, No. 23 at pp. 89–90) It added that it places labels in discreet but accessible locations because customers do not want to have visible labels on their equipment. (Hussmann, No. 20 at p. 2) American Panel suggested as an alternative that walk-in door labels be placed on the door frame with other product labeling and safety information. (American Panel, No. 7 at p. 1) Bally noted that if labels are affixed in a visible location they will allow dirt to collect around their periphery and will interfere with cleaning. (Bally, No. 22 at p. 3)

Heat Controller was concerned that the label visibility requirements could necessitate the placement of multiple labels on a single component. Specifically, it asked whether rooftop refrigeration systems would need a second label in the walk-in envelope that was visible from ground level. (Heat Controller, Public Meeting Transcript, No. 23 at p. 95) CrownTonka also asked that the visibility and permanence requirements of the label be clarified. (CrownTonka, Public Meeting Transcript, No. 23 at pp. 97–98)

American Panel commented that floor panels are often installed beneath a permanent floor covering (*e.g.*, concrete, plastic treatments), which would render the proposed label unseen and inaccessible. (American Panel, Public Meeting Transcript, No. 23 at p. 101)

In light of these comments, DOE is electing not to require the permanent nameplate to be visible at all times, including when the component is assembled into a complete walk-in. However, the label must be visible to the entity that purchases the walk-in component. For example, a panel may have a label on an edge that is not visible when the panel is assembled into a complete walk-in. However, the contractor that purchased the panel would be able to see the label prior to assembly. Additionally, as explained by American Panel, even if a floor panel is covered by a permanent floor covering like concrete, the floor panel must have a label that is visible prior to their integration into a fully assembled walk-in. In response to Heat Controller's comment, DOE clarifies that refrigeration systems installed on a walk-in roof would not need a second label that is visible from ground level.

Lastly, Dow commented that it understood that the NOPR did not propose to require insulation suppliers to label walk-in panels and requested that DOE clarify the role, if any, of insulation suppliers in regards to labeling. (Dow, No. 9 at pp. 2–3) DOE notes that only walk-in component manufacturers are responsible for labeling their equipment.

c. Information Disclosed on Marketing Materials

DOE proposed to clarify the requirements for the disclosure of efficiency information in marketing materials and to require that such marketing materials prominently display the same information required to appear on a walk-in component's permanent nameplate.

Lennox supported the reporting requirements to communicate the rated efficiency and net capacity in their literature for each model, but stated that reporting the information on each page of product literature is duplicative, adds no value to individuals reading the literature and creates an additional burden to manufacturers. Lennox requested the language be revised to remove the term "each page" and indicate that reporting of this information is required in product literature. (Lennox, No. 13 at p. 10) NCC noted that while many marketing materials provide performance information at a range of operating conditions, some marketing materials, such as leaflets, may not have space available for detailed technical data. (NCC, No. 16 at p. 3)

In response to these concerns, DOE is modifying its proposal. Marketing materials must prominently display the same information that must appear on a walk-in component's permanent nameplate. In addition, DOE is requiring manufacturers to disclose the R-value of walk-in panels, the energy consumption for walk-in doors, and the AWEF for walk-in refrigeration systems in each catalog that lists the component and all materials used to market the component. However, as suggested by Lennox, DOE is removing the term "each page" from this requirement. DOE believes that reporting efficiency information on each page of catalogs and marketing materials may be overly burdensome. DOE also notes that while this rule does not require that detailed technical data, like a range of operating conditions, be reported in all marketing materials, the rule requires that all marketing materials that list the walk-in component, including leaflets, must disclose the efficiency of that component.

AHRI, Manitowoc, Rheem, NCC, and KeepRite requested that DOE clarify that net capacity need not be included in marketing materials. These stakeholders argued that net capacity is not familiar or useful to consumers and may cause them confusion. (AHRI, No. 11 at p. 3; Manitowoc, No. 10 at p. 2; Rheem, No. 18 at pp. 6–7; NCC, No. 16 at p. 3; KeepRite, No. 17 at p. 2) AHRI, Rheem, and KeepRite also asked that DOE clarify in the final rule that only information on the proposed label is required in marketing literature. (AHRI, No. 11 at p. 3; Rheem, No. 18 at pp. 6–7; KeepRite, No. 17 at p. 2) NCC commented that manufacturers should be allowed to publish total capacity data at both rated and application conditions. (NCC, No. 16 at p. 3) AHRI and Manitowoc commented that the performance tables used in existing marketing materials are valuable to customers. (AHRI, No. 11 at p. 3; Manitowoc, No. 10 at p. 2) KeepRite asked that DOE clarify whether the current marketing methods for ratings (*i.e.*, tables) are allowed in marketing literature. (KeepRite, No. 17 at p. 2)

This rule contains no requirement to include net capacity in marketing materials. As discussed earlier in section III.B.5.b of this final rule, DOE elected to limit its labeling requirements for panels, doors, and refrigeration systems. In addition to the limited information displayed on walk-in component labels, DOE is requiring catalogs and marketing materials for doors, panels, and refrigeration systems to include the representative energy efficiency or energy consumption for each walk-in component model listed in the literature. With respect to publishing certain application ratings, manufacturers may continue to do so. Specifically, manufacturers may publish total capacity, net capacity, system total power consumption and component power consumptions. In response to AHRI's, Manitowoc's, and KeepRite's request to retain the existing performance tables in marketing literature, DOE agrees that these tables may be retained so long as that information is consistent with this rule.

NCC also requested that DOE permit manufacturers to publish all necessary application capacities, even if some of the associated AWEF values may be below the minimum requirement. In addition, NCC asked whether accessories that are required for certain applications but may reduce the measured AWEF values can be listed on a manufacturer's marketing material with a note stating that it "may not meet DOE minimum AWEF requirements," or similar language. (NCC, No. 16 at p. 3)

Manufacturers must determine the represented AWEF for each basic model of walk-in refrigeration system in accordance with DOE's test procedure (10 CFR 431.306) and sampling requirements (10 CFR 429.53). All walk-in refrigeration system basic models, including those basic models sold with accessories, are required to meet the applicable AWEF standards. Distribution in commerce of any covered equipment that does not comply with an applicable energy conservation standard is prohibited.

C. Compliance With Other EPCA Requirements

In addition to the issues discussed above, DOE examined its other obligations under EPCA in developing this final rule. These requirements are addressed in greater detail below.

1. Test Burden

EPCA requires that the test procedures DOE prescribes or amends be reasonably designed to produce test results that measure the energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. These procedures must also not be unduly burdensome to conduct. See 42 U.S.C. 6314(a). DOE has concluded that the adopted amendments satisfy this requirement. The adopted test procedure amendments generally represent minor changes to the test procedure that do not affect the equipment required for testing and either reduce or have no effect on the time required to conduct the testing.

Section III.A.2.a of this final rule discusses the reasons for removing the method for addressing the treatment of hot gas defrost—a credit—from the test procedure. That credit represented the efficiency improvement of hot gas defrost and applied to any low-temperature refrigeration system that uses hot gas defrost. The procedure adopted in this rule will require refrigeration systems with hot gas defrost to be tested by measuring their steady-state performance with their hot gas defrost components removed and pipes reconnected according to the manufacturer's specifications, as discussed in section III.A.2.a of this document. This step represents a potential increase in test burden when testing unit coolers, matched pairs, and single-package dedicated systems with hot gas defrost. The reason for this step, as discussed in section III.A.2.a of this document, is that the evaporators of such systems cannot defrost themselves and cannot remove moisture from the

indoor room of the test facility without collecting frost, which necessitates testing be conducted in a facility with an indoor room conditioning system that can cool down the room and remove moisture. To the extent that a manufacturer without access to such a test facility must conduct such a test for hot gas defrost equipment, the associated test burden represents either installing such a conditioning system in the indoor room of their facility, or contracting such test work to third party laboratories.

DOE does not have detailed information regarding the test facilities that manufacturers use to test refrigeration systems, or whether all manufacturers have their own test facilities. DOE expects, however, that most of these test facilities have indoor room conditioning systems to ensure that low-capacity systems, whose capacity may not exceed the indoor room thermal load and would therefore not be able to pull the indoor room temperature down to specified test conditions, could be tested. In support of this expectation, DOE notes that Figure C1 of appendix C of AHRI 1250–2009 shows a conditioning system in the indoor room of the illustrated test facility. DOE also expects that some manufacturers will develop performance representations for their hot gas defrost units using AEDMs, an approach that limits the need for actual testing of hot gas defrost unit coolers and matched-pairs. Therefore, DOE does not expect these increased requirements to add unduly to test burden.

Section III.A.2.b of this final rule discusses DOE's revisions to the test procedure for refrigeration systems with adaptive defrost. This final rule does not require manufacturers of refrigeration systems with adaptive defrost to measure and certify their performance using this feature. Manufacturers that make representations showing the benefit of adaptive defrost may continue using the testing and certification requirements for performance incorporating this feature since these provisions are not affected by this final rule. Hence, in DOE's view, there is no added test burden involved with the test procedure as finalized in this notice.

Section III.A.2.c of this final rule discusses DOE's revisions to the test procedure for unit coolers with on-cycle variable-speed fan control. Prior to this final rule, DOE allowed manufacturers to test the benefit of this feature using the DOE test procedure for unit coolers. DOE is modifying the test procedure to specify that certified ratings of systems with this feature shall exclude the credit. This approach lowers the testing

burden for unit coolers with this feature because manufacturers no longer need to perform this test to obtain ratings for certification. (Manufacturers may still make representations of unit cooler efficiency with this feature; in this case, the testing burden will not change.)

2. Changes in Measured Energy Use

In general, when modifying a given test procedure, DOE determines to what extent, if any, the new test procedure would alter the measured energy use of covered products. (42 U.S.C 6293(e)(1)). DOE has made this determination in light of the corresponding standards rulemaking that it is conducting in parallel with this test procedure rulemaking. See 81 FR 62980. (That rulemaking addresses potential energy conservation standards for certain classes of walk-in refrigeration systems.) DOE has determined that the adopted test procedure amendments could affect the measured energy use of certain covered products, but the amendments would only affect aspects related to testing after the compliance date of the amended energy conservation standards that DOE is proposing in a separate notice. The test procedure amendments would not, however, affect the current standards for any walk-in components, nor would they affect the refrigeration system standards promulgated in the June 2014 final rule with a compliance date of June 5, 2017 (*i.e.*, the standards for medium-temperature, dedicated condensing refrigeration systems). Instead, the modifications in this rule will affect only low-temperature dedicated condensing refrigeration systems and unit coolers. The separate analysis for the standards rulemaking that DOE is conducting explicitly accounts for the test procedure changes finalized in this rule. Accordingly, this rule will require no further changes to the energy conservation standards beyond those which DOE has already considered in its parallel standards rulemaking analysis.

D. Additional Comments From Interested Parties

This section discusses additional comments made by interested parties during this rulemaking that were unrelated to any of DOE's specific proposals.

1. High Temperature Freezer Applications

Lennox commented that in the current market, high temperature freezer applications (10 °F to 32 °F room temperature) are served by medium temperature condensing units. (Lennox, No. 13 at p. 2) Lennox, Rheem and

AHRI pointed out the challenges that using lower GWP refrigerants pose for reaching freezer testing conditions with medium temperature condensing units. Lennox, Rheem and AHRI recommended that DOE allow manufacturers to publish application ratings below 32 °F room temperature for medium temperature WICF products without having to certify this equipment as low temperature refrigeration systems using the low-temperature test conditions. (Lennox, No. 13 at pp. 2–4; Rheem, No. 18 at p. 6; AHRI, No. 11 at p. 7) Lennox suggested that this “high temperature freezer” application may justifiably represent a third class of walk-in refrigeration systems (in addition to low-temperature and medium-temperature), which could require establishing a third set of test procedure operating conditions and standards. However, Lennox also highlighted the cost and reporting burden associated with establishing a new equipment class for the high temperature freezer application. (Lennox, No. 13 at pp. 2–4) Hussmann requested that manufacturers be allowed to market and sell medium temperature unit coolers for applications with interior temperatures less than 32 °F. Although not explicitly stated in the comment, DOE assumes Hussmann intended this as a request that DOE not require the testing and certifying of such equipment as low-temperature unit coolers. Hussmann explained that unit coolers cannot have optimized performance at both –10 °F and close-to-32 °F test conditions. (Hussmann, No. 20 at p. 3)

As noted earlier, DOE published a notice of proposed rulemaking to address potential energy conservation standards for certain classes of walk-in refrigeration equipment. In response to that rulemaking proposal, Lennox submitted additional information on the high temperature freezer issue. (See docket No. EERE–2015–BT–STD–0016, Lennox, No. 89 at pp. 2–5) In particular, Lennox provided AWEF values for operation at 10 °F room temperature showing that medium-temperature condensing units are more efficient than low-temperature condensing units at 10 °F room temperature. These values also indicated that medium-temperature condensing units were more efficient under these conditions than the low-temperature AWEF standard levels proposed by DOE (which apply for –10 °F rather than 10 °F room conditions). See 81 FR at 62982 (detailing proposed standard levels for various walk-in refrigeration equipment classes). Lennox used these data to argue that DOE's

interests (*i.e.* ensuring that the most efficient equipment will be used in walk-ins) would best be served by allowing use of medium temperature condensing units in the 10 °F to 32 °F range without additional testing or certification, because of the medium-temperature units' better efficiency. (Docket No. EERE-2015-BT-STD-0016, Lennox, No. 89 at p. 4)

DOE discussed the issues regarding publishing application ratings in section III.B.2. DOE acknowledges the market need for equipment to serve the high-temperature freezer market and that medium-temperature units may have better efficiency than low-temperature units in this temperature range. However, models that span multiple equipment classes are to be tested and certified as compliant with the applicable standard for each equipment class. If these equipment cannot be tested in a way that properly represents their performance characteristics, manufacturers have the option of petitioning DOE for test procedure waivers as described in 10 CFR 431.401. DOE notes the test method of commercial refrigerators, freezers, and refrigerator-freezers includes provisions for testing equipment at the lowest application product temperature. (10 CFR part 431, appendix A to subpart C) While DOE is not formalizing such an approach in this rule, the manufacturer may consider such an approach or other applicable test methods when petitioning for a waiver. DOE may also consider establishing new equipment classes and developing applicable test methods in future rulemakings.

2. Unit Cooler With Mounted/Ancillary Components

Lennox recommended that DOE update the test procedure in section 3.3.1 of 10 CFR part 431, subpart R, appendix C to indicate that any mounted or ancillary components installed in the refrigerant flow path upstream of the distributor and downstream of the heat exchanger exit are to be removed during the test. Lennox noted the 10 °F temperature differential ("TD") at the heat exchanger was specified as the basis for the test procedure¹⁶ and also used in calculations to establish the proposed unit cooler ("UC") AWEF standards. Lennox indicated the pressure drop of the ancillary components outside of the

heat exchanger was not considered when setting the UC standards. Lennox commented that the pressure drop results in loss of ability to attain the 10 °F TD at the heat exchanger. Therefore, the ancillary components should be removed during testing. (Lennox, No. 13 at p. 5)

Regarding this issue, DOE notes that the current test conditions for testing unit coolers includes a 25 °F saturated suction temperature for medium temperature unit coolers and -20 °F for low-temperature unit coolers (see 10 CFR 431.304(12)(ii)). These conditions represent a 10 °F TD relative to the unit cooler air entering dry-bulb temperatures (see Tables 15 and 16 in 10 CFR 431.304), which is consistent with AHRI 1250-2009. DOE maintained the same test conditions in this final rule in section 3.3.1 of 10 CFR part 431, subpart R, Appendix C. There is no indication in AHRI 1250-2009, nor in the test procedure in 10 CFR 431.304, that these conditions apply to the heat exchanger rather than the suction outlet. For example, Table C2 of Appendix C of AHRI 1250-2009 lists "pressure of superheated refrigerant vapor leaving the Unit Cooler" as a measured quantity. DOE asserts that "leaving the unit cooler" is not the same as "within the heat exchanger." The "leaving the heat exchanger" location is underscored by Figure C1 of Appendix C of the test standard, which shows the pressure measurement in the pipe after it has exited the unit cooler. AHRI 1250-2009 does not point to locations within the heat exchanger when referencing the unit cooler exit, focusing instead on the exit piping. Hence, it is not clear that the test procedure calls for 10 °F TD within the heat exchanger if there is any appreciable pressure drop between the heat exchanger and the pipe leaving the unit cooler.

Regarding Lennox's comment that the proposed UC AWEF standards used an assumed 10 °F TD at the heat exchanger, DOE's unit cooler energy modeling in support of its standards proposal did not involve any assumption regarding the removal of any mounted/ancillary components in the refrigerant line. The analysis also did not assume that there would be any significant pressure drop between the heat exchanger's suction header and the unit cooler outlet. As DOE noted in its standards proposal, DOE's unit cooler testing indicated that the unit coolers' measured capacities are lower than the nominal capacities reported in manufacturer literature. These results suggest that using a unit cooler's nominal capacity would overestimate both capacity and efficiency when measured during

testing. (September 11, 2015 Public Meeting Presentation, Docket No. EERE-2015-BT-STD-0016, No. 3 at p. 40) Rheem suggested that this discrepancy may be due, in part, to the difference between the test conditions used during testing and those used when determining the nominal capacity of a unit cooler. (Docket No. EERE-2015-BT-STD-0016, Rheem, Public Meeting Transcript (September 11, 2015), No. 61 at pp. 116-117) DOE's standards analysis used performance modeling of WICF evaporator coils, calibrated with testing data, to develop an equation that related manufacturer-reported nominal capacity to the net capacity measured during unit cooler testing. (September 30, 2015 Public Meeting Presentation, Docket No. EERE-2015-BT-STD-0016, No. 7 at pp. 55 and 57) The tests conducted were consistent with AHRI 1250-2009, with the pressures measured in the exit piping leaving the unit coolers. DOE used this approach, which was vetted by the WICF Working Group, for determining unit cooler measured capacity in the subsequent analysis. (Docket No. EERE-2015-BT-STD-0016, various parties, Public Meeting Transcript (October 15, 2015), No. 62 at pp. 205-209)

Moreover, Lennox did not indicate in its submission which ancillary components should be removed. DOE believes any components that are necessary for the proper operation of a given unit cooler should remain part of that equipment when tested. DOE is aware that unit coolers equipped with hot gas defrost are likely to require additional valves in the refrigerant line. DOE discusses specific requirements regarding components installed as part of hot gas defrost units in section III.A.2.a of this final rule. DOE notes that evaporator pressure regulators ("EPRs") are commonly installed with unit coolers in supermarket refrigeration systems, but not in dedicated condensing applications. For this reason, DOE believes that it may be acceptable to remove the EPR during unit cooler testing, but is not formalizing this approach in the test procedure at this time. DOE is not aware of any other ancillary components that are likely to be installed as indicated by the comment. If a manufacturer believes the inclusion of any ancillary components would make testing non-representative of average use cycles, it can petition DOE for a waiver in accordance with the requirements in 10 CFR 431.401.

¹⁶ For example, for a freezer unit cooler, section 3.3.1 of 10 CFR 431, subpart R, appendix C as finalized in this notice indicates that the suction A condition of Table 16 of AHRI 1250-2009 is used for testing. For this condition, the entering air temperature is -10 °F and the saturated suction temperature is -20 °F, representing a 10 °F TD.

3. Off-Cycle Unit Cooler Variable-Speed Fan Setting

Lennox recommended that DOE specify that during the unit cooler off-cycle fan power test, the controls shall be adjusted to 50% fan speed/duty cycle only if the controls are adjustable, and that otherwise the control default parameters shall be used. (Lennox, No. 13 at p. 5)

Lennox's suggestion, if adopted, would potentially allow fans with fixed two-speed control to use speed below 50% in unit cooler testing. During one of the Working Group meetings, Rheem stated concern with air flow distribution at low fan speed. Lennox and Rheem agreed with selecting 50% as the minimum evaporator fan turn-down for both on-cycle and off-cycle evaporator fan speed in DOE's engineering analysis supporting the standard rulemaking. (Docket No. EERE-2015-BT-STD-0016, Rheem, Lennox, Public Meeting Transcript (September 11, 2015), No. 61 at pp. 135-136) In a subsequent meeting, DOE presented analyses that used as the lowest speed for variable-speed fan operation 50% of the fan's maximum speed for both on-cycle and off-cycle in the analysis. The Working Group raised no objections to this approach. (See public meeting presentation, Docket No. EERE-2015-BT-STD-0016, No. 7 at p. 20; see also Public Meeting Transcript (September 30, 2015), Docket No. EERE-2015-BT-STD-0016, No. 67 at p. 106). Consistent with this approach, DOE used a 50% lower limit as part of its energy conservation standard rulemaking analysis. See Docket EERE-2015-BT-STD-0016, NOPR Technical Support Document, No. 70, Section 5.5.6.7 pp. 5-34 to 5-35. The energy conservation standards developed during the related negotiated rulemaking are based on the use of this 50% limit for testing. Hence, it would be inconsistent to now allow the use of a lower fan speed in tests for demonstration of compliance with the standards. Consequently, consistent with the approach laid out during the negotiated rulemaking for walk-in standards, DOE is continuing to use 50% as the lower limit of evaporator fan duty cycle and fan speed. The procedure allows two- or multi-speed fan controls to use a low (or intermediate) speed that is no less than 50% of the maximum fan speed. DOE notes that the test procedure does not prohibit a manufacturer from offering evaporator fan speed/duty cycle settings that are lower than 50% in the market, but recognizes that such fans would likely require multi-speed motors. These designs would likely use low-speed

settings for the off-cycle in some installations and intermediate speed settings for the off-cycle in other installations that require these higher (intermediate) speeds to ensure more complete air mixing—but off-cycle for testing would be 50% of full-speed or higher using an intermediate speed setting.

4. Unit Cooler Capacity Determination in Condensing Unit Only Test

Lennox and Rheem suggested that the WICF test procedure lacks clarification on the capacity calculation when testing a condensing unit only. Both commenters suggested using the condensing unit capacity in the AWEF calculation. Rheem proposed the condensing unit capacity should be calculated using the enthalpy of the refrigerant leaving the condensing unit (liquid line), the enthalpy of the refrigerant entering the condensing unit (suction line), and the measured refrigerant mass flow rate. (Lennox, No. 13 at p.11; Rheem, No. 18 at p.7)

DOE notes the saturated refrigerant temperatures at the unit cooler coil exit for the purposes of calculating the enthalpy leaving the unit cooler are provided in section 3.4.2.1 of the proposed 10 CFR 431 Subpart R, Appendix C (and also 10 CFR 431.304(12)(ii) of the current test procedure), and are 25 °F for medium temperature and -20 °F for low temperature. Section 3.4.1 indicates that the suction dew point conditions at the condensing unit are the "suction A" conditions provided in AHRI 1250-2009, Tables 11 through 14—these are 23 °F for medium temperature and -22 °F for low temperature. Hence, the pressure drop in the suction line is assumed to be equivalent to a 2 °F reduction in dew point temperature.

However, the unit cooler refrigerant exit temperature or superheat, neither of which were provided in the test procedure, is also required to calculate the unit cooler leaving enthalpy. The test procedure requires testing with a suction temperature entering the unit cooler (*i.e.*, return gas temperature) equal to 41 °F for medium temperature and 5 °F for low temperature (see, *e.g.*, Tables 11 and 13 of AHRI 1250-2009). DOE notes that the exit temperature for a medium-temperature unit cooler could not be 41 °F, because the temperature of the air that the refrigerant is cooling is taken to be 35 °F. Likewise, the exit temperature for a low-temperature unit cooler could not be 5 °F, because the entering air temperature for a low-temperature unit cooler is taken to be -10 °F. By assuming that the refrigerant temperature leaving the unit cooler is 41

°F for medium temperature and 5 °F for low temperature, the approach proposed by Lennox and Rheem would take credit for refrigeration capacity that could not have been delivered by the unit cooler. DOE does not believe this is appropriate.

Instead, DOE considered the approach recommended by the WICF Working Group, which DOE applied in its walk-in standards engineering analysis. During the Working Group meetings, DOE presented the use of a 6.5 °F unit cooler exit superheat assumption for calculating unit cooler capacity of low temperature dedicated condensing unit tested alone. See Docket No. EERE-2015-BT-STD-0016, DOE and Hussmann, Public Meeting Transcript (September 30, 2015), No. 67 at pp. 135. DOE developed a spreadsheet-based engineering model that calculates the performance of different WICF equipment designs and summarizes cost versus efficiency relationships for the classes covered in the energy conservation standard rulemaking. DOE made a draft version of the spreadsheet available to the Working Group members and the general public. See Docket EERE-2015-BT-STD-0016, No. 32. DOE implemented integer superheat values in the engineering spreadsheet to avoid refrigerant property calculation errors. A caucus of manufacturers later submitted their notes after reviewing the DOE-provided draft engineering spreadsheet. There was no disagreement on the selection of unit cooler superheat values as part of condensing unit calculations. See Docket EERE-2015-BT-STD-0016, No. 45) Consistent with the superheat values given in the engineering spreadsheet presented to the Working Group, DOE is adopting the same values (6 °F for low temperature, 10 °F to medium temperature) in this final rule for low temperature and medium temperature condensing units tested alone. DOE adds the prescribed superheat values to section 3.4.2.1 for purposes of calculating enthalpy leaving the unit cooler as part of the calculating gross capacity. DOE notes that the recommendations made by Lennox and Rheem for the conditions representing enthalpy at the unit cooler inlet are consistent with the engineering analysis as discussed by the WICF Working Group, for which unit cooler inlet enthalpy equals to condensing unit outlet enthalpy (*i.e.*, 0 °F liquid line subcooling), (see Docket No. EERE-2015-BT-STD-0016, DOE and Rheem, Public Meeting Transcript (September 30, 2015), No. 67 at pp. 133-134; see also October 15, 2015 Public Meeting Presentation, slide 42, available in

Docket No. EERE-2015-BT-STD-0016, No. 26 at p. 42), which is equivalent to the subcooling that would be present at the exit of a typical condensing unit during a test.

5. Insulation Aging

EPCA defines the R-value as the 1/K factor multiplied by the thickness of the panel, and that the K factor shall be tested based on ASTM test procedure C518-2004. (42 U.S.C. 6314(a)(9)(A)). (The K factor represents the thermal conductivity.) EPCA, however, does not specify when the R-value should be determined. As was first discussed in the 2010 NOPR and later in the 2010 SNOBR, the R-value of polyurethane and extruded polystyrene (“XPS”) insulation products can significantly decrease with time. 75 FR 185, 192-195 (January 4, 2010) and 75 FR 55067, 55075-55081 (September 9, 2010). To address this concern, two European testing standards DIN EN 13164:2009 and DIN EN 13165:2009 were included in the 2011 Test Procedure final rule in order to take foam aging into consideration when determining an R-value for these insulation types. 76 FR at 21585 (April 15, 2011). However, as discussed in its 2014 final rule addressing the use of AEDMs and certain test procedure issues with respect to walk-ins, DOE received a number of negative comments regarding this aspect of the WICF panel test procedure. See 79 FR 27388. The comments largely presented two concerns: Test burden and the availability of laboratories to conduct these tests. In these comments, multiple manufacturers suggested that no independent laboratories were capable of conducting DIN EN 13164/13165 tests. Several industry comments suggested that the cost of these tests could be excessive, particularly given the limited availability of independent test laboratories to perform these specific tests. See section III.D. of the 2014 AEDM and Test Procedure SNOBR for a full comment summary, 79 FR at 9835-9837. In response to the concerns highlighted in these comments, DOE ultimately removed the portions of the test procedure referencing DIN EN 13164/13165. 79 FR at 27405.

This issue resurfaced in the comments of EPS-IA in response to the August 2016 NOPR. EPS-IA reiterated that the R-value of XPS products reduces significantly from the time of production (“fresh”) to when it’s assembled in panels (weeks or months later). Further, EPS-IA noted that panel manufacturers often accelerate the aging process by shaping or milling the XPS product during panel assembly. (EPS-

IA, No. 12 at p. 2) EPS-IA argued that existing regulations allow manufacturers to report, and assemblers to rely upon, the “fresh” R-value, which is significantly higher than the actual R-value of the XPS in an assembled panel. (EPS-IA, No. 12 at p. 1) EPS-IA suggested that DOE modify the regulation to require the reporting of a stable, long-term R-value, or alternatively to define “fresh” and implement controls to ensure manufacturers are incorporating “fresh” insulation into the panels. EPS-IA also suggested that DOE adopt existing FTC R-value regulations, rather than craft its own test methodology, and noted that requiring panel manufacturers to label each unit will not address the issue. (EPS-IA, No. 12 at p. 2)

DOE agrees with EPS-IA’s observation that insulation, including those types used in walk-in applications, may exhibit aging. However, in this test procedure, DOE proposed editorial changes to the test procedure for measuring R-value for walk-in cooler and freezer panels. While the test procedure does not account for insulation aging at this time, the Department may consider alternate test methods—such as those suggested by EPS-IA—for addressing insulation aging in a future energy conservation standard and test procedure rulemakings.

6. Laboratory Qualification

DOE received written comments on the capability of test laboratories performing enforcement testing. AHRI and Manitowoc recommended that DOE ensure that laboratories demonstrate repeatability on a regular basis in order to justify the results from an enforcement test. (AHRI, No. 11 at p. 4; Manitowoc, No. 10 at p. 2) NCC noted that DOE should pre-qualify laboratories on testing of WICF refrigeration systems where enforcement tests for this equipment would be performed. (NCC, No. 16 at p. 6)

DOE requires enforcement testing to be conducted at laboratories accredited to the International Organization for Standardization (“ISO”)/International Electrotechnical Commission (“IEC”), “General requirements for the competence of testing and calibration laboratories.” In addition, when conducting enforcement testing, DOE requires the specific DOE test procedure to be on the test laboratory’s scope of accreditation. 10 CFR 429.110(a)(3) DOE may consider additional criteria for test laboratories conducting walk-in cooler or walk-in freezer testing in a separate rulemaking that could apply equally to both test laboratories used by

manufacturers and those used by DOE for enforcement.

7. Variable-Capacity Condensing Unit Test Method

The CA IOUs recommended that DOE begin to address the issues with testing variable-capacity condensing units. (CA IOUs, No. 21 at pp. 4-5)

DOE is aware that ASHRAE Standard Project Committee 210 (SPC 210) has established a Working Group to address test methods issues regarding variable- and multiple-capacity condensing units. The SPC 210 Working Group includes members representing walk-in refrigeration system and compressor manufacturers who are familiar with the design, operation and testing of variable- and multiple-capacity compressors and condensing units. DOE believes it is appropriate to permit ASHRAE SPC 210 to continue with its developmental work in defining an appropriate test method for this equipment. Allowing these industry experts to analyze and develop the parameters of an approach to address this equipment will help ensure that the fundamental issues associated with testing this equipment are sufficiently vetted and addressed. Once that development work has completed and a test method has been developed, DOE will examine that method and may then consider its incorporation into the applicable regulations in a future rulemaking.

8. Request for Supplemental Notice of Proposed Rulemaking

AHRI and Manitowoc recommended that DOE publish a supplemental notice of proposed rulemaking (“SNOBR”) as the next stage of this rulemaking. The written comments argued that many of the NOPR proposals did not originate from the ASRAC negotiation, and that many of the proposals do not provide a clear way forward for implementation. The comments also indicated DOE has the necessary time available to issue an SNOBR. (AHRI, No 11 at p.7; Manitowoc, No 10 at p.3)

DOE has the authority to propose amendments to its regulations that are necessary in order to properly administer standards and test procedure requirements. DOE notes the ASRAC negotiations had a limited scope that did not address many topics proposed in the NOPR. The proposals not originating from the negotiations are clearly identified in the NOPR and this final rule, and DOE believes that stakeholders had ample time to voice concerns and suggest alternative approaches. DOE has received numerous comments to its NOPR and

has considered these comments carefully in modifying its approach and finalizing the proposed amendments. DOE notes that AHRI and Manitowoc did not provide any detail as to which of the proposals in the NOPR would require an SNOPR. For these reasons, DOE has finalized this rulemaking without publishing a SNOPR.

9. ASRAC Working Group Representation

KPS commented that the ASRAC Working Group had little representation from WICF OEMs. KPS also suggested adding more WICF OEMs to the Working Group. (KPS, No. 8 at p.1)

Prior to the Working Group meetings, on August 5, 2015, DOE published a notice of intent to establish a Working Group for Certain Equipment Classes of Refrigeration Systems of Walk-in Coolers and Freezers to Negotiate a Notice of Proposed Rulemaking for Energy Conservation Standards. 80 FR 46521. DOE notes that the agenda for the WICF Working Group meetings included as key issues (a) proposed energy conservation standards for six classes of refrigeration systems and (b) potential impacts on installers. See id. at 46523. These issues focused on refrigeration systems and installers. As discussed in section I.B, the Working Group consisted of 12 representatives of parties having a defined stake in the outcome of the proposed standards and one DOE representative. These members included six representatives of WICF refrigeration system manufacturers (Traulsen, Lennox, Hussmann, Manitowoc, Rheem, and Emerson). In addition, a representative of the Air Conditioning Contractors of America represented walk-in installers. Other members other than DOE represented efficiency advocacy groups and utilities. (Docket EERE-2015-BT-STD-0016, No. 56 at p. 4) Hence, DOE believes that the representation was appropriate for the scope of the Working Group.

10. EPCA Prescriptive Requirements

During the public meeting, AHRI asked for clarification as to whether the EPCA prescriptive requirements are still needed with the minimum energy efficiency standard DOE established. (AHRI, Public Meeting Transcript, No. 23, at p. 14)

DOE notes it is not within DOE's authority to waive the statutorily-prescribed prescriptive design requirements set forth in EPCA. (42 U.S.C. 6313(f)) EPCA does not specify an expiration date for these requirements and there is no indication in the statute that the performance-based standards would supplant the

already-enacted prescriptive requirements. Hence, these prescriptive requirements continue to remain in effect.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget ("OMB") has determined that test procedure rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs ("OIRA") in the OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that when an agency promulgates a final rule under 5 U.S.C. 553, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis ("FRFA"). As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: <http://energy.gov/gc/office-general-counsel>. DOE has prepared the following FRFA for the equipment that are the subject of this rulemaking.

For manufacturers of walk-in equipment, the Small Business Administration ("SBA") has set a size threshold, which defines those entities classified as "small businesses" for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (September 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System ("NAICS") code and industry description and are available at www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards. Walk-in equipment is classified under NAICS 333415, "Air-Conditioning and Warm Air Heating Equipment and Commercial

and Industrial Refrigeration Equipment Manufacturing." The SBA sets a threshold of 1,250 employees or less for an entity to be considered as a small business for this category. Based on this threshold, DOE presents the following FRFA analysis:

1. Need for, and Objectives of, the Rule

Title III, Part C of the Energy Policy and Conservation Act of 1975 ("EPCA" or, in context, "the Act"), Public Law 94-163, as amended (codified at 42 U.S.C. 6311-6317) established the Energy Conservation Program for Certain Industrial Equipment, a program covering certain industrial equipment, including walk-ins, the subject of this document. (42 U.S.C. 6311(1)(G))

In general, this program addresses the energy efficiency of certain types of commercial and industrial equipment. Relevant provisions of the Act specifically include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316 and 6296). Manufacturers of covered equipment must use the prescribed DOE test procedure as the basis for making representations to the public regarding the energy use or efficiency of such equipment. (42 U.S.C. 6314(d))

2. Significant Issues Raised in Response to the IRFA

DOE did not receive written comments that specifically addressed impacts on small businesses or that were provided in response to the IRFA.

3. Description and Estimated Number of Small Businesses Regulated

DOE used available public information to identify potential small manufacturers. DOE's research involved industry trade association membership directories (including those from AHRI¹⁷ and NAFEM¹⁸), public databases (e.g., the SBA Database¹⁹), individual company Web sites, and market research tools (e.g., Dun and Bradstreet reports²⁰ and Hoovers reports²¹) to create a list of companies that manufacture or sell equipment covered by this rulemaking. During the 2014 rulemaking, DOE also asked

¹⁷ See www.ahridirectory.org/ahriDirectory/pages/home.aspx.

¹⁸ See www.nafem.org/find-members/MemberDirectory.aspx.

¹⁹ See http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm.

²⁰ See www.dnb.com/.

²¹ See www.hoovers.com/.

stakeholders and industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at DOE public meetings. DOE reviewed publicly available data and contacted select companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered walk-in coolers and walk-in freezers. DOE screened out companies that do not offer equipment covered by this rulemaking, do not meet the definition of a "small business," or are foreign-owned.

DOE identified forty-seven panel manufacturers, of which forty-two are the small businesses.

DOE identified forty-nine walk-in door manufacturers. Forty-five of those produce solid doors and four produce display doors. Of the forty-five solid door manufacturers, forty-two produce panels as their primary business and are considered in the category of panel manufacturers in this preamble. The remaining three solid door manufacturers are all considered small businesses. Of the four display door manufacturers, two are considered small businesses. Therefore, of the seven manufacturers that exclusively produce walk-in doors (three producing solid doors and four producing display doors), DOE determined that five are small businesses.

DOE identified ten walk-in refrigeration system manufacturers that produce equipment for one or more of the equipment classes analyzed in this proposal. All ten are domestic companies and three of the ten manufacturers are small businesses.

Lastly, DOE looked at manufacturers that assemble the complete walk-in cooler or walk-in freezer (e.g., an installer). Walk-in installation work is a subset of the highly fragmented heating, ventilation, air-conditioning, and refrigeration ("HVACR") industry. DOE was unable to identify any company that exclusively operated as an assembler of WICFs. In general, WICF assemblers offer walk-in installation as part of a broader refrigeration offering and/or broader heating and cooling offering.

DOE estimates that 3,400 to 14,100 companies offer walk-in contractor services. This is a subset of the roughly 87,000 plumbing, heating, and air-conditioning contractor establishments in the United States.²² Key activities for these companies include the installation

of residential HVAC, commercial HVAC, commercial refrigeration, and industrial refrigeration systems. Of these, DOE estimates the majority are small businesses.

4. Description and Estimate of Compliance Requirements

Panel manufacturers have had to comply with standards for their panels' R-value (a measure of the insulating value) since 2009. In a previous test procedure rule, published in May 2014, DOE established a sampling plan and certification reporting requirements for walk-in panels. 79 FR 27388 (May 13, 2014). DOE is not establishing any new testing, certification, compliance, or reporting requirements for panels in this final rule. However, DOE is adopting labeling requirements for walk-in panels, and DOE is establishing that manufacturers include rating information on marketing materials for panels. For further discussion of the labeling requirements, see section III.B.5. As discussed in that section, the cost of updating marketing materials could be up to \$50,000 per manufacturer. DOE calculated that the cost of updating marketing materials for a small manufacturer would be less than one percent of annual revenues; thus, this requirement would not have a significant impact on small manufacturers.

This final rule establishes new certification requirements for door manufacturers and refrigeration system manufacturers to use when certifying their basic models to DOE. Door manufacturers must certify that they meet the June 2014 standards, which have a compliance date of June 5, 2017. Manufacturers of refrigeration systems for which standards were promulgated in the June 2014 final rule, and which were not subsequently remanded by the United States Court of Appeals for the Fifth Circuit's court order, must also certify that those refrigeration systems meet the June 2014 standards, which have a compliance date of June 5, 2017. DOE is conducting a separate energy conservation standards rulemaking for those refrigeration system classes whose standards were remanded. On the compliance date for those standards, manufacturers will have to certify that those refrigeration systems meet the relevant standards using the certification requirements in this rule.

In general, DOE modified the data elements walk-in door manufacturers and walk-in refrigeration system manufacturers will be required to submit as part of a certification report indicating that all basic models distributed in commerce in the U.S.

comply with the applicable standards using DOE's test procedures. These data elements include product-specific certification data describing the efficiency and characteristics of the basic model. The certification reports are submitted for each basic model, either when the requirements go into effect (for models already in distribution), or prior to when the manufacturer begins distribution of a particular basic model, and annually thereafter. Reports must be updated when a new model is introduced or a change affecting energy efficiency or use is made to an existing model resulting in a change in the certified rating. (10 CFR 429.12(a))

DOE currently requires manufacturers or their party representatives to prepare and submit certification reports using DOE's electronic Web-based tool, the Compliance Certification Management System ("CCMS"), which is the only mechanism for submitting certification reports to DOE. CCMS currently has product-specific templates that manufacturers must use when submitting certification data to DOE. See www.regulations.doe.gov/ccms/templates. This final rule does not change the requirement that manufacturers submit certification reports electronically. DOE believes the availability of electronic filing through the CCMS system reduces reporting burdens, streamlines the process, and provides the Department with needed information in a standardized, more accessible form. This electronic filing system also ensures that submitted reports are recorded in a permanent, systematic way.

DOE is also requiring manufacturers to label their doors with the door brand name and an application statement. DOE is requiring manufacturers to label their refrigeration systems with the brand, model number, date of manufacture, an application statement and if applicable specify if the systems is for indoor use only. For further discussion of the labeling requirements, see section III.B.5. As discussed in that section, the cost of updating marketing materials could be up to \$50,000 per manufacturer.

DOE added clarifications that the entity responsible for testing, rating, and certifying is the WICF component manufacturer. Thus, WICF manufacturers that exclusively assemble the complete WICF and who use components that are certified and labelled as compliant with applicable standards, do not bear any testing and certification burdens. DOE is also establishing labeling requirements and revising the certification requirements

²² U.S. Census Bureau. Industry Snapshot thedataweb.rm.census.gov/TheDataWeb_HotReport2/econsnapshot/2012/snapshot.html?NAICS=238220. (Last accessed July 2016)

on WICF component manufacturers in this final rule. These requirements will reduce any burden on WICF manufacturers that manufacture or assemble the complete walk-in cooler or walk-in freezer by allowing them to more easily identify compliant WICF components for assembly. This does not change the compliance requirements for these WICF manufacturers and installers; however, DOE believes labeling will help WICF assemblers comply with the regulations. In conclusion, DOE does not believe that small WICF manufacturers that assemble complete WICFs will see an increased burden from this rulemaking.

5. Significant Alternatives to the Rule

This section considers alternatives to the final rule. DOE has tried to minimize the reporting burden as much as possible by: (1) Accepting electronic submissions; (2) providing preformatted templates that lay out the certification and compliance requirements for each product; and (3) allowing manufacturers to group individual models into basic models for the purposes of certification to reduce the number of discrete models reported to the Department. DOE has also made efforts to address the concerns of small businesses by expanding the ability of manufacturers to use alternative efficiency determination methods (“AEDMs”) in lieu of conducting tests requiring testing equipment.

C. Review Under the Paperwork Reduction Act of 1995

1. Description of the Requirements

In this rule, DOE is expanding the information that manufacturers and importers of covered walk-in equipment would need to submit to the Department to certify that the equipment they are distributing in commerce in the U.S. complies with the applicable energy conservation standards. Further, this rule requires manufacturers to disclose performance information as part of the proposed labeling requirements for walk-in panels, doors, and refrigeration systems.

2. Information Collection Request Title

Certification Reports, Compliance Statements, Application for a Test Procedure Waiver, Recordkeeping for Consumer Products and Commercial/Industrial Equipment Subject to Energy or Water Conservation Standards, and Label and Marketing Material Information Disclosure.

3. Type of Request

Revision and Expansion of an Existing Collection.

4. Purpose

Manufacturers of the covered equipment addressed in this rule are already required to certify to DOE that their equipment complies with applicable energy conservation standards. In certifying compliance, manufacturers must test their equipment according to the applicable DOE test procedures for the given equipment type, including any amendments adopted for those test procedures, or use AEDMs (as applicable) to develop the certified ratings of the basic models. The collection-of-information requirement for the certification proposals is subject to review and approval by OMB under the PRA.

Manufacturers are required to certify: (1) New basic models before distribution in commerce; (2) existing basic models, whose certified ratings remain valid, annually; (3) existing basic models, whose designs have been altered resulting in a change in rating that is more consumptive or less efficient, at the time the design change is made; and (4) previously certified basic models that have been discontinued, annually. Respondents may submit reports to the Department at any time during the year using DOE’s online system.

Amendments to the existing walk-in standards are expected to result in slight changes to the information that DOE is collecting for walk-ins. Specifically, DOE is requiring that, in addition to information currently required for certification reports, door manufacturers report the door energy use as determined by the DOE test procedure, the rated power of each light, heater wire and/or other electricity consuming device and whether such device(s) has a control system. Refrigeration system manufacturers will need to report the Annual Walk-in Efficiency Factor (“AWEF”), net capacity as determined by the DOE test procedure, the configuration test for certification, and whether indoor dedicated condensing units are also certified as outdoor dedicated condensing units. Manufacturers will have to re-submit certification reports for basic models that they distribute in commerce starting on the compliance date of the amended standards.

In addition, DOE is requiring manufacturers of walk-in components to disclose their rated energy use or efficiency, in all component catalogs and marketing materials. For further discussion of the information disclosure requirements, see section III.B.5. As discussed in that section, the cost of initially updating marketing materials

could be up to \$50,000 per manufacturer.

Regarding the additional certification requirements, DOE estimates that the slight change in certification requirements would not result in additional burden because walk-in component manufacturers are already required to annually certify compliance with the existing standards.

DOE estimates the burden for this rule as follows:

- (1) Annual Estimated Number of Respondents: 63 (47 panel manufacturers, 7 door manufacturers, and 10 refrigeration system manufacturers).
- (2) Annual Estimated Number of Total Responses: 1,216 (188 for panels, 28 door, 1000 for refrigeration systems).
- (3) Annual Estimated Number of Burden Hours: 1,216 (1 hour for applying and creating label and updating marketing materials).
- (4) Annual Estimated Reporting and Recordkeeping Cost Burden: \$91,200.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE amends its test procedure for walk-in coolers and walk-in freezers. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE’s implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without affecting the amount, quality or distribution of energy usage, and, therefore, will not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to

ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA") requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104-4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and an opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at <http://energy.gov/gc/office-general-counsel>. DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" 53 FR 8859 (March 18, 1988), that this regulation

will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95-91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy

Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (“FTC”) concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedure for walk-in coolers and walk-in freezers adopted in this final rule incorporates testing methods contained in certain sections of the following commercial standards: ASTM C518–14, “Standard Test Method for Thermal Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus”; AHRI Standard 1250–2009 “Standard for Performance Rating of Walk-ins”; AHRI 420–2008, “Performance Rating of Forced-Circulation Free Delivery Unit Coolers for Refrigeration”; and ASHRAE 23.1–2010, “Methods of Testing for Performance Rating Positive Displacement Refrigerant Compressors and Condensing Units that Operate at Subcritical Temperatures of the Refrigerant”. DOE has evaluated these standards and was unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.*, whether they were developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a “major rule” as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

In this final rule, DOE incorporates by reference the ASTM C518–04 test method titled “Standard Test Method for Thermal Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus.” This reference standard is the method by which thermal conductivity (the “K

factor”) of a walk-in panel is measured and its use is mandated by EPCA. (42 U.S.C. 6314(a)(9)(A))

Copies of ASTM C518–04 may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, by phone at (610) 832–9500, or by going to www.astm.org.

Also, DOE incorporates by reference the test standard published by AHRI, titled “Standard for Performance Rating of Walk-ins,” AHRI Standard 1250–2009. AHRI Standard 1250–2009 establishes definitions, test requirements, rating requirements, minimum data requirements for published ratings, operating requirements, marking and nameplate data, and conformance conditions for walk-in coolers and walk-in freezers. This testing standard applies to mechanical refrigeration equipment that consists of an integrated, single-package refrigeration unit, or as separate unit cooler and condensing unit components, where the condensing unit can be located either indoors or outdoors. Controls can be integral or can be added by a separate party, as long as their performance is tested and certified with the listed mechanical equipment.

Copies of AHRI Standard 1250–2009 may be purchased from AHRI at 2111 Wilson Boulevard, Suite 500, Arlington, VA 22201, or by going to www.ahrinet.org.

DOE also incorporates by reference AHRI 420–2008, titled “Performance Rating of Forced-Circulation Free Delivery Unit Coolers for Refrigeration.” AHRI 420–2008 establishes the following elements for forced-circulation free-delivery unit coolers for refrigeration: Definitions, test requirements, rating requirements, minimum data requirements for published ratings, marketing and nameplate data, and conformance conditions. The standard applies to factory-made, forced-circulation, free-delivery unit coolers, as defined in Section 3 of this standard, operating with a volatile refrigerant fed by either direct expansion or liquid overfeed at wet conditions, dry conditions, or both.

Copies of AHRI 420–2008 may be purchased from AHRI at 2111 Wilson Boulevard, Suite 500, Arlington, VA 22201, or by going to www.ahrinet.org.

Finally, DOE also incorporates by reference ASHRAE Standard 23.1–2010, entitled “Methods of Testing for Performance Rating Positive Displacement Refrigerant Compressors and Condensing Units that Operate at Subcritical Temperatures of the Refrigerant.” ASHRAE 23.1–2010 provides testing methods for rating the

thermodynamic performance of positive displacement refrigerant compressors and condensing units that operate at subcritical temperatures of the refrigerant. This standard applies to all of the refrigerants listed in ASHRAE Standard 34, “Designation and Safety Classification of Refrigerants,” that fall within the scope of positive displacement refrigerant compressors and condensing units that operate at subcritical temperatures of the refrigerant, which either (a) do not have liquid injection or (b) incorporate liquid injection that is achieved by compressor motor power.

Copies of ASHRAE 23.1–2010 may be purchased from ASHRAE at 1971 Tullie Circle NE., Atlanta, GA 30329, or by going to www.ashrae.org.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, and Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 2, 2016.

Kathleen B. Hogan,

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

For the reasons stated in the preamble, DOE amends parts 429 and 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

- 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

- 2. Section 429.12 is amended by revising paragraph (b)(6) to read as follows:

§ 429.12 General requirements applicable to certification reports.

* * * * *

(b) * * *

(6) For each brand, the basic model number and the manufacturer's individual model number(s) in that basic model with the following exceptions: For external power supplies that are certified based on design families, the design family model number and the individual manufacturer's model numbers covered by that design family must be submitted for each brand. For distribution transformers, the basic model number or kVA grouping model number (depending on the certification method) for each brand must be submitted. For commercial HVAC, WH, and refrigeration equipment, an individual manufacturer model number may be identified as a "private model number" if it meets the requirements of § 429.7(b).

* * * * *

■ 3. Section 429.53 is revised to read as follows:

§ 429.53 Walk-in coolers and walk-in freezers.

(a) *Determination of represented value.* (1) The requirements of § 429.11 apply to walk-in coolers and walk-in freezers; and

(2) For each basic model of walk-in cooler and walk-in freezer refrigeration system, the annual walk-in energy factor (AWEF) must be determined either by testing, in accordance with § 431.304 of this chapter and the provisions of this section, or by application of an AEDM that meets the requirements of § 429.70 and the provisions of this section.

(i) *Applicable test procedure.* If the AWEF is determined by testing, refer to the following for the appropriate test procedure to use:

(A) *Unit cooler test procedure.* For unit coolers tested alone, use the test procedure in 10 CFR part 431, subpart R, appendix C. Follow the general testing provisions in appendix C, sections 3.1 and 3.2, and the equipment-specific provisions in appendix C, section 3.3.

(B) *Dedicated condensing unit test procedure.* For dedicated condensing units tested alone, use the test procedure in 10 CFR part 431, subpart R, appendix C. Follow the general testing provisions in appendix C, sections 3.1 and 3.2, and the product-specific provisions in appendix C, section 3.4. Outdoor dedicated condensing refrigeration systems that are also designated for use in indoor applications must be tested and certified as both an outdoor dedicated condensing refrigeration system and indoor dedicated condensing refrigeration system.

(C) *Single-Package dedicated system test procedure.* For single-package dedicated systems, use the test procedure in 10 CFR part 431, subpart R, appendix C. Follow the general testing provisions in appendix C, sections 3.1 and 3.2, and the product-specific provisions in appendix C, section 3.3.

(D) *Matched refrigeration system test procedure.* For matched refrigeration systems, use the test procedure in 10 CFR part 431, subpart R, appendix C. Follow the general testing provisions in appendix C, sections 3.1 and 3.2, and the product-specific provisions in appendix C, section 3.3. It is not necessary to rate a matched refrigeration system if the constituent unit cooler(s) and dedicated condensing unit have been tested and rated as specified paragraphs (a)(2)(i)(A) and (B) of this section, respectively. However, if a manufacturer wishes to represent the efficiency of the matched refrigeration system as distinct from the efficiency of either constituent component, or if the manufacturer cannot rate one or both of the constituent components using the specified method, the manufacturer must test and certify the matched refrigeration system as specified in this paragraph (a)(2)(i)(D).

(ii) *Units to be tested.* (A) If the represented value for a given refrigeration system basic model is determined through testing, the general requirements of § 429.11 apply; and

(B) For each basic model, a sample of sufficient size shall be randomly selected and tested to ensure that any represented value of AWEF or other measure of energy efficiency of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(1) The mean of the sample, where:

$$\bar{x} = \frac{1}{n} \sum_{i=1}^n x_i$$

And \bar{x} is the sample mean; n is the number of samples; and x_i is the i^{th} sample, or,

(2) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{0.95} \left(\frac{s}{\sqrt{n}} \right)$$

And \bar{x} is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with $n-1$ degrees of freedom (from appendix A to subpart B).

(C) The represented value of net capacity shall be the average of the

capacities measured for the sample selected.

(iii) *Alternative efficiency determination methods.* In lieu of testing, pursuant to the requirements of § 429.70 and the provisions of this section, a represented value of AWEF for a basic model of a walk-in cooler or walk-in freezer refrigeration system may be determined through the application of an AEDM, where:

(A) Any represented value of AWEF or other measure of energy efficiency of a basic model for which consumers would favor higher values shall be less than or equal to the output of the AEDM and greater than or equal to the Federal standard for that basic model.

(B) The represented value of net capacity must be the net capacity simulated by the AEDM.

(3) For each basic model of walk-in cooler and walk-in freezer panel, display door, and non-display door, the R-value and/or energy consumption must be determined by testing, in accordance with § 431.304 of this chapter and the provisions of this section.

(i) *Applicable test procedure.* Refer to the following for the appropriate test procedure:

(A) *Display door test procedure.* For determining the energy consumption and rated surface area in square feet, use the test procedure in 10 CFR part 431, subpart R, appendix A.

(B) *Non-display door test procedure.* For determining the energy consumption and rated surface area in square feet, use the test procedure in 10 CFR part 431, subpart R, appendix A. For determining the R-value, use the test procedure in 10 CFR part 431, subpart R, appendix B.

(C) *Panel test procedure.* For determining the R-value, use the test procedure in 10 CFR part 431, subpart R, appendix B.

(ii) *Units to be tested.* (A) The general requirements of § 429.11 apply; and

(B) For each basic model, a sample of sufficient size shall be randomly selected and tested to ensure that—

(1) Any represented value of door energy consumption or other measure of energy use of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(i) The mean of the sample, where:

$$\bar{x} = \frac{1}{n} \sum_{i=1}^n x_i$$

And \bar{x} is the sample mean; n is the number of samples; and x_i is the i^{th} sample, or,

(ii) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{0.95} \left(\frac{s}{\sqrt{n}} \right)$$

And \bar{x} is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with $n-1$ degrees of freedom (from appendix A to subpart B).

(2) Any represented R-value or other measure of energy efficiency of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(i) The mean of the sample, where:

$$\bar{x} = \frac{1}{n} \sum_{i=1}^n x_i$$

And \bar{x} is the sample mean; n is the number of samples; and x_i is the i^{th} sample, or,

(ii) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{0.95} \left(\frac{s}{\sqrt{n}} \right)$$

And \bar{x} is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the statistic for a 95% one-tailed confidence interval with $n-1$ degree of freedom (from appendix A to subpart B).

(b) *Certification reports.* (1) The requirements of § 429.12 apply to manufacturers of walk-in cooler and walk-in freezer panels, doors, and refrigeration systems, and;

(2) Pursuant to § 429.12(b)(13), a certification report must include the following public product-specific information:

(i) For doors: The door type, R-value of the door insulation, and a declaration that the manufacturer has incorporated the applicable design requirements. In addition, for those walk-in coolers and walk-in freezers with transparent reach-in doors and windows, the glass type of the doors and windows (e.g., double-pane with heat reflective treatment, triple-pane glass with gas fill), and the power draw of the antisweat heater in watts per square foot of door opening must also be included.

(ii) For walk-in cooler and walk-in freezer panels: The R-value of the insulation.

(iii) For walk-in cooler and walk-in freezer refrigeration systems: The installed motor's functional purpose (i.e., evaporator fan motor or condenser fan motor), its rated horsepower, and a

declaration that the manufacturer has incorporated the applicable walk-in-specific design requirements into the motor.

(3) Pursuant to § 429.12(b)(13), starting on June 5, 2017, a certification report must include the following public product-specific information in addition to the information listed in paragraph (b)(2) of this section:

(i) For walk-in cooler and walk-in freezer doors: The door energy consumption and rated surface area in square feet.

(ii) For refrigeration systems that are medium-temperature dedicated condensing units, medium-temperature single-package dedicated systems, or medium-temperature matched systems: The refrigeration system AWEF, net capacity, the configuration tested for certification (e.g., condensing unit only, unit cooler only, single-package dedicated system, or matched-pair), and if an indoor dedicated condensing unit is also certified as an outdoor dedicated condensing unit and, if so, the basic model number for the outdoor dedicated condensing unit.

(4) Pursuant to § 429.12(b)(13), starting on June 5, 2017, a certification report must include the following product-specific information in addition to the information listed in paragraphs (b)(2) and (3) of this section:

(i) For walk-in cooler and walk-in freezer doors: the rated power of each light, heater wire, and/or other electricity consuming device associated with each basic model of display and non-display door; and whether such device(s) has a timer, control system, or other demand-based control reducing the device's power consumption.

(5) When certifying compliance to the AWEF refrigeration standards for WICF refrigeration systems except those specified in (b)(3)(ii) of this section, a certification report must include the following public product-specific information in addition to the information listed in paragraph (b)(2) of this section: For refrigeration systems that are low-temperature dedicated condensing units, low-temperature matched systems, low-temperature single-package dedicated systems, or medium and low-temperature unit coolers: The refrigeration system AWEF, net capacity, the configuration tested for certification (e.g., condensing unit only, unit cooler only, single-package dedicated system, or matched-pair), and if an indoor dedicated condensing unit is also certified as an outdoor dedicated condensing unit and, if so, the basic model number for the outdoor dedicated condensing unit.

■ 4. Section 429.110 is amended by revising paragraph (e)(2) to read as follows:

§ 429.110 Enforcement testing.

* * * * *

(e) * * *

(2) For automatic commercial ice makers; commercial refrigerators, freezers, and refrigerator-freezers; refrigerated bottled or canned vending machines; commercial air conditioners and heat pumps; commercial packaged boilers; commercial warm air furnaces; commercial water heating equipment; and walk-in cooler and walk-in freezer refrigeration systems, DOE will use an initial sample size of not more than four units and follow the sampling plans in appendix B of this subpart (Sampling Plan for Enforcement Testing of Covered Equipment and Certain Low-Volume Covered Products).

* * * * *

■ 5. Section 429.134 is amended by adding paragraph (q) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(q) *Walk-in coolers and walk-in freezers.* (1) If DOE determines that a basic model of a panel, door, or refrigeration system for walk-in coolers or walk-in freezers fails to meet an applicable energy conservation standard, then the manufacturer of that basic model is responsible for the noncompliance. If DOE determines that a complete walk-in cooler or walk-in freezer or component thereof fails to meet an applicable energy conservation standard, then the manufacturer of that walk-in cooler or walk-in freezer is responsible for the noncompliance with the applicable standard, except that the manufacturer of a complete walk-in cooler or walk-in freezer is not responsible for the use of components that were certified and labeled (in accordance with DOE labeling requirements) as compliant by another party and later found to be noncompliant with the applicable standard(s).

(2) *Verification of refrigeration system net capacity.* The net capacity of the refrigeration system basic model will be measured pursuant to the test requirements of 10 CFR part 431, subpart R, appendix C for each unit tested. The results of the measurement(s) will be averaged and compared to the value of net capacity certified by the manufacturer. The certified net capacity will be considered valid only if the average measured net capacity is within plus or minus five percent of the certified net capacity.

(i) If the certified net capacity is found to be valid, the certified net capacity will be used as the basis for calculating the AWEF of the basic model.

(ii) If the certified net capacity is found to be invalid, the average measured net capacity will serve as the basis for calculating the annual energy consumption for the basic model.

(3) *Verification of door surface area.* The surface area of a display door or non-display door basic model will be measured pursuant to the requirements of 10 CFR part 431, subpart R, appendix A for each unit tested. The results of the measurement(s) will be averaged and compared to the value of the surface area certified by the manufacturer. The certified surface area will be considered valid only if the average measured surface area is within plus or minus three percent of the certified surface area.

(i) If the certified surface area is found to be valid, the certified surface area will be used as the basis for calculating the maximum energy consumption (kWh/day) of the basic model.

(ii) If the certified surface area is found to be invalid, the average measured surface area will serve as the basis for calculating the maximum energy consumption (kWh/day) of the basic model.

(4) For each basic model of walk-in cooler and walk-in freezer door, DOE will calculate the door's energy consumption using the power listed on the nameplate of each electricity consuming device shipped with the door. If an electricity consuming device shipped with a walk-in door does not have a nameplate or such nameplate does not list the device's power, then DOE will use the device's "rated power" included in the door's certification report.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 6. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 7. Section 431.302 is amended by:

■ a. Adding in alphabetical order, definitions for "Adaptive defrost," "Dedicated condensing unit," "Dedicated condensing refrigeration system," "Indoor dedicated condensing refrigeration system," "Matched condensing unit," "Matched refrigeration system," "Outdoor

dedicated condensing refrigeration system," "Refrigerated storage space," "Single-package dedicated system," "Unit cooler," and "Walk-in process cooling refrigeration system"; and

■ b. Revising the definition of "refrigeration system."

The revision and additions read as follows:

§ 431.302 Definitions concerning walk-in coolers and walk-in freezers.

Adaptive defrost means a factory-installed defrost control system that reduces defrost frequency by initiating defrosts or adjusting the number of defrosts per day in response to operating conditions (e.g., moisture levels in the refrigerated space, measurements that represent coil frost load) rather than initiating defrost strictly based on compressor run time or clock time.

* * * * *

Dedicated condensing unit means a positive displacement condensing unit that is part of a refrigeration system (as defined in this section) and is an assembly that

(1) Includes 1 or more compressors, a condenser, and one refrigeration circuit; and

(2) Is designed to serve one refrigerated load.

Dedicated condensing refrigeration system means one of the following:

- (1) A dedicated condensing unit;
- (2) A single-package dedicated system; or
- (3) A matched refrigeration system.

* * * * *

Indoor dedicated condensing refrigeration system means a dedicated condensing refrigeration system designated by the manufacturer for indoor use or for which there is no designation regarding the use location.

* * * * *

Matched condensing unit means a dedicated condensing unit that is distributed in commerce with one or more unit cooler(s) specified by the condensing unit manufacturer.

Matched refrigeration system (also called "matched-pair") means a refrigeration system including the matched condensing unit and the one or more unit coolers with which it is distributed in commerce.

Outdoor dedicated condensing refrigeration system means a dedicated condensing refrigeration system designated by the manufacturer for outdoor use.

* * * * *

Refrigerated storage space means a space held at refrigerated (as defined in this section) temperatures.

* * * * *

Refrigeration system means the mechanism (including all controls and other components integral to the system's operation) used to create the refrigerated environment in the interior of a walk-in cooler or walk-in freezer, consisting of:

(1) A dedicated condensing refrigeration system (as defined in this section); or

(2) A unit cooler.

Single-packaged dedicated system means a refrigeration system (as defined in this section) that is a single-package assembly that includes one or more compressors, a condenser, a means for forced circulation of refrigerated air, and elements by which heat is transferred from air to refrigerant, without any element external to the system imposing resistance to flow of the refrigerated air.

* * * * *

Unit cooler means an assembly, including means for forced air circulation and elements by which heat is transferred from air to refrigerant, thus cooling the air, without any element external to the cooler imposing air resistance.

* * * * *

Walk-in process cooling refrigeration system means a refrigeration system that is capable of rapidly cooling food or other substances from one temperature to another. The basic model of such a system must satisfy one of the following three conditions:

(1) Be distributed in commerce with an insulated enclosure consisting of panels and door(s) such that the assembled product has a refrigerating capacity of at least 100 Btu/h per cubic foot of enclosed internal volume;

(2) Be a unit cooler having an evaporator coil that is at least four-and-one-half (4.5) feet in height and whose height is at least one-and-one-half (1.5) times the width. The height of the evaporator coil is measured perpendicular to the tubes and is also the fin height, while its width is the finned length parallel to the tubes, as illustrated in Figure 1; or

(3) Be a dedicated condensing unit that is distributed in commerce exclusively with a unit cooler meeting description (2) or with an evaporator that is not a unit cooler, i.e., an evaporator that is not distributed or installed as part of a package including one or more fans.

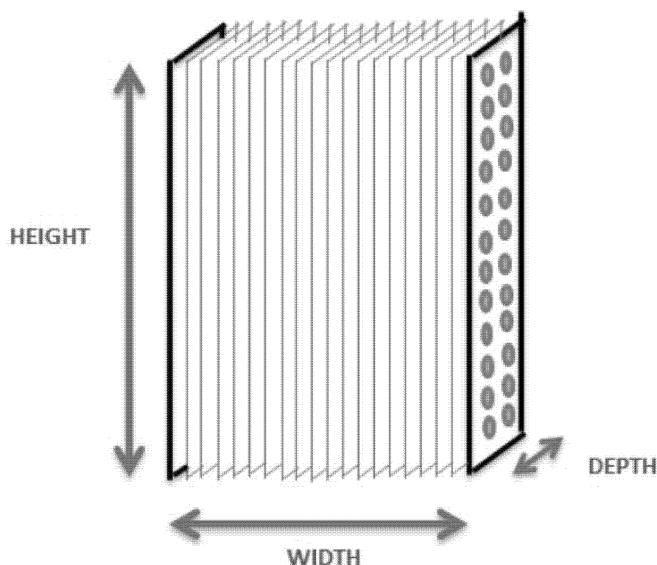


Figure 1: Evaporator Coil Dimensions

- 8. Section 431.303 is amended by:
 - a. Revising paragraph (a);
 - b. Revising paragraph (b)(1) and adding paragraph (b)(2);
 - c. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and adding paragraph (c);
 - d. Revising the last sentence of newly redesignated paragraph (d)(1).

The additions and revisions read as follows:

§ 431.303 Materials incorporated by reference.

(a) *General.* Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. Any amendment to a standard by the standard-setting organization will not affect the DOE regulations unless and until amended by DOE. Material is incorporated as it exists on the date of the approval. To enforce any edition other than that specified in this section, the U.S. Department of Energy must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024, 202-586-2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays, or go to: http://www1.eere.energy.gov/buildings/appliance_standards/, and is

available from the sources listed below. It is also available for inspection 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/code_of_federal_regulations/ibr_locations.html.

- (b) * * *
 - (1) ANSI/AHRI Standard 420-2008 ("AHRI 420-2008"), "Performance Rating of Forced-Circulation Free-Delivery Unit Coolers for Refrigeration," Copyright 2008, IBR approved for appendix C to subpart R of part 431.
 - (2) AHRI Standard 1250P (I-P)-2009 ("AHRI 1250-2009"), "Standard for Performance Rating of Walk-in Coolers and Freezers, (including Errata sheet dated December 2015), copyright 2009, except Table 15 and Table 16. IBR approved for appendix C to subpart R of part 431.
 - (c) *ASHRAE.* The American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle NE., Atlanta, GA 30329, or www.ashrae.org/.
 - (1) ANSI/ASHRAE Standard 23.1-2010, ("ASHRAE 23.1-2010"), "Methods of Testing for Rating the Performance of Positive Displacement Refrigerant Compressors and Condensing Units that Operate at Subcritical Temperatures of the Refrigerant," ANSI approved January 28, 2010, IBR approved for appendix C to subpart R of part 431.
 - (2) [Reserved]

- (d) * * *
 - (1) * * * IBR approved for appendix B to subpart R of part 431.

* * * * *

- 9. Section 431.304 is amended by revising paragraph (b) and removing paragraph (c) to read as follows:

§ 431.304 Uniform test method for the measurement of energy consumption of walk-in coolers and walk-in freezers.

* * * * *

- (b) Determine the energy efficiency and/or energy consumption of the specified walk-in cooler and walk-in freezer components by conducting the appropriate test procedure as follows:
 - (1) Determine the U-factor, conduction load, and energy use of walk-in cooler and walk-in freezer display panels by conducting the test procedure set forth in appendix A to this subpart.
 - (2) Determine the energy use of walk-in cooler and walk-in freezer display doors and non-display doors by conducting the test procedure set forth in appendix A to this subpart.
 - (3) Determine the R-value of walk-in cooler and walk-in freezer non-display panels and non-display doors by conducting the test procedure set forth in appendix B to this subpart.
 - (4) Determine the AWEF and net capacity of walk-in cooler and walk-in freezer refrigeration systems by conducting the test procedure set forth in appendix C to this subpart.
- 10. Section 431.305 is added to read as follows:

§ 431.305 Walk-in cooler and walk-in freezer labeling requirements.

(a) Panel nameplate—(1) Required information. The permanent nameplate of a walk-in cooler or walk-in freezer panel for which standards are prescribed in § 431.306 must be marked clearly with the following information:

- (i) The panel brand or manufacturer; and
- (ii) One of the following statements, as appropriate:

(A) “This panel is designed and certified for use in walk-in cooler applications.”

(B) “This panel is designed and certified for use in walk-in freezer applications.”

(C) “This panel is designed and certified for use in walk-in cooler and walk-in freezer applications.”

(2) Display of required information. All orientation, spacing, type sizes, typefaces, and line widths to display this required information must be the same as or similar to the display of the other performance data included on the panel’s permanent nameplate. The permanent nameplate must be visible unless the panel is assembled into a completed walk-in.

(b) Door nameplate—(1) Required information. The permanent nameplate of a walk-in cooler or walk-in freezer door for which standards are prescribed in § 431.306 must be marked clearly with the following information:

- (i) The door brand or manufacturer; and
- (ii) One of the following statements, as appropriate:

(A) “This door is designed and certified for use in walk-in cooler applications.”

(B) “This door is designed and certified for use in walk-in freezer applications.”

(C) “This door is designed and certified for use in walk-in cooler and walk-in freezer applications.”

(2) Display of required information. All orientation, spacing, type sizes, typefaces, and line widths to display this required information must be the same as or similar to the display of the other performance data included on the door’s permanent nameplate. The permanent nameplate must be visible unless the door is assembled into a completed walk-in.

(c) Refrigeration system nameplate—(1) Required information. The permanent nameplate of a walk-in cooler or walk-in freezer refrigeration system for which standards are prescribed in § 431.306 must be marked clearly with the following information:

- (i) The refrigeration system brand or manufacturer;

(ii) The refrigeration system model number;

(iii) The date of manufacture of the refrigeration system (if the date of manufacture is embedded in the unit’s serial number, then the manufacturer of the refrigeration system must retain any relevant records to discern the date from the serial number);

(iv) If the refrigeration system is a dedicated condensing refrigeration system, and is not designated for outdoor use, the statement, “Indoor use only” (for a matched pair this must appear on the condensing unit); and

(v) One of the following statements, as appropriate:

(A) “This refrigeration system is designed and certified for use in walk-in cooler applications.”

(B) “This refrigeration system is designed and certified for use in walk-in freezer applications.”

(C) “This refrigeration system is designed and certified for use in walk-in cooler and walk-in freezer applications.”

(2) Process cooling refrigeration systems. The permanent nameplate of a process cooling refrigeration system (as defined in § 431.302) must be marked clearly with the statement, “This refrigeration system is designed for use exclusively in walk-in cooler and walk-in freezer process cooling refrigeration applications.”

(3) Display of required information. All orientation, spacing, type sizes, typefaces, and line widths to display this required information must be the same as or similar to the display of the other performance data included on the refrigeration system’s permanent nameplate. The model number must be in one of the following forms: “Model _____” or “Model number _____” or “Model No. _____.” The permanent nameplate must be visible unless the refrigeration system is assembled into a completed walk-in.

(d) A manufacturer may not mark the nameplate of a component with the required information if the manufacturer has not submitted a certification of compliance for the relevant model.

(e) Disclosure of efficiency information in marketing materials. Each catalog that lists the component and all materials used to market the component must include:

(1) For panels—The R-value in the form “R-value _____.”

(2) For doors—The energy consumption in the form “EC _____ kWh/day.”

(3) For those refrigeration system for which standards are prescribed—The AWEF in the form “AWEF _____.”

(4) The information that must appear on a walk-in cooler or walk-in freezer component’s permanent nameplate pursuant to paragraphs (a)–(c) of this section must also be prominently displayed in each catalog that lists the component and all materials used to market the component.

■ 11. Appendix A to subpart R of part 431 is amended by:

- a. Removing and reserving sections 3.2 and 3.3;
- b. Revising section 3.4;
- c. Redesignating sections 3.5 and 3.6 as sections 3.6 and 3.7.
- d. Adding section 3.5;
- e. Revising newly redesignated section 3.6; and
- f. Revising Table A.1.

The revisions and additions read as follows:

Appendix A to Subpart R of Part 431—Uniform Test Method for the Measurement of Energy Consumption of the Components of Envelopes of Walk-In Coolers and Walk-In Freezers

- * * * * *
- 3.2 [Reserved]
- 3.3 [Reserved]
- 3.4 *Surface area* means the area of the surface of the walk-in component that would be external to the walk-in cooler or walk-in freezer as appropriate.
- 3.5 *Rated power* means the electricity consuming device’s power as specified on the device’s nameplate. If the device does not have a nameplate or such nameplate does not list the device’s power, then the rated power must be read from the device’s product data sheet.
- 3.6 *Rating conditions* means, unless explicitly stated otherwise, all conditions shown in Table A.1 of this section.

TABLE A.1—TEMPERATURE CONDITIONS

Internal Temperatures (cooled space within the envelope)	
Cooler Dry Bulb Temperature.	35 °F
Freezer Dry Bulb Temperature.	–10 °F
External Temperatures (space external to the envelope)	
Freezer and Cooler Dry Bulb Temperatures.	75 °F.

- * * * * *
- 11. Add appendices B and C to subpart R of part 431 to read as follows:

Appendix B to Subpart R of Part 431—Uniform Test Method for the Measurement of R-Value for Envelope Components of Walk-In Coolers and Walk-In Freezers

1.0 Scope

This appendix covers the test requirements used to measure the R-value of non-display panels and non-display doors of a walk-in cooler or walk-in freezer.

2.0 Definitions

The definitions contained in § 431.302 apply to this appendix.

3.0 Additional Definitions

3.1 *Edge region* means a region of the panel that is wide enough to encompass any framing members. If the panel contains framing members (e.g., a wood frame) then the width of the edge region must be as wide as any framing member plus an additional 2 in. ± 0.25 in.

4.0 Test Methods, Measurements, and Calculations

4.1 The R value shall be the 1/K factor multiplied by the thickness of the panel.

4.2 The K factor shall be based on ASTM C518 (incorporated by reference; see § 431.303).

4.3 For calculating the R value for freezers, the K factor of the foam at 20 ± 1 degrees Fahrenheit (average foam temperature) shall be used. Test results from a test sample 1 ± 0.1-inches in thickness may be used to determine the R value of panels with various foam thickness as long as the foam is of the same final chemical form.

4.4 For calculating the R value for coolers, the K factor of the foam at 55 ± 1 degrees Fahrenheit (average foam temperature) shall be used. Test results from a test sample 1 ± 0.1-inches in thickness may be used to determine the R value of panels with various foam thickness as long as the foam is of the same final chemical form.

4.5 Foam shall be tested after it is produced in its final chemical form. For foam produced inside of a panel (“foam-in-place”), “final chemical form” means the foam is cured as intended and ready for use as a finished panel. For foam produced as board stock (typically polystyrene), “final chemical form” means after extrusion and ready for assembly into a panel or after assembly into a panel. Foam from foam-in-place panels

must not include any structural members or non-foam materials. Foam produced as board stock may be tested prior to its incorporation into a final panel. A test sample 1 ± 0.1-inches in thickness must be taken from the center of a panel and any protective skins or facers must be removed. A high-speed band-saw and a meat slicer are two types of recommended cutting tools. Hot wire cutters or other heated tools must not be used for cutting foam test samples. The two surfaces of the test sample that will contact the hot plate assemblies (as defined in ASTM C518 (incorporated by reference, see § 431.303)) must both maintain ±0.03 inches flatness tolerance and also maintain parallelism with respect to one another within ±0.03 inches. Testing must be completed within 24 hours of samples being cut for testing.

4.6 Internal non-foam member and/or edge regions shall not be considered when testing in accordance with ASTM C518 (incorporated by reference, see § 431.303).

4.7 For panels consisting of two or more layers of dissimilar insulating materials (excluding facers or protective skins), test each material as described in sections 4.1 through 4.6 of this appendix. For a panel with N layers of insulating material, the overall R-Value shall be calculated as follows:

$$R_{panel} = \sum_{i=1}^N \frac{t_i}{k_i}$$

Where:

k_i is the k factor of the ith material as measured by ASTM C518, (incorporated by reference, see § 431.303);

t_i is the thickness of the ith material that appears in the panel; and

N is the total number of material layers that appears in the panel.

Appendix C to Subpart R of Part 431—Uniform Test Method for the Measurement of Net Capacity and AWEF of Walk-In Cooler and Walk-In Freezer Refrigeration Systems

1.0 Scope

This appendix covers the test requirements used to determine the net capacity and the AWEF of the refrigeration system of a walk-in cooler or walk-in freezer.

2.0 Definitions

The definitions contained in § 431.302 and AHRI 1250–2009 (incorporated by reference; see § 431.303) apply to this appendix. When definitions in standards incorporated by reference are in conflict or when they conflict with this section, the hierarchy of precedence shall be in the following order: § 431.302, AHRI 1250–2009, and then either AHRI 420–2008 (incorporated by reference; see § 431.303) for unit coolers or ASHRAE 23.1–2010 (incorporated by reference; see § 431.303) for dedicated condensing units.

3.0 Test Methods, Measurements, and Calculations

Determine the Annual Walk-in Energy Factor (AWEF) and net capacity of walk-in cooler and walk-in freezer refrigeration systems by conducting the test procedure set forth in AHRI 1250–2009 (incorporated by reference; see § 431.303), with the modifications to that test procedure provided in this section. When standards that are incorporated by reference are in conflict or when they conflict with this section, the hierarchy of precedence shall be in the following order: § 431.302, AHRI 1250–2009, and then either AHRI 420–2008 (incorporated by reference; see § 431.303) or ASHRAE 23.1–2010 (incorporated by reference; see § 431.303).

3.1 *General modifications: Test Conditions and Tolerances.*

When conducting testing in accordance with AHRI 1250–2009 (incorporated by reference; see § 431.303), the following modifications must be made.

3.1.1. In Table 1, Instrumentation Accuracy, refrigerant temperature measurements shall have a tolerance of ±0.5 F for unit cooler in/out, ±1.0 F for all other temperature measurements.

3.1.2. In Table 2, Test Operating and Test Condition Tolerances for Steady-State Test, electrical power frequency shall have a Test Condition Tolerance of 1 percent.

3.1.3. In Table 2, the Test Operating Tolerances and Test Condition Tolerances for Air Leaving Temperatures shall be deleted.

3.1.4. In Tables 2 through 14, the Test Condition Outdoor Wet Bulb Temperature requirement and its associated tolerance apply only to units with evaporative cooling.

3.1.5. Tables 15 and 16 shall be modified to read as follows:

TABLE 15—REFRIGERATOR UNIT COOLER

Test description	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity, %	Saturated suction temp, °F	Liquid inlet saturation temp, °F	Liquid inlet subcooling temp, °F	Compressor capacity	Test objective
Off Cycle Fan Power.	35	<50	—	—	—	Compressor Off ..	Measure fan input power during compressor off cycle.
Refrigeration Capacity Suction A.	35	<50	25	105	9	Compressor On ..	Determine Net Refrigeration Capacity of Unit Cooler.

TABLE 15—REFRIGERATOR UNIT COOLER—Continued

Test description	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity, %	Saturated suction temp, °F	Liquid inlet saturation temp, °F	Liquid inlet subcooling temp, °F	Compressor capacity	Test objective
Refrigeration Capacity Suction B.	35	<50	20	105	9	Compressor On ..	Determine Net Refrigeration Capacity of Unit Cooler.

Note: Superheat to be set according to equipment specification in equipment or installation manual. If no superheat specification is given, a default superheat value of 6.5 °F shall be used. The superheat setting used in the test shall be reported as part of the standard rating.

TABLE 16—FREEZER UNIT COOLER

Test description	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity, %	Saturated suction temp, °F	Liquid inlet saturation temp, °F	Liquid inlet subcooling temp, °F	Compressor capacity	Test objective
Off Cycle Fan Power.	- 10	<50	—	—	—	Compressor Off ..	Measure fan input power during compressor off cycle.
Refrigeration Capacity Suction A.	- 10	<50	- 20	105	9	Compressor On ..	Determine Net Refrigeration Capacity of Unit Cooler.
Refrigeration Capacity Suction B.	- 10	<50	- 26	105	9	Compressor On ..	Determine Net Refrigeration Capacity of Unit Cooler.
Defrost	- 10	Various	—	—	—	Compressor Off ..	Test according to Appendix C Section C11.

Note: Superheat to be set according to equipment specification in equipment or installation manual. If no superheat specification is given, a default superheat value of 6.5 °F shall be used. The superheat setting used in the test shall be reported as part of the standard rating.

3.2. General Modifications: Methods of Testing

When conducting testing in accordance with appendix C of AHRI 1250–2009 (incorporated by reference; see § 431.303), the following modifications must be made.

3.2.1. In appendix C, section C3.1.6, any refrigerant temperature measurements upstream and downstream of the unit cooler may use sheathed sensors immersed in the flowing refrigerant instead of thermometer wells.

3.2.2. It is not necessary to perform composition analysis of refrigerant (appendix C, section C3.3.6) or refrigerant oil concentration testing (appendix C, section C3.4.6).

3.2.3. In appendix C, section C3.4.5, for verification of sub-cooling downstream of mass flow meters, only the sight glass and a temperature sensor located on the tube surface under the insulation are required.

3.2.4. In appendix C, section C3.5, regarding unit cooler fan power measurements, for a given motor winding configuration, the total power input shall be measured at the highest nameplate voltage. For three-phase power, voltage imbalances shall be no more than 2 percent from phase to phase.

3.2.5. In the test setup (appendix C, section C8.3), the liquid line and suction line shall be constructed of pipes of the manufacturer-specified size. The pipe lines shall be

insulated with a minimum total thermal resistance equivalent to 1/2-inch thick insulation having a flat-surface R-Value of 3.7 ft²-°F-hr/Btu per inch or greater. Flow meters need not be insulated but must not be in contact with the floor. The lengths of the connected liquid line and suction line shall be 25 feet ± 3 inches, not including the requisite flow meters, each. Of this length, no more than 15 feet shall be in the conditioned space. Where there are multiple branches of piping, the maximum length of piping applies to each branch individually as opposed to the total length of the piping.

3.3. *Matched systems, single-package dedicated systems, and unit coolers tested alone:* Use the test method in AHRI 1250–2009 (incorporated by reference; see § 431.303), appendix C as the method of test for matched refrigeration systems, single-package dedicated systems, or unit coolers tested alone, with the following modifications:

3.3.1. For unit coolers tested alone, use test procedures described in AHRI 1250–2009 (incorporated by reference; see § 431.303) for testing unit coolers for use in mix-match system ratings, except that for the test conditions in Tables 15 and 16, use the Suction A saturation condition test points only. Also for unit coolers tested alone, use the calculations in section 7.9 to determine AWEF and net capacity described in AHRI

1250–2009 for unit coolers matched to parallel rack systems.

3.3.2. In appendix C, section C.13, the version of AHRI Standard 420 used for test methods, requirements, and procedures shall be AHRI 420–2008 (incorporated by reference; see § 431.303).

3.3.3. Use appendix C, section C10 of AHRI 1250–2009 for off-cycle evaporator fan testing, with the exception that evaporator fan controls using periodic stir cycles shall be adjusted so that the greater of a 50% duty cycle (rather than a 25% duty cycle) or the manufacturer default is used for measuring off-cycle fan energy. For adjustable-speed controls, the greater of 50% fan speed (rather than 25% fan speed) or the manufacturer's default fan speed shall be used for measuring off-cycle fan energy. Also, a two-speed or multi-speed fan control may be used as the qualifying evaporator fan control. For such a control, a fan speed no less than 50% of the speed used in the maximum capacity tests shall be used for measuring off-cycle fan energy.

3.3.4. Use appendix C, section C11 of AHRI 1250–2009 (incorporated by reference, see § 431.303) for defrost testing. The Frost Load Condition Defrost Test (C11.1.1) is optional.

3.3.4.1. If the frost load condition defrost test is performed:

3.3.4.1.1 Operate the unit cooler at the dry coil conditions as specified in appendix

C, section C11.1 to obtain dry coil defrost energy, DF_d , in W-h.

3.3.4.1.2 Operate the unit cooler at the frost load conditions as specified in appendix C, sections C11.1 and C11.1.1 to obtain frosted coil defrost energy, DF_r , in W-h.

3.3.4.1.3 The number of defrosts per day, N_{DF} , shall be calculated from the time interval between successive defrosts from the start of one defrost to the start of the next defrost at the frost load conditions.

3.3.4.1.4 Use appendix C, equations C13 and C14 in section C11.3 to calculate, respectively, the daily average defrost energy,

DF, in W-h and the daily contribution of the load attributed to defrost Q_{DF} in Btu.

3.3.4.1.5 The defrost adequacy requirements in appendix C, section C11.3 shall apply.

3.3.4.2 If the frost load test is not performed:

3.3.4.2.1 Operate the unit cooler at the dry coil conditions as specified in appendix C, section C11.1 to obtain dry coil defrost energy, DF_d , in W-h.

3.3.4.2.2 The frost load defrost energy, DF_r , in W-h shall be equal to 1.05 multiplied by the dry coil energy consumption, DF_d ,

measured using the dry coil condition test in appendix C, section C11.1.

3.3.4.2.3 The number of defrosts per day N_{DF} used in subsequent calculations shall be 4.

3.3.4.2.4 Use appendix C, equation C13 in section C11.3 to calculate the daily average defrost energy, DF, in W-h.

3.3.4.2.5 The daily contribution of the load attributed to defrost Q_{DF} in Btu shall be calculated as follows:

$$Q_{DF} = 0.95 \times 3.412 \text{ Btu/W-h} \times \frac{2.05 \times DF_d}{2} \times 4$$

Where:

DF_d = the defrost energy, in W-h, measured at the dry coil condition

3.3.5. If a unit has adaptive defrost, use appendix C, section C11.2 of AHRI 1250–2009 as follows:

3.3.5.1. When testing to certify to the energy conservation standards in § 431.306, do not perform the optional test for adaptive or demand defrost in appendix C, section C11.2.

3.3.5.2. When determining the represented value of the calculated benefit for the inclusion of adaptive defrost, conduct the optional test for adaptive or demand defrost in appendix C, section C11.2 to establish the maximum time interval allowed between dry coil defrosts. If this time is greater than 24 hours, set its value to 24 hours. Then, calculate N_{DF} (the number of defrosts per day) by averaging the time in hours between successive defrosts for the dry coil condition with the time in hours between successive defrosts for the frosted coil condition, and dividing 24 by this average time. (The time between successive defrosts for the frosted coil condition is found as specified in section 3.3.4 of this appendix C of AHRI 1250–2009: That is, if the optional frosted coil test was performed, the time between successive defrosts for the frosted coil condition is found by performing the frosted coil test as specified in section 3.3.4.1 of this appendix; and if the optional frosted coil test was not performed, the time between successive defrosts for the frosted coil condition shall be set to 4 as specified in section 3.3.4.2. of this appendix) Use this new value of N_{DF} in subsequent calculations.

3.3.6. For matched refrigeration systems and single-package dedicated systems, calculate the AWEF using the calculations in AHRI 1250–2009 (incorporated by reference; see § 431.303), section 7.4, 7.5, 7.6, or 7.7, as applicable.

3.3.7. For unit coolers tested alone, calculate the AWEF and net capacity using the calculations in AHRI 1250–2009, (incorporated by reference; see § 431.303), section 7.9. If the unit cooler has variable-speed evaporator fans that vary fan speed in response to load, then:

3.3.7.1. When testing to certify compliance with the energy conservation standards in § 431.306, fans shall operate at full speed

during on-cycle operation. Do not conduct the calculations in AHRI 1250–2009, section 7.9.3. Instead, use AHRI 1250–2009, section 7.9.2 to determine the system’s AWEF.

3.3.7.2. When calculating the benefit for the inclusion of variable-speed evaporator fans that modulate fan speed in response to load for the purposes of making representations of efficiency, use AHRI 1250–2009, section 7.9.3 to determine the system AWEF.

3.4. *Dedicated condensing units that are not matched for testing and are not single-package dedicated systems*

3.4.1. Refer to appendix C, section C.12 of AHRI 1250–2009 (incorporated by reference; see § 431.303), for the method of test for dedicated condensing units. The version of ASHRAE Standard 23 used for test methods, requirements, and procedures shall be ANSI/ASHRAE Standard 23.1–2010 (incorporated by reference; see § 431.303). When applying this test method, use the applicable test method modifications listed in sections 3.1 and 3.2 of this appendix. For the test conditions in AHRI 1250–2009, Tables 11, 12, 13, and 14, use the Suction A condition test points only.

3.4.2. Calculate the AWEF and net capacity for dedicated condensing units using the calculations in AHRI 1250–2009 (incorporated by reference; see § 431.303) section 7.8. Use the following modifications to the calculations in lieu of unit cooler test data:

3.4.2.1. For calculating enthalpy leaving the unit cooler to calculate gross capacity, (a) The saturated refrigerant temperature (dew point) at the unit cooler coil exit, T_{evap} , shall be 25 °F for medium-temperature systems (coolers) and –20 °F for low-temperature systems (freezers), and (b) the refrigerant temperature at the unit cooler exit shall be 35 °F for medium-temperature systems (coolers) and –14 °F for low-temperature systems (freezers). For calculating gross capacity, the measured enthalpy at the condensing unit exit shall be used as the enthalpy entering the unit cooler.

3.4.2.2. The on-cycle evaporator fan power in watts, $EF_{\text{comp,on}}$, shall be calculated as follows:

For medium-temperature systems (coolers), $EF_{\text{comp,on}} = 0.013 \times q_{\text{mix,cd}}$

For low-temperature systems (freezers),

$$EF_{\text{comp,on}} = 0.016 \times q_{\text{mix,cd}}$$

Where:

$q_{\text{mix,cd}}$ is the gross cooling capacity of the system in Btu/h, found by a single test at the Capacity A, Suction A condition for outdoor units and the Suction A condition for indoor units.

3.4.2.3. The off-cycle evaporator fan power in watts, $EF_{\text{comp,off}}$, shall be calculated as follows:

$$EF_{\text{comp,off}} = 0.2 \times EF_{\text{comp,on}}$$

Where:

$EF_{\text{comp,on}}$ is the on-cycle evaporator fan power in watts.

3.4.2.4. The daily defrost energy use in watt-hours, DF, shall be calculated as follows:

For medium-temperature systems (coolers), $DF = 0$

For low-temperature systems (freezers), $DF = 8.5 \times 10^{-3} \times q_{\text{mix,cd}}^{1.27} \times N_{DF}$

Where:

$q_{\text{mix,cd}}$ is the gross cooling capacity of the system in Btu/h, found by a single test at the Capacity A, Suction A condition for outdoor units and the Suction A condition for indoor units, and N_{DF} is the number of defrosts per day, equal to 4.

3.4.2.5. The daily defrost heat load contribution in Btu, Q_{DF} , shall be calculated as follows:

For medium-temperature systems (coolers), $Q_{DF} = 0$

For low-temperature systems (freezers), $Q_{DF} = 0.95 \times DF \times 3.412$

Where:

DF is the daily defrost energy use in watt-hours.

3.5 Hot Gas Defrost Refrigeration Systems

For all hot gas defrost refrigeration systems, remove the hot gas defrost mechanical components and disconnect all such components from electrical power.

3.5.1 Hot Gas Defrost Dedicated Condensing Units Tested Alone: Test these units as described in section 3.4 of this appendix for electric defrost dedicated condensing units that are not matched for

testing and are not single-package dedicated systems.

3.5.2 Hot Gas Defrost Matched Systems, Single-package Dedicated Systems, and Unit Coolers Tested Alone: Test these units as described in section 3.3 of this appendix for

electric defrost matched systems, single-package dedicated systems, and unit coolers tested alone, but do not conduct defrost tests as described in sections 3.3.4 and 3.3.5 of this appendix. Calculate daily defrost energy use as described in section 3.4.2.4 of this

appendix. Calculate daily defrost heat contribution as described in section 3.4.2.5 of this appendix.

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Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Nutritional Yeast
Manufacturing Risk and Technology Review; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2015-0730; FRL-9956-21-OAR]

RIN 2060-AS93

National Emission Standards for Hazardous Air Pollutants: Nutritional Yeast Manufacturing Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Manufacturing of Nutritional Yeast source category. The proposed amendments address the results of the residual risk and technology reviews (RTRs) conducted as required under the Clean Air Act (CAA) as well as other actions deemed appropriate during the review of these standards. The proposed amendments include revising the form of the fermenter volatile organic compounds (VOC) emission limits, changing the testing and monitoring requirements, and updating the reporting and recordkeeping requirements.

DATES: *Comments.* Comments must be received on or before February 13, 2017. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before January 27, 2017.

Public Hearing. A public hearing will be held, if requested by January 3, 2017.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2015-0730, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment

contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Allison Costa, Sector Policies and Programs Division (Mail Code E140), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-1322; fax number: (919) 541-3470; and email address: costa.allison@epa.gov. For specific information regarding the risk modeling methodology, contact Chris Sarsony, Health and Environmental Impacts Division (Mail Code C539-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-4843; fax number: (919) 541-0840; and email address: sarsony.chris@epa.gov. For information about the applicability of the NESHAP to a particular entity, contact Scott Throwe, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, EPA WJC South Building (Mail Code 2227A), 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (919) 564-7013; fax number: (202) 564-0050; and email address: throwe.scott@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2015-0730. All documents in the docket are listed in the *Regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and

the telephone number for the EPA Docket Center is (202) 566-1742.

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2015-0730. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

Public Hearing. A public hearing will be held, if requested by January 3, 2017, to accept oral comments on this proposed action. If a hearing is requested, it will be held at the EPA's North Carolina campus located at 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. The hearing, if requested, will begin at 9:00 a.m. (local time) and will conclude at 8:00 p.m. (local time). To request a hearing, to register to speak at a hearing, or to inquire if a hearing will be held, please contact Aimee St. Clair at (919) 541-1063 or by email at StClair.Aimee@epa.gov. The last day to pre-register to speak at a hearing, if one is held, will be January 10, 2017. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk, although preferences on speaking times may not be able to be fulfilled. Please note that registration requests

received before the hearing will be confirmed by the EPA via email. The EPA will make every effort to accommodate all speakers who arrive and register. Because the hearing will be held at a U.S. governmental facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. If your driver's license is issued by Alaska, American Samoa, Arizona, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Montana, New York, Oklahoma or the state of Washington, you must present an additional form of identification to enter the federal building. Acceptable alternative forms of identification include: federal employee badges, passports, enhanced driver's licenses and military identification cards. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building and demonstrations will not be allowed on federal property for security reasons.

Please note that any updates made to any aspect of the hearing, including whether or not a hearing will be held, will be posted online at <https://www.epa.gov/stationary-sources-air-pollution/manufacturing-nutritional-yeast-national-emission-standards>. We ask that you contact Aimee St. Clair at (919) 541-1063 or by email at StClair.Aimee@epa.gov or monitor our Web site to determine if a hearing will be held. The EPA does not intend to publish a notice in the **Federal Register** announcing any such updates. Please go to <https://www.epa.gov/stationary-sources-air-pollution/manufacturing-nutritional-yeast-national-emission-standards> for more information on the public hearing.

Preamble Acronyms and Abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

AEGL Acute exposure guideline levels
 AERMOD Air dispersion model used by the HEM-3 model
 ATSDR Agency for Toxic Substances and Disease Registry
 CAA Clean Air Act
 CalEPA California EPA

CBI Confidential Business Information
 CDX Central Data Exchange
 CEDRI Compliance and Emissions Data Reporting Interface
 CEMS Continuous emission monitoring system
 CFR Code of Federal Regulations
 EGU Electric generation unit
 EPA Environmental Protection Agency
 ERPG Emergency Response Planning Guidelines
 FR Federal Register
 HAP Hazardous air pollutants
 HCl Hydrochloric acid
 HEM-3 Human Exposure Model, Version 1.1.0
 HF Hydrogen fluoride
 HI Hazard index
 HQ Hazard quotient
 ICR Information Collection Request
 IRIS Integrated Risk Information System
 km Kilometer
 MACT Maximum achievable control technology
 MATS Mercury Air Toxics Standard
 mg/kg-day Milligrams per kilogram per day
 mg/m³ Milligrams per cubic meter
 MIR Maximum individual risk
 MON Miscellaneous organic chemical manufacturing NESHAP
 NAAQS National Ambient Air Quality Standards
 NAICS North American Industry Classification System
 NAS National Academy of Sciences
 NATA National Air Toxics Assessment
 NEI National Emissions Inventory
 NESHAP National emissions standards for hazardous air pollutants
 NO_x Nitrogen oxides
 NRC National Research Council
 QA/QC Quality assurance/quality control
 OAQPS Office of Air Quality Planning and Standards
 OMB Office of Management and Budget
 PB-HAP Hazardous air pollutants known to be persistent and bio-accumulative in the environment
 POM Polycyclic organic matter
 ppmv Parts per million by volume
 PRA Paperwork Reduction Act
 PS Performance Specification
 RBLC RACT/BACT/LAER Clearinghouse
 REL Reference exposure level
 RFA Regulatory Flexibility Act
 RfC Reference concentration
 RfD Reference dose
 RTO Regenerative thermal oxidizer
 RTR Residual risk and technology review
 SAB Science Advisory Board
 SBA Small Business Administration
 SOP Standing Operating Procedures
 SSM Startup, shutdown, and malfunction
 TOSHI Target organ-specific hazard index
 tpy Tons per year
 TRIM.FaTE Total Risk Integrated Methodology. Fate, Transport, and Ecological Exposure model
 TTN Technology Transfer Network
 UF Uncertainty factor
 µg/m³ Microgram per cubic meter
 UMRA Unfunded Mandates Reform Act
 URE Unit risk estimate
 VOC Volatile organic compounds

Organization of this Document. The information in this preamble is organized as follows:

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I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and the associated regulated industrial source category that is the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities would not be affected by this proposed action. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992), the Manufacturing of Nutritional Yeast source category includes any facility engaged in the manufacture of baker's yeast by fermentation (both active dry yeast and compressed yeast). The category includes, but is not limited to, the following manufacturing process units: fermentation vessels and the drying and packaging system. The original source category was named Baker's Yeast Manufacturing, but it was revised to Manufacturing of Nutritional Yeast to provide clarity on the scope (63 FR 55812, October 19, 1998).

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

NESHAP and source category	NAICS code ¹
Manufacturing of Nutritional Yeast	311999

¹North American Industry Classification System (NAICS).

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the Internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at <https://www.epa.gov/stationary-sources-air-pollution/manufacturing-nutritional-yeast-national-emission-standards>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same Web site. Information on the overall RTR program is available at <https://www3.epa.gov/ttn/atw/trrisk/rtrpg.html>.

C. What should I consider as I prepare my comments for the EPA?

Submitting CBI. Do not submit information containing CBI to the EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD-ROM that you mail to the EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI for inclusion in the public docket. If you submit a CD-ROM or disk that does not contain CBI, mark the outside of the disk or CD-ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2015-0730.

II. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, after the EPA has identified categories of sources emitting one or more of the HAP listed in CAA section 112(b), CAA section 112(d) requires us to promulgate technology-based NESHAP for those sources. "Major sources" are those that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP. For major sources, the technology-based NESHAP must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements and non-air quality health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

MACT standards must reflect the maximum degree of emissions reduction achievable through the application of measures, processes, methods, systems

or techniques, including, but not limited to, measures that: (1) Reduce the volume of or eliminate pollutants through process changes, substitution of materials, or other modifications; (2) enclose systems or processes to eliminate emissions; (3) capture or treat pollutants when released from a process, stack, storage, or fugitive emissions point; (4) are design, equipment, work practice, or operational standards (including requirements for operator training or certification); or (5) are a combination of the above. CAA section 112(d)(2)(A)–(E). The MACT standards may take the form of design, equipment, work practice, or operational standards where the EPA first determines either that: (1) A pollutant cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with law; or (2) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations. CAA section 112(h)(1)–(2).

The MACT "floor" is the minimum control level allowed for MACT standards promulgated under CAA section 112(d)(3) and may not be based on cost considerations. For new sources, the MACT floor cannot be less stringent than the emissions control that is achieved in practice by the best-controlled similar source. The MACT floor for existing sources can be less stringent than floors for new sources, but not less stringent than the average emissions limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, the EPA must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on considerations of the cost of achieving the emission reductions, any non-air quality health and environmental impacts, and energy requirements.

The EPA is then required to review these technology-based standards and revise them "as necessary (taking into account developments in practices, processes, and control technologies)" no less frequently than every 8 years. CAA section 112(d)(6). In conducting this review, the EPA is not required to recalculate the MACT floor. *Natural Resources Defense Council (NRDC) v. EPA*, 529 F.3d 1077, 1084 (D.C. Cir. 2008). *Association of Battery Recyclers,*

Inc. v. EPA, 716 F.3d 667 (D.C. Cir. 2013).

The second stage in standard-setting focuses on reducing any remaining (*i.e.*, “residual”) risk according to CAA section 112(f). CAA section 112(f)(1) required that the EPA prepare a report to Congress discussing (among other things) methods of calculating the risks posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks, and the EPA’s recommendations as to legislation regarding such remaining risk. The EPA prepared and submitted the “Residual Risk Report to Congress,” EPA-453/R-99-001 (“Risk Report”) in March 1999. CAA section 112(f)(2) then provides that if Congress does not act on any recommendation in the Risk Report, the EPA must analyze and address residual risk for each category or subcategory of sources 8 years after promulgation of such standards pursuant to CAA section 112(d).

Section 112(f)(2) of the CAA requires the EPA to determine for source categories subject to MACT standards whether the emission standards provide an ample margin of safety to protect public health. Section 112(f)(2)(B) of the CAA expressly preserves the EPA’s use of the two-step process for developing standards to address any residual risk and the Agency’s interpretation of “ample margin of safety” developed in the *National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants* (Benzene NESHAP) (54 FR 38044, September 14, 1989). The EPA notified Congress in the Risk Report that the Agency intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA-453/R-99-001, p. ES-11). The EPA subsequently adopted this approach in its residual risk determinations and in a challenge to the risk review for the Synthetic Organic Chemical Manufacturing source category, the United States Court of Appeals for the District of Columbia Circuit upheld as reasonable the EPA’s interpretation that CAA section 112(f)(2) incorporates the approach established in the Benzene NESHAP. See *NRDC v. EPA*, 529 F.3d 1077, 1083 (D.C. Cir. 2008) (“[S]ubsection 112(f)(2)(B) expressly incorporates the EPA’s interpretation of the Clean Air Act from the Benzene standard, complete with a citation to the **Federal Register**.”); see also, *A Legislative History of the Clean Air Act Amendments of 1990*, vol. 1, p.

877 (Senate debate on Conference Report).

The first step in the process of evaluating residual risk is the determination of acceptable risk. If risks are unacceptable, the EPA cannot consider cost in identifying the emissions standards necessary to bring risks to an acceptable level. The second step is the determination of whether standards must be further revised in order to provide an ample margin of safety to protect public health. The ample margin of safety is the level at which the standards must be set, unless an even more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

1. Step 1—Determination of Acceptability

The Agency in the Benzene NESHAP concluded that “the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information” and that the “judgment on acceptability cannot be reduced to any single factor.” Benzene NESHAP at 38046. The determination of what represents an “acceptable” risk is based on a judgment of “what risks are acceptable in the world in which we live” (Risk Report at 178, quoting *NRDC v. EPA*, 824 F.2d 1146, 1165 (D.C. Cir. 1987) (en banc) (“Vinyl Chloride”), recognizing that our world is not risk-free.

In the Benzene NESHAP, we stated that “EPA will generally presume that if the risk to [the maximum exposed] individual is no higher than approximately one in 10 thousand, that risk level is considered acceptable.” 54 FR at 38045, September 14, 1989. We discussed the maximum individual lifetime cancer risk (or maximum individual risk (MIR)) as being “the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.” *Id.* We explained that this measure of risk “is an estimate of the upper bound of risk based on conservative assumptions, such as continuous exposure for 24 hours per day for 70 years.” *Id.* We acknowledged that maximum individual lifetime cancer risk “does not necessarily reflect the true risk, but displays a conservative risk level which is an upper-bound that is unlikely to be exceeded.” *Id.*

Understanding that there are both benefits and limitations to using the MIR as a metric for determining acceptability, we acknowledged in the Benzene NESHAP that “consideration of

maximum individual risk * * * must take into account the strengths and weaknesses of this measure of risk.” *Id.* Consequently, the presumptive risk level of 100-in-1 million (1-in-10 thousand) provides a benchmark for judging the acceptability of maximum individual lifetime cancer risk, but does not constitute a rigid line for making that determination. Further, in the Benzene NESHAP, we noted that:

“[p]articular attention will also be accorded to the weight of evidence presented in the risk assessment of potential carcinogenicity or other health effects of a pollutant. While the same numerical risk may be estimated for an exposure to a pollutant judged to be a known human carcinogen, and to a pollutant considered a possible human carcinogen based on limited animal test data, the same weight cannot be accorded to both estimates. In considering the potential public health effects of the two pollutants, the Agency’s judgment on acceptability, including the MIR, will be influenced by the greater weight of evidence for the known human carcinogen.”

Id. at 38046. The Agency also explained in the Benzene NESHAP that:

“[i]n establishing a presumption for MIR, rather than a rigid line for acceptability, the Agency intends to weigh it with a series of other health measures and factors. These include the overall incidence of cancer or other serious health effects within the exposed population, the numbers of persons exposed within each individual lifetime risk range and associated incidence within, typically, a 50 kilometers (km) exposure radius around facilities, the science policy assumptions and estimation uncertainties associated with the risk measures, weight of the scientific evidence for human health effects, other quantified or unquantified health effects, effects due to co-location of facilities, and co-emission of pollutants.”

Id. at 38045. In some cases, these health measures and factors taken together may provide a more realistic description of the magnitude of risk in the exposed population than that provided by maximum individual lifetime cancer risk alone.

As noted earlier, in *NRDC v. EPA*, the Court held that CAA section 112(f)(2) “incorporates the EPA’s interpretation of the Clean Air Act from the Benzene Standard.” The Court further held that Congress’ incorporation of the Benzene standard applies equally to carcinogens and non-carcinogens. 529 F.3d at 1081–82. Accordingly, we also consider non-cancer risk metrics in our determination of risk acceptability and ample margin of safety.

2. Step 2—Determination of Ample Margin of Safety

CAA section 112(f)(2) requires the EPA to determine, for source categories

subject to MACT standards, whether those standards provide an ample margin of safety to protect public health. As explained in the Benzene NESHAP, “the second step of the inquiry, determining an ‘ample margin of safety,’ again includes consideration of all of the health factors, and whether to reduce the risks even further. . . . Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. Considering all of these factors, the agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by section 112.” 54 FR 38046, September 14, 1989.

According to CAA section 112(f)(2)(A), if the MACT standards for HAP “classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million,” the EPA must promulgate residual risk standards for the source category (or subcategory), as necessary to provide an ample margin of safety to protect public health. In doing so, the EPA may adopt standards equal to existing MACT standards if the EPA determines that the existing standards (*i.e.*, the MACT standards) are sufficiently protective. *NRDC v. EPA*, 529 F.3d 1077, 1083 (D.C. Cir. 2008) (“If EPA determines that the existing technology-based standards provide an ‘ample margin of safety,’ then the Agency is free to readopt those standards during the residual risk rulemaking.”) The EPA must also adopt more stringent standards, if necessary, to prevent an adverse environmental effect,¹ but must consider cost, energy, safety, and other relevant factors in doing so.

The CAA does not specifically define the terms “individual most exposed,” “acceptable level,” and “ample margin of safety.” In the Benzene NESHAP, 54 FR 38044, September 14, 1989, we stated as an overall objective:

In protecting public health with an ample margin of safety under section 112, EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the

greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million and (2) limiting to no higher than approximately 1-in-10 thousand [*i.e.*, 100-in-1 million] the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

The Agency further stated that “[t]he EPA also considers incidence (the number of persons estimated to suffer cancer or other serious health effects as a result of exposure to a pollutant) to be an important measure of the health risk to the exposed population. Incidence measures the extent of health risks to the exposed population as a whole, by providing an estimate of the occurrence of cancer or other serious health effects in the exposed population.” *Id.* at 38045.

In the ample margin of safety decision process, the Agency again considers all of the health risks and other health information considered in the first step, including the incremental risk reduction associated with standards more stringent than the MACT standard or a more stringent standard that the EPA has determined is necessary to ensure risk is acceptable. In the ample margin of safety analysis, the Agency considers additional factors, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. Considering all of these factors, the Agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by CAA section 112(f). 54 FR 38046, September 14, 1989.

B. What is this source category and how does the current NESHAP regulate its HAP emissions?

In the original 1992 list of sources under CAA section 112(c)(1), the EPA defined the Baker’s Yeast Manufacturing source category as including any facility engaged in the manufacture of baker’s yeast by fermentation (both active dry yeast and compressed yeast) (57 FR 31576). The EPA explained that the category included, but was not limited to, the following manufacturing process units: Fermentation vessels and the drying and packaging system. The original source category was renamed to Manufacturing of Nutritional Yeast in 1998 to clarify that the source category covered the manufacturing of yeast, not its use in facilities such as breweries or bakeries. Both “baker’s yeast” and “nutritional yeast” are common names for *Saccharomyces cerevisiae*, which is a specific species of yeast that is used to produce many common food and

beverage products and whose manufacturing process typically emits HAP. The 40 CFR part 63, subpart CCCC NESHAP, which was finalized in 2001, defines a manufacturer of nutritional yeast as a facility that makes yeast for the purpose of becoming an ingredient in dough for bread or any other yeast-raised baked product, or for becoming a nutritional food additive intended for consumption by humans (66 FR 27876). Facilities that manufacture nutritional yeast intended for consumption by animals, such as an additive for livestock feed, are not included in the description of sources covered by this subpart in 40 CFR 63.2131. In addition, the NESHAP clarifies that fermenters are not subject to emission limits during the production of specialty yeast (*e.g.*, yeast for use in wine, champagne, whiskey, or beer) in 40 CFR 63.2132. We are not proposing to amend the source category definition in this action and are, therefore, not seeking comment on the source category definition at this time.

Only facilities that are located at or are part of a major source of HAP emissions are subject to the Manufacturing of Nutritional Yeast NESHAP; area sources of HAP are not subject to the rule. The HAP emitted by nutritional yeast manufacturing facilities is acetaldehyde, a probable carcinogen. In 2016, there are four nutritional yeast manufacturing facilities that are subject to the NESHAP.

The affected sources at nutritional yeast manufacturing facilities are the collection of equipment used to manufacture *Saccharomyces cerevisiae* yeast, including fermenters. The sizes of the fermenters vary; generally smaller fermenters are used for earlier fermentation stages and larger fermenters are used for later fermentation stages. The initial, smaller fermenters, where the sugar source is added only at the start of the batch (*e.g.*, laboratory and pure culture fermenters), are not subject to emission limits. The 40 CFR part 63, subpart CCCC emission limits apply to the final three stages of the fermentation process where the sugar source is added intermittently throughout the process, which are often referred to as stock (third-to-last stage), first generation (second-to-last stage), and trade (last stage) fermentation.

Currently, the fermenters are subject to batch average VOC emission limits that differ for each fermentation stage, and which must be met for 98 percent of all batches in each fermentation stage on a rolling 12-month basis. VOC is used as a surrogate for the HAP of interest, acetaldehyde. The batch

¹ “Adverse environmental effect” is defined as any significant and widespread adverse effect, which may be reasonably anticipated to wildlife, aquatic life, or natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental qualities over broad areas. CAA section 112(a)(7).

average VOC limits are 300 parts per million by volume (ppmv) for stock fermenters (third-to-last stage), 200 ppmv for first generation fermenters (second-to-last stage), and 100 ppmv for trade fermenters (last stage).

In the current NESHAP, facilities can continuously monitor either the VOC concentration in the fermenter exhaust or the brew ethanol concentration in the fermenter liquid to determine compliance with the emission limits. If a facility monitors brew ethanol concentration, it must conduct an annual performance test to determine the correlation between the brew ethanol concentration in the fermenter liquid and the VOC concentration in the fermenter exhaust gas.

C. What data collection activities were conducted to support this action?

The EPA visited three nutritional yeast manufacturing facilities during the development of the NESHAP. Those facilities were the American Yeast and AB Mauri Fleischmann's Yeast facilities in Memphis, Tennessee, which we visited in December 2015, and the Red Star Yeast facility in Cedar Rapids, Iowa, which we visited in June 2016. We also held a conference call with the Minn-Dak Wahpeton facility, located in Wahpeton, North Dakota, in May 2016. The EPA discussed the specific yeast fermentation processes employed by each facility, including a discussion of the number and design of their fermenters and associated emission points, the process controls and monitors used, unregulated emission sources, and other aspects of facility operations. The site visits and conference call are documented in separate memoranda: "Site Visit Report—American Yeast Corporation, Memphis Plant," "Site Visit Report—AB Mauri Fleischmann's Yeast, Memphis Plant," "Site Visit Report—Red Star Yeast, Cedar Rapids, IA," and "Notes from May 6, 2016 Conference Call Between the EPA and Minn-Dak Wahpeton," which are available in the docket for this action.

D. What other relevant background information and data are available?

The EPA used information from the National Emissions Inventory (NEI) and the RACT/BACT/LAER Clearinghouse (RBLC) to support this proposed rulemaking. We used the NEI emissions and supporting data to develop the modeling file for the risk review. The EPA utilized the RBLC to identify additional control technologies for the technology review. See sections III.A, III.C, and IV.C of this preamble for

further details on the use of these sources of information.

III. Analytical Procedures

In this section, we describe the analyses performed to support the proposed decisions for the RTR and other issues addressed in this proposal.

A. How did we estimate post-MACT risks posed by the source category?

The EPA conducted a risk assessment that provides estimates of the MIR posed by the HAP emissions from each source in the source category, the hazard index (HI) for chronic exposures to HAP with the potential to cause non-cancer health effects, and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause non-cancer health effects. The assessment also provides estimates of the distribution of cancer risks within the exposed populations, cancer incidence, and an evaluation of the potential for adverse environmental effects. The eight sections that follow this paragraph describe how we estimated emissions and conducted the risk assessment. The docket for this rulemaking contains the following document which provides more information on the risk assessment inputs and models: "Residual Risk Assessment for the Manufacturing of Nutritional Yeast Source Category in Support of the December 2016 Risk and Technology Review Proposed Rule." The methods used to assess risks (as described in the eight primary steps below) are consistent with those peer-reviewed by a panel of the EPA's Science Advisory Board (SAB) in 2009 and described in their peer review report issued in 2010;² they are also consistent with the key recommendations contained in that report.

1. How did we estimate actual emissions and identify the emissions release characteristics?

Fermenters are the primary emission source at nutritional yeast facilities. Each fermenter emission source has a stack through which the emissions are vented. The HAP emitted is acetaldehyde, which is a by-product of the fermentation process. We used acetaldehyde emissions data from the 2011 NEI and state emission reports (*i.e.*, Iowa Emissions Inventory Questionnaire reports) as the basis of the actual emission estimates for each facility. The stack parameters used for

² U.S. EPA SAB. *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing*, May 2010.

each fermenter were obtained from the 2011 NEI, title V permits, or were provided to the Agency during site visits. We used default parameters if site-specific information was not available. Additional details on the data and methods used to develop actual emissions for the risk modeling are provided in the memorandum, "Emissions Data and Acute Risk Factor Used in Residual Risk Modeling: Manufacturing of Nutritional Yeast Source Category," which is available in the docket for this action.

2. How did we estimate MACT-allowable emissions?

The available emissions data in the RTR emissions dataset include estimates of the mass of HAP emitted during the specified annual time period. In some cases, these "actual" emission levels are lower than the emission levels required to comply with the current MACT standards. The emissions level allowed to be emitted by the MACT standards is referred to as the "MACT-allowable" emissions level. We discussed the use of both MACT-allowable and actual emissions in the final Coke Oven Batteries RTR (70 FR 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP RTRs (71 FR 34428, June 14, 2006, and 71 FR 76609, December 21, 2006, respectively). In those actions, we noted that assessing the risks at the MACT-allowable level is inherently reasonable since these risks reflect the maximum level facilities could emit and still comply with national emission standards. We also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP approach. (54 FR 38044, September 14, 1989.)

For nutritional yeast manufacturing facilities, we used the actual emissions as the basis for the MACT-allowable emissions in the risk assessment. We set allowable emissions equal to actual emissions based on information gathered during the site visits that the facilities are operating near maximum capacity and close to the level of emissions allowed under the NESHAP. It is difficult to calculate a precise allowable emissions level for this industry because the emission limits are based on the average emissions concentration during each batch and the absolute number of batches produced at a facility fluctuates each year based on market demand for yeast.

Furthermore, facilities are also unlikely to emit significantly higher levels of HAP due to a business incentive to minimize acetaldehyde

emissions and continuous monitoring requirements in the rule. Acetaldehyde is a by-product of sub-optimal yeast production. Increasing concentrations of acetaldehyde indicate decreases relative to the potential amount and/or quality of yeast that can be produced within a fermentation batch, resulting in a loss of profit for the yeast manufacturer. Therefore, companies have a business incentive to reduce HAP emissions as much as possible. Additionally, continuous monitoring ensures that the facilities receive real-time information about emissions throughout the yeast manufacturing process. These monitoring systems have enabled facilities to set up control systems that automatically adjust process parameters in real-time to reduce emissions if they reach a specified level.

As stated above, MACT-allowable emissions are used to develop estimates of risk when actual emissions are lower than those required to meet current emission standards. Due to the difficulties that limit the calculation of allowable emissions (e.g., the current NESHAP standard requirements) and the low likelihood of facilities emitting significantly higher levels of HAP than current amounts, actual emissions provide the most accurate estimate of emissions that will be emitted from nutritional yeast manufacturing facilities. Therefore, we determined that the use of actual emissions as the basis of the MACT-allowable emissions in this risk assessment is the most appropriate option for this subpart.

3. How did we conduct dispersion modeling, determine inhalation exposures, and estimate individual and population inhalation risks?

Both long-term and short-term inhalation exposure concentrations and health risks from the source category addressed in this proposal were estimated using the Human Exposure Model (Community and Sector HEM-3 version 1.1.0). The HEM-3 performs three primary risk assessment activities: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 km of the modeled sources,³ and (3) estimating individual and population-level inhalation risks using the exposure estimates and quantitative dose-response information.

The air dispersion model used by the HEM-3 model (AERMOD) is one of the EPA's preferred models for assessing

pollutant concentrations from industrial facilities.⁴ To perform the dispersion modeling and to develop the preliminary risk estimates, HEM-3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year (2014) of hourly surface and upper air observations for more than 800 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block⁵ internal point locations and populations provides the basis of human exposure calculations (U.S. Census, 2010). In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant unit risk factors and other health benchmarks is used to estimate health risks. These risk factors and health benchmarks are the latest values recommended by the EPA for HAP and other toxic air pollutants. These values are available at <https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants> and are discussed in more detail later in this section.

In developing the risk assessment for chronic exposures, we used the estimated annual average ambient air concentrations of each HAP emitted by each source for which we have emissions data in the source category. The air concentrations at each nearby census block centroid were used as a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. We calculated the MIR for each facility as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week, and 52 weeks per year for a 70-year period) exposure to the maximum concentration at the centroid of inhabited census blocks. Individual cancer risks were calculated by multiplying the estimated lifetime exposure to the ambient concentration of each of the HAP (in micrograms per cubic meter ($\mu\text{g}/\text{m}^3$)) by its unit risk estimate (URE). The URE is an upper bound estimate of an individual's probability of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per

cubic meter of air. For residual risk assessments, we generally use URE values from the EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) URE values, where available. In cases where new, scientifically credible dose response values have been developed in a manner consistent with the EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate.

The EPA estimated incremental individual lifetime cancer risks associated with emissions from the facilities in the source category as the sum of the risks for each of the carcinogenic HAP (including those classified as carcinogenic to humans, likely to be carcinogenic to humans, and suggestive evidence of carcinogenic potential)⁶ emitted by the modeled sources. Cancer incidence and the distribution of individual cancer risks for the population within 50 km of the sources were also estimated for the source category as part of this assessment by summing individual risks. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044, September 14, 1989) and the limitations of Gaussian dispersion models, including AERMOD.

To assess the risk of non-cancer health effects from chronic exposures, we summed the HQ for each of the HAP that affects a common target organ system to obtain the HI for that target organ system (or target organ-specific HI, TOSHI). The HQ is the estimated exposure divided by the chronic reference value, which is a value selected from one of several sources. First, the chronic reference level can be the EPA reference concentration (RfC) (https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=Risk

⁶ These classifications also coincide with the terms "known carcinogen, probable carcinogen, and possible carcinogen," respectively, which are the terms advocated in the EPA's previous "Guidelines for Carcinogen Risk Assessment," published in 1986 (51 FR 33992, September 24, 1986). Summing the risks of these individual compounds to obtain the cumulative cancer risks is an approach that was recommended by the EPA's SAB in their 2002 peer review of the EPA's National Air Toxics Assessment (NATA) titled, "NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory," available at [http://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/\\$File/ecadv02001.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf).

⁴ U.S. EPA. Revision to the "Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions" (70 FR 68218, November 9, 2005).

⁵ A census block is the smallest geographic area for which census statistics are tabulated.

³ This metric comes from the Benzene NESHAP. See 54 FR 38046.

%20Assessment%20Glossary), defined as “an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime.” Alternatively, in cases where an RfC from the EPA’s IRIS database is not available or where the EPA determines that using a value other than the RfC is appropriate, the chronic reference level can be a value from the following prioritized sources: (1) The Agency for Toxic Substances and Disease Registry Minimum Risk Level (<http://www.atsdr.cdc.gov/mrls/index.asp>), which is defined as “an estimate of daily human exposure to a hazardous substance that is likely to be without an appreciable risk of adverse non-cancer health effects (other than cancer) over a specified duration of exposure”; (2) the CalEPA Chronic Reference Exposure Level (REL) (http://oehha.ca.gov/media/downloads/crn/2015guidance_manual.pdf), which is defined as “the concentration level (that is expressed in units of micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) for inhalation exposure and in a dose expressed in units of milligram per kilogram-day ($\text{mg}/\text{kg}\text{-day}$) for oral exposures), at or below which no adverse health effects are anticipated for a specified exposure duration”; or (3), as noted above, a scientifically credible dose-response value that has been developed in a manner consistent with the EPA guidelines and has undergone a peer review process similar to that used by the EPA, in place of or in concert with other values.

As mentioned above, in order to characterize non-cancer chronic effects, and in response to key recommendations from the SAB, the EPA selects dose-response values that reflect the best available science for all HAP included in RTR risk assessments.⁷ More specifically, for a given HAP, the EPA examines the availability of inhalation reference values from the sources included in our tiered approach (e.g., IRIS first, Agency for Toxic Substances and Disease Registry (ATSDR) second, CalEPA third) and determines which inhalation reference value represents the best available science. Thus, as new inhalation reference values become available, the EPA will typically evaluate them and determine whether they should be given

preference over those currently being used in RTR risk assessments.

The EPA also evaluated screening estimates of acute exposures and risks for each of the HAP (for which appropriate acute dose-response values are available) at the point of highest potential off-site exposure for each facility. To do this, the EPA estimated the risks when both the peak hourly emissions rate and worst-case dispersion conditions occur. We also assume that a person is located at the point of highest impact during that same time. In accordance with our mandate in section 112 of the CAA, we use the point of highest off-site exposure to assess the potential risk to the maximally exposed individual. The acute HQ is the estimated acute exposure divided by the acute dose-response value. In each case, the EPA calculated acute HQ values using best available, short-term dose-response values. These acute dose-response values, which are described below, include the acute REL, acute exposure guideline levels (AEGL) and emergency response planning guidelines (ERPG) for 1-hour exposure durations. As discussed below, we used conservative assumptions for emissions rates, meteorology, and exposure location.

As described in the CalEPA’s “Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants,” an acute REL value (<http://oehha.ca.gov/media/downloads/crn/acutereel.pdf>) is defined as “the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration.” *Id.* at page 2. Acute REL values are based on the most sensitive, relevant, adverse health effect reported in the peer-reviewed medical and toxicological literature. Acute REL values are designed to protect the most sensitive individuals in the population through the inclusion of margins of safety. Because margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact.

AEGL values were derived in response to recommendations from the National Research Council (NRC). As described in “Standing Operating Procedures (SOP) of the National Advisory Committee on Acute Exposure Guideline Levels for Hazardous Substances” (https://www.epa.gov/sites/production/files/2015-09/documents/sop_final_standing_operating

[procedures_2001.pdf](#)),⁸ “the NRC’s previous name for acute exposure levels—community emergency exposure levels was replaced by the term AEGL to reflect the broad application of these values to planning, response, and prevention in the community, the workplace, transportation, the military, and the remediation of Superfund sites.” *Id.* at 2. This document also states that AEGL values “represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to eight hours.” *Id.* at 2.

The document lays out the purpose and objectives of AEGL by stating that “the primary purpose of the AEGL program and the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances is to develop guideline levels for once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals.” *Id.* at 21. In detailing the intended application of AEGL values, the document states that “[i]t is anticipated that the AEGL values will be used for regulatory and nonregulatory purposes by U.S. Federal and state agencies and possibly the international community in conjunction with chemical emergency response, planning, and prevention programs. More specifically, the AEGL values will be used for conducting various risk assessments to aid in the development of emergency preparedness and prevention plans, as well as real-time emergency response actions, for accidental chemical releases at fixed facilities and from transport carriers.” *Id.* at 31.

The AEGL-1 value is then specifically defined as “the airborne concentration (expressed as ppm (parts per million) or mg/m^3 (milligrams per cubic meter)) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.” *Id.* at 3. The document also notes that, “Airborne concentrations below AEGL-1 represent exposure levels that can produce mild and progressively increasing but transient and nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects.” *Id.* Similarly, the document defines AEGL-2 values as

⁷ The SAB peer review of RTR Risk Assessment Methodologies is available at [http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/\\$File/EPA-SAB-10-007-unsigned.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf).

⁸ National Academy of Sciences (NAS), 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals*, page 2.

“the airborne concentration (expressed as parts per million or milligrams per cubic meter) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape.” *Id.*

ERPG values are derived for use in emergency response, as described in the American Industrial Hygiene Association’s ERP Committee document titled, “ERPGS Procedures and Responsibilities” (<https://www.aiha.org/get-involved/AIHAGuidelineFoundation/EmergencyResponsePlanningGuidelines/Documents/ERPG%20Committee%20Standard%20Operating%20Procedures%20%20-%20March%202014%20Revision%20%28Updated%2010-2-2014%29.pdf>), which states that, “Emergency Response Planning Guidelines were developed for emergency planning and are intended as health based guideline concentrations for single exposures to chemicals.”⁹ *Id.* at 1. The ERPG–1 value is defined as “the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor.” *Id.* at 2. Similarly, the ERPG–2 value is defined as “the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to one hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual’s ability to take protective action.” *Id.* at 1.

As can be seen from the definitions above, the AEGL and ERPG values include the similarly-defined severity levels 1 and 2. For many chemicals, a severity level 1 value AEGL or ERPG has not been developed because the types of effects for these chemicals are not consistent with the AEGL–1/ERPG–1 definitions; in these instances, we compare higher severity level AEGL–2 or ERPG–2 values to our modeled exposure levels to screen for potential acute concerns. When AEGL–1/ERPG–1 values are available, they are used in our acute risk assessments.

Acute REL values for 1-hour exposure durations are typically lower than their corresponding AEGL–1 and ERPG–1 values. Even though their definitions are

slightly different, AEGL–1 values are often the same as the corresponding ERPG–1 values, and AEGL–2 values are often equal to ERPG–2 values.

Maximum HQ values from our acute screening risk assessments typically result when basing them on the acute REL value for a particular pollutant. In cases where our maximum acute HQ value exceeds 1, we also report the HQ value based on the next highest acute dose-response value (usually the AEGL–1 and/or the ERPG–1 value).

To develop screening estimates of acute exposures in the absence of hourly emissions data, generally we first develop estimates of maximum hourly emissions rates by multiplying the average actual annual hourly emissions rates by a default factor to cover routinely variable emissions. We choose the factor to use partially based on process knowledge and engineering judgment. The factor chosen also reflects a Texas study of short-term emissions variability, which showed that most peak emission events in a heavily-industrialized four-county area (Harris, Galveston, Chambers, and Brazoria Counties, Texas) were less than twice the annual average hourly emissions rate. The highest peak emissions event was 74 times the annual average hourly emissions rate, and the 99th percentile ratio of peak hourly emissions rate to the annual average hourly emissions rate was 9.¹⁰ Considering this analysis, to account for more than 99 percent of the peak hourly emissions, we apply a conservative screening multiplication factor of 10 to the average annual hourly emissions rate in our acute exposure screening assessments as our default approach. However, we use a factor other than 10 if we have information that indicates that a different factor is appropriate for a particular source category.

For this source category, we used an acute multiplication factor of 1.2 for all emission sources from nutritional yeast manufacturing facilities. The factor equals the average peak-to-mean ratio developed using 5 years of batch-averaged fermenter VOC concentration data from the facility with the highest emissions in the 2011 NEI. While the current rule requires continuous monitoring of emissions, facilities are required to report whether the percentage of batches that meet

¹⁰ Allen, et al., *Variable Industrial VOC Emissions and their impact on ozone formation in the Houston Galveston Area*. Texas Environmental Research Consortium, 2004, and available online at: https://www.researchgate.net/publication/237593060_Variable_Industrial_VOC_Emissions_and_their_Impact_on_Ozone_Formation_in_the_Houston_Galveston_Area

emission limits based on the average concentration of VOC emitted from each batch meets the current compliance requirements; not the continuous levels of emissions at the facility. Using the data above, we developed a multiplier to estimate potential acute emissions from each facility in this source category. A further discussion of why this factor was chosen can be found in the memorandum, “Emissions Data and Acute Risk Factor Used in Residual Risk Modeling: Manufacturing of Nutritional Yeast Source Category,” available in the docket for this rulemaking.

As part of our acute risk assessment process, for cases where acute HQ values from the screening step were less than or equal to 1 (even under the conservative assumptions of the screening analysis), acute impacts were deemed negligible and no further analysis was performed for these HAP. In cases where an acute HQ from the screening step was greater than 1, additional site-specific data were considered to develop a more refined estimate of the potential for acute impacts of concern. For this source category, all acute HQ screening values were less than 1. Therefore, we did not employ additional data refinements.

Ideally, we would prefer to have continuous measurements over time to see how the emissions vary by each hour over an entire year. Having a frequency distribution of hourly emissions rates over a year would allow us to perform a probabilistic analysis to estimate potential threshold exceedances and their frequency of occurrence. Such an evaluation could include a more complete statistical treatment of the key parameters and elements adopted in this screening analysis. Recognizing that this level of data is rarely available, we instead rely on the multiplier approach.

To better characterize the potential health risks associated with estimated acute exposures to HAP, and in response to a key recommendation from the SAB’s peer review of the EPA’s RTR risk assessment methodologies,¹¹ we generally examine a wider range of available acute health metrics (*e.g.*, RELs, AEGLs) than we do for our chronic risk assessments. This is in response to the SAB’s acknowledgement that there are generally more data gaps and inconsistencies in acute reference values than there are in chronic reference values. In some cases, when

¹¹ The SAB peer review of RTR Risk Assessment Methodologies is available at [http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/\\$File/EPA-SAB-10-007-unsigned.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf).

⁹ *ERP Committee Procedures and Responsibilities*. March 2014. American Industrial Hygiene Association.

Reference Value Arrays¹² for HAP have been developed, we consider additional acute values (*i.e.*, occupational and international values) to provide a more complete risk characterization.

4. How did we conduct the multi-pathway exposure and risk screening?

The EPA conducted a screening analysis examining the potential for significant human health risks due to exposures via routes other than inhalation (*i.e.*, ingestion). We first determined whether any sources in the source category emitted any HAP known to be persistent and bioaccumulative in the environment (PB-HAP). The PB-HAP compounds or compound classes are identified for the screening from the EPA's Air Toxics Risk Assessment Library (available at <http://www2.epa.gov/fera/risk-assessment-and-modeling-air-toxics-risk-assessment-reference-library>).

For the Manufacturing of Nutritional Yeast source category, we did not identify emissions of any PB-HAP. Because we did not identify PB-HAP emissions, no further evaluation of multi-pathway risk was conducted for this source category.

5. How did we assess risks considering emissions control options?

The proposed rule amendments include changes to the form of the current emission limits, additional testing requirements, changes to the current monitoring requirements, and updates to the reporting and recordkeeping requirements. The proposed amendments to the emission limits may lead to a slight decrease in the overall emissions from the facilities, but we are unable to quantify this reduction. Facilities will continue to employ current process controls to comply with the emission limits (*i.e.*, they are not required to install additional control technologies); however, the facilities may need to make minor adjustments to the level of process controls to comply with the new limits.

The proposed amendments to testing and monitoring requirements will increase the reliability of the emissions data that is monitored by each facility to ensure that the current emission limits are being met consistently. Therefore, risks considering the

proposed amendments are estimated to be the same as actual risks under the current MACT standard.

6. How did we conduct the environmental risk screening assessment?

a. Adverse Environmental Effect

The EPA conducts a screening assessment to examine the potential for adverse environmental effects as required under section 112(f)(2)(A) of the CAA. Section 112(a)(7) of the CAA defines "adverse environmental effect" as "any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas."

b. Environmental HAP

The EPA focuses on seven HAP, which we refer to as "environmental HAP," in its screening analysis: Five PB-HAP and two acid gases. The five PB-HAP are cadmium, dioxins/furans, polycyclic organic matter (POM), mercury (both inorganic mercury and methyl mercury), and lead compounds. The two acid gases are hydrogen chloride (HCl) and hydrogen fluoride (HF). The rationale for including these seven HAP in the environmental risk screening analysis is presented below.

HAP that persist and bioaccumulate are of particular environmental concern because they accumulate in the soil, sediment, and water. The PB-HAP are taken up, through sediment, soil, water, and/or ingestion of other organisms, by plants or animals (*e.g.*, small fish) at the bottom of the food chain. As larger and larger predators consume these organisms, concentrations of the PB-HAP in the animal tissues increases as does the potential for adverse effects. The five PB-HAP we evaluate as part of our screening analysis account for 99.8 percent of all PB-HAP emissions nationally from stationary sources (on a mass basis from the 2005 NEI).

In addition to accounting for almost all of the mass of PB-HAP emitted, we note that the TRIM.FaTE model that we use to evaluate multi-pathway risk allows us to estimate concentrations of cadmium compounds, dioxins/furans, POM, and mercury in soil, sediment and water. For lead compounds, we currently do not have the ability to calculate these concentrations using the TRIM.FaTE model. Therefore, to evaluate the potential for adverse environmental effects from lead

compounds, we compare the estimated HEM-modeled exposures from the source category emissions of lead with the level of the secondary National Ambient Air Quality Standards (NAAQS) for lead.¹³ We consider values below the level of the secondary lead NAAQS to be unlikely to cause adverse environmental effects.

Due to their well-documented potential to cause direct damage to terrestrial plants, we include two acid gases, HCl, and HF in the environmental screening analysis. According to the 2005 NEI, HCl, and HF account for about 99 percent (on a mass basis) of the total acid gas HAP emitted by stationary sources in the U.S. In addition to the potential to cause direct damage to plants, high concentrations of HF in the air have been linked to fluorosis in livestock. Air concentrations of these HAP are already calculated as part of the human multi-pathway exposure and risk screening analysis using the HEM3-AERMOD air dispersion model, and we are able to use the air dispersion modeling results to estimate the potential for an adverse environmental effect.

The EPA acknowledges that other HAP beyond the seven HAP discussed above may have the potential to cause adverse environmental effects. Therefore, the EPA may include other relevant HAP in its environmental risk screening in the future, as modeling science and resources allow. The EPA invites comment on the extent to which other HAP emitted by the source category may cause adverse environmental effects. Such information should include references to peer-reviewed ecological effects benchmarks that are of sufficient quality for making regulatory decisions, as well as information on the presence of organisms located near facilities within the source category that such benchmarks indicate could be adversely affected.

c. Screening Methodology

For the environmental risk screening analysis, the EPA first determined whether any facilities in the Manufacturing of Nutritional Yeast source category emitted any of the seven environmental HAP. For this source category, we did not identify emissions

¹² U.S. EPA. Chapter 2.9, *Chemical Specific Reference Values for Formaldehyde in Graphical Arrays of Chemical-Specific Health Effect Reference Values for Inhalation Exposures* (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-09/061, 2009, and available online at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=211003>.

¹³ The secondary lead NAAQS is a reasonable measure of determining whether there is an adverse environmental effect since it was established considering "effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being."

of any of the seven environmental HAP included in the screen. Because we did not identify environmental HAP emissions, we did not conduct a further evaluation of environmental risk.

7. How did we conduct facility-wide assessments?

To put the source category risks in context, we typically examine the risks from the entire “facility,” where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, we examine the HAP emissions not only from the source category emission points of interest, but also emissions of HAP from all other emission sources at the facility for which we have data. The current NESHAP does not set emission limits for equipment other than fermenters at the affected sources. There is a potential for temporary wastewater storage tanks (e.g., pH adjustment tanks) and dryers to emit small amounts of acetaldehyde at nutritional yeast facilities covered by this subpart. The NEI does not include emissions from wastewater storage tanks at any of the four facilities subject to this rule. Only one of the four facilities has dryers; the NEI did report estimated emissions from these dryers, which were included in the risk assessment for this source category.

We did not perform a separate facility-wide risk assessment for facilities that manufacture nutritional yeast. One facility (American Yeast) reported 43 pounds of additional HAP emissions, composed largely of hexane and formaldehyde, from equipment sources not covered by 40 CFR part 63, subpart CCCC (e.g., boilers, equipment covered by other NESHAP).¹⁴ However, because these emissions were so low and from pollutants with low risk factors, we concluded that a facility-wide risk assessment would yield the same or only very slightly different results as the source category assessment.

8. How did we consider uncertainties in risk assessment?

In the Benzene NESHAP, we concluded that risk estimation uncertainty should be considered in our decision-making under the ample margin of safety framework. Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for this proposal. Although uncertainty exists, we believe that our approach, which used conservative

¹⁴ Because these emissions originate from sources outside the manufacturing of nutritional yeast source category, they were also excluded from the source category risk analysis.

tools and assumptions, ensures that our decisions are health protective and environmentally protective. A brief discussion of the uncertainties in the RTR emissions dataset, dispersion modeling, inhalation exposure estimates, and dose-response relationships follows below. A more thorough discussion of these uncertainties is included in the “Residual Risk Assessment for the Manufacturing of Nutritional Yeast Source Category in Support of the December 2016 Risk and Technology Review Proposed Rule,” which is available in the docket for this action.

a. Uncertainties in the RTR Emissions Dataset

Although the development of the RTR emissions dataset involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are accurate, errors in emission estimates, and other factors. The emission estimates considered in this analysis generally are annual totals for certain years, and they do not reflect short-term fluctuations during the course of a year or variations from year to year. The estimates of peak hourly emission rates for the acute effects screening assessment were based on an emission adjustment factor applied to the average annual hourly emission rates, which are intended to account for emission fluctuations due to normal facility operations.

b. Uncertainties in Dispersion Modeling

We recognize there is uncertainty in ambient concentration estimates associated with any model, including the EPA’s recommended regulatory dispersion model, AERMOD. In using a model to estimate ambient pollutant concentrations, the user chooses certain options to apply. For RTR assessments, we select some model options that have the potential to overestimate ambient air concentrations (e.g., not including plume depletion or pollutant transformation). We select other model options that have the potential to underestimate ambient impacts (e.g., not including building downwash). Other options that we select have the potential to either under- or overestimate ambient levels (e.g., meteorology and receptor locations). On balance, considering the directional nature of the uncertainties commonly present in ambient concentrations estimated by dispersion models, the approach we apply in the RTR assessments should yield unbiased

estimates of ambient HAP concentrations.

c. Uncertainties in Inhalation Exposure

The EPA did not include the effects of human mobility on exposures in the assessment. Specifically, short-term mobility and long-term mobility between census blocks in the modeling domain were not considered.¹⁵ The approach of not considering short or long-term population mobility does not bias the estimate of the theoretical MIR (by definition), nor does it affect the estimate of cancer incidence because the total population number remains the same. It does, however, affect the shape of the distribution of individual risks across the affected population, shifting it toward higher estimated individual risks at the upper end and reducing the number of people estimated to be at lower risks, thereby increasing the estimated number of people at specific high risk levels (e.g., 1-in-10 thousand or 1-in-1 million).

In addition, the assessment predicted the chronic exposures at the centroid of each populated census block as surrogates for the exposure concentrations for all people living in that block. Using the census block centroid to predict chronic exposures tends to over-predict exposures for people in the census block who live farther from the facility and under-predict exposures for people in the census block who live closer to the facility. Thus, using the census block centroid to predict chronic exposures may lead to a potential understatement or overstatement of the true maximum impact, but is an unbiased estimate of average risk and incidence. We reduce this uncertainty by analyzing large census blocks near facilities using aerial imagery and adjusting the location of the block centroid to better represent the population in the block, as well as adding additional receptor locations where the block population is not well represented by a single location.

The assessment evaluates the cancer inhalation risks associated with pollutant exposures over a 70-year period, which is the assumed lifetime of an individual. In reality, both the length of time that modeled emission sources at facilities actually operate (i.e., more or less than 70 years) and the domestic growth or decline of the modeled industry (i.e., the increase or decrease in the number or size of domestic facilities) will influence the future risks

¹⁵ Short-term mobility is movement from one micro-environment to another over the course of hours or days. Long-term mobility is movement from one residence to another over the course of a lifetime.

posed by a given source or source category. Depending on the characteristics of the industry, these factors will, in most cases, result in an overestimate both in individual risk levels and in the total estimated number of cancer cases. However, in the unlikely scenario where a facility maintains, or even increases, its emissions levels over a period of more than 70 years, residents live beyond 70 years at the same location, and the residents spend most of their days at that location, then the cancer inhalation risks could potentially be underestimated. However, annual cancer incidence estimates from exposures to emissions from these sources would not be affected by the length of time an emissions source operates.

The exposure estimates used in these analyses assume chronic exposures to ambient (outdoor) levels of pollutants. Because most people spend the majority of their time indoors, actual exposures may not be as high, depending on the characteristics of the pollutants modeled. For many of the HAP, indoor levels are roughly equivalent to ambient levels, but for very reactive pollutants or larger particles, indoor levels are typically lower. This factor has the potential to result in an overestimate of 25 to 30 percent of exposures.¹⁶

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that the EPA conducts as part of the risk review under section 112 of the CAA that should be highlighted. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology, and the presence of humans at the location of the maximum concentration. In the acute screening assessment that we conduct under the RTR program, we assume that peak emissions from the source category and worst-case meteorological conditions co-occur, thus, resulting in maximum ambient concentrations. These two events are unlikely to occur at the same time, making these assumptions conservative. We then include the additional assumption that a person is located at this point during this same time period. For this source category, these assumptions would tend to be worst-case actual exposures as it is unlikely that a person would be located at the point of maximum exposure

during the time when peak emissions and worst-case meteorological conditions occur simultaneously.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and non-cancer effects from both chronic and acute exposures. Some uncertainties may be considered quantitatively, and others generally are expressed in qualitative terms. We note as a preface to this discussion a point on dose-response uncertainty that is brought out in the EPA's *2005 Cancer Guidelines*; namely, that "the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective" (EPA's *2005 Cancer Guidelines*, pages 1–7). This is the approach followed here as summarized in the next several paragraphs. A complete detailed discussion of uncertainties and variability in dose-response relationships is given in the "Residual Risk Assessment for the Manufacturing of Nutritional Yeast Source Category in Support of the December 2016 Risk and Technology Review Proposed Rule," which is available in the docket for this action.

Cancer URE values used in our risk assessments are those that have been developed to generally provide an upper bound estimate of risk. That is, they represent a "plausible upper limit to the true value of a quantity" (although this is usually not a true statistical confidence limit).¹⁷ In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.¹⁸ When developing an upper bound estimate of risk and to provide risk values that do not underestimate risk, health-protective default approaches are generally used. To err on the side of ensuring adequate health protection, the EPA typically uses the upper bound estimates rather than lower bound or central tendency estimates in our risk assessments, an approach that may have limitations for

other uses (e.g., priority-setting or expected benefits analysis).

Chronic non-cancer RfC and reference dose (RfD) values represent chronic exposure levels that are intended to be health-protective levels. Specifically, these values provide an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure (RfC) or a daily oral exposure (RfD) to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. To derive values that are intended to be "without appreciable risk," the methodology relies upon an uncertainty factor (UF) approach (U.S. EPA, 1993 and 1994), which considers uncertainty, variability, and gaps in the available data. The UF are applied to derive reference values that are intended to protect against appreciable risk of deleterious effects. The UF are commonly default values,¹⁹ e.g., factors of 10 or 3, used in the absence of compound-specific data; where data are available, UF may also be developed using compound-specific information. When data are limited, more assumptions are needed and more UF are used. Thus, there may be a greater tendency to overestimate risk in the sense that further study might support development of reference values that are higher (i.e., less potent) because fewer default assumptions are needed. However, for some pollutants, it is possible that risks may be underestimated.

While collectively termed "UF," these factors account for a number of different quantitative considerations when using observed animal (usually rodent) or human toxicity data in the development of the RfC. The UF are intended to

¹⁹ According to the NRC report, "Science and Judgment in Risk Assessment" (NRC, 1994) "[Default] options are generic approaches, based on general scientific knowledge and policy judgment, that are applied to various elements of the risk assessment process when the correct scientific model is unknown or uncertain." The 1983 NRC report, "Risk Assessment in the Federal Government: Managing the Process," defined default option as "the option chosen on the basis of risk assessment policy that appears to be the best choice in the absence of data to the contrary" (NRC, 1983a, p. 63). Therefore, default options are not rules that bind the Agency; rather, the Agency may depart from them in evaluating the risks posed by a specific substance when it believes this to be appropriate. In keeping with the EPA's goal of protecting public health and the environment, default assumptions are used to ensure that risk to chemicals is not underestimated (although defaults are not intended to overtly overestimate risk). See EPA, "An Examination of EPA Risk Assessment Principles and Practices," EPA/100/B-04/001, 2004, available at <https://nctc.fws.gov/resources/course-resources/pesticides/Risk%20Assessment/Risk%20Assessment%20Principles%20and%20Practices.pdf>.

¹⁷ IRIS glossary (https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=IRIS%20Glossary).

¹⁸ An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible, and which is based on maximum likelihood estimates.

¹⁶ U.S. EPA, *National-Scale Air Toxics Assessment for 1996*. (EPA 453/R-01-003; January 2001; page 85.)

account for: (1) Variation in susceptibility among the members of the human population (*i.e.*, inter-individual variability); (2) uncertainty in extrapolating from experimental animal data to humans (*i.e.*, interspecies differences); (3) uncertainty in extrapolating from data obtained in a study with less-than-lifetime exposure (*i.e.*, extrapolating from sub-chronic to chronic exposure); (4) uncertainty in extrapolating the observed data to obtain an estimate of the exposure associated with no adverse effects; and (5) uncertainty when the database is incomplete or there are problems with the applicability of available studies.

Many of the UF used to account for variability and uncertainty in the development of acute reference values are quite similar to those developed for chronic durations, but they more often use individual UF values that may be less than 10. The UF are applied based on chemical-specific or health effect-specific information (*e.g.*, simple irritation effects do not vary appreciably between human individuals, hence a value of 3 is typically used), or based on the purpose for the reference value (*see* the following paragraph). The UF applied in acute reference value derivation include: (1) Heterogeneity among humans; (2) uncertainty in extrapolating from animals to humans; (3) uncertainty in lowest observed adverse effect (exposure) level to no observed adverse effect (exposure) level adjustments; and (4) uncertainty in accounting for an incomplete database on toxic effects of potential concern. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.*, 4 hours) to derive an acute reference value at another exposure duration (*e.g.*, 1 hour).

Not all acute reference values are developed for the same purpose, and care must be taken when interpreting the results of an acute assessment of human health effects relative to the reference value or values being exceeded. Where relevant to the estimated exposures, the lack of short-term dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

For a group of compounds that are unspiciated (*e.g.*, glycol ethers), we conservatively use the most protective reference value of an individual compound in that group to estimate risk. Similarly, for an individual compound in a group (*e.g.*, ethylene glycol diethyl ether) that does not have a specified reference value, we also apply the most protective reference

value from the other compounds in the group to estimate risk.

B. How did we consider the risk results in making decisions for this proposal?

As discussed in section II.A of this preamble, in evaluating and developing standards under CAA section 112(f)(2), we apply a two-step process to address residual risk. In the first step, the EPA determines whether risks are acceptable. This determination “considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR)²⁰ of approximately [1-in-10 thousand] [*i.e.*, 100-in-1 million].” 54 FR 38045, September 14, 1989. If risks are unacceptable, the EPA must determine the emissions standards necessary to bring risks to an acceptable level without considering costs. In the second step of the process, the EPA considers whether the emissions standards provide an ample margin of safety “in consideration of all health information, including the number of persons at risk levels higher than approximately 1-in-1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.” *Id.* The EPA must promulgate emission standards necessary to provide an ample margin of safety. After conducting the ample margin of safety analysis, we consider whether a more stringent standard is necessary to prevent, taking into consideration, costs, energy, safety, and other relevant factors, an adverse environmental effect.

In past residual risk actions, the EPA considered a number of human health risk metrics associated with emissions from the categories under review, including the MIR, the number of persons in various risk ranges, cancer incidence, the maximum non-cancer HI and the maximum acute non-cancer hazard. *See, e.g.*, 72 FR 25138, May 3, 2007; and 71 FR 42724, July 27, 2006. The EPA considered this health information for both actual and allowable emissions. *See, e.g.*, 75 FR 65068, October 21, 2010; 75 FR 80220, December 21, 2010; 76 FR 29032, May 19, 2011. The EPA also discussed risk estimation uncertainties and considered the uncertainties in the determination of acceptable risk and ample margin of safety in these past actions. The EPA considered this same type of information in support of this action.

²⁰ Although defined as “maximum individual risk,” MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk were an individual exposed to the maximum level of a pollutant for a lifetime.

The Agency is considering these various measures of health information to inform our determinations of risk acceptability and ample margin of safety under CAA section 112(f). As explained in the Benzene NESHAP, “the first step judgment on acceptability cannot be reduced to any single factor” and, thus, “[t]he Administrator believes that the acceptability of risk under [previous] section 112 is best judged on the basis of a broad set of health risk measures and information.” 54 FR 38046, September 14, 1989. Similarly, with regard to the ample margin of safety determination, “the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.” *Id.*

The Benzene NESHAP approach provides flexibility regarding factors the EPA may consider in making determinations and how the EPA may weigh those factors for each source category. In responding to comment on our policy under the Benzene NESHAP, the EPA explained that:

“[t]he policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of non-cancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the *Vinyl Chloride* mandate that the Administrator ascertain an acceptable level of risk to the public by employing [her] expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA’s consideration with respect to CAA section 112 regulations, and thereby implicitly permits consideration of any and all measures of health risk which the Administrator, in [her] judgment, believes are appropriate to determining what will ‘protect the public health’.”

See 54 FR at 38057, September 14, 1989. Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risks. The Benzene NESHAP explained that “an MIR of approximately one in 10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk

measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors.” *Id.* at 38045. Similarly, with regard to the ample margin of safety analysis, the EPA stated in the Benzene NESHAP that: “EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category.” *Id.* at 38061. We also consider the uncertainties associated with the various risk analyses, as discussed earlier in this preamble, in our determinations of acceptability and ample margin of safety.

The EPA notes that it has not considered certain health information to date in making residual risk determinations. At this time, we do not attempt to quantify those HAP risks that may be associated with emissions from other facilities that do not include the source categories in question, mobile source emissions, natural source emissions, persistent environmental pollution, or atmospheric transformation in the vicinity of the sources in these categories.

The Agency understands the potential importance of considering an individual’s total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. We recognize that such consideration may be particularly important when assessing non-cancer risks, where pollutant-specific exposure health reference levels (*e.g.*, RfCs) are based on the assumption that thresholds exist for adverse health effects. For example, the Agency recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse non-cancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.*, other facilities) to which an individual is exposed may be sufficient to result in increased risk of adverse non-cancer health effects. In May 2010, the SAB advised the EPA “that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background

concentrations and contributions from other sources in the area.”²¹

In response to the SAB recommendations, the EPA is incorporating cumulative risk analyses into its RTR risk assessments, including those reflected in this proposal. The Agency is: (1) Conducting facility-wide assessments, which include source category emission points, as well as other emission points within the facilities; (2) considering sources in the same category whose emissions result in exposures to the same individuals; and (3) for some persistent and bioaccumulative pollutants, analyzing the ingestion route of exposure. In addition, the RTR risk assessments have always considered aggregate cancer risk from all carcinogens and aggregate non-cancer HI from all non-carcinogens affecting the same target organ system.

Although we are interested in placing source category and facility-wide HAP risks in the context of *total* HAP risks from all sources combined in the vicinity of each source, we are concerned about the uncertainties of doing so. Because of the contribution to total HAP risk from emission sources other than those that we have studied in depth during this RTR review, such estimates of total HAP risks would have significantly greater associated uncertainties than the source category or facility-wide estimates. Such aggregate or cumulative assessments would compound those uncertainties, making the assessments too unreliable.

C. How did we perform the technology review?

Our technology review focused on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the MACT standards were promulgated. Where we identified such developments, in order to inform our decision of whether it is “necessary” to revise the emissions standards, we analyzed the technical feasibility of applying these developments and the estimated costs, energy implications, non-air environmental impacts, as well as considering the emission reductions. We also considered the appropriateness of applying controls to new sources versus retrofitting existing sources.

²¹ The EPA’s responses to this and all other key recommendations of the SAB’s advisory on RTR risk assessment methodologies (which is available at: [http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/\\$File/EPA-SAB-10-007-unsigned.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf)) are outlined in a memorandum to this rulemaking docket from David Guinnup titled, “EPA’s Actions in Response to the Key Recommendations of the SAB Review of RTR Risk Assessment Methodologies.”

Based on our analyses of the available data and information, we identified potential developments in practices, processes, and control technologies. For this exercise, we considered any of the following to be a “development”:

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards;
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction;
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards;
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards; and
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

In addition to reviewing the practices, processes, and control technologies that were considered at the time we originally developed (or last updated) the NESHAP, we reviewed a variety of data sources in our investigation of potential practices, processes, or controls to consider. Among the sources we reviewed were the NESHAP for various industries that were promulgated since the MACT standards being reviewed in this action. We reviewed the regulatory requirements and/or technical analyses associated with these regulatory actions to identify any practices, processes, and control technologies considered in these efforts that could be applied to emission sources in the Manufacturing of Nutritional Yeast source category, as well as the costs, non-air impacts, and energy implications associated with the use of these technologies. Additionally, we requested information from facilities regarding developments in practices, processes, or control technology. Finally, we reviewed information from other sources, such as state and/or local permitting agency databases and industry-supported databases.

IV. Analytical Results and Proposed Decisions

A. What are the results of the risk assessment and analyses?

As described above, for the Manufacturing of Nutritional Yeast source category, we conducted an inhalation risk assessment for all HAP emitted. We present results of the risk assessment briefly below and in more detail in the document: “Residual Risk

Assessment for the Manufacturing of Nutritional Yeast Source Category in Support of the December 2016 Risk and Technology Review Proposed Rule,” which is available in the docket for this action.

1. Inhalation Risk Assessment Results

Table 2 of this preamble provides a summary of the results of the inhalation risk assessment for the source category. As discussed in section III.A.2 of this

preamble, we set MACT-allowable HAP emission levels at nutritional yeast manufacturing facilities equal to actual emissions. For more detail about the MACT-allowable emission levels, see the memorandum, “Emissions Data and Acute Risk Factor Used in Residual Risk Modeling: Manufacturing of Nutritional Yeast Source Category,” which is available in the docket for this action.

TABLE 2—NUTRITIONAL YEAST MANUFACTURING INHALATION RISK ASSESSMENT RESULTS

Number of facilities ¹	Maximum individual cancer risk (in 1 million) ²		Estimated population at increased risk of cancer ≥ 1-in-1 Million		Estimated annual cancer incidence (cases per year)		Maximum chronic non-cancer TOSHI ³		Maximum screening acute non-cancer HQ ⁴	
	Based on actual emissions level ²	Based on allowable emissions level	Based on actual emissions level ²	Based on allowable emissions level	Based on actual emissions level ²	Based on allowable emissions level	Based on actual emissions level ²	Based on allowable emissions level	Based on actual emissions level ²	Based on allowable emissions level
4	2	2	750	750	0.0009	0.0009	0.08	0.08	HQ _{REL} = 0.2	HQ _{REL} = 0.2.

¹ Number of facilities evaluated in the risk analysis.
² Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
³ Maximum TOSHI. The target organ with the highest TOSHI for the Manufacturing of Nutritional Yeast source category is the respiratory system.
⁴ The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which in most cases is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute dose-response value. See section III.A.3 of this preamble for explanation of acute dose-response values.

The results of the inhalation risk modeling using actual emissions data, as shown in Table 2 of this preamble, indicate that the maximum lifetime individual cancer risk could be up to 2-in-1 million, the maximum chronic non-cancer TOSHI value could be up to 0.08, and the maximum off-facility site acute HQ value could be up to 0.2. The total estimated national cancer incidence from these facilities based on actual emission levels is 0.0009 excess cancer cases per year or 1 case in every 1,100 years.

2. Acute Risk Results

Table 2 of this preamble shows the acute risk results for the Manufacturing of Nutritional Yeast source category. The screening analysis for acute impacts was based on an industry specific multiplier of 1.2, to estimate the peak emission rates from the average rates. For more detailed acute risk results, refer to the draft document: “Residual Risk Assessment for the Manufacturing of Nutritional Yeast Source Category in Support of the December 2016 Risk and Technology Review Proposed Rule,” which is available in the docket for this action.

3. Multi-Pathway Risk Screening Results

There are no PB–HAP emitted by facilities in this source category.

Therefore, we do not expect any human health multi-pathway risks as a result of emissions from this source category.

4. Environmental Risk Screening Results

The emissions data for the Manufacturing of Nutritional Yeast source category indicate that sources within this source category do not emit any of the seven pollutants that we identified as “environmental HAP,” as discussed earlier in this preamble. Additionally, the processes and materials used in the source category typically do not emit any of the seven environmental HAP. Also, we are unaware of any adverse environmental effect caused by emissions of HAP that are emitted by this source category (acetaldehyde). Therefore, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

5. Facility-Wide Risk Results

As explained in section III.A.7 of this preamble, we did not perform a separate facility-wide risk assessment because we expect facility-wide risks to be equal to the risks we assessed for this source category.

6. What demographic groups might benefit from this regulation?

To examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups within the population near the four nutritional yeast manufacturing facilities that are subject to the NESHAP. In this analysis, we evaluated the distribution of HAP-related cancer risks and non-cancer hazards from the nutritional yeast manufacturing facilities across different social, demographic, and economic groups within the populations living near facilities identified as having the highest risks. The methodology and the results of the demographic analyses are included in a technical report, “Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Nutritional Yeast Manufacturing Facilities,” available in the docket for this action.

The analysis indicates that the minority population living within 50 km (1,700,000 people, of whom 41 percent are minority) and within 5 km (131,567 people, of whom 68 percent are minority) of the four nutritional yeast manufacturing facilities is greater than the minority population found nationwide (28 percent). The specific

demographics of the population within 5 and 50 km of the facilities indicate potential disparities in risks in certain demographic groups, including the “African American,” “Below the Poverty Level,” and “Over 25 and without high school diploma” groups.

When examining the risk levels of those exposed to emissions from the four nutritional yeast manufacturing facilities, we find approximately 750 persons are exposed to a cancer risk greater than or equal to 1-in-1 million, and the highest cancer risk for these individuals is less than 2-in-1 million. Of these 750 persons, 100 percent of them are defined as minority. When examining the noncancer risks surrounding these facilities, no one is predicted to have a chronic non-cancer TOSHI greater than 1.

B. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effects?

1. Risk Acceptability

As noted in section III.B of this preamble, we weigh all health risk factors in our risk acceptability determination, including the cancer MIR, the number of persons in various cancer and non-cancer risk ranges, cancer incidence, the maximum non-cancer TOSHI, the maximum acute non-cancer HQ, the extent of non-cancer risks, the potential for adverse environmental effects, the distribution of cancer and non-cancer risks in the exposed population, and risk estimation uncertainties (54 FR 38044, September 14, 1989).

For the Manufacturing of Nutritional Yeast source category, the risk analysis indicates that the cancer risks to the individual most exposed could be up to 2-in-1 million due to actual emissions and up to 2-in-1 million based on allowable emissions. As explained in section III.A.2 of this preamble, we determined that actual emissions provide an accurate representation of maximum emissions from the source category and used the actual emissions in both steps of the risk assessment (*i.e.*, determination of risk based on actual and MACT-allowable emissions). These risks are considerably less than 100-in-1 million, which is the presumptive upper limit of acceptable risk. The risk analysis also shows very low cancer incidence (0.0009 cases per year), as well as no potential for adverse chronic or multi-pathway health effects. In addition, the risk assessment indicates no significant potential for multi-pathway health effects or adverse environmental effects. The acute non-

cancer risks based on actual and allowable emissions are all below an HQ of 1. Therefore, we find there is little potential concern of acute non-cancer health impacts from actual and allowable emissions.

Considering all of the health risk information and factors discussed above, including the uncertainties discussed in section III.A.8 of this preamble, we propose to find that the risks from the Manufacturing of Nutritional Yeast source category are acceptable.

2. Ample Margin of Safety Analysis

Although we are proposing that the risks from the Manufacturing of Nutritional Yeast source category are acceptable, risk estimates for approximately 750 individuals in the exposed population are above 1-in-1 million at the actual and MACT-allowable emissions levels. Consequently, we further considered whether the MACT standards for the Manufacturing of Nutritional Yeast source category provide an ample margin of safety to protect public health. In this ample margin of safety analysis, we investigated available emissions control options that might reduce the risk from the source category. We considered this information along with all of the health risks and other health information considered in our determination of risk acceptability.

As discussed in section IV.C of this preamble, during the technology review for this source category, we evaluated two control technologies for reducing acetaldehyde emissions from fermenters at nutritional yeast facilities: Thermal oxidizers and wet (packed bed) scrubbers. Thermal oxidizers have the potential to reduce total acetaldehyde emissions from this source category by 11 tpy to 36 tpy, for a total of 90 tpy for the industry, but would also lead to increases in energy use and emissions of approximately 89 tpy of nitrogen oxides (NO_x) from these facilities. The cost effectiveness for thermal oxidizers varied per facility, with an average cost of \$56,000 per ton of acetaldehyde reduced. The average cost effectiveness for packed bed scrubbers was \$74,000 per ton of acetaldehyde per facility. The use of packed bed scrubbers would also lead to additional environmental impacts, such as increased energy and water usage, as well as the need to use and dispose of solvents. These cost-effectiveness values are significantly higher than values that we have historically deemed to be cost effective for organic HAP in other NESHAP. Due to the additional environmental impacts that would be imposed and the low

level of current risk, along with the substantial costs associated with these options, we are proposing that additional emissions controls for this source category are not necessary to provide an ample margin of safety.

3. Environmental Effects

We did not identify emissions of any of the seven environmental HAP included in our environmental risk screening, and are unaware of any adverse environmental effects caused by HAP emitted by this source category (acetaldehyde). Therefore, we do not expect there to be an adverse environmental effect as a result of HAP emissions from this source category and we are proposing that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

C. What are the results and proposed decisions based on our technology review?

In order to fulfill our obligations under CAA section 112(d)(6), we conducted a technology review to identify developments in practices, processes, and control technologies that may advise revisions to the current NESHAP standards applicable to the Manufacturing of Nutritional Yeast source category (*i.e.*, 40 CFR part 63, subpart CCCC). In conducting our technology review, we utilized the RBLC database, reviewed title V permits for each nutritional yeast facility, and reviewed regulatory actions related to emissions controls at similar sources that could be applicable to nutritional yeast manufacturing facilities.

After reviewing information from the sources above, we identified two control technologies for further evaluation that are technically feasible for use at nutritional yeast facilities: thermal oxidizers and wet scrubbers.²² These control technologies were identified both in the RBLC database and in a review of the miscellaneous organic chemical manufacturing NESHAP (MON). The RBLC database contains multiple sources with similar production processes as nutritional yeast manufacturing facilities that employ thermal oxidizers or wet scrubbers, *e.g.*, fermenters at ethanol facilities. We also identified the MON in particular as being a potentially useful analog for manufacturing of nutritional yeast because the MON regulates

²² Additional information about this determination is documented in the memorandum, “Technology Review for the Manufacturing of Nutritional Yeast Source Category,” which is available in the docket for this action.

emissions from ethanol fermenters (the same sources identified in the RBLC) that are located at facilities that are major sources of HAP emissions. Our review of this rule revealed that facilities use thermal oxidizers as a control technology to comply with the process vent emission limits in the MON.

After identifying control technologies that are technically feasible for reducing acetaldehyde emissions from nutritional yeast fermenters, we then evaluated the costs and emissions reductions associated with installing regenerative thermal oxidizers (RTOs) and packed bed scrubbers at each of the four nutritional yeast facilities. The total capital investment to install RTOs ranged from \$2 million to \$6.9 million per facility for a total of approximately \$14.9 million for the industry. Annual costs for each facility were approximately \$0.8 million to \$2.2 million, for a total of \$5.2 million per year for the industry. Applying a control efficiency of 98 percent, acetaldehyde emissions for each facility would be reduced by approximately 11 tpy to 36 tpy, for a total of 90 tpy for the industry. To install RTOs at each facility, the resulting cost effectiveness ranged from \$32,000 to \$90,000 per ton of acetaldehyde reduced. Furthermore, use of RTOs would result in increased energy use and NO_x emissions of approximately 89 tpy from nutritional yeast manufacturing facilities. Additional information about the assumptions and methodologies used in these calculations is documented in the memorandum, "Technology Review for the Manufacturing of Nutritional Yeast Source Category," which is available in the docket for this action.

The total capital investment to install packed bed scrubbers on fermenters ranged from \$3 million to \$11.6 million per facility for a total of about \$24.5 million for the industry. Annual costs for each facility were approximately \$0.8 million to \$2.5 million, for a total of \$5.8 million per year for the industry. Applying a control efficiency of 85 percent, acetaldehyde emissions for each facility would be reduced by approximately 9.4 tpy to 31 tpy, for a total of 78 tpy for the industry. To install packed bed scrubbers at each facility, the resulting cost effectiveness ranged from \$43,000 to \$110,000 per ton of acetaldehyde reduced. Furthermore, the use of packed bed scrubbers would lead to increased energy usage and other environmental impacts, such as the usage and disposal of water and caustic solutions (e.g., sodium hydroxide). These cost-effectiveness values are significantly higher than values that we

have historically deemed to be cost effective for organic HAP in other NESHAP. Additional information about the assumptions and methodologies used in these calculation is documented in the memorandum, "Technology Review for the Manufacturing of Nutritional Yeast Source Category," which is available in the docket for this action.

Considering the high costs per ton of acetaldehyde reduced and potential adverse environmental impacts associated with the installation of RTOs or packed bed scrubbers, we did not consider these technologies to be cost effective for further reducing acetaldehyde emissions from fermenters at nutritional yeast manufacturing facilities. In light of the results of the technology review, we conclude that changes to the fermenter emission limits are not warranted pursuant to CAA section 112(d)(6). We solicit comment on our proposed decision.

D. What other actions are we proposing?

We are proposing revisions to the malfunction provisions of the MACT rule in order to ensure that they are consistent with the Court decision in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of startup, shutdown, and malfunction (SSM). We are proposing revisions to the form of the VOC emission limits for fermenters to address this issue. We also are proposing various other changes to testing, monitoring, recordkeeping, and reporting requirements. Our analyses and proposed changes related to these issues are presented below.

1. Fermenter VOC Emission Limits

The Manufacturing of Nutritional Yeast NESHAP currently requires that 98 percent of all batches meet the fermenter batch average VOC emission limits, on a 12-month rolling basis. However, this requirement allows 2 percent of the batches to exceed the standard. This formulation of the standard is in direct conflict with the statutory requirement that emission standards apply at all times, as discussed in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008). As a result, the EPA reviewed the current fermenter VOC emission limits and is proposing revisions to the form of the standard. We are proposing to revise the form of the standard in Table 1 to 40 CFR part 63, subpart CCCC such that each batch must meet the existing VOC

concentration limits (300 ppmv for stock fermentation, 200 ppmv for first generation fermentation, and 100 ppmv for trade fermentation), which is referred to as the "Batch Option" in the proposed revisions.

In recognition that the yeast manufacturing process is biological and does not produce the exact same level of emissions from every batch, the proposed amendments also include an alternative compliance method in Table 1 to 40 CFR part 63, subpart CCCC that allows facilities to average the VOC concentration data from all batches within each fermentation stage over a rolling 12-month period. When manufacturing yeast, increased acetaldehyde levels indicate inefficiencies in the manufacturing process; consequently, facilities have a financial incentive to reduce emissions as much as possible through process controls. However, to ensure that the averaging method will be at least as stringent as the emission standards without averaging, we are proposing a 5-percent discount factor in the VOC emission limit for each stage, *i.e.*, 285 ppmv for stock fermentation, 190 ppmv for first generation fermentation, and 95 ppmv for trade fermentation. For example, if this alternative option is selected, all batch average VOC concentration data for the trade fermentation stage in a 12-month period must be averaged together and this average must not exceed 95 ppmv VOC instead of the limit of 100 ppmv VOC for individual batches. This option is referred to as the "Average Option" in the proposed revisions to 40 CFR part 63, subpart CCCC. This alternative provides sources with flexibility on ways to comply with the standard, while maintaining the sources' accountability for meeting health and environmental goals and maintaining the enforceability of the emission limits by regulatory authorities. We expect that allowing facilities to average emissions over the period of 1 year will provide flexibility for changes in production over time without allowing for wide-ranging fluctuations in HAP emissions. The use of a rolling annual calculation period with semiannual compliance reports, including monthly updates of the annual average emission calculations, protects against emission peaks so health and welfare effects are avoided. This proposed alternative method of demonstrating compliance also minimizes the recordkeeping and reporting impacts of the changes for facilities and regulatory authorities, since the current rule requires the same compliance periods. The EPA requests

comment on the proposed revisions to the form of the fermenter VOC emission limits. Additionally, we request comment on whether it is appropriate to use a discount factor and what value between 0 and 10 percent should be selected for the discount factor.

We are also proposing changes to 40 CFR 63.2171 and Table 4 to 40 CFR part 63, subpart CCCC that specify the procedures facilities must use to demonstrate continuous compliance with either of the two proposed forms of the emission limits in Table 1 to 40 CFR part 63, subpart CCCC. The proposed changes require facilities to immediately begin demonstrating continuous compliance with one of the two proposed forms of the emission limits (*i.e.*, the Average Option or the Batch Option) upon the effective date of the final rule.

For the proposed Average Option, the changes to 40 CFR 63.2171 and Table 4 to 40 CFR part 63, subpart CCCC require facilities to calculate compliance on a monthly basis using data from every batch produced during the previous 12 months. The proposed amendments to 40 CFR 63.2150 remove the exemption that allows facilities to exceed emissions during periods of malfunction. The proposed amendments to 40 CFR 63.2170 retain the provision that data recorded during monitoring malfunctions, associated repairs, and required quality assurance or quality control activities must not be used to report emissions. Therefore, data from batches that were produced during periods of malfunctions over the past 12 months, other than those related to the monitoring system, must now be included in the calculations used to determine compliance. Additionally, instead of calculating a single determination of compliance based on the emissions from all batches regardless of fermentation stage, facilities must now determine compliance for batches within each of the three fermentation stages that have specific emission limits in Table 1 to 40 CFR part 63, subpart CCCC. Based on information collected during the site visits, the EPA expects that facilities have the necessary data available to make these changes to the methods used to determine compliance upon promulgation of the final rule.

For the proposed Batch Option, the changes to 40 CFR 63.2171 and Table 4 to 40 CFR part 63, subpart CCCC require

facilities to demonstrate that the average VOC concentration for each individual batch produced during a semiannual compliance period did not exceed the applicable emission limits. As noted above, this now includes data from batches that were produced during periods of malfunctions, other than malfunctions related to the monitoring system. Based on information collected during the site visits, the EPA expects that facilities have the necessary data available to make these changes to the methods used to determine compliance upon promulgation of the final rule.

The EPA requests comment on the proposed timeframe to demonstrate compliance using the revised form of the emission limits upon promulgation of the final rule and the availability of data necessary to comply within this timeframe.

2. Testing, Monitoring, Recordkeeping, and Reporting Requirements

We propose to revise the rule's testing, monitoring, recordkeeping, and reporting requirements in five ways: (1) Owners or operators must demonstrate compliance by using a VOC continuous emission monitoring system (CEMS) to determine the VOC concentration in the fermenter exhaust (*i.e.*, we are removing the option to monitor brew ethanol and calculate VOC concentration using a correlation); (2) owners or operators may not use a gas chromatographic (GC) CEMS to monitor VOC concentration; (3) owners or operators must have valid CEMS data from each hour of the entire batch monitoring period and report periods of missing data as deviations; (4) owners or operators of VOC CEMS must conduct annual performance tests (relative accuracy test audits (RATAs)) using Procedure 1 of appendix F to part 60 to evaluate the performance of the installed VOC CEMS over an extended period of time; and (5) owners or operators must provide compliance reports electronically.

a. Proposed Removal of the Option to Monitor Brew Ethanol

Subpart CCCC of 40 CFR part 63 currently allows owners or operators to monitor brew ethanol in the fermenter liquid and determine an annual correlation to VOC concentration in the fermenter exhaust in order to demonstrate compliance with fermenter VOC emission limits. We are proposing to revise the requirements of 40 CFR 63.2166 and 63.2171 and Table 3 and

Table 4 to 40 CFR part 63, subpart CCCC to remove the option to monitor brew ethanol.

Currently, one facility demonstrates compliance by monitoring brew ethanol and submits annual reports showing the results of performance testing and development of the correlation equation for each fermentation stage.²³ We reviewed reports for the past 5 years (2012–2016) and found that individual equations showed strong correlations with the data obtained during the applicable performance tests. However, the reports also showed a high level of variability between the equations for each fermentation stage across the 5-year period. A fermentation stage characterized by a correlation equation with a higher slope results in higher VOC emissions estimates per percent ethanol measured in the brew, while a correlation equation with a lower slope results in lower VOC emissions estimates per percent ethanol in the brew. Therefore, applying equations with different slopes to the same brew ethanol concentration yields different estimates of VOC emissions. A review of reports from the previous 5 years shows a high level of inconsistency in the amount of VOC emissions estimated for a particular brew ethanol percentage each year. The practical effect of these variations is that estimates of VOC concentrations from a given fermentation stage can almost double for a single brew ethanol concentration, depending on the correlation equation used. This has the greatest effect on concentrations at the higher end of the normal range for each stage of fermentation. To illustrate the effect, we selected a brew ethanol concentration at the higher end of the range of brew ethanol concentration data for each of the fermentation stages and determined the corresponding range of VOC concentrations, based on the most recent 5 years of correlation data. The results showed that for each fermentation stage, a given brew ethanol concentration would meet the compliance emission limit in some years, but greatly exceed it in other years; see Table 3 of this preamble. The 5 years of correlation data are presented in the memorandum, "Brew Ethanol Correlation Review for the Manufacturing of Nutritional Yeast Source Category," which is available in the docket for this action.

²³ The correlation equation is used to estimate the concentration of VOC in the fermenter exhaust for

a given percentage of ethanol (measured in the fermenter brew).

TABLE 3—RANGE OF VOC CONCENTRATION FOR EACH FERMENTATION STAGE, BASED ON BREW ETHANOL CORRELATION DATA

Fermentation stage	Brew ethanol concentration, %	VOC concentration range, ppmv as propane	VOC emission limitation, ppmv as propane ¹
Third-to-last	0.25	188 to 372	300
Second-to-last	0.20	109 to 227	200
Last	0.125	73 to 170	100

¹ As specified in Table 1 to 40 CFR part 63, subpart CCCC.

As mentioned above, individual equations typically exhibited strong statistical correlations for the data used to develop them, which indicates that there is a relationship between VOC emissions and brew ethanol concentration for a given batch. However, the observed variability between equations indicates the correlation between VOC emissions and brew ethanol concentration is different for each batch. This means that the correlation developed for one batch may not be representative of the correlation between VOC emissions and brew ethanol concentration for any other batch. Given that estimates of VOC concentrations from a given fermentation stage can almost double for a single brew ethanol concentration, depending on the correlation equation used, a batch that appears to be in compliance could, in fact, be out of compliance.

The manufacturing of yeast is a biological process and some degree of variation is expected. However, emissions are also determined by a few key process parameters, including the amount of available oxygen and the composition and amount of the sugar and nutrient mixture fed to the yeast in each batch. As noted on the site visits, the amount of oxygen does not vary significantly between batches. Fermenters are equipped with aeration systems, which operate at full capacity for every batch. In contrast, the composition of the sugar source can vary greatly from one batch to the next. Market factors (e.g., price, availability, competition) drive the purchase of sugar sources, such as molasses, throughout the year. Purchases are made frequently and there is some on-site storage, allowing operators of nutritional yeast manufacturing facilities to blend different materials together at times. While the composition of the mixture is optimized for yeast growth given the materials on hand at any given time, the specific composition fluctuates throughout the year. It is likely that the differences in composition of the sugar source for each batch explains much of

the variance observed in the correlation equations analyzed above.

In order to establish a reliable correlation between VOC emissions and brew ethanol for each batch, a new performance test would need to be conducted every time the sugar source changes. At facilities where the sugar source changes frequently, this requirement would pose a significant financial and logistic burden with results that were of limited applicability. In addition, it would create significant challenges for the regulatory authority responsible for enforcing the frequency and validity of the performance tests.

Reliable emissions data are critical to ensuring compliance with the established emission limits, which is necessary to reduce the emissions of HAP and protect public health and the environment. Therefore, the EPA is proposing to remove the option to demonstrate compliance with the emission limits by monitoring brew ethanol, and to require all facilities to monitor fermenter exhaust using CEMS.

We are proposing to allow facilities to continue to monitor brew ethanol for up to 1 year after the promulgation of any such proposed rule revisions. This transition period would help ensure continuous compliance with the emission limits while allowing time to install CEMS (see proposed 40 CFR 63.2171). Additionally, because no new facilities are currently under construction, we are proposing to remove requirements in 40 CFR 63.2160, 63.2166, 63.2180, and Table 3 to 40 CFR part 63, subpart CCCC related to the demonstration of initial compliance by monitoring brew ethanol. New affected sources would not be able to demonstrate initial compliance by monitoring brew ethanol.

We are proposing to revise language in 40 CFR 63.2164 to reference a “brew ethanol monitor” and not a “CEMS” to monitor brew ethanol. CEMS is not the correct term to describe the monitoring device for brew ethanol. The term “brew ethanol monitor” is already defined in the current rule, and the proposed

revisions correctly incorporate its use into the rule language.

The EPA specifically requests comments on whether the option to demonstrate compliance by monitoring brew ethanol and developing a correlation to VOC concentration in the fermenter exhaust should be retained if performance tests to determine the correlation are conducted more frequently. Commenters should address the frequency of the correlation recalculation (using performance testing) needed to provide reliable emissions data that will consistently reflect accurate emissions for each batch and explain the basis for their conclusions.

b. Proposed Removal of GC CEMS

The current rule allows the use of CEMS that generate a single combined response value for VOC (VOC CEMS) or that rely upon GC CEMS, if they are constructed and operated according to the applicable Performance Specification (PS) of 40 CFR part 60, appendix B, to monitor VOC emissions (40 CFR 63.2163). However, nutritional yeast manufacturing facilities emit a mixture of VOCs and the emission limits for these facilities are stated for total VOC (as opposed to specific VOC species). While VOC CEMS constructed and operated according to PS 8 can measure total VOCs, GC CEMS constructed and operated according to PS 9 are suitable for measuring a few specific VOC species. Based on information collected during the site visits, we are not aware of any facilities currently using GC CEMS. Therefore, we propose to revise 40 CFR 63.2163 to remove the option to use GC CEMS to monitor VOC concentration. The EPA requests comment on this proposed revision.

c. Proposed Collection of All Valid CEMS Data From the Entire Batch Monitoring Period.

The current rule requires owners or operators who monitor fermenter exhaust to have valid CEMS data from at least 75 percent of the full hours over

the entire batch, and that a valid hour of data must have one data point for each 30-minute period. In the 15 years since the rule was promulgated, there have been continued improvements in CEMS reliability as well as a change in the data collection approach. In many NESHAP, CEMS are required to collect, process, and report results of the sampling at least once every 15 minutes. Some CEMS are able to complete the process cycle more often than every 15 minutes. Moreover, many regulatory authorities no longer have minimum valid data requirements for emissions data. Rather, each source owner or operator is expected to collect as much data as possible and to report periods of missing data, along with the reason for such periods, to the regulatory authority who determines what, if any, follow-up action would be required.²⁴ Such an approach is included in our recently promulgated Mercury Air Toxics Standard (MATS). MATS requires owners or operators to collect data at all times the electric generation unit (EGU) operates; failure to collect the required data is a deviation from monitoring requirements. EGU owners or operators are to describe, explain, and report deviations in ongoing compliance reports and to keep records of deviations.²⁵

We propose to revise 40 CFR 63.2163, 63.2170, 63.2181(c)(7), and 63.2182(b)(9) to require owners or operators of nutritional yeast sources to follow this model. Owners or operators would be required to collect VOC concentration data at all times of batch operation. Failure to collect VOC concentration data would be a deviation of monitoring requirements and would trigger generation of a report identifying the periods during which data were not collected, a description of the deviation event, and an explanation as to why the deviation occurred. The owner or operator would also be required to maintain records of each deviation. In addition, owners or operators would report the hours of deviation, along with the hours of batch operation. Relying on reported information, regulatory authorities would determine what, if any, follow-up correction or enforcement action should occur. The EPA requests comment on this proposed revision and its incorporation into the rule.

²⁴ See Indiana's *Compliance Branch CEMS Guidance Manual*, section 4.5 on page 19 of chapter 2, available at http://www.in.gov/idem/files/aircom_cems_chapter_2.pdf.

²⁵ See 40 CFR 63.10020(b), 10020(d), 10021(g), 10031(c)(9), and 10032(a)(4).

d. Proposed Use of Procedure 1 of Appendix F to Part 60 for VOC CEMS

The current rule requires owners or operators of nutritional yeast manufacturing facilities to monitor compliance using either VOC or GC CEMS. Additionally, the rule exempts owners or operators that use a VOC CEMS with a flame ionization analyzer from conducting the RATAs required by PS 8. As discussed in section IV.D.2.b of this preamble, we are proposing to remove the option to monitor compliance using a GC CEMS and the related installation requirements. The current rule requires owners or operators to install and certify VOC CEMS according to PS 8. Use of PS 8 ensures that the VOC CEMS has been installed properly, but it lacks ongoing quality assurance and quality control (QA/QC) procedures to ensure that a properly installed VOC CEMS continues to operate appropriately. Such procedures are included in Procedure 1 of appendix F to part 60. In order to clarify the minimum requirements for owners or operators to ensure their VOC CEMS continue to produce valid data, we propose to revise 40 CFR 63.2163 to include the requirements of Procedure 1 of appendix F to part 60, where propane would be used for the calibration gas and Method 25A would be used as the Reference Method (RM). In doing so, we are also removing the exemption for owners and operators of nutritional yeast manufacturing facilities that monitor VOC emissions using a flame ionization analyzer from conducting the relative-accuracy test PS 8 requires. Incorporation of a consistent set of ongoing QA/QC requirements will not only provide assurance that the ongoing collected data are valid, but also ensure a consistent basis for collecting those data.

Moreover, we propose to replace the outdated reference 2 of PS 8, "A Procedure for Establishing Traceability of Gas Mixtures to Certain National Bureau of Standards Standard Reference Materials," with the current version of our traceability protocol. In the revised regulatory text of 40 CFR part 63, subpart CCCC, the EPA is proposing to incorporate by reference EPA/600/R-12/531, EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards, May 2012, at 40 CFR 63.2163(b)(2), in accordance with requirements of 1 CFR 51.5. The protocol is used to certify calibration gases for continuous emission monitors and specifies methods for assaying gases and establishing traceability to National Institute of Standards and Technology

reference standards.²⁶ The EPA has made, and will continue to make, documents that are incorporated by reference generally available electronically through <http://www.regulations.gov> and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information). The EPA requests comment on the proposed QA/QC procedures and CEMS RATA revisions.

e. Electronic Reporting

Through this action, the EPA is proposing to amend 40 CFR 63.2181(a) to require that owners or operators of nutritional yeast manufacturing facilities submit electronic copies of compliance reports, which include performance test and performance evaluation results, through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). The EPA believes that the electronic submittal of the reports addressed in this proposed rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability, will further assist in the protection of public health and the environment, and will ultimately result in less burden on the regulated community. Under current requirements, paper reports are often stored in filing cabinets or boxes, which make the reports more difficult to obtain and use for data analysis and sharing. Electronic storage of such reports would make data more accessible for review, analyses, and sharing. Electronic reporting can also eliminate paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public.

In 2011, in response to Executive Order 13563, the EPA developed a plan²⁷ to periodically review its regulations to determine if they should be modified, streamlined, expanded, or repealed in an effort to make regulations more effective and less burdensome. The plan includes replacing outdated paper reporting with electronic reporting. In keeping with this plan and the White House's Digital Government

²⁶ Additional information about the traceability protocol is available at <https://www.epa.gov/air-research/epa-traceability-protocol-assay-and-certification-gaseous-calibration-standards>.

²⁷ EPA's Final Plan for Periodic Retrospective Reviews, August 2011. Available at: https://www.epa.gov/sites/production/files/2015-09/documents/eparetroreviewplan-aug2011_0.pdf.

Strategy,²⁸ in 2013 the EPA issued an agency-wide policy specifying that new regulations will require reports to be electronic to the maximum extent possible. By requiring electronic submission of specified reports in this proposed rule, the EPA is taking steps to implement this policy.

The EPA Web site that stores the submitted electronic data, WebFIRE, will be easily accessible to everyone and will provide a user-friendly interface that any stakeholder could access. By making data readily available, electronic reporting increases the amount of data that can be used for many purposes. One example is the development of emissions factors. An emissions factor is a representative value that attempts to relate the quantity of a pollutant released to the atmosphere with an activity associated with the release of that pollutant (e.g., kilograms of particulate emitted per megagram of coal burned). Such factors facilitate the estimation of emissions from various sources of air pollution and are an important tool in developing emissions inventories, which in turn are the basis for numerous efforts, including trends analysis, regional and local scale air quality modeling, regulatory impact assessments, and human exposure modeling. Emissions factors are also widely used in regulatory applicability determinations and in permitting decisions.

The EPA has received feedback from stakeholders asserting that many of the EPA's emissions factors are outdated or not representative of a particular industry emission source. While the EPA believes that the emissions factors are suitable for their intended purpose, we recognize that the quality of emissions factors varies based on the extent and quality of underlying data. We also recognize that emissions profiles on different pieces of equipment can change over time due to a number of factors (fuel changes, equipment improvements, industry work practices), and it is important for emissions factors to be updated to keep up with these changes. The EPA is currently pursuing emissions factor development improvements that include procedures to incorporate the source test data that we are proposing be submitted electronically. By requiring the electronic submission of the reports identified in this proposed action, the EPA would be able to access and use the submitted data to update emissions

factors more quickly and efficiently, creating factors that are characteristic of what is currently representative of the relevant industry sector. Likewise, an increase in the number of test reports used to develop the emissions factors will provide more confidence that the factor is of higher quality and representative of the whole industry sector.

Additionally, by making the records, data, and reports addressed in this proposed rulemaking readily available, the EPA, the regulated community, and the public will benefit when the EPA conducts its CAA-required technology and risk-based reviews. As a result of having performance test reports and air emission reports readily accessible, our ability to carry out comprehensive reviews will be increased and achieved within a shorter period of time. These data will provide useful information on control efficiencies being achieved and maintained in practice within a source category and across source categories for regulated sources and pollutants. These reports can also be used to inform the technology-review process by providing information on improvements to add-on control technology and new control technology.

Under an electronic reporting system, the EPA's Office of Air Quality Planning and Standards (OAQPS) would have air emissions and performance test data in hand; OAQPS would not have to collect these data from the EPA Regional offices or from delegated air agencies or industry sources in cases where these reports are not submitted to the EPA Regional offices. Thus, we anticipate fewer or less substantial information collection requests (ICRs) in conjunction with prospective CAA-required technology and risk-based reviews may be needed. We expect this to result in a decrease in time spent by industry to respond to data collection requests. We also expect the ICRs to contain less extensive stack testing provisions, as we will already have stack test data electronically. Reduced testing requirements would be a cost savings to industry. The EPA should also be able to conduct these required reviews more quickly, as OAQPS will not have to include the ICR collection time in the process or spend time collecting reports from the EPA Regional Offices. While the regulated community may benefit from a reduced burden of ICRs, the general public benefits from the Agency's ability to provide these required reviews more quickly, resulting in increased public health and environmental protection.

Electronic reporting could minimize submission of unnecessary or

duplicate reports in cases where facilities report to multiple government agencies and the agencies opt to rely on the EPA's electronic reporting system to view report submissions. Where air agencies continue to require a paper copy of these reports and will accept a hard copy of the electronic report, facilities will have the option to print paper copies of the electronic reporting forms to submit to the air agencies, and, thus, minimize the time spent reporting to multiple agencies. Additionally, maintenance and storage costs associated with retaining paper records could likewise be minimized by replacing those records with electronic records of electronically submitted data and reports.

Air agencies could benefit from more streamlined and automated review of the electronically submitted data. For example, because the performance test data would be readily-available in a standard electronic format, air agencies would be able to review reports and data electronically rather than having to conduct a review of the reports and data manually. Having reports and associated data in electronic format will facilitate review through the use of software "search" options, as well as the downloading and analyzing of data in spreadsheet format. Additionally, air agencies would benefit from the reported data being accessible to them through the EPA's electronic reporting system wherever and whenever they want or need access (as long as they have access to the Internet). The ability to access and review air emission report information electronically will assist air agencies to more quickly and accurately determine compliance with the applicable regulations, potentially allowing a faster response to violations which could minimize harmful air emissions. This benefits both air agencies and the general public.

The proposed electronic reporting of data is consistent with electronic data trends (e.g., electronic banking and income tax filing). Electronic reporting of environmental data is already common practice in many media offices at the EPA. The changes being proposed in this rulemaking are needed to continue the EPA's transition to electronic reporting.

3. Startup, Shutdown, and Malfunction Requirements

In 2008, the United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir.

²⁸ Digital Government: Building a 21st Century Platform to Better Serve the American People, May 2012. Available at: <https://www.whitehouse.gov/sites/default/files/omb/egov/digital-government/digital-government-strategy.pdf>.

2008). Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some section 112 standards apply continuously.

While the current rule does not exempt periods of startup and shutdown from emissions standards, we are proposing several changes to eliminate the malfunction exemption that is contained in this rule. While, for simplicity, we refer throughout this section to the SSM exemption and the associated SSM plan requirements, only the malfunction exemption and its removal are relevant to this action because periods of startup and shutdown were never exempt from emissions standards in this subpart. As discussed earlier in this preamble (section IV.D.1), we are proposing standards in this rule that apply at all times (*i.e.*, to all batches), consistent with *Sierra Club v. EPA*. We are also proposing revisions to several provisions of 40 CFR part 63, subpart CCCC and to Table 6 to 40 CFR part 63, subpart CCCC (the General Provisions Applicability Table) as is explained in more detail below. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. We also are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption as further described below.

The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether we have successfully identified all such provisions and whether any of the identified provisions retain utility even in the absence of the SSM exemption.

In proposing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not proposed alternate standards for those periods.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. In this NESHAP, owners and operators of nutritional yeast manufacturing facilities employ process controls to limit emissions. These process controls are employed from the time a fermenter starts production of a batch of yeast and continue until the fermenter is emptied

of yeast. Additionally, emissions are averaged over the entire duration of each batch in order to meet emission limits, so there was no need to set separate limits for periods of startup and shutdown in this rule.

Malfunions, in contrast, are neither predictable nor routine. Instead they are, by definition, sudden, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment. 40 CFR 63.2 (definition of malfunction). The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards. Under CAA section 112, emissions standards for new sources must be no less stringent than the level "achieved" by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation "achieved" by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the Agency to consider malfunctions in determining the level "achieved" by the best performing sources when setting emission standards. As the D.C. Circuit has recognized, the phrase "average emissions limitation achieved by the best performing 12 percent of" sources "says nothing about how the performance of the best units is to be calculated." *Nat'l Ass'n of Clean Water Agencies v. EPA*, 734 F.3d 1115, 1141 (D.C. Cir. 2013). While the EPA accounts for variability in setting emissions standards, nothing in CAA section 112 requires the Agency to consider malfunctions as part of that analysis. A malfunction should not be treated in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a "normal or usual manner" and no statutory language compels EPA to consider such events in setting CAA section 112 standards.

Further, accounting for malfunctions in setting emission standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. As such, the performance of units that are malfunctioning is not "reasonably" foreseeable. *See, Sierra Club v. EPA*, 167 F.3d 658, 662 (D.C. Cir. 1999) ("The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a

problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to 'invest the resources to conduct the perfect study.'") *See also, Weyerhaeuser v. Costle*, 590 F.2d 1011, 1058 (D.C. Cir. 1978) ("In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation."). In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an air pollution control device with 99-percent removal goes off-line as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state type unit that would take days to shut down, the source would go from 99-percent control to zero control until the control device was repaired. The source's emissions during the malfunction would be 100 times higher than during normal operations. As such, the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards that are not reflective of (and significantly less stringent than) levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

In this instance, it is unlikely that a malfunction would result in a violation of the standards for fermenters. For fermenters, the rule provides an option for owners and operators to determine the average VOC concentration for all batches within each fermentation stage using data from 12-month periods. This option minimizes the effect of malfunctions on the ability of a facility to meet the emission limits because the averaging effectively minimizes "spikes" in emissions. Additionally, many of the common malfunctions described by owners and operators of nutritional yeast manufacturing facilities during the site visits were malfunctions of the emissions

monitoring equipment. While the equipment was unable to record accurate data during periods of malfunction, it did not impact actual emissions because process controls could still be used to limit emissions.

In the unlikely event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, sudden, infrequent, not reasonably preventable and was not instead caused in part by poor maintenance or careless operation. 40 CFR 63.2 (definition of malfunction).

If the EPA determines in a particular case that an enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the Federal District Court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.

In summary, the EPA interpretation of the CAA and, in particular, CAA section 112 is reasonable and encourages practices that will avoid malfunctions. Administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations.²⁹

a. 40 CFR 63.2150 General Duty

We are proposing to revise the General Provisions table (Table 6 to 40 CFR part 63, subpart CCCC) to specify that 40 CFR 63.6(e)(1)(i) does not apply to 40 CFR part 63, subpart CCCC. Section 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. We are proposing instead to add general duty regulatory text at 40 CFR 63.2150(c) that reflects the general

duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown, and malfunction events in describing the general duty. Therefore, the language the EPA is proposing at 40 CFR 63.2150(c) does not include that language from 40 CFR 63.6(e)(1).

We are also proposing to revise the General Provisions table (Table 6 to 40 CFR part 63, subpart CCCC) to specify that 40 CFR 63.6(e)(1)(ii) does not apply to 40 CFR part 63, subpart CCCC. Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.2150.

b. SSM Plan

We are proposing to revise the General Provisions table (Table 6 to 40 CFR part 63, subpart CCCC) to specify that 40 CFR 63.6(e)(3) does not apply to 40 CFR part 63, subpart CCCC. Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. As noted, the EPA is proposing to remove the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and thus the SSM plan requirements are no longer necessary.

c. Compliance With Standards

We are proposing to revise the General Provisions table (Table 6 to 40 CFR part 63, subpart CCCC) to specify that 40 CFR 63.6(f)(1) does not apply to 40 CFR part 63, subpart CCCC. The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some section 112 standard apply continuously. Consistent with *Sierra Club*, the EPA is proposing standards in this rule that apply at all times.

d. 40 CFR 63.2161 Performance Testing

We are proposing to revise the General Provisions table (Table 6 to 40

CFR part 63, subpart CCCC) to specify that 40 CFR 63.7(e)(1) does not apply to 40 CFR part 63, subpart CCCC. Section 63.7(e)(1) describes performance testing requirements. The EPA is instead proposing to add a performance testing requirement at 40 CFR 63.2161(b). The performance testing requirements we are proposing to add differ from the General Provisions performance testing provisions in several respects. The proposed regulatory text does not include the language in 40 CFR 63.7(e)(1) that restated the SSM exemption and language that precluded startup and shutdown periods from being considered "representative" for purposes of performance testing. The proposed performance testing provisions exclude periods of startup and shutdown. As in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of normal operating conditions. The EPA is proposing to add language that requires the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Section 63.7(e) requires that the owner or operator make available to the Administrator such records "as may be necessary to determine the condition of the performance test" upon request, but does not specifically require the information to be recorded. The regulatory text the EPA is proposing to add to this provision builds on that requirement and makes explicit the requirement to record the information.

e. Monitoring

We are proposing to revise the General Provisions table (Table 6 to 40 CFR part 63, subpart CCCC) to specify that 40 CFR 63.8(c)(1)(i) and (iii) do not apply to 40 CFR part 63, subpart CCCC. The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)).

We are proposing to revise the General Provisions table (Table 6 to 40 CFR part 63, subpart CCCC) to specify that 40 CFR 63.8(d)(3) does not apply to 40 CFR part 63, subpart CCCC. The final sentence in 40 CFR 63.8(d)(3) refers to the General Provisions' SSM plan requirement, which is no longer

²⁹ *U.S. Sugar Corp. v. EPA*, No. 11–1108, 2016 U.S. App. LEXIS 13783, at *41–49 (D.C. Cir. July 29, 2016) (upholding EPA's approach to addressing periods of malfunction).

applicable. The EPA is proposing to add to the rule at 40 CFR 63.2182(b)(7) and 63.2183(d) text that contains the same requirements as 40 CFR 63.8(d)(3), except that the final sentence is replaced with the following sentence: "The program of corrective action should be included in the plan required under § 63.8(d)(2)."

f. 40 CFR 63.2182 Recordkeeping

We are proposing to revise the General Provisions table (Table 6 to 40 CFR part 63, subpart CCCC) to specify that 40 CFR 63.10(b)(2)(i) does not apply to 40 CFR part 63, subpart CCCC. Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recording provisions are no longer necessary because the EPA is proposing that recordkeeping and reporting applicable to normal operations will apply to startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods.

We are proposing to revise the General Provisions table (Table 6 to 40 CFR part 63, subpart CCCC) to specify that 40 CFR 63.10(b)(2)(ii) does not apply to 40 CFR part 63, subpart CCCC. Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction. The EPA is proposing to add such requirements to 40 CFR 63.2182(a)(2). The regulatory text we are proposing to add differs from the General Provisions it is replacing in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment. The EPA is proposing that this requirement apply to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the "occurrence."

The EPA is also proposing to add to 40 CFR 63.2182(a)(2) a requirement that sources keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the standard for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing to require that sources keep

records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are proposing to revise the General Provisions table (Table 6 to 40 CFR part 63, subpart CCCC) to specify that 40 CFR 63.10(b)(2)(iv) does not apply to 40 CFR part 63, subpart CCCC. When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by reference to 40 CFR 63.2182(a)(2).

We are proposing to revise the General Provisions table (Table 6 to 40 CFR part 63, subpart CCCC) to specify that 40 CFR 63.10(b)(2)(v) does not apply to 40 CFR part 63, subpart CCCC. When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

We are proposing to revise the General Provisions table (Table 6 to 40 CFR part 63, subpart CCCC) to specify that 40 CFR 63.10(c)(15) does not apply to 40 CFR part 63, subpart CCCC. When applicable, the provision allows an owner or operator to use the affected source's SSM plan or records kept to satisfy the recordkeeping requirements of the SSM plan, specified in 40 CFR 63.6(e), to also satisfy the requirements of 40 CFR 63.10(c)(10) through (12). The EPA is proposing to eliminate this requirement because SSM plans would no longer be required, and, therefore, 40 CFR 63.10(c)(15) no longer serves any useful purpose for affected units.

g. 40 CFR 63.2181 Reporting

We are proposing to revise the General Provisions table (Table 6 to 40 CFR part 63, subpart CCCC) to specify that 40 CFR 63.10(d)(5) does not apply to 40 CFR part 63, subpart CCCC. Section 63.10(d)(5) describes the reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.2181(c)(5) and (6). The replacement

language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. We are proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semi-annual compliance report already required under this rule. We are proposing that the report must contain the number, date, time, duration, and the cause of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

We will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because malfunction plans would no longer be required. The proposed amendments, therefore, eliminate the cross reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

We are proposing to revise the General Provisions table (Table 6 to 40 CFR part 63, subpart CCCC) to specify that 40 CFR 63.10(d)(5)(ii) does not apply to 40 CFR part 63, subpart CCCC. Section 63.10(d)(5)(ii) describes an immediate report for startups, shutdowns, and malfunctions when a source failed to meet an applicable standard but did not follow the SSM plan. We will no longer require owners and operators to report when actions taken during a startup, shutdown, or malfunction were not consistent with an SSM plan, because plans would no longer be required.

4. Rule Language Clarifications

We are proposing other miscellaneous revisions that add clarity to rule language. For example, we are using active, second-person voice throughout the rule by incorporating “you must . . .” into the language. This is consistent with the EPA’s current rule-writing practices and creates uniformity within 40 CFR part 63, subpart CCCC. We are also proposing the removal of “but is not limited to” in 40 CFR 63.2132, because this language is not necessary. The 40 CFR part 63, subpart CCCC requirements are limited to fermenters at this time, and the removal of this language clarifies this distinction. The EPA requests comment on each of these proposed revisions.

E. What compliance dates are we proposing?

The EPA is proposing that currently operating facilities must immediately comply with the revised form of the fermenter VOC emission limits and general compliance requirements upon the effective date of the final rule. As discussed in section IV.D.2.a of this preamble, facilities that currently demonstrate compliance by monitoring brew ethanol in the fermenter have up to 1 year to install CEMS. During this time, emissions data must be collected for each batch using the existing compliance method (monitoring brew ethanol) for use in the semiannual compliance reports with the revised emission limits. Sources that are constructed or reconstructed after promulgation of the rule revisions must comply with the emission limits and compliance requirements upon startup of the affected source. We request comment on each of these timeframes.

We are proposing to revise 40 CFR 63.2133 to specify that an area source that becomes a major source of HAP, and that is an existing affected source, must be in compliance with the subpart by not later than 1 year after it becomes a major source, instead of by not later than 3 years. This revision is consistent with the proposed requirement that facilities have 1 year to install CEMS if they currently monitor brew ethanol in the fermenter to determine compliance. The EPA requests comment on this timeframe.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

We anticipate that four nutritional yeast facilities currently operating in the United States will be affected by these proposed amendments.

B. What are the air quality impacts?

The proposed amendments to this subpart will have a positive impact on air quality. While facilities will not need to install additional controls to comply with the proposed fermenter emission limits, the revisions will remove the exemption that allowed up to 2 percent of the total number of batches to exceed emission limits, as well as the exemption that allowed emissions from batches produced during periods of malfunction to not be used in determining compliance with emission limits. While these changes cannot easily be quantified due to a lack of data on the current number of exempted batches, the practical effect is that production of all batches of nutritional yeast at affected sources will be required to meet emission limits. The other proposed revisions, which affect testing, monitoring, recordkeeping, and reporting requirements, will ensure that emissions monitoring equipment continues to perform as expected and provides reliable data from each facility to be reported for compliance. For reference, the baseline emissions for each facility are documented in the memorandum, “Emissions Data and Acute Risk Factor Used in Residual Risk Modeling: Manufacturing of Nutritional Yeast Source Category,” which is available in the docket for this action.

C. What are the cost impacts?

We have estimated compliance costs for all existing sources to install the necessary monitoring equipment (*i.e.*, VOC CEMS) and perform annual RATAs for VOC CEMS. We estimated a total capital investment of \$511,000 and an annualized cost of approximately \$172,000. The details of the cost estimates are documented in the memorandum, “Costs for the Manufacturing of Nutritional Yeast Source Category,” which is available in the docket for this action.

D. What are the economic impacts?

Total annualized costs for this proposal are estimated to be \$172,000. Estimated annualized compliance costs range from \$16,000 to \$109,000 per facility. The EPA conducted economic impact screening analyses for this proposal, as detailed in the memorandum, “Economic Impact Analysis for the Manufacturing of Nutritional Yeast Risk and Technology Review (RTR),” which is available in the docket for this action. Screening analyses suggest that the impacts of this action will be minimal, with all entities subject to this action estimated to have cost-to-sales ratios of less than 0.1

percent. We do not expect any adverse economic impacts to result from this action.

E. What are the benefits?

As discussed above, the proposed amendments to this subpart will have positive impacts on air quality by removing the exemption for a portion of batches to meet emission limits. The proposed changes to monitoring methods will increase the reliability of emissions data collected by facilities by requiring continued maintenance of emission monitoring systems and monitoring of actual emission measurements at all times instead of allowing emission estimates based on brew ethanol correlations, which will allow regulators to clearly assess whether the standards for the protection of public health and the environment are being met. In particular, the demographics analysis shows that increased risk levels are concentrated around the facility that is not currently using CEMS. The proposed amendment will directly benefit this population by increasing the accuracy of the emissions data that is monitored and reported. Utilization of CEMS is also expected to facilitate more effective use of current process controls for acetaldehyde emissions versus use of the brew ethanol correlation approach. Other proposed amendments will result in additional benefits, such as streamlined reporting through electronic methods for owners/operators of nutritional yeast manufacturing facilities and increased access to emissions data by stakeholders, as described in previous sections.

VI. Request for Comments

We solicit comments on all aspects of this proposed action, including those aspects specifically called out elsewhere in this preamble. As noted previously, we are not seeking comment on the source category definition in this action. In addition to general comments on this proposed action, we are also interested in additional data that may improve the risk assessments and other analyses. We are specifically interested in receiving any improvements to the data used in the site-specific emissions profiles used for risk modeling. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Section VII of this preamble provides more information on submitting data.

VII. Submitting Data Corrections

The site-specific emissions profiles used in the source category risk and demographic analyses and instructions are available for download on the RTR Web site at <http://www.epa.gov/ttn/atw/risk/rtrpg.html>. The data files include detailed information for each HAP emissions release point for the facilities in the source category.

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any "improved" data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data downloaded from the RTR Web site, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information.
2. Fill in the commenter information fields for each suggested revision (*i.e.*, commenter name, commenter organization, commenter email address, commenter phone number, and revision comments).
3. Gather documentation for any suggested emissions revisions (*e.g.*, performance test reports, material balance calculations).
4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID No. EPA-HQ-OAR-2015-0730 (through the method described in the **ADDRESSES** section of this preamble).
5. If you are providing comments on a single facility or multiple facilities, you need only submit one file for all facilities. The file should contain all suggested changes for all sources at that facility. We request that all data revision comments be submitted in the form of updated Microsoft® Excel files that are generated by the Microsoft® Access file. These files are provided on the RTR Web site at <http://www.epa.gov/ttn/atw/risk/rtrpg.html>.

VIII. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was, therefore, not submitted to OMB for review.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) that the EPA prepared has been assigned EPA ICR number 1886.03. A copy of the ICR can be found in the docket for this rule, and it is summarized here.

We are proposing new reporting and recordkeeping requirements to the Manufacturing of Nutritional Yeast source category as a result of additional requirements related to the use of CEMS.

Respondents/affected entities:

Manufacturers of nutritional yeast.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart CCCC).

Estimated number of respondents: Four facilities.

Frequency of response: Initially and semiannually.

Total estimated burden: 1,340 hours (per year) for the responding facilities and 117 hours (per year) for the Agency. Of these, 43 hours (per year) for the responding facilities and 4 hours (per year) for the Agency is the incremental burden to comply with the proposed rule amendments. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$939,000 (per year), which includes \$832,000 annualized capital and operation and maintenance costs, for the responding facilities and \$5,400 (per year) for the Agency to comply with all of the requirements in this NESHAP. Of the total, \$175,000 (per year), including \$172,000 in annualized capital and operation and maintenance costs, for the responding facilities and \$180 (per year) for the Agency, is the incremental cost to comply with the proposed amendments to this rule.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to OIRA_submission@omb.eop.gov, Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning

the ICR between 30 and 60 days after receipt, OMB must receive comments no later than January 27, 2017. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. One entity subject to the requirements of this action is assumed to be a small business for the purposes of this analysis, as the complex ownership structure makes it difficult to clearly determine the entity's size. The Agency has determined that this entity may experience an impact of less than 0.01 percent of revenues. Details of this analysis are presented in the memorandum, "Economic Impact Analysis for the Manufacturing of Nutritional Yeast Risk and Technology Review (RTR)," which is available in the docket for this action.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate that may result in expenditures of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments. The nationwide annualized cost of this action for affected industrial sources is estimated to be \$172,000 per year.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. No tribal facilities are known to be engaged in the nutritional yeast manufacturing industry that would be affected by this action. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. This action's

health and risk assessments are contained in sections III.A and B and sections IV.A and B of this preamble.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves technical standards. Therefore, the EPA conducted a search to identify potentially applicable voluntary consensus standards. However, the Agency identified no such standards. Therefore, the EPA has decided to use EPA Method 25A of 40 CFR part 60, appendix A. A thorough summary of the search conducted and results are included in the memorandum titled, "Voluntary Consensus Standard Results for the Risk and Technology Review of the Manufacturing of Nutritional Yeast NESHAP," which is available in the docket for this action.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (58 FR 7629, February 16, 1994).

The documentation for this decision is contained in section IV.A of this preamble and the technical report, "Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Nutritional Yeast Manufacturing Facilities," which is available in the docket for this action.

As discussed in section IV.A of this preamble, we performed a demographic analysis, which is an assessment of risks to individual demographic groups, of the population close to the facilities (within 50 km and within 5 km). In this analysis, we evaluated the distribution of HAP-related cancer risks and non-cancer hazards from the nutritional yeast manufacturing facilities across different social, demographic, and economic groups within the populations living near facilities identified as having the highest risks.

The analysis indicates that the minority population living within 50 km (1,700,000 people, of which 41

percent are minority) and within 5 km (131,567 people, of which 68 percent are minority) of the four nutritional yeast manufacturing facilities is greater than the minority population found nationwide (28 percent). The specific demographics of the population within 5 and 50 km of the facilities indicate potential disparities in certain demographic groups, including the "African American," "Below the Poverty Level," and "Over 25 and without high school diploma" groups.

When examining the risk levels of those exposed to emissions from the four nutritional yeast manufacturing facilities we find approximately 750 persons around one facility (AB Mauri—Fleischmann's Yeast in Memphis, Tennessee) are exposed to a cancer risk greater than or equal to 1-in-1 million with the highest exposure to these individuals of less than 2-in-1 million. Of these 750 persons, 100 percent of them are defined as minority. When examining the noncancer risks surrounding these facilities, no one is predicted to have a chronic non-cancer TOSHI greater than 1. This facility is also the only one that is not currently using CEMS. The proposed amendments will directly benefit this population by increasing the accuracy of the emissions data that is monitored and reported. Utilization of CEMS is also expected to facilitate more effective use of process controls for acetaldehyde emissions versus use of the brew ethanol correlation approach.

The EPA has determined that this proposed rule does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples because the health risks based on actual emissions are low (below 2-in-1 million), the population exposed to risks greater than 1-in-1 million is relatively small (750 persons), and the rule maintains or increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority, low-income, or indigenous populations. Further, the EPA believes that implementation of this rule will provide an ample margin of safety to protect public health of all demographic groups.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: December 13, 2016.

Gina McCarthy,
Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend part 63 of title 40, chapter I, of the Code of Federal Regulations as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

§ 63.14 [Amended]

■ 2. Section 63.14 is amended by adding paragraph (m)(24) to read as follows:

* * * * *

(m) * * *

(24) EPA/600/R-12/531, EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards, May 2012, IBR approved for § 63.2163(b)(2).

* * * * *

■ 3. Part 63 is amended by revising subpart CCCC to read as follows:

Subpart CCCC—National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast

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What This Subpart Covers

§ 63.2130 What is the purpose of this subpart?

This subpart establishes national emission limitations for hazardous air pollutants emitted from manufacturers of nutritional yeast. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.2131 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a nutritional yeast manufacturing facility that is, is located at, or is part of a major source of hazardous air pollutants (HAP) emissions.

(1) A manufacturer of nutritional yeast is a facility that makes yeast for the purpose of becoming an ingredient in dough for bread or any other yeast-raised baked product, or for becoming a nutritional food additive intended for consumption by humans. A manufacturer of nutritional yeast does not include production of yeast intended for consumption by animals, such as an additive for livestock feed.

(2) A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

(b) [Reserved]

§ 63.2132 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing “affected source” that produces *Saccharomyces cerevisiae* at a nutritional yeast manufacturing facility.

(b) The affected source is the collection of equipment used in the manufacture of the nutritional yeast species *Saccharomyces cerevisiae*. This collection of equipment includes fermentation vessels (fermenters), as described in paragraph (c) of this section. The collection of equipment used in the manufacture of the nutritional yeast species *Candida utilis* (torula yeast) is not part of the affected source.

(c) The emission limitations in this subpart apply to fermenters in the affected source that meet all of the criteria listed in paragraphs (c)(1) and (2) of this section.

(1) The fermenters are “fed-batch” as defined in § 63.2192.

(2) The fermenters are used to support one of the last three fermentation stages in a production run (*i.e.*, third-to-last stage, second-to-last stage, and last stage), which may be referred to as “stock, first generation, and trade,” “seed, semi-seed, and commercial,” or “CB4, CB5, and CB6” stages.

(d) The emission limitations in this subpart do not apply to flask, pure-culture, yeasting-tank, or any other set-batch (defined in § 63.2192) fermentation, and they do not apply to any operations after the last dewatering operation, such as filtration.

(e) The emission limitations in Table 1 to this subpart do not apply to fermenters during the production of specialty yeast (defined in § 63.2192).

(f) An affected source is a “new affected source” if you commenced construction of the affected source after October 19, 1998, and you met the applicability criteria in § 63.2131 at the time you commenced construction.

(g) An affected source is “reconstructed” if it meets the criteria for reconstruction as defined in § 63.2.

(h) An affected source is “existing” if it is not new or reconstructed.

§ 63.2133 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, then you must comply with paragraph (a)(1) or (2) of this section.

(1) If you start up your affected source before May 21, 2001, then you must comply with the applicable emission limitations in Table 1 to this subpart no later than May 21, 2001.

(2) If you start up your affected source on or after May 21, 2001, then you must comply with the applicable emission limitations in Table 1 to this subpart upon startup of your affected source.

(b) If you have an existing affected source, then you must comply with the applicable emission limitations in Table 1 to this subpart no later than May 21, 2004.

(c) If you have an area source that increases its emissions, or its potential to emit, so that it becomes a major source of HAP, then paragraphs (c)(1) through (2) of this section apply.

(1) Any portion of the existing facility that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the affected source must be in compliance with this subpart by not later than 1 year after it becomes a major source.

(d) You must meet the notification requirements in § 63.2180 according to the schedule in § 63.2180 and in subpart A of this part.

Emission Limitations

§ 63.2140 What emission limitations must I meet?

You must meet the applicable emission limitations in Table 1 to this subpart.

General Compliance Requirements

§ 63.2150 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations in Table 1 to this subpart at all times.

(b) If the date upon which you must demonstrate initial compliance as specified in § 63.2160 falls after the compliance date specified for your affected source in § 63.2133, then you must maintain a log detailing the operation and maintenance of the continuous emission monitoring systems and the process and emissions control equipment during the period between those dates.

(c) At all times, you must operate and maintain any affected source, including associated air pollution control

equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether an affected source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the affected source.

(d) To determine compliance before [date of publication of the final rule in the **Federal Register**], you must monitor the volatile organic compound (VOC) concentration or brew ethanol continuously for each batch and demonstrate that the VOC concentration for at least 98 percent of the batches for each fermentation stage in each 12-month calculation period does not exceed the applicable emission limitations in Table 1 to this subpart. You must monitor VOC concentration either by installing and operating a continuous emission monitoring system (CEMS) to monitor VOC in the fermenter exhaust continuously or by monitoring the concentration of ethanol in the fermenter liquid continuously for each batch (*i.e.*, brew ethanol monitoring) and determining VOC concentration in the exhaust using the correlation equation developed according to § 63.2161.

(e) To determine compliance on or after [date of publication of the final rule in the **Federal Register**], you must monitor VOC concentration continuously for each batch and demonstrate compliance with the applicable emission limitations of either the Average Option or the Batch Option in Table 1 to this subpart. You must monitor VOC concentration by installing and operating a CEMS to monitor the VOC concentration in the fermenter exhaust continuously.

Testing and Initial Compliance Requirements

§ 63.2160 By what date must I conduct an initial compliance demonstration?

(a) For each emission limitation in Table 1 to this subpart for which you demonstrate compliance using the Average Option, you must demonstrate initial compliance for the period ending on the last day of the month that is 12 calendar months (or 11 calendar

months, if the compliance date for your affected source is the first day of the month) after the compliance date that is specified for your affected source in § 63.2133. (For example, if the compliance date is October 15, 2017, then the first 12-month period for which you must demonstrate compliance would be October 15, 2017 through October 31, 2018.)

(b) For each emission limitation in Table 1 to this subpart for which you demonstrate compliance using the Batch Option, you must demonstrate initial compliance for the period ending June 30 or December 31 (use whichever date is the first date following the compliance date that is specified for your affected source in § 63.2133).

§ 63.2161 What performance tests and other procedures must I use if I monitor brew ethanol?

(a) You must conduct each performance test in Table 2 to this subpart that applies to you, as specified in paragraphs (b) through (f) of this section.

(b) You must conduct performance tests under such conditions as the Administrator specifies, based on representative performance of the affected source for the period being tested, and under the specific conditions that this subpart specifies in Table 2 to this subpart and in paragraphs (b)(1) through (4) of this section. You must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(1) You must conduct each performance test simultaneously with brew ethanol monitoring to establish a brew-to-exhaust correlation as specified in paragraph (f) of this section.

(2) For each fermentation stage, you must conduct one run of the EPA Test Method 25A of 40 CFR part 60, appendix A-7, over the entire length of a batch. The three fermentation stages do not have to be from the same production run.

(3) You must obtain your test sample at a point in the exhaust-gas stream before you inject any dilution air. For fermenters, dilution air is any air not needed to control fermentation.

(4) You must record the results of the test for each fermentation stage.

(c) You may not conduct performance tests during periods of malfunction.

(d) You must collect data to correlate the brew ethanol concentration to the VOC concentration in the fermenter exhaust according to paragraphs (d)(1) through (3) of this section.

(1) You must collect a separate set of brew ethanol concentration data for each fed-batch fermentation stage while manufacturing the product that constitutes the largest percentage (by mass) of average annual production.

(2) You must measure brew ethanol as specified in § 63.2164 concurrently with conducting a performance test for VOC in fermenter exhaust as specified in paragraph (b) of this section. You must measure brew ethanol at least once during each successive 30-minute period over the entire period of the performance test for VOC in fermenter exhaust.

(3) You must keep a record of the brew ethanol concentration data for each fermentation stage over the period of EPA Test Method 25A of 40 CFR part 60, appendix A-7, performance test.

(e) For each set of data that you collected under paragraphs (b) and (d) of this section, you must perform a linear regression of brew ethanol concentration (percent) on VOC fermenter exhaust concentration (parts per million by volume (ppmv) measured as propane). You must ensure the correlation between the brew ethanol concentration, as measured by the brew ethanol monitor, and the VOC fermenter exhaust concentration, as measured by EPA Test Method 25A of 40 CFR part 60, appendix A-7, is linear with a correlation coefficient of at least 0.90.

(f) You must calculate the VOC concentration in the fermenter exhaust using the brew ethanol concentration data according to Equation 1 of this section.

$$\text{BAVOC} = \text{BAE} * \text{CF} + y \quad (\text{Eq. 1})$$

Where:

BAVOC = Batch-average concentration of VOC in fermenter exhaust (ppmv measured as propane), calculated for compliance demonstration

BAE = Batch-average concentration of brew ethanol in fermenter liquid (percent), measured by the brew ethanol monitor

CF = Constant established at performance test and representing the slope of the regression line

Y = Constant established at performance test and representing the y-intercept of the regression line

§ 63.2162 When must I conduct subsequent performance tests?

(a) For each emission limitation in Table 1 to this subpart for which compliance is demonstrated by monitoring brew ethanol concentration and calculating VOC concentration in the fermenter exhaust according to the

procedures in § 63.2161, you must conduct an EPA Test Method 25A of 40 CFR part 60, appendix A-7, performance test and establish a brew-to-exhaust correlation according to the procedures in Table 2 to this subpart and in § 63.2161, at least once every year.

(b) The first subsequent performance test must be conducted no later than 365 calendar days after the initial performance test conducted according to § 63.2160. Each subsequent performance test must be conducted no later than 365 calendar days after the previous performance test. You must conduct a performance test for each 365 calendar day period during which you demonstrate compliance using the brew ethanol correlation developed according to § 63.2161.

§ 63.2163 If I monitor fermenter exhaust, what are my monitoring installation, operation, and maintenance requirements?

(a) You must install and certify a CEMS that generates a single combined response value for VOC concentration (VOC CEMS) according to the procedures and requirements in Performance Specification 8—Performance Specifications for Volatile Organic Compound Continuous Emission Monitoring Systems in Stationary Sources in appendix B to part 60 of this chapter.

(b) You must operate and maintain your VOC CEMS according to the procedures and requirements in Procedure 1—Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determination in appendix F to part 60 of this chapter.

(1) You must conduct a relative accuracy test audit (RATA) at least annually, in accordance with sections 8 and 11, as applicable, of Performance Specification 8.

(2) As necessary, rather than relying on reference 2 of Performance Specification 8 of appendix B to 40 CFR part 60, you must rely on EPA/600/R-12/531, EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards, May 2012 (incorporated by reference, see § 63.14).

(3) Your affected source must meet the criteria of Performance Specification 8, section 13.2.

(c) You must use Method 25A in appendix A-7 to part 60 of this chapter as the Reference Method (RM).

(d) You must calibrate your VOC CEMS with propane.

(e) You must set your VOC CEMS span at less than 5 times the relevant VOC emission limitation given in Table 1 or 2 of this subpart. Note that the EPA

considers 1.5 to 2.5 times the relevant VOC emission limitation to be the optimum range, in general.

(f) You must complete the performance evaluation and submit the performance evaluation report before the compliance date that is specified for your affected source in § 63.2133.

(g) You must monitor VOC concentration in fermenter exhaust at any point prior to dilution of the exhaust stream.

(h) You must collect data using the VOC CEMS at all times during each batch monitoring period, except for periods of monitoring system malfunctions, required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments), and any scheduled maintenance.

(i) For each CEMS, you must record the results of each inspection, calibration, and validation check.

(j) You must check the zero (low-level) and high-level calibration drifts for each CEMS in accordance with the applicable Performance Specification of 40 CFR part 60, appendix B. You must adjust the zero (low-level) and high-level calibration drifts, at a minimum, whenever the zero (low-level) drift exceeds 2 times the limits of the applicable Performance Specification. You must perform the calibration drift checks at least once daily except under the conditions of paragraphs (j)(1) through (3) of this section.

(1) If a 24-hour calibration drift check for your CEMS is performed immediately prior to, or at the start of, a batch monitoring period of a duration exceeding 24 hours, you are not required to perform 24-hour-interval calibration drift checks during that batch monitoring period.

(2) If the 24-hour calibration drift exceeds 2.5 percent of the span value in fewer than 5 percent of the checks over a 1-month period, and the 24-hour calibration drift never exceeds 7.5 percent of the span value, you may reduce the frequency of calibration drift checks to at least weekly (once every 7 days).

(3) If, during two consecutive weekly checks, the weekly calibration drift exceeds 5 percent of the span value, then you must resume a frequency of at least 24-hour interval calibration checks until the 24-hour calibration checks meet the test of paragraph (j)(2) of this section.

(k) If your CEMS is out of control, you must take corrective action according to paragraphs (k)(1) through (3) of this section.

(1) Your CEMS is out of control if the zero (low-level) or high-level calibration drift exceeds 2 times the limits of the applicable Performance Specification.

(2) When the CEMS is out of control, you must take the necessary corrective action and repeat all necessary tests that indicate that the system is out of control. You must take corrective action and conduct retesting until the performance requirements are below the applicable limits.

(3) You must not use data recorded during batch monitoring periods in which the CEMS is out of control in averages and calculations used to demonstrate compliance, or to meet any data availability requirement established under this subpart. The beginning of the out-of-control period is the beginning of the first batch monitoring period that follows the most recent calibration drift check during which the system was within allowable performance limits. The end of the out-of-control period is the end of the last batch monitoring period before you have completed corrective action and successfully demonstrated that the system is within the allowable limits. If your successful demonstration that the system is within the allowable limits occurs during a batch monitoring period, then the out-of-control period ends at the end of that batch monitoring period. If the CEMS is out of control for any part of a particular batch monitoring period, it is out of control for the whole batch monitoring period.

§ 63.2164 If I monitor brew ethanol, what are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain each brew ethanol monitor according to the manufacturer's specifications and in accordance with § 63.2150(c).

(b) Each of your brew ethanol monitors must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 30-minute period within each batch monitoring period. Except as specified in paragraph (c) of this section, you must have a minimum of two cycles of operation in a 1-hour period to have a valid hour of data.

(c) You must reduce the brew ethanol monitor data to arithmetic batch averages computed from two or more data points over each 1-hour period, except during periods when calibration, quality assurance, or maintenance activities pursuant to provisions of this part are being performed. During these periods, a valid hour of data must consist of at least one data point representing a 30-minute period.

(d) You must have valid brew ethanol monitor data from all operating hours over the entire batch monitoring period.

(e) You must set the brew ethanol monitor span to correspond to not greater than 5 times the relevant emission limit; note that we consider 1.5 to 2.5 times the relevant emission limit to be the optimum range, in general. You must use the brew-to-exhaust correlation equation established under § 63.2161(f) to determine the span value for your brew ethanol monitor that corresponds to the relevant emission limit.

(f) For each brew ethanol monitor, you must record the results of each inspection, calibration, and validation check.

(g) The gas chromatographic (GC) that you use to calibrate your brew ethanol monitor must meet the requirements of paragraphs (g)(1) through (3) of this section.

(1) You must calibrate the GC at least daily, by analyzing standard solutions of ethanol in water (0.05 percent, 0.15 percent, and 0.3 percent).

(2) For use in calibrating the GC, you must prepare the standard solutions of ethanol using the procedures listed in paragraphs (g)(2)(i) through (vi) of this section.

(i) Starting with 100-percent ethanol, you must dry the ethanol by adding a small amount of anhydrous magnesium sulfate (granular) to 15–20 milliliters (ml) of ethanol.

(ii) You must place approximately 50 ml of water into a 100-ml volumetric flask and place the flask on a balance. You must tare the balance. You must weigh 2.3670 grams of the dry (anhydrous) ethanol into the volumetric flask.

(iii) Add the 100-ml volumetric flask contents to a 1000-ml volumetric flask. You must rinse the 100-ml volumetric flask with water into the 1000-ml flask. You must bring the volume to 1000 ml with water.

(iv) You must place an aliquot into a sample bottle labeled “0.3% Ethanol.”

(v) You must fill a 50-ml volumetric flask from the contents of the 1000-ml flask. You must add the contents of the 50-ml volumetric flask to a 100-ml volumetric flask and rinse the 50-ml flask into the 100-ml flask with water. You must bring the volume to 100 ml with water. You must place the contents into a sample bottle labeled “0.15% Ethanol.”

(vi) With a 10-ml volumetric pipette, you must add two 10.0-ml volumes of water to a sample bottle labeled “0.05% Ethanol.” With a 10.0-ml volumetric pipette, you must pipette 10.0 ml of the

0.15 percent ethanol solution into the sample bottle labeled “0.05% Ethanol.”

(3) For use in calibrating the GC, you must dispense samples of the standard solutions of ethanol in water in aliquots to appropriately labeled and dated glass sample bottles fitted with caps having a Teflon® seal. You may keep refrigerated samples unopened for 1 month. You must prepare new calibration standards of ethanol in water at least monthly.

(h) You must calibrate the CEMS according to paragraphs (h)(1) through (3) of this section.

(1) To calibrate the brew ethanol monitor, you must inject a brew sample into a calibrated GC and compare the simultaneous ethanol value given by the brew ethanol monitor to that given by the GC. You must use either the Porapak® Q, 80–100 mesh, 6' × 1/8', stainless steel packed column or the DB Wax, 0.53 millimeter × 30 meter capillary column.

(2) If a brew ethanol monitor value for ethanol differs by 20 percent or more from the corresponding GC ethanol value, you must determine the brew ethanol values throughout the rest of the batch monitoring period by injecting brew samples into the GC not less frequently than once every 30 minutes. From the time at which you detect a difference of 20 percent or more until the batch monitoring period ends, the GC data will serve as the brew ethanol monitor data.

(3) You must perform a calibration of the brew ethanol monitor at least four times per batch.

§ 63.2165 How do I demonstrate initial compliance with the emission limitations if I monitor fermenter exhaust?

(a) You must demonstrate initial compliance with each emission limitation that applies to you according to Table 3 to this subpart.

(b) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.2180(e).

Continuous Compliance Requirements

§ 63.2170 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for periods of monitoring system malfunctions, required monitoring system quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), and any scheduled maintenance, you must collect data using the CEMS at all

times during each batch monitoring period.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or quality control activities in data averages and calculations used to report emission or operating levels, or to fulfill a data collection requirement. You must use all the data collected during all other periods in assessing the operation of the control system.

(d) Any hour during the batch monitoring period for which quality-assured VOC data are not obtained is a deviation from monitoring requirements and is counted as an hour of monitoring system downtime.

§ 63.2171 How do I demonstrate continuous compliance with the emission limitations?

(a) You must demonstrate continuous compliance with each emission limitation in Table 1 to this subpart that applies to you according to methods specified in Table 4 to this subpart and the applicable procedures of this section.

(1) To demonstrate compliance prior to [date one year after the date of publication of the final rule in the **Federal Register**], you must install, operate, and maintain a CEMS in accordance with § 63.2163 to monitor VOC concentration in the fermenter exhaust or install, operate, and maintain a brew ethanol monitor in accordance with § 63.2164 to monitor the brew ethanol concentration in the fermenter liquid.

(2) To demonstrate compliance on and after [date 1 year after the date of publication of the final rule in the **Federal Register**], you must install, operate, and maintain a CEMS in accordance with § 63.2163 to monitor VOC concentration in the fermenter exhaust.

(b) To demonstrate compliance with emission limitations prior to [date of publication of the final rule in the **Federal Register**], you must calculate the percentage of within-concentration batches (defined in § 63.2192) for each 12-month calculation period by following the procedures in paragraphs (b)(1) through (4) of this section.

(1) You must determine the percentage of batches over a 12-month calculation period that were in compliance with the applicable maximum concentration. The total number of batches in the calculation period is the sum of the numbers of batches of each fermentation stage for which emission limits apply. To determine which batches are in the 12-month calculation period, you must

include those batches for which the batch monitoring period ended on or after midnight on the first day of the period and exclude those batches for which the batch monitoring period did not end before midnight on the last day of the period.

(2) You must determine the percentage of batches in compliance with the applicable emission limitations for each 12-month calculation period at the end of each calendar month.

(3) The first 12-month calculation period begins on the compliance date that is specified for your affected source in § 63.2133 and ends on the last day of the month that includes the date 1 year after your compliance date, unless the compliance date for your affected source is the first day of the month, in which case the first 12-month calculation period ends on the last day of the month that is 11 calendar months after the compliance date. (For example, if the compliance date for your affected source is October 15, 2017, the first 12-month calculation period would begin on October 15, 2017, and end on October 31, 2018. If the compliance date for your affected source is October 1, 2017, the first 12-month calculation period would begin on October 1, 2017, and end on September 30, 2018.)

(4) The second 12-month calculation period and each subsequent 12-month calculation period begins on the first day of the month following the first full month of the previous 12-month averaging period and ends on the last day of the month 11 calendar months later. (For example, if the compliance date for your affected source is October 15, 2017, the second calculation period would begin on December 1, 2017, and end on November 30, 2018.)

(c) To demonstrate compliance with emission limitations on and after [date of publication of the final rule in the **Federal Register**] by using the Average Option, you must follow the procedures in paragraphs (c)(1) through (3) of this section.

(1) At the end of each calendar month, you must determine the average VOC concentration from all batches in each fermentation stage in a 12-month calculation period. To determine which batches are in a 12-month calculation period, you must include those batches for which the batch monitoring period ended on or after midnight on the first day of the period and exclude those batches for which the batch monitoring period did not end before midnight on the last day of the period.

(2) The first 12-month calculation period begins on the compliance date that is specified for your affected source in § 63.2133 and ends on the last day of

the month that includes the date 1 year after your compliance date, unless the compliance date for your affected source is the first day of the month, in which case the first 12-month calculation period ends on the last day of the month that is 11 calendar months after the compliance date. (For example, if the compliance date for your affected source is October 15, 2017, the first 12-month calculation period would begin on October 15, 2017, and end on October 31, 2018. If the compliance date for your affected source is October 1, 2017, the first 12-month calculation period would begin on October 1, 2017, and end on September 30, 2018.)

(3) The second 12-month calculation period and each subsequent 12-month calculation period begins on the first day of the month following the first full month of the previous 12-month averaging period and ends on the last day of the month 11 calendar months later. (For example, if the compliance date for your affected source is October 15, 2017, the second calculation period would begin on December 1, 2017, and end on November 30, 2018.)

(d) To demonstrate compliance with emission limitations on and after [date of publication of the final rule in the **Federal Register**] by using the Batch Option, you must determine the average VOC concentration in the fermenter exhaust for each batch of each fermentation stage in a semiannual reporting period (*i.e.*, January 1 through June 30 or July 1 through December 31). To determine which batches are in the semiannual reporting period, you must include those batches for which the batch monitoring period ended on or after midnight on the first day of the period and exclude those batches for which the batch monitoring period did not end before midnight on the last day of the period.

Notification, Reports, and Records

§ 63.2180 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e), (f)(4) and (6), and 63.9(b) through (h) that apply to you by the dates specified.

(b) If you start up your affected source before May 21, 2001, you are not subject to the initial notification requirements of § 63.9(b)(2).

(c) If you are required to conduct a performance test as specified in Table 2 to this subpart, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(d) If you are required to conduct a performance evaluation as specified in § 63.2163, you must submit a notification of the date of the performance evaluation at least 60 days prior to the date the performance evaluation is scheduled to begin as required in § 63.8(e)(2).

(e) If you are required to conduct a performance test as specified in Table 2 to this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii).

(f) For each initial compliance demonstration required in Table 3 to this subpart, you must submit the Notification of Compliance Status no later than July 31 or January 31, whichever date follows the date that is specified for your affected source in § 63.2160(a) or (b). The first compliance report, described in § 63.2181(b)(1), serves as the Notification of Compliance Status.

§ 63.2181 What reports must I submit and when?

(a) You must submit each report in Table 5 to this subpart that applies to you.

(1) On and after [date of publication of the final rule in the **Federal Register**], you must also comply with electronic reporting for compliance tests as specified in paragraphs (a)(1)(i) and (ii) of this section.

(i) Within 60 days after the date of completing each performance test as required by this subpart, you must submit the results of the performance test following the procedure specified in either paragraph (a)(1)(i)(A) or (B) of this section.

(A) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (https://www3.epa.gov/ttn/chief/ert/ert_info.html) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>.) Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT Web site. If you claim that some of the performance test information being submitted is confidential business information (CBI), then you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed

on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(B) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13.

(ii) Within 60 days after the date of completing each CEMS performance evaluation (as defined in § 63.2), you must submit the results of the performance evaluation following the procedure specified in either paragraph (ii)(A) or (B) of this section.

(A) For performance evaluations of CEMS measuring RATA pollutants that are supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the evaluation, you must submit the results of the performance evaluation to the EPA via the CEDRI. Performance evaluation data must be submitted in a file format generated through the use of the EPA's ERT or an alternate file format consistent with the XML schema listed on the EPA's ERT Web site. If you claim that some of the performance evaluation information being submitted is CBI, then you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage media to the EPA. The electronic storage media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(B) For any performance evaluations of continuous emission monitoring systems measuring RATA pollutants that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the evaluation, you must submit the results of the performance

evaluation to the Administrator at the appropriate address listed in § 63.13.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 5 to this subpart and according to paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must include the information specified in paragraph (c) of this section. If you are demonstrating compliance with an emission limitation using a 12-month calculation period (e.g., the Average Option), then the first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.2133 and ending on either June 30 or December 31 (use whichever date is the first date following the end of the first 12 calendar months after the compliance date that is specified for your affected source in § 63.2133). (For example, if the compliance date for your affected source is October 15, 2017, then the first compliance report would cover the period from October 15, 2017 to December 31, 2018.) If you are demonstrating compliance with an emission limitation using the Batch Option, then the first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.2133 and ending on either June 30 or December 31 (use whichever date is the first date following the compliance date that is specified for your affected source in § 63.2133).

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first compliance reporting period specified in paragraph (b)(1) of this section.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31. Each subsequent compliance report must include the information specified in paragraph (c) of this section.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(a)(iii)(A) or 40 CFR 71.6(a)(3)(a)(iii)(A), you may submit the

first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information listed in paragraphs (c)(1) through (7) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) For reporting periods ending before [date of publication of the final rule in the **Federal Register**], the percentage of batches that are within-concentration batches for each 12-month period ending on a calendar month that falls within the reporting period.

(5) For reporting periods ending before [date of publication of the final rule in the **Federal Register**], if an affected source fails to meet an applicable standard, the information for each batch for which the batch-average VOC concentration exceeded the applicable maximum VOC concentration in Table 1 to this subpart and whether the batch was in production during a period of malfunction or during another period.

(6) For reporting periods ending on or after [date of publication of the final rule in the **Federal Register**], if an affected source meets an applicable standard, the information in paragraph (c)(6)(i) or (ii) of this section, depending on the compliance option selected from Table 1 to this subpart.

(i) If using the Average Option in Table 1 to this subpart, the average VOC concentration in the fermenter exhaust from all batches in each fermentation stage for each 12-month period ending on a calendar month that falls within the reporting period that did not exceed the applicable emission limitation.

(ii) If using the Batch Option in Table 1 to this subpart, a certification that the average VOC concentration in the fermenter exhaust for each batch did not exceed applicable emission limitations.

(7) For reporting periods ending on and after [date of publication of the final rule in the **Federal Register**], if an affected source fails to meet an applicable standard, the information in paragraph (c)(7)(i) or (ii) of this section, depending on the compliance option selected from Table 1 to this subpart.

(i) If using the Average Option in Table 1 to this subpart, the average VOC concentration in the fermenter exhaust from all batches in each fermentation

stage for each 12-month period that failed to meet the applicable standard, the fermenters that operated in each fermentation stage that failed to meet the applicable standard, the duration of each failure, an estimate of the quantity of VOC emitted over the emission limitation, a description of the method used to estimate the emissions, and the actions taken to minimize emissions and correct the failure.

(ii) If using the Batch Option in Table 1 to this subpart, the fermenters and batches that failed to meet the applicable standard; the date, time, and duration of each failure; an estimate of the quantity of VOC emitted over the emission limitation; a description of the method used to estimate the emissions; and the actions taken to minimize emissions and correct the failure.

(8) The total operating hours and hours of monitoring system downtime for each fermenter.

§ 63.2182 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (4) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Notification of Compliance Status and compliance report that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) Records of failures to meet a standard, specified in § 63.2181(c)(5) and (7).

(3) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(4) Records of results of brew-to-exhaust correlation tests specified in § 63.2161.

(b) For each CEMS, you must keep the records listed in paragraphs (b)(1) through (9) of this section.

(1) Records described in § 63.10(b)(2)(vi).

(2) All required measurements needed to demonstrate compliance with a relevant standard (including, but not limited to, CEMS data, raw performance testing measurements, and raw performance evaluation measurements that support data that you are required to report).

(3) Records described in § 63.10(b)(2)(viii) through (xi). The CEMS system must allow the amount of excess zero (low-level) and high-level calibration drift measured at the interval checks to be quantified and recorded.

(4) All required CEMS measurements (including monitoring data recorded during CEMS breakdowns and out-of-control periods).

(5) Identification of each time period during which the CEMS was inoperative, except for zero (low-level) and high-level checks.

(6) Identification of each time period during which the CEMS was out of control, as defined in § 63.2163(k).

(7) Current version of the performance evaluation test plan, as specified in § 63.8(d)(2), including the program of corrective action for a malfunctioning CEMS, and previous (*i.e.*, superseded) versions of the performance evaluation test plan for a period of 5 years after each revision to the plan. The program of corrective action should be included in the plan required under § 63.8(d)(2).

(8) Request for alternatives to relative accuracy test audits for CEMS as required in § 63.8(f)(6)(i).

(9) Records of each deviation from monitoring system requirements, including a description and explanation of each deviation.

(c) You must keep the records required in Table 4 to this subpart to show continuous compliance with each emission limitation that applies to you.

(d) You must also keep the records listed in paragraphs (d)(1) through (3) of this section for each batch in your affected source.

(1) Unique batch identification number.

(2) Fermentation stage for which you are using the fermenter.

(3) Unique CEMS equipment identification number.

§ 63.2183 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records off site for the remaining 3 years.

(d) You must keep written procedures documenting the CEMS quality control program on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator.

Other Requirements and Information

§ 63.2190 What parts of the General Provisions apply to me?

Table 6 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

§ 63.2191 Who implements and enforces this subpart?

(a) We, the U.S. EPA, or a delegated authority such as your state, local, or tribal agency, can implement and enforce this subpart. If our Administrator has delegated authority to your state, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact the U.S. EPA Regional Office that serves you to find out if this subpart is delegated to your state, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a state, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by our Administrator and are not transferred to the state, local, or tribal agency.

(c) The authorities that will not be delegated to state, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the non-opacity emission limitations in § 63.2140 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.2192 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

Batch means a single fermentation cycle in a single fermentation vessel (fermenter).

Batch monitoring period means the period that begins at the later of either the start of aeration or the addition of yeast to the fermenter; the period ends at the earlier of either the end of aeration or the point at which the yeast has begun being emptied from the fermenter.

Brew means the mixture of yeast and additives in the fermenter.

Brew ethanol means the ethanol in fermenter liquid.

Brew ethanol monitor means the monitoring system that you use to

measure brew ethanol to demonstrate compliance with this subpart. The monitoring system includes a resistance element used as an ethanol sensor, with the measured resistance proportional to the concentration of ethanol in the brew.

Brew-to-exhaust correlation means the correlation between the concentration of ethanol in the brew and the concentration of VOC in the fermenter exhaust. This correlation is specific to each fed-batch fermentation stage and is established while manufacturing the product that comprises the largest percentage (by mass) of average annual production.

Emission limitation means any emission limit or operating limit.

Fed-batch means the yeast is fed carbohydrates and additives during fermentation in the vessel.

Monitoring system malfunction means any sudden, infrequent, and not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to complete monitoring system repairs in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

1-hour period means any 60-minute period commencing on the minute at which the batch monitoring period begins.

Product means the yeast resulting from the final stage in a production run. Products are distinguished by yeast species, strain, and variety.

Responsible official means responsible official as defined in 40 CFR 70.2.

Set-batch means the yeast is fed carbohydrates and additives only at the start of the batch.

Specialty yeast includes but is not limited to yeast produced for use in wine, champagne, whiskey, and beer.

Within-concentration batch means a batch for which the average VOC concentration is not higher than the maximum concentration that is allowed as part of the applicable emission limitation.

TABLE 1 TO SUBPART CCCC OF PART 63—EMISSION LIMITATIONS

For each fed-batch fermenter producing yeast in the following fermentation stage . . .	Before [date of publication of the final rule in the Federal Register] . . .	On and after [date of publication of the final rule in the Federal Register], you must comply with either the Average Option or the Batch Option . . .	
	You must not exceed the following VOC emission limitation ^a . . .	Average Option: You must not exceed the following VOC emission limitation ^a . . .	Batch Option: You must not exceed the following VOC emission limitation ^a . . .
Last stage	100 parts per million by volume (ppmv) (measured as propane) in the fermenter exhaust for at least 98 percent of all batches ^b in each 12-month calculation period described in § 63.2171(b).	95 ppmv (measured as propane) for the average VOC concentration in the fermenter exhaust from all batches ^b in this stage in each 12-month calculation period ^c .	100 ppmv (measured as propane) for the average VOC concentration in the fermenter exhaust for each batch. ^b
Second-to-last stage	200 ppmv (measured as propane) in the fermenter exhaust for at least 98 percent of all batches ^b in each 12-month calculation period described in § 63.2171(b).	190 ppmv (measured as propane) for the average VOC concentration in the fermenter exhaust from all batches ^b in this stage in each 12-month calculation period ^c .	200 ppmv (measured as propane) for the average VOC concentration in the fermenter exhaust for each batch. ^b
Third-to-last stage	300 ppmv (measured as propane) in the fermenter exhaust for at least 98 percent of all batches ^b in each 12-month calculation period described in § 63.2171(b).	285 ppmv (measured as propane) for the average VOC concentration in the fermenter exhaust from all batches ^b in this stage in each 12-month calculation period ^c .	300 ppmv (measured as propane) for the average VOC concentration in the fermenter exhaust for each batch. ^b

^a The emission limitation does not apply during the production of specialty yeast.

^b The average VOC concentration for each batch equals the average VOC concentration over the duration of a batch.

^c Determined as the average of all batch-average VOC concentration data for this stage in each 12-month calculation period as described in §§ 63.2160(a) and 63.2171(c).

TABLE 2 TO SUBPART CCCC OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS IF YOU MONITOR BREW ETHANOL

For each fed-batch fermenter for which compliance is determined by monitoring brew ethanol concentration and calculating VOC concentration in the fermenter exhaust according to the procedures in § 63.2161, you must . . .	Using . . .	According to the following requirements . . .
Measure VOC as propane	Method 25A ^a , or an alternative validated by EPA Method 301 ^b and approved by the Administrator.	You must measure the VOC concentration in the fermenter exhaust at any point prior to the dilution of the exhaust stream.

^a EPA Test Method 25A is found in appendix A-7 of 40 CFR part 60.

^b EPA Test Method 301 is found in appendix A of 40 CFR part 63.

TABLE 3 TO SUBPART CCCC OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS

For . . .	Before [date of publication of the final rule in the Federal Register], you have demonstrated initial compliance if . . .	On and after [date of publication of the final rule in the Federal Register] . . .	
		Average Option: You have demonstrated initial compliance if . . .	Batch Option: You have demonstrated initial compliance if . . .
Each fed-batch fermenter producing yeast in a fermentation stage (last (Trade), second-to-last (First Generation), or third-to-last (Stock)) for which compliance is determined by monitoring VOC concentration in the fermenter exhaust.	The average VOC concentration in the fermenter exhaust for at least 98 percent of the batches (sum of batches from last, second-to-last, and third-to-last stages) during the initial compliance period does not exceed the applicable maximum concentration in Table 1 to this subpart.	The average VOC concentration in the fermenter exhaust from all batches in each fermentation stage during the initial compliance period described in §63.2160(a) does not exceed the applicable concentration in Table 1 to this subpart.	The average VOC concentration in the fermenter exhaust for each batch of each fermentation stage during the initial compliance period described in §63.2160(b) does not exceed the applicable concentration in Table 1 to this subpart.

TABLE 4 TO SUBPART CCCC OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS

For . . .	Before [date of publication of the final rule in the Federal Register], you must demonstrate continuous compliance by . . .	On and after [date of publication of the final rule in the Federal Register] . . .	
		Average Option: You must demonstrate continuous compliance by . . .	Batch Option: You must demonstrate continuous compliance by . . .
1. Each fed-batch fermenter producing yeast in a fermentation stage (last (Trade), second-to-last (First Generation), or third-to-last (Stock)) for which compliance is determined by monitoring VOC concentration in the fermenter exhaust.	Showing that for at least 98 percent of the batches (sum of batches from last, second-to-last, and third-to-last stages) for each 12-month period ending within a semiannual reporting period described in §63.2181(b)(3), the batch-average VOC concentration in the fermenter exhaust does not exceed the applicable maximum concentration in Table 1 to this subpart.	Showing that the average VOC concentration in the fermenter exhaust from all batches in each fermentation stage during each 12-month calculation period ending within a semiannual reporting period described in §63.2181(b)(3) does not exceed the applicable concentration in Table 1 to this subpart.	Showing that the average VOC concentration in the fermenter exhaust for each batch within a semiannual reporting period described in §63.2181(b)(3) does not exceed the applicable concentration in Table 1 to this subpart.
2. Each fed-batch fermenter producing yeast in a fermentation stage (last (Trade), second-to-last (First Generation), or third-to-last (Stock)) for which compliance is determined by monitoring brew ethanol concentration and calculating VOC concentration in the fermenter exhaust according to the procedures in §63.2161.	Showing that for at least 98 percent of the batches (sum of batches from last, second-to-last, and third-to-last stages) for each 12-month period ending within a semiannual reporting period described in §63.2181(b)(3), the batch-average VOC concentration in the fermenter exhaust does not exceed the applicable maximum concentration in Table 1 to this subpart.	Showing that the average VOC concentration in the fermenter exhaust from all batches in each fermentation stage during each 12-month calculation period ending within a semiannual reporting period described in §63.2181(b)(3) does not exceed the applicable concentration in Table 1 to this subpart ^a .	Showing that the average VOC concentration in the fermenter exhaust for each batch within a semiannual reporting period described in §63.2181(b)(3) does not exceed the applicable concentration in Table 1 to this subpart. ^a

^a Monitoring brew ethanol to demonstrate compliance is not allowed on and after [date one year after the date of publication of the final rule in the **Federal Register**], as specified in §63.2171(a)(2).

TABLE 5 TO SUBPART CCCC OF PART 63—REQUIREMENTS FOR REPORTS

You must submit a . . .	The report must contain . . .	You must submit the report . . .
1. Compliance report	a. The information described in §63.2181(c), for 12-month calculation periods ending on each calendar month that falls within the reporting period. b. If you had a malfunction during the reporting period, then the compliance report must include the information in §63.2181(c)(5) and (7).	Semiannually according to the requirements in §63.2181(b). Semiannually according to the requirements in §63.2181(b).
2. Performance Evaluation Report	The results of the performance evaluation, including information from the performance evaluation plan at 63.8(e)(3).	At least annually and according to the requirements in §§63.2163(f) and 63.2181(a)(1)(ii).

TABLE 6 TO SUBPART CCCC OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART CCCC

Citation	Subject	Applicable to subpart CCCC?
§ 63.1	Applicability	Yes.
§ 63.2	Definitions	Yes.
§ 63.3	Units and Abbreviations	Yes.
§ 63.4	Prohibited Activities and Circumvention	Yes.
§ 63.5	Construction and Reconstruction	Yes.
§ 63.6	Compliance With Standards and Maintenance Requirements.	1. § 63.6(e)(1)(i) does not apply, instead specified in § 63.2150(c). 2. § 63.6(e)(1)(ii), (e)(3), (f)(1), and (h) do not apply. 3. Otherwise, all apply.
§ 63.7	Performance Testing Requirements	1. § 63.7(a)(1)–(2) do not apply, instead specified in § 63.2162. 2. § 63.7(e)(1) and (e)(3) do not apply, instead specified in § 63.2161(b). 3. Otherwise, all apply.
§ 63.8	Monitoring Requirements	1. § 63.8(a)(2) is modified by § 63.2163. 2. § 63.8(d)(3) does not apply, instead specified in § 63.2182(b)(7) and § 63.2183(d). 3. § 63.8(a)(4), (c)(1)(i), (c)(1)(iii), (c)(4)(i), (c)(5), (e)(5)(ii), and (g)(5) do not apply. 4. § 63.8(c)(4)(ii), (c)(6)–(8), (e)(4), and (g)(1)–(4) do not apply, instead specified in § 63.2163, § 63.2170(b), and § 63.2182(b)(6). 5. Otherwise, all apply.
§ 63.9	Notification Requirements	1. § 63.9(b)(2) does not apply because rule omits requirements for initial notification for affected sources that start up prior to May 21, 2001. 2. § 63.9(f) does not apply. 3. Otherwise, all apply.
§ 63.10	Recordkeeping and Reporting Requirements.	1. § 63.10(b)(2)(ii) does not apply, instead specified in § 63.2182(a)(2). 2. § 63.10(c)(1)–(6) do not apply, instead specified in § 63.2182(b)(4)–(6). 3. § 63.10 (b)(2)(i), (b)(2)(iv), (b)(2)(v), (c)(15), (d)(3), (e)(2)(ii), and (e)(3)–(4) do not apply. 4. § 63.10(d)(5) does not apply, instead specified in § 63.2181(c)(5) and (7). 5. Otherwise, all apply.
§ 63.11	Flares	No.
§ 63.12	Delegation	Yes.
§ 63.13	Addresses	Yes.
§ 63.14	Incorporation by Reference	Yes.
§ 63.15	Availability of Information	Yes.

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Part V

The President

Memorandum of December 22, 2016—Supporting New American Service Members, Veterans, and Their Families

Presidential Documents

Title 3—

Memorandum of December 22, 2016

The President

Supporting New American Service Members, Veterans, and Their Families

Memorandum for the Heads of Executive Departments and Agencies

My Administration has maintained a steadfast commitment to honor and serve the brave men and women who have served this country. Like all service members and veterans, foreign-born residents and naturalized citizens serving in the United States Armed Forces are shining examples of the American dream. These brave new Americans have taken the extraordinary step of answering the call to duty, to support and defend our country. Some have made the ultimate sacrifice for our country before becoming American citizens.

New American service members are undoubtedly a critical element of our national security. They risk their lives all over the world in the name of the United States, securing shipping lanes, protecting bases and embassies, providing medical assistance, and conducting humanitarian missions. Tens of thousands of lawful permanent residents and naturalized U.S. citizens currently serve in our Armed Forces. Many more are veterans who have served previously in the Armed Forces. Additionally, many U.S.-born service members have immediate family members who were born abroad.

Over the past decade, the Departments of Defense, Veterans Affairs, and Homeland Security have strengthened partnerships to provide services and opportunities to service members, veterans, and their families interacting with the U.S. immigration system. Indeed, since 2001, more than 110,000 service members have been naturalized and many were assisted in the process through partnerships such as the “Naturalization at Basic Training Initiative,” which gives non-citizen enlistees the opportunity to naturalize during basic training. Despite these efforts, service members, veterans, and their families still face barriers to accessing immigration benefits and other assistance for which they may be eligible.

In light of the sacrifices that all of these individuals make and have made for our country, it is critical that executive departments and agencies (agencies) enhance collaboration and streamline processes to ensure that they receive the services and benefits they need and have earned. Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, and to address the issues facing new American service members, veterans, and their families, I hereby direct as follows:

Section 1. *Interagency Working Group to Support New American Service Members, Veterans, and their Families.* There is established a Working Group to Support New American Service Members, Veterans, and their Families (Working Group) to coordinate records, benefits, and immigration and citizenship services for these service members, veterans, and their families. The Working Group shall convene its first meeting within 10 days of the date of this memorandum.

- (a) The Working Group shall consist of representatives from:
 - (i) the Department of State;
 - (ii) the Department of Defense;
 - (iii) the Department of Justice;

- (iv) the Department of Labor;
- (v) the Department of Veterans Affairs; and
- (vi) the Department of Homeland Security.

(b) The Working Group shall consult with additional agencies or offices, as appropriate.

Sec. 2. *Mission and Functions of the Working Group.* (a) The Working Group shall coordinate agency efforts to support service members, veterans, and their families who are navigating the immigration, veterans, and military systems. Such efforts shall include:

- (i) coordinating the sharing of military records and other information relevant to immigration or veterans benefits;
- (ii) enhancing awareness of naturalization and immigration benefits to provide timely assistance and information to service members, veterans, and their families;
- (iii) coordinating and facilitating the process of adjudicating immigration applications and petitions; and
- (iv) other efforts that further support service members, veterans, and their families.

(b) Within 30 days of the date of this memorandum, the Working Group shall develop an initial 3-year strategic action plan that details broad approaches to be taken to enhance access to services and benefits. This initial plan shall be supplemented by a more detailed plan, to be published within 120 days of the date of this memorandum that discusses the steps to be taken in greater detail. The Working Group shall also report periodically on its accomplishments and ongoing initiatives.

Sec. 3. *Outreach.* Consistent with the objectives of this memorandum and applicable law, the Working Group shall seek the views of representatives of private and nonprofit organizations; veterans and military service organizations; State, tribal, and local government agencies; elected officials; and other interested persons to inform the Working Group's plans.

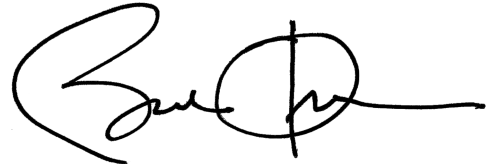
Sec. 4. *General Provisions.* (a) The heads of agencies shall assist and provide information to the Working Group, consistent with applicable law, as may be necessary to carry out the functions of the Working Group. Each agency and office shall bear its own expense for carrying out activities related to the Working Group.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect the authority granted by law to an executive department or an agency, or the head thereof, or the status of that department or agency within the Federal Government.

(c) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(e) The Secretary of Homeland Security is hereby authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to be "Donald Trump", written in a cursive style.

THE WHITE HOUSE,
Washington, December 22, 2016.

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