FEDERAL REGISTER

Vol. 81 Wednesday,
No. 3 January 6, 2016

Pages 371–718

OFFICE OF THE FEDERAL REGISTER

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Federal Register

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2015–0156]

RIN 3150–AJ63

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System; Amendment No. 9, Revision 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the Holtec International (''Holtec,'' or ''the applicant'') HI–STORM 100 Cask System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 9, Revision 1, to Certificate of Compliance (CoC) No. 1014. Amendment No. 9, Revision 1, changes cooling time limits for thimble plug devices (TPDs), removes certain testing requirements for the fabrication of Metamic HT neutron-absorbing structural material, and reduces certain minimum guaranteed values (MGV) used in bounding calculations for this material. Amendment No. 9, Revision 1, also changes fuel definitions to classify certain boiling water reactor (BWR) fuel within specified guidelines as undamaged fuel.

DATES: The direct final rule is effective March 21, 2016, unless significant adverse comments are received by February 5, 2016. If the direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only of comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0156. 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.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Robert D. MacDougall, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–5175, email: *Robert.MacDougall@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0156 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–2015–0156.
- *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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2015–0156 in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Procedural Background

This rule is limited to the changes contained in Amendment No. 9, Revision 1, to CoC No. 1014 and does not include other aspects of the Holtec HI–STORM 100 Cask System design. The NRC is using the ''direct final rule'' procedure to issue this amendment because it represents a limited and routine change to an existing CoC and is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on March 21, 2016. If the NRC receives significant adverse comments on this direct final rule by February 5, 2016, the NRC will publish a **Federal Register** notice withdrawing the direct final rule, and will address the comments in a subsequent **Federal Register** notice for a final rule based on the companion proposed rule published in the Proposed Rule section of this issue of the **Federal Register**. Absent the need for significant modifications to the proposed revisions that would require republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or Technical Specifications.

For detailed instructions on filing comments, please see the **ADDRESSES** section of this document.

III. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that ''the Secretary [of the U.S. Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [U.S. Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule to add a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule (65 FR 25241; May 1, 2000) that approved the HI–STORM 100 Cask System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214, ''List of approved spent fuel storage casks,'' as CoC No. 1014. Most recently, the NRC issued a final rule effective on March 11, 2014 (78 FR 78165), that approved the HI–STORM 100 Cask System design amendment subject to this rulemaking and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1014, Amendment No. 9.

IV. Discussion of Changes

On July 1, 2014, Holtec submitted a request to the NRC to revise CoC No. 1014 to supersede Amendment 9 with Amendment 9, Revision 1. Amendment No. 9, Revision 1, changes cooling time limits for TPDs, removes certain testing requirements for the fabrication of Metamic HT, and reduces certain MGVs used in bounding calculations for this material. Amendment No. 9, Revision 1, also changes fuel definitions to classify certain boiling water reactor (BWR) fuel within specified guidelines as undamaged fuel. The changes to the CoC and Technical Specifications (TS) Appendices are identified with revisions bars in the margin of each document.

As a revision, the CoC and its associated TS will supersede the previous version of the CoC No. 1014, Amendment No. 9 CoC and its TSs in their entirety. A revision in lieu of a new amendment is justified on the grounds that:

- Equipment for CoC No. 1014, Amendment No. 9, cask systems has been placed in service by several general licensees, all of whom were made aware of Holtec's revision request and supported it;
- No new canisters are being requested to be added to CoC No. 1014, Amendment No. 9, cask systems;
- No new systems, components, or structures are requested to be added to CoC No. 1014, Amendment No. 9, cask systems;
- The requested changes have minor field and administrative implementation impacts on general licensees; and
- The requested changes are applicable to CoC No. 1014, Amendment No. 9, in their entirety.

Each of the applicant's proposed changes is discussed below.

1. Reduced Cooling Time Limit for TPDS

The TPDs are a form of non-fuel hardware inserted into guide tubes used in some pressurized water reactor (PWR) fuel assemblies and made radioactive by exposure to neutrons during reactor operation. Supporting its proposal to reduce the cooling time limits for TPDs, the applicant noted that TPDs are not considered in any of the thermal analyses of CoC No. 1014, Amendment No. 9, so that in order to comply with this amendment, general licensees must perform an evaluation under 10 CFR 72.212 to ensure that maximum fuel storage decay heat limits are met. The applicant stated that, currently, cooling times for TPDs exposed to typical fuel burnups in a reactor core are long, preventing many TPDs from being stored in the dry multi-purpose canisters (MPC) that contain spent fuel and non-fuel hardware with ''activation products,'' or components or constituents made radioactive by

exposure to neutrons in the reactor core. The applicant proposed to reduce the required cooling times so that general license users can have greater flexibility to store a larger population of TPDs.

The principal activation product from the irradiation of TPDs in a reactor core is Cobalt-60 (Co-60), which has a half-life (the time it takes to lose half its radioactivity) of 5 years. The applicant calculated that the Co-60 source for a TPD with a five-year cooling time after exposure to a fuel burnup of 63,000 megawatt-days per metric ton of uranium (MWD/MTU) or less is 141 curies. The maximum Co-60 activity of TPDs is 240 curies. The applicant selected 141 curies Co-60 as the design basis Co-60 activity for each TPD, so that any TPD can be stored in a HI–STORM MPC so long as the TPD has a cooling time of 5 years or greater after a burnup of 63,000 MWD/MTU or less, as required by the TSs.

The applicant also calculated the dose rates from a HI–STORM 100 overpack with an MPC for BWR and for PWR fuels using allowable burnup and cooling times from the proposed Revision 1 to CoC No. 1014, Amendment No. 9. These calculated dose rates were less than the allowable values in the TSs for the currently-approved Amendment No. 9.

The NRC staff reviewed the applicant's proposed revisions to its final safety analysis report (FSAR) and finds that the proposed change would have no impact on a fuel rod's internal pressure or cladding temperatures. The NRC staff finds the storing of TPDs to be acceptable because, as non-fuel components, they present no risk of rupturing and releasing fission products, fission product gases, or any other material detrimental to the internals of the cask. Nor would the storage of TPDs prevent the retrieval of spent fuel from a cask. General licensees will, however, continue to be required under 72.212 to evaluate and ensure that cell heat loads per canister remain below the applicable limits as listed in the FSAR and TSs prior to loading.

2. Removing or Revising Certain Metamic-HT Fabrication Testing Requirements

Metamic-HT is a neutron-absorbing structural material used for internal components of MPCs, which hold spent fuel assemblies and other radioactive fuel components inside storage casks. The applicant proposed changing Metamic-HT fabrication testing requirements to: Remove testing using a 1-inch collimated neutron beam; remove Charpy V-notch and lateral expansion testing; remove thermal conductivity testing; revise testing requirements for fuel basket welds; change re-testing criteria when a component fails to meet an MGV by requiring only the failed property to be re-tested (not all MGVs); and add the ability to conduct 100% testing of an MGV property within a lot if a sample within the lot fails re-testing. According to the applicant, these changes are to improve Metamic-HT testing, or ease undue burden, because some testing requirements were overly conservative and created a lengthy testing process, while others did not affect the safety analysis.

The requirement for the use of a 1-inch neutron beam is based on Interim Staff Guidance (ISG)-23, ''Application of ASTM Standard Practice C1671–07 when performing technical reviews of spent fuel storage and transportation packaging licensing actions.'' ISG–23 concludes that a beam between 1 cm and 2.54 cm is acceptable for qualification and acceptance testing of neutron absorbing materials. The ISG also states, however, that ''a visual inspection should be conducted on all neutron absorbing materials intended for service,'' and that as part of that visual inspection, ''it is important to ensure that there are no defects that might lead to problems in service; such as delaminations or cracks that could appear on clad neutron absorbing materials.'' The staff finds that in this instance, a visual inspection of all neutron-absorbing materials intended for service, along with other fabrication testing measures called for in ISG–23, such as minimum plate thickness testing, will provide adequate assurance against significant defects in Metamic HT without the need for neutron beam testing.

The Charpy V-notch test is a measure of a given material's toughness under impact loading to study temperature-dependent ductile-to-brittle transitions. As temperature decreases, a metal's ability to absorb the energy of an impact—its ductility—decreases, and at some temperature, its ductility may suddenly drop almost to zero. This sharp transition to brittleness is essentially unidentified in metals with a face-centered cubic (FCC) crystal structure, however, and Metamic-HT is an aluminum composite with an FCC-based metal matrix. The staff therefore concludes that the Charpy V-notch test is not necessary for Metamic-HT.

Proposing to remove the thermal conductivity testing requirement for Metamic-HT during fabrication, the applicant noted that there is little variability in this material's thermal conductivity when fabricated according to the manufacturing manual.

The NRC staff evaluated the applicant's proposal and finds that the thermal conductivity of Metamic-HT is stable for normal operating temperatures (200 °C to 500 °C), so that removal of this testing requirement would have no impact on any of the previously approved NRC staff evaluations. The proposed change is therefore considered acceptable.

The applicant also intends to employ a new qualified welding process called Friction Stir Welding (FSW), for external basket joints. Allowing the use of FSW of the Metamic HT basket does not change the safety basis as evaluated by the staff in HI–STORM 100, Amendment No. 9, with respect to basket structural performance. Since the basket corners utilize the same welded joint configuration specified in amendment No. 9 and prior amendments, the primary consideration is that of weld process and qualification, rather than structural performance of the weld itself.

Based on its review of the application, the staff determined that the methods used to qualify the weld joint were sufficiently robust to demonstrate a structural performance comparable to the welding method described in previous amendments. The loading conditions and the fully supported boundary conditions of the peripheral basket panels result in calculated joint stresses below their full capacity. The staff therefore concludes that this margin accounts for any differences in welding procedures, should they arise in the future. The staff's conclusions in this regard only apply to the basket corner welds and shim arrangement defined by this revision.

3. Changing Minimum Guaranteed Values for Metamic-HT Analyses

Using the guidance of the American Society of Mechanical Engineers (ASME) Section II, Mandatory Appendix 5, ''Guideline on the Approval of New Materials Under the ASME Boiler and Pressure Vessel Code,'' Holtec determined the mechanical properties of Metamic-HT at ambient and various other higher and lower temperatures. It then analyzed its test data using statistical methods to determine minimum, average, and mean values of the material's structural properties. In addition, the applicant established a design value MGV for each of the various properties. An MGV is an arbitrary value for any given property below the lowest measured value from the test data. The MGV is then demonstrated or guaranteed to be exceeded for every manufactured lot of Metamic HT through lot testing.

The MGVs for Metamic-HT are used in calculations to demonstrate that structural components made with this material will satisfy engineering requirements, such as stress or deflection limits to ensure acceptable hardness of the component in service. Using MGV values produces a bounding calculation for any given engineering requirement.

To support its proposal for reducing some of these MGVs, Holtec used differing MGV values in structural calculations for developing stress/strain curves from finite element analysis, a method of computing displacements, stresses, and strains at defined points along the length, width, or within a cross-section of a given component.

Holtec's calculations determined that a positive margin of safety for basket performance criteria remains even with an average reduction of approximately 10 percent in MGVs for material yield stress, ultimate strength, and Young's modulus, a measure of a material's elasticity (ability to resume its original dimensions) under lengthwise tension or compression. The applicant also reported a calculated reduction of 20 percent of the MGV for area criteria measured during a tensile test. Positive margins remain in the criteria for peak stress, maximum deflection, and crack propagation. These minimum values are guaranteed to be met by the imposition of a sampling test plan based on the standards for critical service parts. The applicant also proposed to add the ability to conduct 100 percent testing of an MGV property within a lot if a sample fails re-testing.

This is the same change Holtec made to the HI–STORM 100 Flood/Wind (FW) Multipurpose MPC Storage System, CoC—No. 1032 using an acceptable evaluation that complied with 10 CFR 72.48, ''Changes, tests, and experiments.'' The NRC staff reviewed these results and finds the proposed changes acceptable, because an adequate safety margin remains for basket performance criteria even with the reduced MGVs.

4. New Spent Fuel Definitions

Holtec proposed to add new definitions for ''undamaged fuel assembly,'' and ''repaired/reconstituted fuel assembly'' to provide further clarity for cask system users and greater consistency with NRC guidance for classifying fuel. In addition, the applicant says that these definitions will help some BWR users who have older, low-enriched, channeled BWR fuel with potential cladding defects that these users want to load for dry storage without prior placement in a damaged fuel container. A discussion of the definition changes follows.

4.a. Definition of ''Undamaged Fuel Assembly''

The applicant proposed the new definition for ''undamaged fuel assembly'' to read: ''a) a fuel assembly without known or suspected cladding defects greater than pinhole leaks or hairline cracks and that can be handled by normal means; or b) a BWR fuel assembly with an intact channel and a maximum average initial enrichment of 3.3 percent U–235 by weight (wt-percent) that has no known or suspected grossly breached spent fuel rods and can be handled by normal means.'' Under this definition, an ''undamaged fuel assembly'' may be a repaired and reconstituted fuel assembly.

The applicant noted that with the currently approved definition, inspections to classify the fuel cladding of channeled BWR fuel as undamaged may be prohibitively costly and/or unjustifiable for maintaining worker radiation exposures as low as reasonably achievable. Holtec also noted, however, that a particular subset of older, less-enriched fuel has been shown to remain subcritical even with significant cladding damage and rearrangement of the fuel rods inside the channel. If this fuel does not have gross cladding breaches (defined as breaches larger than pinhole leaks or hairline cracks), can be handled by normal means, and has enrichment less than or equal to 3.3 weight-percent, Holtec asserted, the fuel does not require a damaged fuel container and is not limited to certain basket locations in the HI–STORM 100 Cask System's MPC model 68 designed for BWR fuel.

Under the NRC's ISG–1, ''Classifying the Condition of Spent Nuclear Fuel for Interim Storage and Transportation Based on Function,'' undamaged fuel may contain some cladding defects if it is safeguarded from high temperatures and/or oxidation and does not contain gross cladding breaches. Because HI–STORM 100 Cask System MPCs are backfilled with helium and shown to keep peak fuel cladding temperatures below the limits in ISG 11, ''Cladding Considerations for the Transportation and Storage of Spent Fuel,'' the staff has determined that this fuel is protected during storage from temperatures that would lead to gross ruptures. Also, as long as the fuel meets ISG–1 and does not already contain a gross breach, the staff concludes that there are no means for the release of fuel fragments during storage. In addition, fuel that contains an assembly defect may be considered undamaged under ISG–1 if the fuel can still meet fuel-specific and system-related functions. The NRC staff will therefore also consider repaired and/or reconstituted assemblies meeting these functions as undamaged under the applicant's proposed revised definition.

4.b. Definition of ''Repaired/Reconstituted Fuel Assembly''

As part of Amendment No. 9, Revision 1, Holtec proposed a new definition for a repaired or reconstituted fuel assembly as one that ''contains dummy fuel rod(s) that displaces [sic] an amount of water greater than or equal to the original fuel rod(s) and/or which contains structural repairs so it can be handled by normal means.'' The applicant proposed this definition for clarification purposes and as a subset of the definition of ''undamaged fuel.'' It is a common practice to repair a nuclear fuel assembly by removing a damaged fuel rod and replacing it with a dummy rod to allow the assembly to be returned to the reactor core. The NRC has approved this use in specific applications, and has provided guidance to 10 CFR part 50 licensees to ensure that the repair is performed within the requirements of the licensee's 10 CFR part 50 TSs and does not create an unreviewed safety question. Because a repaired/reconstituted fuel assembly is restored to a condition within the bounds of its original design and safety analysis, the NRC staff finds this type of assembly to be a subset of ''undamaged fuel,'' and concludes that the applicant's proposed definition is consistent with ISG–1 and therefore acceptable.

5. Conclusions

As documented in its Safety Evaluation Report (SER), the NRC staff performed a detailed safety evaluation of this proposed CoC amendment request. There are no significant changes to cask design requirements in the proposed CoC amendment. Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. If there is no loss of containment, shielding, or criticality control, the environmental impacts would be not be significant. This amendment does not reflect a significant change in design or fabrication of the cask. In addition, any resulting occupational exposures or offsite dose rates from the implementation of Amendment No. 9, Revision 1, would remain well within 10 CFR part 20 radiation safety limits. Therefore, the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that significantly

differ from the environmental impacts evaluated in the environmental assessment (EA) supporting the May 1, 2000, final rule approving the original HI–STORM 100 Cask System CoC. There will be no significant changes in the types or amounts of any effluent released, no significant increase in individual or cumulative radiation exposures, and no significant increase in the potential for or consequences of radiological accidents.

This direct final rule revises the HI–STORM 100 Cask System listing in 10 CFR 72.214 by adding Amendment No. 9, Revision 1, to CoC No. 1014. The revision consists of the changes previously described, as set forth in the revised CoC and TSs. The revised TSs are identified in the SER.

The revised HI–STORM 100 Cask System design, when used under the conditions specified in the CoC, the TSs, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load spent nuclear fuel into HI–STORM 100 Cask Systems that meet the criteria of Amendment No. 9, Revision 1, to CoC No. 1014 under 10 CFR 72.212.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the Holtec HI–STORM 100 Cask System design listed in § 72.214, ''List of Approved Spent Fuel Storage Casks.'' This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements using mechanisms consistent with the particular State's administrative procedure laws, but classifying an NRC rule as Category ''NRC'' does not confer regulatory authority on the State.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

VIII. Environmental Assessment and Finding of No Significant Environmental Impact

A. The Action

The action is to amend 10 CFR 72.214 to revise the Holtec HI–STORM 100 Cask System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 9, Revision 1, to CoC No. 1014. Under the National Environmental Policy Act (NEPA) of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement (EIS) is not required. The NRC has made a finding of no significant impact on the basis of this EA.

B. The Need for the Action

The need for this direct final rule is to allow users of HI–STORM 100 Cask Systems under Amendment 9, Revision 1, to load for dry storage under a general license some PWR fuel assemblies with shorter cooling times for TPDs, and some BWR fuel assemblies that would otherwise have to remain in spent fuel storage pools. Specifically, Amendment No. 9, Revision 1, changes cooling time limits for TPDs, removes certain testing requirements for the fabrication of Metamic HT neutron-absorbing structural material, and reduces certain MGVs used in bounding calculations for this material. Amendment No. 9, Revision 1, also changes fuel definitions to classify certain BWR fuel within specified guidelines as undamaged fuel, which could avert the worker radiation exposures that would otherwise be necessary to put this fuel into containers before loading them into MPCs.

C. Environmental Impacts of the Action

On July 18,1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the EA for the 1990 final rule. The EA for this Amendment No. 9, Revision 1, tiers off of that EA for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under NEPA. As stated in the Council on Environmental Quality's 40 Frequently Asked Questions, the tiering process makes each EIS/EA of greater use and meaning to the public as the plan or program develops without duplication of the analysis prepared for the previous impact statement.

Holtec HI–STORM 100 Cask Systems are designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an independent spent fuel storage installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of confinement, shielding, and criticality control. If there is no loss of confinement, shielding, or criticality control, the environmental impacts would be insignificant. This revision does not reflect a significant change in design or fabrication of the cask. There are no significant changes to cask design requirements in the proposed CoC revision. In addition, because there are no significant design or process changes, any resulting occupational exposures or offsite doses from the implementation of Amendment No. 9, Revision 1, would remain well within 10 CFR part 20 radiation protection limits. Therefore, the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that differ significantly from the environmental impacts evaluated in the EA supporting the July 18, 1990, final rule. There will

be no significant change in the types or amounts of any effluent released, no significant increase in individual or cumulative radiation exposures, and no significant increase in the potential for or consequences of radiological accidents. The NRC staff documented these safety findings in the SER.

D. Alternative to the Action

The alternative to this action is to deny approval of Amendment No. 9, Revision 1, and end the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent fuel into a HI–STORM 100 Cask System in accordance with the changes described in proposed Amendment No. 9, Revision 1, would have to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, each separate exemption request, thereby increasing the administrative burden on the NRC and the costs to each licensee. The environmental impacts of this no-action alternative would therefore be the same as or more than those for the action itself.

E. Alternative Use of Resources

Approval of Amendment No. 9, Revision 1, to CoC No. 1014 would result in no irreversible commitments of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this EA.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed as required by the NRC's 10 CFR part 51 regulations. Based on the foregoing EA, the NRC concludes that this direct final rule entitled, ''List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System; Amendment No. 9, Revision 1,'' will not have a significant effect on the human environment. Therefore, the NRC has determined that an EIS for this direct final rule is not necessary.

IX. Paperwork Reduction Act Statement

This rule does not contain any information collection requirements, and is therefore not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and Holtec. These entities do not fall within the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is provided in 10 CFR 72.214. On May 1, 2000 (65 FR 25241), the NRC issued an amendment to 10 CFR part 72 that approved the HI–STORM 100 Cask System design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214.

On July 1, 2014, Holtec submitted an application to revise the HI–STORM 100 Cask System as described in Section III, ''Discussion of Changes,'' of this document.

The alternative to this action is to withhold approval of Amendment No. 9, Revision 1, and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into a HI–STORM 100 Cask System under the changes described in Amendment No. 9, Revision 1, to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of the direct final rule is consistent with previous NRC actions. Further, as documented in the SER and the EA, the direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and therefore, this action is recommended.

XII. Backfitting and Issue Finality

For the reasons set forth below, the NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule, and therefore, a backfit analysis is not required.

This direct final rule revises CoC No. 1014, Amendment No. 9, for the Holtec HI–STORM 100 Cask System, as currently listed in 10 CFR 72.214, ''List of Approved Spent Fuel Storage Casks.'' Amendment No. 9, Revision 1, reduces cooling time limits for TPDs in some fuel assemblies, removes a thermal conductivity testing requirement for the fabrication of Metamic HT neutron-absorbing structural material, and reduces the MGVs used in bounding calculations for this material. Amendment No. 9, Revision 1, also changes fuel definitions to classify certain BWR fuel within specified guidelines as undamaged fuel.

According to the certificate holder, casks have been manufactured under Amendment No. 9, the subject of this revision. Although Holtec (applicant, certificate holder) has manufactured some casks under the existing CoC No. 1014, Amendment No. 9, that is being revised by this direct final rule, Holtec, as the certificate holder, is not subject to backfitting protection under 10 CFR 72.62. Moreover, Holtec requested the change and requested to apply it to the existing casks manufactured under Amendment No. 9. Therefore, even if the certificate holder were deemed to be an entity protected from backfitting, this request represents a voluntary change and is not backfitting for Holtec.

Under 10 CFR 72.62, general licensees are entities that are protected from backfitting, and in this instance, Holtec has provided casks under CoC No. 1014, Amendment No. 9, to general licensees at the Braidwood, Byron, Farley, Hatch, and Vogtle reactor facilities. General licensees are required, pursuant to 10 CFR 72.212, to ensure that each cask conforms to the terms, conditions, and specifications of a CoC, and that each cask can be safely used at the specific site in question. Because the casks purchased and delivered under CoC No. 1014 Amendment No. 9, must now be evaluated under 10 CFR 72.212

consistent with the revisions in CoC No. 1014 Amendment 9, Revision 1, this change in the evaluation method and criteria constitutes a change in a procedure required to operate an independent spent fuel storage installation (ISFSI) and, therefore, would constitute backfitting under 10 CFR 72.62(a)(2).

In this instance, however, the affected general licensees voluntarily indicated their willingness to comply with the revised CoC. In order to provide these general licensees adequate time to implement the revised CoC, it now also incorporates a condition that provides general licensees 180 days from the effective date of Revision 1 to implement the changes authorized by this revision and to perform the required evaluation. Therefore, although the general licensees are entities that are protected from backfitting, this request represents a voluntary change and is not backfitting for the general licensees.

In addition, the changes in CoC No. 1014, Amendment 9, Revision 1, do not apply to casks manufactured to the initial CoC 1014 or subsequent Amendments of CoC 1014. These changes therefore have no effect on current ISFSI general licensees using casks manufactured to the initial CoC 1014 or other amendments of CoC No. 1014. Thus, the NRC approval of CoC No. 1014, Amendment No. 9, Revision 1, does not constitute backfitting for general licensed users of the Holtec HI–STORM 100 Cask System that were manufactured to the initial CoC No. 1014 or to other amendments of CoC No. 1014, under 10 CFR 72.62, 10 CFR 50.109(a)(1), or the issue finality provisions in 10 CFR part 52.

For these reasons, no backfit analysis or additional documentation addressing the issue finality criteria in 10 CFR part 52 has been prepared by the NRC.

XIII. Congressional Review Act

The Office of Management and Budget has not found this to be a major rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No.
Proposed CoC 1014 Amendment No. 9, Revision 1	ML15156A941
Proposed CoC 1014 Amendment No. 9, Revision 1 Technical Specifications, Appendix A	ML15156A956
Proposed CoC 1014 Amendment No. 9, Revision 1 Technical Specifications, Appendix B	ML15156A970
Proposed CoC 1014 Amendment No. 9, Revision 1 Technical Specifications, Appendix A–100U	ML15156A982
Proposed CoC 1014 Amendment No. 9, Revision 1 Technical Specifications, Appendix B–100U	ML15156B000
Preliminary CoC 1014 Amendment No. 9, Revision 1 Safety Evaluation Report	ML15156B011
Request for Revision Application dated July 1, 2014	ML14182A486
Notification by general licensees of voluntary acceptance of Revision 1 requirements dated August 28, 2015	ML15240A233
Interim Staff Guidance 1, Classifying the Condition of Spent Nuclear Fuel for Interim Storage and Transportation Based on Function.	ML071420268
Interim Staff Guidance 11, Revision 3, Cladding Considerations for the Transportation and Storage of Spent Fuel	ML033230335
Interim Staff Guidance 23, Application of ASTM Standard Practice C1671–07 when performing technical reviews of spent fuel storage and transportation packaging licensing actions.	ML103130171

The NRC may post materials related to this document, including public comments, on the Federal rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2015–0156. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2015–0156); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Hazardous waste, Indians, Intergovernmental relations, Manpower training programs, Nuclear energy, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC adopts the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

Section 72.44(g) also issued under Nuclear Waste Policy Act secs. 142(b) and 148(c), (d) (42 U.S.C. 10162(b), 10168(c), (d)).

Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154).

Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)).

Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)).

Subpart K also issued under sec. 218(a) (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance No. 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.

Initial Certificate Effective Date: May 31, 2000.

Amendment Number 1 Effective Date: July 15, 2002.

Amendment Number 2 Effective Date: June 7, 2005.

Amendment Number 3 Effective Date: May 29, 2007.

Amendment Number 4 Effective Date: January 8, 2008.

Amendment Number 5 Effective Date: July 14, 2008.

Amendment Number 6 Effective Date: August 17, 2009.

Amendment Number 7 Effective Date: December 28, 2009.

Amendment Number 8 Effective Date: May 2, 2012, as corrected on November 16, 2012 (ADAMS Accession No. ML12213A170).

Amendment Number 9 Effective Date: March 11, 2014, superseded by Amendment Number 9, Revision 1, on March 21, 2016.

xxxx

Amendment Number 9, Revision 1, Effective Date: March 21, 2016.

Safety Analysis Report (SAR) Submitted by: Holtec International.

SAR Title: Final Safety Analysis Report for the HI–STORM 100 Cask System.

Docket Number: 72–1014.

Certificate Expiration Date: May 31, 2020.

Model Number: HI–STORM 100.

* * * * *

Dated at Rockville, Maryland, this 22nd day of December, 2015.

For the Nuclear Regulatory Commission.

Glenn M. Tracy,

Acting, Executive Director for Operations.

[FR Doc. 2015–33280 Filed 1–5–16; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. FDA–2015–N–4408]

Medical Devices; Obstetrical and Gynecological Devices; Classification of the Intravaginal Culture System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying the intravaginal culture system into class II (special controls). The special controls that will apply to the device are identified in this order and will be part of the codified language for the intravaginal culture system's classification. The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This order is effective January 6, 2015. The classification was applicable on November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Jason Roberts, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G218, Silver Spring, MD 20993–0002, 240–402–6400, *jason.roberts@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1). Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1) of the FD&CAct, the person requests a classification under section 513(f)(2). Under the second procedure, rather than first submitting a premarket notification under section 510(k) of the FD&C Act and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to undertake the classification request if FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device or if FDA determines that the device submitted is not of ''low-moderate risk'' or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA will classify the device by written order within 120 days. This classification will be the initial classification of the device.

On February 23, 2015, INVO Bioscience, submitted a request for classification of the INVOcell™ Intravaginal Culture System under section 513(f)(2) of the FD&C Act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request for de novo classification in order to classify the device under the criteria for classification set forth in section 513(a)(1). FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the request, FDA determined that the device can be classified into class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on November 2, 2015, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding § 884.6165 (21 CFR 884.6165).

Following the effective date of this final classification order, any firm submitting a premarket notification (510(k)) for an intravaginal culture system will need to comply with the special controls named in this final order. The device is assigned the generic name intravaginal culture system, and it is identified as a prescription device intended for preparing, holding, and transferring human gametes or embryos during intravaginal in vitro fertilization (IVF) or intravaginal culture procedures.

FDA has identified the following risks to health associated specifically with this type of device, as well as the measures required to mitigate these risks in table 1:

TABLE 1—INTRAVAGINAL CULTURE SYSTEM RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Damage to gametes and/or embryos or disruption of the IVF process	Nonclinical performance testing. Shelf life testing. Clinical testing. Sterilization validation. Labeling.
Patient injury (e.g., hypersensitivity, toxicity, abrasion, discomfort)	Nonclinical performance testing. Shelf life testing. Biocompatibility. Clinical testing. Sterilization validation. Labeling.
Infection	Sterilization validation. Reprocessing validation. Nonclinical performance testing. Shelf life testing. Clinical testing. Labeling.
Transfer of incorrect embryos to patient	Labeling.

FDA believes that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of the safety and effectiveness.

Intravaginal culture system devices are prescription devices restricted to patient use only upon the authorization of a practitioner licensed by law to administer or use the device; see 21 CFR 801.109 (*Prescription devices*).

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k), if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the intravaginal culture system they intend to market.

II. Environmental Impact, No Significant Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other 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 part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 801, regarding labeling have been approved under OMB control number 0910–0485.

IV. Reference

The following reference is on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *http://www.regulations.gov.*

1. DEN150008: De novo Request per 513(f)(2) from INVO Bioscience, dated February 23, 2015.

List of Subjects in 21 CFR Part 884

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 884 is amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

■ 1. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Add § 884.6165 to subpart G to read as follows:

§ 884.6165 Intravaginal culture system.

(a) *Identification.* An intravaginal culture system is a prescription device intended for preparing, holding, and transferring human gametes or embryos during intravaginal in vitro fertilization or intravaginal culture procedures.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical performance testing must demonstrate the following:

(i) Comfort and retention of the intravaginal culture device;

(ii) Adverse vaginal tissue reactions associated with intravaginal culture;

(iii) Maximum number of gametes and/or embryos that can be placed in a device; and

(iv) Rates of embryo development to the designated stage, implantation rates, clinical pregnancy rates, live birth rates, and any adverse events or outcomes.

(2) Nonclinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be demonstrated:

(i) Mouse embryo assay testing to assess embryotoxicity by evaluating the gamete and embryo-contacting device components effect on the growth and development of mouse embryos to the blastocyst stage;

(ii) Endotoxin testing on gamete and embryo-contacting components of the device;

(iii) Cleaning and disinfection validation of reusable device components;

(iv) Sterility maintenance of the culture media within the device throughout the vaginal incubation

period and subsequent embryo extraction; and

(v) Ability of the device to permit oxygen and carbon dioxide exchange between the media contained within the device and the external environment throughout the vaginal incubation period.

(3) The patient-contacting components of the device must be demonstrated to be biocompatible.

(4) Performance data must demonstrate the sterility of the device components intended to be provided sterile.

(5) Shelf life testing must demonstrate that the device maintains its performance characteristics and the packaging of device components labeled as sterile maintain integrity and sterility for the duration of the shelf life.

(6) Labeling for the device must include:

(i) A detailed summary of the clinical testing, including device effectiveness, device-related complications, and adverse events;

(ii) Validated methods and instructions for reprocessing of reusable components;

(iii) The maximum number of gametes or embryos that can be loaded into the device;

(iv) A warning that informs users that the embryo development is first evaluated following intravaginal culture; and

(v) A statement that instructs the user to use legally marketed assisted reproductive technology media that contain elements to mitigate the contamination risk (*e.g.,* antibiotics) and to support continued embryonic development over the intravaginal culture period.

(7) Patient labeling must be provided and must include:

(i) Relevant warnings, precautions, and adverse effects and complications;

(ii) Information on how to use the device;

(iii) The risks and benefits associated with the use of the device; and

(iv) A summary of the principal clinical device effectiveness results.

Dated: December 30, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–33264 Filed 1–5–16; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R07–OAR–2015–0733; FRL–9941–06–Region 7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Nebraska; Sewage Sludge Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve the Clean Air Act (CAA) section 111(d)/129 negative declaration for the state of Nebraska, for existing sewage sludge incinerator (SSI) units. This negative declaration certifies that existing SSI units subject to sections 111(d) and 129 of the CAA do not exist within the jurisdiction of Nebraska. EPA is accepting the negative declaration in accordance with the requirements of the CAA.

DATES: This direct final rule will be effective March 7, 2016, without further notice, unless EPA receives adverse comment by February 5, 2016. If EPA receives adverse comment, we 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–R07–OAR–2015–0733, to *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 *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Paula Higbee, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7028 or by email at *higbee.paula@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following:

I. Background

The CAA requires that state regulatory agencies implement the emission guidelines and compliance times using a state plan developed under sections 111(d) and 129 of the CAA. The general provisions for the submittal and approval of state plans are codified in 40 CFR part 60, subpart B and 40 CFR part 62, subpart A. Section 111(d) establishes general requirements and procedures on state plan submittals for the control of designated pollutants. Section 129 requires emission guidelines to be promulgated for all categories of solid waste incineration units, including SSI units. Section 129 mandates that all plan requirements be at least as protective and restrictive as the promulgated emission guidelines. This includes fixed final compliance dates, fixed compliance schedules, and Title V permitting requirements for all affected sources. Section 129 also requires that state plans be submitted to EPA within one year after EPA's promulgation of the emission guidelines and compliance times.

States have options other than submitting a state plan in order to fulfill their obligations under CAA sections 111(d) and 129. If a State does not have any existing Sewage Sludge Incineration (SSI) units for the relevant emissions guidelines, a letter can be submitted certifying that no such units exist within the State (*i.e.,* negative declaration) in lieu of a state plan. The negative declaration exempts the State from the requirements of subpart B that would otherwise require the submittal of a CAA section 111(d)/129 plan.

On March 21, 2011 (76 FR 15372), the EPA established emission guidelines and compliance times for existing SSI units. The emission guidelines and compliance times are codified at 40 CFR 60, Subpart MMMM. In order to fulfill obligations under CAA sections 111(d) and 129, NDEQ submitted a negative declaration letter to EPA on December 6, 2012. The submittal of this declaration exempts NDEQ from the requirement to

submit a state plan for existing SSI units.

II. Analysis of State Submittal

In this Direct Final action, EPA is amending part 62 to reflect receipt of the negative declaration letter from the NDEQ, certifying that there are no existing SSI units subject to 40 CFR part 60, subpart MMMM, in accordance with Section 111(d) of the CAA. If a designated facility (*i.e.,* existing SSI unit) is later found within NDEQ's jurisdiction after publication of this **Federal Register** action, then the overlooked facility will become subject to the requirements of the Federal plan for that designated facility, including the compliance schedule. The Federal plan will no longer apply, if we subsequently receive and approve the 111(d) plan from the jurisdiction with the overlooked facility. EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the negative declaration if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This action is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard. In reviewing section 111(d)/129 plan submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a section 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a section 111(d)/129 plan submission, to use VCS in place of a section 111(d)/129 plan submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this 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 March 7, 2016. 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 approving Nebraska's section 111(d)/129 plan revision for SSI sources may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements, Sewage sludge incinerators.

Dated: December 23, 2015.

Mark Hague,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 62 as set forth below:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart CC—Nebraska

* * * * *

■ 2. Subpart CC is amended by adding an undesignated center heading and § 62.6917 to read as follows:

Air Emissions Standards of Performance for New Sewage Sludge Incinerators

§ 62.6917 Identification of plan—negative declaration.

Letter from the Nebraska Department of Environmental Quality received December 6, 2012, certifying that there are no Sewage Sludge Incinerator units subject to 40 CFR part 60, subpart MMMM.

[FR Doc. 2015–33292 Filed 1–5–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 164

Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and the National Instant Criminal Background Check System (NICS)

AGENCY: Office for Civil Rights, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS or ''the Department'') is issuing this final rule to modify the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule to expressly permit certain HIPAA covered entities to disclose to the National Instant Criminal Background Check System (NICS) the identities of individuals who are subject to a Federal ''mental health prohibitor'' that disqualifies them from shipping, transporting, possessing, or receiving a firearm. The NICS is a national system maintained by the Federal Bureau of Investigation (FBI) to conduct background checks on persons who may be disqualified from receiving firearms based on Federally prohibited categories or State law. Among the persons subject to the Federal mental health prohibitor established under the Gun Control Act of 1968 and implementing regulations issued by the Department of Justice (DOJ) are individuals who have been involuntarily committed to a mental institution; found incompetent to stand trial or not guilty by reason of insanity; or otherwise have been determined by a court, board, commission, or other lawful authority to be a danger to themselves or others or to lack the mental capacity to contract or manage their own affairs, as a result of marked subnormal intelligence or mental illness, incompetency, condition, or disease. Under this final rule, only covered entities with lawful authority to make the adjudications or commitment decisions that make individuals subject to the Federal mental health prohibitor, or that serve as repositories of information for NICS reporting purposes, are permitted to disclose the information needed for these purposes. The disclosure is restricted to limited demographic and certain other information needed for NICS purposes. The rule specifically prohibits the disclosure of diagnostic or clinical information, from medical records or other sources, and any mental health information beyond the indication that the individual is subject to the Federal mental health prohibitor.

DATES: *Effective date:* This final rule is effective on February 5, 2016.

FOR FURTHER INFORMATION CONTACT: Andra Wicks, 202–205–2292.

SUPPLEMENTARY INFORMATION:

I. Background

On January 16, 2013, President Barack Obama announced 23 executive actions aimed at curbing gun violence across the nation. Those actions include efforts by the Federal government to strengthen the national background check system, and a specific commitment to ''[a]ddress unnecessary legal barriers, particularly relating to the Health Insurance Portability and Accountability Act, that may prevent States from making information available to the background check system.'' The National Instant Criminal Background Check System (NICS) is the system used to determine whether a potential firearms recipient is statutorily prohibited from possessing or receiving a firearm. The Department proposed, and now finalizes, a modification to the HIPAA Privacy Rule to permit certain covered entities to disclose to the NICS the identities of persons who are not allowed to possess or receive a firearm because they are subject to the Federal mental health prohibitor.

The National Instant Criminal Background Check System (NICS)

The Brady Handgun Violence Prevention Act of 1993, Public Law 103–159 (Brady Gun Law), and its implementing regulations, are designed to prevent the transfer of firearms by licensed dealers to individuals who are not allowed to possess or receive them as a result of restrictions contained in either the Gun Control Act of 1968, as amended (Title 18, United States Code, Chapter 44), or State law. The Gun Control Act identifies several categories (known as ''prohibitors'') of individuals [1] who are prohibited from engaging in the shipment, transport, receipt, or possession of firearms, including convicted felons and fugitives. Most relevant for the purposes of this rule is the Federal mental health prohibitor, which, pursuant to Department of Justice (DOJ) regulations, applies to individuals who have been involuntarily committed to a mental institution, for reasons such as mental illness or drug use; [2] found incompetent to stand trial or not guilty by reason of insanity; or otherwise determined by a court, board, commission, or other lawful authority to be a danger to themselves or others or unable to manage their own affairs, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease.[3] [4]

The Brady Gun Law established the NICS to help enforce these prohibitions, as well as State law prohibitions on the possession or receipt of firearms.[5] The NICS Index, a database administered by the Federal Bureau of Investigation (FBI), collects and maintains certain identifying information about individuals who are subject to one or more Federal prohibitors and thus who are ineligible to purchase firearms. As of 2012, the NICS Index also contains information on persons who are subject to State law prohibitions on the possession or receipt of firearms.[6] The

[1] See 18 U.S.C. 922(g) and (n) and implementing regulations at 27 CFR 478.11 and 27 CFR 478.32.

[2] The regulation, at 27 CFR 478.11, defines ''Committed to a mental institution'' as a formal commitment to the institution by a court or other lawful authority. The term does not apply to a person voluntarily admitted to a mental institution or in a mental institution merely for observation.

[3] The term used in the statute is ''adjudicated as a mental defective. The term includes a finding of insanity in a criminal case, and a finding of incompetence to stand trial or a finding of not guilty by reason of lack of mental responsibility pursuant to the Uniform Code of Military Justice. 27 CFR 478.11.

[4] This rule refers to the involuntary commitments and other applicable adjudications as, collectively, ''adjudications that make an individual subject to the Federal mental health prohibitor.''

[5] See Public Law 103–159, 18 U.S.C. 921–925, and implementing regulations at 28 CFR 25.1 through 25.11 (establishing NICS information system specifications and processes) and 27 CFR part 478 (establishing requirements and prohibitions for commerce in firearms and ammunition, including requirements related to conducting NICS background checks); and 42 U.S.C. 3759(b) (allocating a percentage of certain DOJ funds for State reporting of NICS data).

[6] See Statement Before the Senate Judiciary Committee, Subcommittee on Crime and Terrorism at a hearing entitled, ''THE FIX GUN CHECKS ACT: BETTER STATE AND FEDERAL COMPLIANCE, SMARTER ENFORCEMENT'' (November 15, 2011), by David Cuthbertson, Assistant Director, Criminal Justice Information Services Division, Federal Bureau of Investigation. Testimony available at: *http://www.justice.gov/ola/testimony/112-1/11-15-11-fbi-cuthbertson-testimony-re-the-fix-gun-checks-*

minimum information required in a NICS Index record consists of: The name of the ineligible individual; the date of birth; sex; and codes indicating the applicable prohibitor, the submitting entity, and the agency record supporting the prohibition (*e.g.,* an order for involuntary commitment). For individuals subject to the Federal mental health prohibitor, only the fact that the individual is subject to that prohibitor is submitted to the NICS; underlying diagnoses, treatment records, and other identifiable health information are not provided to or maintained by the NICS. A NICS background check queries the NICS Index and certain other national databases [7] to determine whether a prospective buyer's identifying information matches any prohibiting records contained in the databases. The NICS Index can be accessed only for the limited purposes authorized by regulation (see 28 CFR 25.6(j)) and cannot be used for other purposes, including general law enforcement activities.

The potential transfer of a firearm from a Federal Firearms Licensee (FFL) to a prospective buyer proceeds as follows: First, the prospective buyer is required to provide personal information on a Firearms Transaction Record (ATF Form 4473). Unless the prospective buyer has documentation that he or she qualifies for an exception to the NICS background check requirement under 18 U.S.C. 922(t)(3),[8] the FFL contacts the NICS—electronically, by telephone, or through a State level point of contact—and provides certain identifying information about the prospective buyer from ATF Form 4473.[9]

The FFL then receives a response that the prospective firearm transfer may proceed or is delayed. The transfer is delayed if the prospective buyer's information matches a record contained in one of the databases reviewed. If there is a match, a NICS examiner reviews the record to determine whether the information it contains is, in fact, prohibiting, and then either: (1) If the record does not contain prohibiting information, advises the FFL to proceed with the transaction; (2) if the record does contain prohibiting information, denies the transaction (due to ineligibility); or (3) if it is unclear based solely on the existing information in the record whether it is prohibiting, delays the transaction pending further research.[10] The NICS examiner does not disclose the reason for the determination to the FFL (*e.g.,* the FFL would not learn that the individual was ineligible due to the Federal mental health prohibitor). In case of a delay, if the NICS examiner does not provide a final instruction to the FFL within three business days of the initial background check request, the FFL may proceed with the transaction.[11]

Although FFLs are required in most cases to request a background check through the NICS before transferring a firearm to a prospective buyer,[12] Federal law does not require State agencies to report to the NICS the identities of individuals who are prohibited from purchasing firearms under either Federal or State prohibitors, and not all States report complete information to the NICS or the databases checked by it. Following the shooting at Virginia Tech University in 2007, and other tragedies involving the illegal use of firearms, Congress enacted the NICS Improvement Amendments Act (NIAA) of 2007, Public Law 110–180. Among other provisions, the NIAA requires Federal agencies to make accessible to the NICS the identities of individuals known by the agencies to be subject to one or more prohibitors, and it authorizes incentive grants for States to provide such information when it is in their possession.[13] In addition, some States have enacted legislation requiring the reporting of the identities of ineligible individuals to databases accessible to the NICS or to a State level repository responsible for submitting information to the relevant databases.

States generally report criminal history information to the other relevant databases that are checked by the NICS; however, many States continue to report little if any information concerning individuals subject to the Federal mental health prohibitor (or the other Federal prohibitors) to the NICS Index.[14] As a result, the NICS does not have access to complete information about all individuals who are subject to one or more of the Federal prohibited categories or who are prohibited from possessing or receiving firearms under State law.

The HIPAA Privacy Rule and NICS Reporting

The Privacy Rule, promulgated under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Title II, Subtitle F—Administrative Simplification, Public Law 104–191, establishes federal protections to ensure the privacy and security of protected health information (PHI) and establishes an array of individual rights with respect to one's own health information. HIPAA applies to covered entities, which include health plans, health care clearinghouses, and health care providers that conduct certain standard transactions (such as billing insurance) electronically. HIPAA covered entities may only use and disclose PHI with the individual's written authorization, or as otherwise expressly permitted or required by the HIPAA Privacy Rule.

The Privacy Rule seeks to balance individuals' privacy interests with important public policy goals including public health and safety. In doing so, the Privacy Rule allows, subject to certain conditions and limitations, uses and disclosures of PHI without individuals' authorization for certain law enforcement purposes, to avert a serious threat to health or safety, and where required by State or other law, among other purposes.[15]

act.pdf. We note also that State law may be more restrictive than Federal law in some cases.

[7] The other databases include the Interstate Identification Index, which contains criminal history record information; and the National Crime Information Center, which includes, *e.g.,* information on persons subject to civil protection orders and arrest warrants. Additional information is available at, *http://www.fbi.gov/about-us/cjis/nics/general-information/nics-overview.*

[8] These exceptions are listed in the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) regulation at 27 CFR 478.102(d). For example, a NICS check would not be required where the potential recipient of a firearm has presented a valid State permit or license, provided conditions at 27 CFR 478.102(d)(1) are met.

[9] The form collects the prospective buyer's name; demographic information such as address, place and date of birth, gender, citizenship, race and ethnicity; and ''yes'' or ''no'' answers to questions about the person's criminal history and other potential prohibitors. The form is available at *http://www.atf.gov/forms/download/atf-f-4473-1.pdf.*

[10] For example, a ''delay'' response may mean that further research is required because potentially prohibitive criteria exist, but the matched records are incomplete, See Federal Bureau of Investigation (FBI) Fact Sheet at: *www.fbi.gov/about-us/cjis/nice/general-information/fact-sheet.*

[11] Some States have waiting periods that also must be complied with before a firearm may be transferred, regardless of whether a proceed response from NICS is received by the FFL within three business days.

[12] See 27 CFR 478.102. Exceptions to this requirement are referenced in FN 8 above, and listed in the regulation at 27 CFR 478.102(d).

[13] Eligibility for these grants is limited to States that have implemented a ''relief from disabilities'' program for individuals who are prohibited from possessing or receiving firearms for mental health reasons. Such programs must provide that a State court, board, commission, or other lawful authority shall grant the relief if, based on the circumstances regarding the disabilities and the person's record and reputation, the person is not likely to pose a danger to public safety, and granting the relief would not be contrary to the public interest. See Public Law 110–180, Section 105.

[14] Federal law does not require States to submit reports to any of the three databases (the NICS Index, the III, and NCIC) accessed during a NICS Check.

[15] See 45 CFR 164.512.

As stated above, individuals who are subject to the Federal mental health prohibitor are ineligible to purchase a firearm because they have been ''committed to a mental institution'' or ''adjudicated as a mental defective.'' [16] DOJ regulations define these categories to include persons who have been involuntarily committed to a mental institution for reasons such as mental illness or drug use; have been found incompetent to stand trial or not guilty by reason of insanity; or otherwise have been determined by a court, board, commission, or other lawful authority to be a danger to themselves or others or unable to manage their own affairs, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease. In many cases, these records are not subject to HIPAA. Records of individuals adjudicated as incompetent to stand trial, or not guilty by reason of insanity, originate with entities in the criminal justice system, and these entities are not HIPAA covered entities. Likewise, involuntary civil commitments usually are made by court order, and thus, records of such formal commitments typically originate with entities in the justice system. In addition, many adjudications determining that individuals are a danger to themselves or others, or are incapable of managing their own affairs, occur through a legal process in the court system.

However, because of the variety of State laws, there may be State agencies, boards, commissions, or other lawful authorities outside the court system that are involved in some involuntary commitments or mental health adjudications that make an individual subject to the Federal mental health prohibitor. Moreover, we understand that some States have designated repositories to collect and report to the NICS the identities of individuals subject to the Federal mental health prohibitor. We believe that certain of these lawful authorities or repositories also may be HIPAA covered entities (*e.g.,* a State health agency may be a covered entity).

As we described in the NPRM, where the record of an involuntary commitment or mental health adjudication originates with a HIPAA covered entity, or the HIPAA covered entity is the State repository for such records, there are two ways in which covered entities can currently report to the NICS (without the individual's authorization). First, a covered entity can disclose the relevant information to the NICS where a State has enacted a law that requires (and does not merely authorize) such reporting.[17] Second, where a State has not enacted such a law, a HIPAA covered entity that performs both health care and non-health care functions (*e.g.,* NICS reporting) could become a hybrid entity under HIPAA so that the Privacy Rule applies only to its health care functions. A covered entity can achieve hybrid entity status by designating its health care components as separate from other components, documenting the designation, and implementing policies and procedures to prevent unauthorized access to PHI by the entity's non-covered components.[18] Under these circumstances, the covered entity can report prohibitor information through its non-HIPAA covered NICS reporting unit without restriction under the Privacy Rule. These provisions remain in effect and are not altered by the amendments to the Privacy Rule that we issue today.

However, despite these avenues for disclosure, many States still were not reporting to the NICS essential information on persons prohibited from possessing firearms for reasons related to mental health; concerns were raised that the HIPAA Privacy Rule's restrictions on covered entities' disclosures of PHI might be preventing certain States from reporting the relevant information to the NICS.

In addition, in July 2012, the U.S. Government Accountability Office (GAO) reported to Congress on the results of a survey of six States that it had assessed as part of a performance audit of the progress made by DOJ and the States in implementing the NIAA.[19] In the report, the GAO wrote that ''officials from 3 of the 6 States we reviewed said that the absence of explicit State-level statutory authority to share mental health records was an impediment to making such records available to NICS.'' [20] The report also stated that, although the number of records provided by the States to the NICS had increased by 800 percent between 2004 and 2011, this increase was largely due to efforts by only 12 States. The report raised the possibility that States that do not report to the NICS the identities of individuals who are prohibited from possessing firearms for reasons related to mental health may experience challenges to reporting related to the HIPAA Privacy Rule.

II. The ANPRM

Background

On April 23, 2013, the Department published an Advance Notice of Proposed Rulemaking (ANPRM) requesting public input on these issues (78 FR 23872). The ANPRM explained that the Department was considering creating an express permission in the HIPAA Privacy Rule for reporting information relevant to the Federal mental health prohibitor to the NICS by those HIPAA covered entities that (a) are responsible for the involuntary commitments or other adjudications that make individuals subject to the Federal mental health prohibitor, or (b) are designated by a State to report to the NICS. In the ANPRM, the Department indicated that such an amendment might produce clarity regarding the Privacy Rule and help make it simpler for States to report the identities of such individuals to the NICS.

To inform our efforts to address any issues in this area, we requested comments on a series of questions concerning the nature and scope of the problem of underreporting and whether a modification to the Privacy Rule would help address these issues. We also requested comments on any implications of a modification to the Privacy Rule for the mental health community or for the treatment of individuals, and how the Department might address any unintended consequences of such a modification. We received over 2,050 comments in response from individuals, State agencies, health care providers, associations of health care professionals, consumer advocacy groups, and other stakeholders.

A number of commenters supported creating an express permission as a way to remove a potential barrier to an important and necessary public safety measure, which could help keep firearms out of the hands of individuals who should not have them by strengthening the background check system. Many others generally expressed concern that the NICS, the Federal mental health prohibitor, and

[16] See 18 U.S.C. 922(g)(4).

[17] See 45 CFR 164.512(a). Note that disclosures for NICS purposes would not fall under the Privacy Rule's provisions permitting disclosures for law enforcement purposes (which apply to specific law enforcement inquiries) or to avert a serious threat to health or safety (which require an imminent threat of harm). See 45 CFR 164.512(f) and (j).

[18] See 45 CFR 164.103, 164.105; 67 FR 53182 (8/14/2002).

[19] See GAO–12–684, Gun Control: Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks.

[20] We note that the GAO Report uses the term ''mental health records'' to refer to identifying information on individuals who are subject to the Federal mental health prohibitor. To avoid implying that mental health records are collected by NICS, the Department uses the terms ''identities,'' ''information,'' or ''data'' in place of ''mental health records.'' GAO–12–684, p. 12.

the contemplated HIPAA permission would infringe on their Second Amendment right to bear arms and the right to be afforded due process of law under the U.S. Constitution. In addition, many individual commenters, as well as health care providers, organizations representing providers, and consumer advocacy groups, emphasized the importance of protecting individuals' health information privacy. These commenters raised concerns regarding the possible adverse consequences an express permission to report certain information could have on the patient-provider treatment relationship and individuals' willingness to seek needed mental health care.[21]

III. Summary of the NPRM

After considering the public comments received on the ANPRM, we published a Notice of Proposed Rulemaking (NPRM) on January 7, 2014,[22] proposing to use the Department's broad authority under HIPAA to specify the permitted uses and disclosures of PHI by HIPAA covered entities. The NPRM proposed to revise 45 CFR 164.512 of the Privacy Rule by adding a new category of permitted disclosures to 45 CFR 164.512(k), which addresses uses and disclosures for specialized government functions. The NPRM proposed new provisions at (k)(7) that would permit certain covered entities to disclose the limited demographic and certain other information needed for NICS reporting purposes.

We indicated in the NPRM that there is a strong public safety need for this information to be accessible to the NICS and that some States are currently under-reporting or not reporting this information at all. Further, although most of the information relevant to the Federal mental health prohibitor is held by entities that are not covered by HIPAA, for those few HIPAA covered entities that may be involved in the relevant commitments or adjudications, the Privacy Rule's existing paths for disclosure did not appear to be sufficient. We explained that, to the extent that some covered entities perform adjudicatory or repository functions in States that have not enacted laws requiring reporting to the NICS, and that a subset of those may be unable to achieve hybrid entity status due to administrative challenges or other reasons, an express permission would provide clarity and remove a barrier to their reporting.

However, to address concerns regarding an express permission's potential to harm the patient-provider relationship or deterring individuals from seeking needed mental health care, we proposed to narrowly tailor the permission to report information on individuals subject to the Federal mental health prohibitor in a number of ways. Specifically, we proposed to limit: (1) Which covered entities could use or disclose PHI for NICS reporting purposes, (2) to whom the PHI could be disclosed, and (3) the scope of the information that could be used or disclosed.

First, the NPRM proposed a new paragraph at 164.512(k)(7)(i) to permit certain NICS disclosures only by those covered entities that function as repositories of information relevant to the Federal mental health prohibitor on behalf of a State or that are responsible for ordering the involuntary commitments or other adjudications that make an individual subject to the Federal mental health prohibitor. The Federal prohibitor regulations define an involuntary commitment as a formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The other applicable adjudications include determinations by a court, board, commission, or other lawful authority that persons are a danger to themselves or others, or lack the mental capacity to contract or manage their own affairs, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease.[23] The prohibitor does not apply to individuals in a psychiatric facility for observation or who have been admitted voluntarily; thus, the proposed rule would not have permitted disclosures with respect to those individuals.

With respect to repositories of Federal mental health prohibitor information, we explained further that we did not intend to require States to formally designate the entities responsible for NICS reporting, but that we would expect States to be able to identify the relevant entities.

We noted in the NPRM that our understanding was that lawful authority for performing such adjudications and repository functions rests, for the most part, with entities that operate outside the scope of HIPAA. However, in the interest of public safety, we wanted to ensure that relevant adjudications could be reported in the subset of States in which HIPAA covered entities may make, or collect and report records of, these determinations.

We explained further that, in permitting only entities involved in these adjudicatory or repository/reporting functions to use or disclose Federal mental health prohibitor information for NICS purposes, the proposal would not create a permission for most treating providers to disclose PHI about their own patients for these purposes. We agreed with the commenters on the ANPRM who argued that encouraging voluntary treatment is critical to ensuring positive outcomes for individuals' health as well as the public's safety, and explained that the NPRM was designed to balance that goal and the public safety interests served by the NICS. We also agreed that non-health care entities bear primary responsibility for collection and reporting of information relevant to the Federal mental health prohibitor in most States. However, where a HIPAA covered entity is a board, commission, or other lawful authority that makes involuntary commitments or other adjudications that result in individuals being subject to the Federal mental health prohibitor, we believed those entities too were likely to hold records of the relevant commitments and adjudications.

We requested public comment on the extent to which some States may have vested responsibility for Federal mental health prohibitor reporting in HIPAA covered entities, to what extent records needed for NICS reporting are created or maintained by covered entities, and whether there are circumstances in which health care providers would need to report the identity of an individual subject to the Federal mental health prohibitor to a State designated records repository or directly to the NICS. We also requested comment on the types of additional guidance from OCR and/or the NICS that would be helpful for understanding to which covered entities, and under what circumstances, the proposed permission would apply.

Second, we proposed a new paragraph at (k)(7)(ii) providing that a covered entity identified in (k)(7)(i) may use or disclose Federal mental health prohibitor information for NICS purposes only directly to the NICS or to an entity designated by the State as a repository of data for purposes of reporting to the NICS. By clearly delimiting the permitted recipients of such disclosures, we explained that the rule would ensure that covered entities do not exceed the intended scope of the permission by disclosing information relevant to the Federal mental health

[21] Please see the ANPRM for a more thorough discussion of public comments and responses. 78 FR 23872 (April 23, 2013).

[22] See 79 FR 784 (January 7, 2014).

[23] See 27 CFR 478.11 (Definitions).

prohibitor to, for example, law enforcement agencies that do not operate as repositories of data for purposes of reporting to the NICS.[24] We requested comment on whether there are States in which a type of entity not described in this proposed paragraph is responsible for NICS reporting and thus, should be able to receive NICS data from a HIPAA covered entity.

Third, we proposed a new paragraph at (k)(7)(iii) to limit the information permitted to be used or disclosed to what is needed for purposes of reporting to the NICS. This is consistent with the Privacy Rule provision that generally requires covered entities to make reasonable efforts to limit the PHI used or disclosed to the minimum necessary to accomplish the intended purpose. Specifically, in the proposed regulation text, we made clear that only the limited demographic and certain other information needed for purposes of reporting to the NICS could be reported under the permission. We indicated that, at the time, we believed that the necessary information would be the data elements needed to create a NICS Index record: (1) Name of the individual; (2) date of birth; (3) sex; (4) a code or notation indicating that the individual is subject to the Federal mental health prohibitor; (5) a code or notation representing the reporting entity; and (6) a code identifying the agency record supporting the prohibition. The proposed regulation text expressly provided that the proposed modification would not permit the use or disclosure of clinical or diagnostic information for NICS reporting purposes. We requested comment on whether, and in what circumstances, HIPAA covered entities or other entities, such as courts, currently report to a records repository or directly to the NICS information that was not listed in the proposed paragraph.

In addition, we explained that we were also considering permitting the disclosure of some or all the following additional data elements, which are optional fields for a NICS Index entry, for NICS reporting purposes: Social Security number, place of birth, State of residence, height, weight, eye color, hair color, and race. As we noted in the NPRM, from what we understand, these elements are not included in every NICS record, but often are used to confirm that a prospective firearm recipient matches a record searched by the NICS or to eliminate ''false positive'' background check results. We requested public comment on this issue.

We also proposed to limit the permission to uses and disclosures about individuals who are subject to the Federal mental health prohibitor and not to apply it to disclosures about individuals subject only to State mental health prohibitors. However, we requested comment on this aspect of the scope of the permission, specifically with regard to whether the permission should be broadened to allow covered entities to also disclose the identities of individuals who are prohibited by State law from possessing or receiving firearms for reasons related to mental health.

Finally, we also explained that the proposed permission would apply only with respect to the PHI of individuals subject to the Federal mental health prohibitor and not to the PHI of those persons who may be subject to the other Federal prohibitors listed at 18 U.S.C. 922(g). The lack of an express HIPAA permission for reporting information relevant to the Federal mental health prohibitor was a limited problem and we had not heard that there was a similar issue with respect to the other prohibitors. Thus, for example, a covered entity would not be able to use the proposed permission to use or disclose information about an individual who is an unlawful user of or addicted to any controlled substance (18 U.S.C. 922(g)(3)), except to the extent the individual was also subject to the Federal mental health prohibitor. We also noted that other laws could impact disclosures related to the other Federal prohibitors, including 18 U.S.C. 922(g)(3).[25]

IV. Provisions of the Final Regulation

This final rule adopts the modifications to the HIPAA Privacy Rule as proposed. After considering the comments we received, we continue to believe that the creation of a limited express permission in the HIPAA Privacy Rule to use or disclose certain information relevant to the Federal mental health prohibitor for NICS purposes is necessary to address barriers related to HIPAA and to ensure that relevant information can be reported for this important public safety purpose. Furthermore, this narrowly tailored rule appropriately balances public safety goals with important patient privacy interests to ensure that individuals are not discouraged from seeking voluntary treatment.

Under this final rule, covered entities that order involuntary commitments or make other adjudications that subject individuals to the Federal mental health prohibitor, or that serve as repositories of the relevant data, are permitted to use or disclose the information needed for NICS reporting of such individuals either directly to the NICS or to a State repository of NICS data. Thus, if a covered health care entity also has a role in the relevant mental health adjudications or serves as a State data repository, it now may disclose the relevant information for NICS reporting purposes under this new permission even if it is not designated as a HIPAA hybrid entity or required by State law to report. This final rule does not create an express permission for covered entities to disclose for NICS reporting purposes the PHI of individuals who are subject to State-only mental health prohibitors.

The Department's rationale for adopting the provisions in this final rule, along with further clarifications and interpretations of the provisions, is explained below in the responses to the public comments on the NPRM.

V. Analysis of and Responses to Public Comments

We received more than 430 public comments in response to the NPRM, including from advocacy organizations, associations of health care and mental health professionals, a state mental health agency, and individual members of the public. A summary of the comments we received on the proposed rule and our responses follow.

A. Comments Regarding Creating an Express Permission for NICS Reporting in the HIPAA Privacy Rule

Comments: A number of commenters expressed general support for including an express permission in the HIPAA Privacy Rule for reporting certain information to the NICS, stating that the rule change would help increase the reporting of information to the NICS, reduce the ability of individuals with serious mental health problems to obtain firearms, and ultimately lessen the risk of harm to the individuals themselves, law enforcement, and the public.

Several advocacy organizations involved in gun violence prevention agreed with our statements in the NPRM that the HIPAA Privacy Rule and, in some cases, perceptions of the Privacy Rule, may create a barrier to certain entities reporting to the NICS, and that the proposed modification would

[24] We did not propose to change the Privacy Rule's existing permissions to use or disclose PHI for specific law enforcement investigations, as provided in 45 CFR 164.512(f).

[25] The ability of certain entities to report individuals who are subject to the Federal prohibitor at 18 U.S.C. 922(g)(3) may be affected by the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations, 42 CFR part 2, administered by the Substance Abuse and Mental Health Services Administration (SAMHSA).

address this problem. For example, the comment submitted by Mayors Against Illegal Guns (MAIG) indicated that mental health treatment facilities in seven States currently are required by State law to report Federal mental health prohibitor information either directly to the NICS or to State agencies that report to the NICS, which indicates that mental health facilities do in some cases hold the relevant records. MAIG inferred from this information that there likely are other States in which HIPAA covered entities have information that should be reported to the NICS, but that the entities may not be reporting due to concerns about the HIPAA Privacy Rule's restrictions on disclosures. MAIG also cited statements from interviews its researchers conducted with State officials about issues related to NICS reporting and noted that officials from nine States and the District of Columbia had expressed concern that HIPAA, or other privacy requirements, generally prohibited sending records to the NICS, and thus that reporting would violate such requirements. MAIG asserted that whether these cited concerns were based on real or perceived barriers, its research indicated that making clear the ability to report without violating privacy laws tended to greatly improve state reporting rates, and that the proposed modifications to the Privacy Rule similarly would help states improve their record submissions.[26]

A number of commenters asserted that increasing reporting to the NICS could, in turn, help to decrease rates of gun violence. One of these commenters cited research indicating that, in one State, having a mental health adjudication record in the NICS database appeared to reduce the chance of a person committing a first violent crime.[27]

In addition, a number of commenters, including the American Medical Association (AMA), and the American Psychiatric Association (APA), expressed appreciation that the proposed rule would appropriately balance protecting public safety and preserving the patient-physician relationship by narrowly defining the scope of the permission. The AMA stated that its view on the issue of reporting patient information to the NICS is governed by the association's Code of Medical Ethics and policies adopted by the AMA's policy making body. The AMA indicated that the Code of Ethics supports strong protections for patient privacy and, in most cases, requires physicians to keep patient medical records strictly confidential. If there must be a breach in confidentiality, such as for public health or safety reasons, the disclosures must be as narrow in scope as possible. In light of these considerations, the AMA expressed support for the Department's approach.

In contrast, many commenters did not support adding an express permission in the HIPAA Privacy Rule for reporting certain information about persons subject to the Federal mental health prohibitor for NICS purposes. Several commenters asserted that there are only ''perceived barriers'' related to HIPAA, not real ones, so changing HIPAA would be unlikely to increase the reporting of mental health prohibitor information for NICS purposes. One commenter suggested that, rather than facing obstacles to reporting, States may be choosing not to report on certain categories of prohibited individuals for reasons unrelated to HIPAA—for example, because the States do not believe the individuals pose a danger.

Other comments, some of which highlighted the importance of early and appropriate mental health intervention as the most effective way to prevent violence related to mental illness, expressed concern that the proposed permission would discourage individuals from seeking needed treatment. For example, the National Association of Psychiatric Health Systems (NAPHS) predicted that the public perception of the proposed rule would be that, if an individual disclosed information to a therapist, the therapist would be required to ''report'' the patient. This commenter argued that, as a result, the proposed rule would create a chilling effect on individuals' willingness to discuss issues in treatment that could lead to positive resolution rather than violence directed toward themselves or others. A number of commenters also expressed concern that the proposed rule would unfairly target persons with mental illness and perpetuate unfounded and damaging stereotypes about persons with mental illness by sending a message to the public that the Department perceives mental illness as inextricably linked with violence.

Some commenters expressed general concern regarding the effects of the proposed rule on individuals' privacy interests. A number of these commenters argued that communications between patients and their health care providers should be kept confidential under all circumstances.

Response: After considering the comments, we continue to believe that the creation of a limited express permission in the HIPAA Privacy Rule to disclose information relevant to the Federal mental prohibitor for NICS purposes is necessary to address barriers to reporting. In particular, to the extent that some States do not require reporting by law, and reporting entities in those States may face administrative or other challenges in creating a hybrid entity, the HIPAA Privacy Rule may create impediments to reporting that cannot be cured through mere guidance. Therefore, we believe such an express permission will serve an important public safety interest by removing a barrier to reporting that may exist in certain circumstances and thereby potentially increase reporting by States that historically have reported little or no Federal mental health prohibitor data to the NICS due to concerns about violating the Privacy Rule.

Further, we believe that the limitations contained in the narrowly tailored express permission we adopt appropriately respond to commenters' important concerns about discouraging individuals who need mental health treatment from seeking care. First, we limit the permission to only those covered entities that order the involuntary commitments or make the other adjudications that cause individuals to be subject to the Federal mental health prohibitor, or that serve as repositories of such information for NICS reporting purposes. Thus, the rule does not affect most treating providers or create a permission for them to disclose PHI about their own patients for these purposes. Second, we permit such entities to disclose NICS data only to designated repositories or the NICS. Third, we limit the information that may be disclosed to certain demographic or other information that is necessary for NICS reporting. Finally, we do not expand the permission to encompass State law prohibitor information. These aspects of the provision are discussed more fully below. By limiting the permission in

[26] MAIG, *Fatal Gaps, How Missing Records in the Federal Background Check System Put Guns in the Hands of Killers* (Nov. 2011).

[27] The commenter cited Jeffrey Swanson, *Preventing Gun Violence Involving People with Serious Mental Illness* in REDUCING GUN VIOLENCE IN AMERICA, INFORMING POLICY WITH EVIDENCE AND ANALYSIS (eds. Daniel W. Webster and Jon S. Vernick, 2013). The study authors note that, ''[c]onsidering separately the subgroup of people with serious mental illness who do not have criminal records, our data seem to suggest that the Brady Law background checks can have some positive effect, if enforced. In those with a gun-disqualifying mental health record, risk of violent criminal offending declined significantly after Connecticut began reporting gun-disqualifying mental health records to the NICS.'' The authors also describe the limitations of the study and add, ''[t]hese findings do not prove a causal relationship between the background check system and reduced violent crime.''

these ways, we protect the patient-provider relationship. Further, we believe these limitations carefully balance an individual's privacy interests with the public safety interest in reporting certain information to the NICS.

In response to concerns that the rule unfairly singles out individuals with mental illness, we emphasize, as we did in the proposed rule, that a mental health diagnosis does not, in itself, make an individual subject to the Federal mental health prohibitor, which requires an involuntary commitment or adjudication that the individual poses a danger to self or others or lacks the mental capacity to contract or manage his or her own affairs.

In addition, the Department continues to support efforts by the Administration to dispel negative attitudes and misperceptions relating to mental illness and to encourage individuals to seek voluntary mental health treatment. With the implementation of the Affordable Care Act, millions of Americans who did not previously have coverage will receive coverage for mental health services.

B. Comments Regarding the Scope of the Permission

Expanding to State Law Prohibitors

Comments: We received several comments in response to our question about whether the permission should be expanded to include State law prohibitors. Of these, a minority of commenters supported expanding the proposed rule to permit disclosures of information about individuals who are subject to State-only mental health prohibitors (*i.e.,* State prohibitors that have different criteria than the Federal mental health prohibitor). Several commenters who advocated for the disclosure of such information for NICS reporting purposes asserted that State law prohibitors would be effective only if accurate and adequate information were submitted to the NICS. One of these commenters argued that State efforts to report disqualifying records to the NICS should be encouraged, not curtailed by confusion over the applicability of the HIPAA Privacy Rules. The commenter also argued that it would create greater confusion not to include the same express permission with respect to State mental health prohibitor information as was proposed for the reporting of information related to the Federal mental health prohibitor.

Another commenter who supported a permission to disclose information about individuals who are subject to State-only mental health prohibitors argued that increasing the disclosures to the NICS about individuals who are prohibited by State law (but perhaps not Federal law) from purchasing firearms could address the situation in which a person who is subject to a prohibitor in the person's State of residence enters another State temporarily for the sole purpose of obtaining a firearm and then returns to the State where ownership is prohibited with a firearm. This commenter voiced the concern that, if the State of residence does not provide information about individuals who are subject to State law prohibitors to the Federal background check system, a FFL in another State would not know that the individual is subject to a prohibitor.

Several commenters asserted that an express permission to disclose information about individuals who are subject to State mental health prohibitors would help to avoid a misinterpretation that HIPAA prohibits disclosures of PHI relevant to State mental health prohibitors in circumstances when HIPAA otherwise would not. Another commenter argued that, as some State law prohibitors were enacted before HIPAA, State legislators would not have foreseen HIPAA-related obstacles to disclosure or the resulting need to require reporting to the NICS by law; as a result, those States may not have laws in place to require the reporting of State law prohibitors.

One commenter who supported extending the permission argued that the reporting of State mental health prohibitors would be consistent with congressional intent, as expressed through statutes aimed at preventing gun violence. The commenter asserted that the NICS was established under the Brady Gun Law to serve as a central aggregated database of information regarding the identities of individuals who are prohibited from possessing firearms under any Federal, State, or local law.

In contrast, a number of commenters, including several associations of mental health professionals, expressed concern that expanding the reporting permission to apply to State law mental health prohibitors would involve more treating health care providers in NICS reporting, and that individuals would not seek treatment for mental health problems if they felt that simply by seeking treatment they could be reported to the NICS.

Several commenters, including two mental health professional associations, expressed concern that State mental health prohibitors are being expanded in an overly broad manner that will further negative attitudes and misperceptions about mental illness. The commenters pointed to an example of a State statute that requires health care providers to report to the NICS the identities of all individuals with intellectual disabilities, as well as individuals who voluntarily commit themselves to a mental institution.

The CCDRTF provided additional examples of State law mental health prohibitors that are significantly broader than the Federal mental health prohibitor and expressed concern that many of these State prohibitors apply to individuals without the benefit of an adjudication by a court, board, commission or other lawful authority, as provided for under the Federal prohibitor.[28] This commenter asserted that the Federal mental health prohibitor forbids the reporting of information to the NICS about individuals who are subject to broader State mental health prohibitors due to a lack of equivalent procedural protections for such individuals; therefore, this commenter argued, to permit reporting related to State mental health prohibitors would violate the Supremacy Clause and raise due process concerns.

A number of commenters who opposed the reporting of State mental health prohibitors expressed concern that the broadest State law prohibitors would become the de facto national standard if the NICS were to include State law prohibitors. Others raised concerns about the increased complexity involved in accurately maintaining the NICS database with the addition of State law prohibitor records, including challenges associated with avoiding or identifying duplicate reports, resulting in less reliability, increased inaccuracy, and improper

[28] This commenter described laws enacted in four States. According to the commenter, New York law requires all mental health professionals to report any person undergoing treatment that is ''likely to engage in conduct that would result in serious harm to self or others'' (citing N.Y. Mental Hygiene. Law § 9.46), while New York's SAFE Act requires mental health treatment providers to report covered individuals to a state database without an adjudicatory process (citing N.Y. Mental Hygiene Law § 9.46). In California, the commenter stated, prohibitors apply to individuals undergoing voluntary inpatient treatment (citing 30 Cal. Welf. & Inst. Code § 8100(a)); and apply to individuals involuntarily held as inpatients under 72-hour holds (citing Cal. Welf. & Inst. Code § 8103(f) and Cal. Welf. & Inst. Code § 5150) without the types of adjudications contemplated under the Federal mental health prohibitor (citing 18 U.S.C. 922(g); *U.S.* v. *Rehlander,* 666 F.3d 45, 50 (1st Cir. 2012). Finally, the commenter noted that Illinois and Hawaii have prohibitors that apply to all individuals who have received particular diagnoses (citing 31 430 Ill. Comp. Stat. 65/8(g) (intellectual disability) and (s) (developmental disability); Haw. Rev. Stat. Ann. § 134–7(c) (persons with significant DSM diagnosed disorder).

denial of rights, as well as adding complexity to appeals.

Response: We share the concerns of commenters that, due to the breadth of some State law prohibitors, the inclusion of State-only prohibitors in the permission would increase the involvement of treating providers in NICS reporting, which could negatively affect patient-provider treatment relationships and discourage some individuals from seeking care. While we note that the NICS currently receives some information on State law prohibitors, given these concerns and the importance of protecting the patient-provider relationship, we do not think it is appropriate to expand the permission with respect to HIPAA covered entities. We agree with the commenters who stated that the health and safety of individuals and the public is best served if persons with mental illness obtain appropriate treatment; by limiting the permission to the narrower Federal mental health prohibitor, and carefully tailoring the permission in the ways described throughout this preamble, this final rule is designed to ensure that such persons are not discouraged from seeking care.

With respect to some commenters' concerns about State mental health prohibitors being ineffective without a HIPAA disclosure permission, we note that the Privacy Rule does not affect the reporting of State law prohibitors by non-HIPAA covered entities, which are the entities that maintain most of the relevant information. Moreover, to the extent that covered entities maintain relevant State law prohibitor information and a State wants to ensure that the reporting of this information can occur, the Privacy Rule provides certain other avenues for disclosure, as we have described elsewhere. For example, although our balancing of interests limits this express permission under HIPAA to disclosures related to the Federal mental health prohibitor, this rule does not prevent State legislators from differently balancing the privacy, health, and public safety issues involved with respect to their State level mental health prohibitors—nor does the Federal mental health prohibitor itself prohibit reporting to the NICS of State law prohibitor information, as a commenter asserted. If State legislators determine that information related to a State-only prohibitor should be disclosed despite any potential chilling effect on seeking treatment, they can enact a State law requiring the relevant entities to report such information. Alternatively, the relevant covered entities can create a hybrid entity, separating their HIPAA covered health care functions from their NICS reporting or repository functions, such that the information maintained by the covered health care component is subject to the Privacy Rule, while information held by the non-covered component can be reported without regard to the Privacy Rule.

We disagree with the commenters who argued that excluding State-only mental health prohibitor information from the permission will create confusion. We do not think this will occur because this final rule clearly indicates that it applies where firearm possession is prohibited under a specific provision in Federal law. We also note that the rule delineates the types of covered entities that are permitted to disclose, the information they are permitted to share, the categories of individuals covered by the permission, and the entities to which they can make such disclosures. In addition, we intend to work with DOJ to develop additional guidance on the categories within the Federal mental health prohibitor. Moreover, we do not believe this final rule will create a misperception that HIPAA always prohibits the reporting to the NICS of individuals who are subject to State-only mental health prohibitors. As explained elsewhere in this preamble, the Privacy Rule already permits uses and disclosures of PHI that are required by law, including State law reporting requirements; also, HIPAA covered entities that perform both health care and non-health care functions (*e.g.,* NICS reporting) are permitted to create hybrid entities under HIPAA so that the Privacy Rule applies only to their health care functions. This final rule does not change those provisions.

Finally, we do not agree that Congress intended for State (or local) law prohibitor information to be reported to the NICS in all circumstances, such as where doing so would conflict with countervailing privacy concerns due to the treatment relationship between patients and health care providers. Therefore, this final rule balances a variety of important interests, including protecting the privacy of individuals' personal health information, ensuring access to needed mental health care services, and advancing the public safety interests in ensuring that persons who are prohibited by Federal law from purchasing or possessing a firearm for mental health reasons do not gain access to firearms.

Entities Permitted To Report

Comment: Several commenters, including the AMA and the National Association of Psychiatric Health Systems, expressed support for the proposal to limit the permission to only those entities in a State that are directly involved in the relevant adjudications or maintain records of them for NICS reporting purposes. These commenters expressed appreciation for the narrow drafting of the NPRM based on the need to support provider-patient relationships and encourage individuals with mental illness to seek appropriate care.

However, several advocacy organizations and many individuals argued that direct treatment providers should not be permitted to report information about their patients to the NICS under any circumstances (*i.e.,* even if they are, or are part of, the entity that orders involuntary commitments or conducts other relevant adjudications, or serves as a repository of NICS data). Some of these commenters argued that reports to the NICS database should come only from the judiciary.

Finally, we did not receive responses to the question we posed in the NPRM about whether additional types of covered entities within a State (other than those identified in the proposed regulatory text) might be expected, and thus should be permitted under the Privacy Rule, to report data to the NICS or to a State repository.

Response: We agree with the commenters who emphasized the need to protect the provider-patient relationship, and this final rule addresses such concerns by limiting the permission to those covered entities that also perform an adjudicatory or data repository function. Furthermore, as described more fully elsewhere in this preamble, the permission does not extend to broader State law prohibitors, which may not require a formal adjudication or involuntary commitment and whose inclusion likely would involve more treatment providers in NICS reporting.

In response to comments arguing that only entities in the court system should be permitted to report to NICS, it is our understanding, based on public comments and our fact finding, that courts do not create or maintain records of all of the involuntary commitments or other adjudications that make individuals subject to the Federal mental health prohibitor. Therefore, for the NICS database to include reports of all persons subject to the mental health prohibitor, it is necessary for certain other entities that create or maintain such information to be able to report. We believe this permission will help strengthen the background check system to ensure that individuals who are prohibited from purchasing or

possessing firearms are prevented from obtaining them. We also acknowledge the concerns of commenters who argued that providers should not be permitted to report information about their patients under any circumstances. As explained in more detail elsewhere in this preamble, to address these and other concerns, we have carefully tailored this final rule to limit the involvement health care providers, and to prevent disclosures of diagnostic or clinical information for NICS reporting purposes.

Demographic and Certain Other Information Permitted To Be Reported

Comment: Many commenters specifically voiced support for the NPRM's proposal not to permit the disclosure of diagnostic or clinical information for NICS reporting purposes. (We also noted in the NPRM that the NICS does not request or contain such information.) For example, the American Medical Association stated that it strongly supported restricting the information disclosed to the limited demographic and other information needed for reporting, as the NPRM proposed. To support the point that NICS reporting is sufficiently limited, another commenter pointed out that the information that is reported to the NICS generally is provided by the individual to a FFL on the required application for the firearm.

In contrast, one commenter asserted that, as written, the proposed permission would grant discretion to state entities to determine the scope of ''demographic and certain other information'' to be reported and argued further that DOJ (specifically ATF), not HHS, has authority to define the ''minimum'' information required by NICS.

In response to our request for comment on whether, and in what circumstances, entities currently report, or should be permitted to report, additional data elements needed to confirm an individual's identity, the Connecticut Department of Mental Health and Addiction Services (DMHAS) asserted that certain additional data elements are helpful in confirming whether an individual is appropriately excluded from gun purchase or possession in cases where multiple individuals share the same name and date of birth. Several other commenters agreed that permitting the disclosure of additional data elements for NICS reporting purposes would allow more accurate verification of an individual's identity, resulting in fewer erroneous denials, and would facilitate the correction and updating of NICS entries.

The Connecticut DMHAS and others suggested the inclusion of some or all of the following specific data elements: Social Security number, place of birth, state of residence, height, weight, eye color, hair color, and race. Social Security number and race were cited as the most reliable indicators of an individual's true identity.

Response: We agree with the commenters who stated that limiting the permission to exclude diagnostic and clinical information appropriately balances individuals' privacy interests and public safety priorities. We also agree that there may be data elements beyond those needed to create the NICS record (*i.e.,* the individual's name, sex, and date of birth; as well as codes identifying (1) the Federal mental health prohibitor, (2) the record documenting the involuntary commitment or adjudication, and (3) the entity from which the record initiated) that may be helpful in verifying identity and excluding false matches. Given that, the final rule provides some flexibility for States or reporting entities. We do not specify in the regulatory text which data elements may be disclosed, but clarify in this preamble that what generally would be considered the information ''needed for purposes of reporting to the [NICS]'' in § 164.512(k)(7)(iii)(A) would be the data elements required to create a NICS record, as well as the following elements to the extent necessary to exclude false matches: Social Security number, State of residence, height, weight, place of birth, eye color, hair color, and race (and we note that the Federal Bureau of Investigations (FBI) and not ATF has the authority to define the information required by NICS). As indicated above, these are the same elements that were identified in the NPRM.

C. Comments Regarding the NICS and the Federal Mental Health Prohibitor

Comment: Many commenters raised concerns about infringement of individuals' Second Amendment right to bear arms without due process. A number of these commenters specifically expressed concern that an individual could be reported to the NICS without a formal adjudication through the court system and argued that due process under the Constitution would require a hearing in a court of law before an individual could be made subject to the Federal mental health prohibitor.

Response: We acknowledge the views of the commenters. However, as we explained in the NPRM, these concerns relate to the Federal mental health prohibitor rather than the HIPAA Privacy Rule or this final rule, and thus are outside the scope of this rule. This final rule addresses HIPAA-related barriers to entities reporting certain information to the NICS about individuals who are subject to the Federal mental health prohibitor. The rule does not expand the categories of federally prohibited persons or modify the criteria for determining that a person is subject to the Federal mental health prohibitor.

Comment: Several disability rights advocates and others asserted that the rule would not result in a decrease in gun violence because mental illness alone does not make a person more likely to commit violence against others. The Consortium for Citizens with Disabilities Rights Task Force (CCDRTF) cited studies indicating that mental illness alone is not statistically related to future violence and that even severe mental illness without drug use or a history of violence is not linked with future violence.[29] Several commenters also noted that persons with mental illness are more likely to be the victims of violence than its perpetrators. Alternatively, several commenters argued that, even if there were a link between mental illness and gun violence, the proposed rule is not needed because mechanisms already are in place in place to prevent harm from patients who are a threat to themselves or the public.

Response: We acknowledge the views of the commenters. However, these commenters address the applicability of the Federal mental health prohibitor itself. This final rule does not expand the existing categories of persons prohibited from owning a firearm or modify other Federal or State laws pertaining to firearms purchases. Therefore, these comments are beyond the scope of this rule.

Comment: Several commenters raised questions about individuals' ability to correct erroneous NICS reports or to

[29] CCDRTF cited Eric B. Elbogen & Sally C. Johnson, *The Intricate Link Between Violence and Mental Disorder: Results from the National Epidemiologic Survey on Alcohol and Related Conditions,* 66 Arch. Gen. Psychiatry 152, 157 (Feb. 2009); David J. Vinkers, *et al., Proportion of Crimes Attributable to Mental Disorders in the Netherlands Population,* 11 World Psychiatry 134 (June 2012). CCDRTF also indicated that other studies showed a modest relationship between serious mental illness and violence, but that other factors (*e.g.,* substance abuse, age, gender and lower economic status) contribute more to increasing the likelihood of committing violence than mental illness alone. They cited R. Van Dorn, *et al.,* Mental Disorder and Violence: Is There a Relationship Beyond Substance Use?, 47 Social Psychiatry and Psychiatric Epidemiology 487, 499 (2012).

have their rights restored when they no longer pose a danger to themselves or others. A number of commenters recommended assuring that the appeals process is free of delay, inexpensive, and easy for individuals to initiate.

Other commenters asserted that the expense to remove oneself from the NICS database is prohibitive for some individuals. As a result, the commenters said, individuals effectively become subject to a lifelong restriction on their Second Amendment right to bear arms, even after they recover from the condition that led to their adjudication and are eligible to apply for relief from disabilities under the Federal mental health prohibitor. Similarly, one commenter argued that, once an individual is reported to the NICS, the ''relief from disabilities'' process [30] is inadequate for remediation due to a lack of Federal funding to support State programs, and wide variability in State programs to provide relief as a result. Another commenter recommended allocating additional funding to support State ''relief from disabilities'' programs.

Response: These comments are outside the scope of the rule. However, we acknowledge the commenters' concerns with respect to opportunities for remediation and note that individuals who believe they are wrongly denied the purchase of a firearm can visit *https://forms.fbi.gov/nice-appeals-request-form* to find out more information and appeal their denial. In addition, the NICS Improvement Amendments Act of 2007 authorized grants for States that implement programs for ''relief from disabilities'' in accordance with the Act.[31] These programs are required to establish processes by which an individual who is subject to the Federal mental health prohibitor may apply for relief to the State where the relevant commitment or adjudication occurred. While States' processes for granting relief vary, the Act requires that relief be granted if it can be established that the circumstances regarding the disability and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and the granting of relief would not be contrary to the public interest.[32]

Comment: A number of commenters expressed concern that a finding of mental incompetence by the Veterans Administration (VA), which could make an individual subject to the Federal mental health prohibitor and cause the individual to be reported to the NICS, may be based solely on a determination that the veteran is unable to handle financial affairs, without regard to dangerousness. The commenters argued that these veterans do not receive due process before being made subject to the Federal mental health prohibitor and believed that the proposed rule would exacerbate this problem.

Response: We note that, as a federal agency, the VA is required by law to report prohibited persons to the Attorney General, who oversees the NICS.[33] This final rule does not affect that requirement or change the procedures relating to adjudications that make individuals subject to the Federal mental health prohibitor.[34]

D. Other Comments

Comment: A few commenters expressed concern that covered entities would misinterpret the proposed permission as a requirement to report information about their patients to the NICS. Another commenter expressed concern that the standards for reporting NICS data will be adopted by courts as a new standard of care for health care providers, exposing covered entities that do not report to increased liability. The commenter requested that the Department clarify that the HIPAA permission is permissive, not mandatory.

Response: This final rule establishes permission for certain HIPAA covered entities—those with lawful authority to make the adjudications or commitment decisions that make individuals subject to the Federal mental health prohibitor, or that serve as repositories of information for NICS reporting purposes—are permitted to disclose the information needed for these purposes. The rule does not create a requirement to disclose. In addition, as explained at length in the NPRM and above, the rule does not apply to most treating providers, but only to those covered entities that are responsible for the involuntary commitments or other adjudications that make individuals subject to the Federal mental health prohibitor, or that serve as repositories of such data. However, we note that covered entities have a responsibility to comply with all applicable laws, and this final rule does not preempt State or other laws that may require reporting to the NICS.

Comment: One commenter recommended that the Department evaluate whether the rule would have the unintended consequence of permitting the reporting of individuals based on mere medical findings.

Response: As we explain above, the rule does not create a broad permission for treating providers to report information about their patients to the NICS. Rather, the rule is narrowly tailored to permit limited disclosures of information about individuals who are subject to the Federal mental health prohibitor, which applies only where an individual has been involuntarily committed or otherwise has received a relevant adjudication from a court, board, commission, or other lawful authority.

Comment: One commenter recommended training for the workforce members of reporting entities to ensure that they understand the applicable reporting protocols sufficiently to avoid making erroneous reports.

Response: We agree that training is generally beneficial to assure compliance with applicable standards. Further, to the extent that reporting entities also are HIPAA covered entities, the Privacy Rule requires those entities to train workforce members on the policies and procedures with respect to the privacy and security of individuals' health information. Where applicable, such training would include ensuring that workforce members have copies of the entity's policies and procedures implementing this final rule's limited permission for uses or disclosures of PHI for NICS reporting purposes.

Comment: One commenter recommended establishing a mechanism to inform mental health patients and their caregivers about the patients' status in the NICS.

Response: We decline to provide for such a mechanism in this final rule because it is outside the scope of the rule. Nothing in this rule, however, precludes covered entities from informing individuals that information about them has been provided to the NICS.

Comment: Several commenters expressed concern that, by allowing multiple entities within a State to report to the NICS, the proposed rule would create complexity, inaccuracy, and delay in processing appeals, particularly if the FBI refers the individual back to the reporting entity for resolution.

Response: To the extent that the involvement of multiple entities in NICS reporting may affect the appeals process in a state, this issue exists apart

[30] See footnote 13 above.

[31] The DOJ Bureau of Justice Statistics provides state data on NICS Act Record Improvement Program (NARIP) Awards (*available at http://www.bjs.gov/index.cfm?ty=tp&tid=491#promising*).

[32] See Public Law 110–180, Section 105.

[33] See NICS Improvement Amendments Act of 2007 Sec. 101, 18 U.S.C. 922 note (2002).

[34] We refer commenters to the VA regulations for information about the due process afforded to veterans as part of VA competency determinations. See 38 CFR 3.353 and 38 CFR 3.103.

from HIPAA. Each State determines the entity or entities responsible for reporting NICS data, depending on where the records documenting a person's status as subject to one or more of the Federal prohibitors are created or maintained. As a result, a variety of entities, including judicial, law enforcement, public health, and other entities in a State, already may be involved in NICS reporting and appeals.

Comment: A few commenters expressed concern that, as a result of the proposed rule, some families may choose not to seek involuntary commitment proceedings for a family member who needs treatment, but whose livelihood depends on the ability to possess a firearm (*e.g.,* first responders and members of the military), because the commitment would result in a report to the NICS and the loss of the patient's livelihood.

Response: We note that the Federal mental health prohibitor makes the purchase or possession of firearms by prohibited individuals unlawful regardless of whether an individual is reported to the NICS, and this final rule does not change who is subject to the Federal mental health prohibitor. This final rule also does not affect law enforcement and military entities' authorities with respect to making their workforce decisions.

Comment: One commenter asked whether covered entities are obligated to update information they have submitted to the NICS when an individual's circumstances change.

Response: Section 102(c)(1)(B) of the NIAA requires States to update, correct, modify, or remove a record from the NICS if they determine that the person is not prohibited or has received ''relief from disabilities'' under the mental health prohibitor.

Comment: A number of commenters argued that the proposed regulation would contravene congressional intent, arguing that Congress did not intend to change HIPAA protections for NICS purposes. The commenters stated that legislation on this topic had been considered and rejected and specifically cited S. 649 (the ''Fix Gun Checks Act''), which was considered by the Senate on April 18, 2013, but did not receive a vote.

Similarly, some commenters asserted that Congress could have included any desired changes to HIPAA when it passed the NICS Improvements Amendments Act, but did not do so. Therefore, the commenters argued, Congress did not intend to modify HIPAA for NICS reporting purposes.

Response: That Congress did not enact S. 649 does not provide relevant evidence of congressional intent with respect to the scope of the HIPAA Privacy Rule. The absence of a provision in the NIAA to modify HIPAA does not imply that Congress intended to prevent any revisions of the HIPAA Privacy Rule with respect to the NICS. The HIPAA statute confers broad authority on the Department to specify the permitted uses and disclosures of PHI by HIPAA covered entities, and NIAA does not affect this statutory authority.

Comment: Several disability rights organizations asserted that the proposed rule did not provide sufficient evidence of HIPAA barriers to reporting in any State to fulfill a requirement of the Administrative Procedure Act (APA) that there be a rational connection between the facts found by a Federal agency through the rulemaking process and the regulatory choice made.[35]

Response: We disagree with the commenters. As stated above, we understand from other comments that at least seven States currently rely on HIPAA covered entities (such as mental health facilities) to report Federal mental health prohibitor data to the NICS. These seven States have laws regarding such reporting, but other States may not. To the extent that any other State does not require NICS-related disclosures by law and the State has not enacted legislation addressing the problem, the Privacy Rule, prior to the effective date of this final rule, would have prevented such disclosures by HIPAA covered entities that do not have hybrid entity status.[36] Therefore, there are sufficient data demonstrating that HIPAA's disclosure restrictions can be a barrier to NICS reporting, and thus to the development of an accurate and comprehensive NICS database. The data support finalizing this modification to the Privacy Rule, which removes barriers while limiting the circumstances under which covered entities may disclose PHI to the NICS and limiting the types of PHI that may be disclosed.

We know of one State in particular in which the Privacy Rule's disclosure restrictions posed challenges for NICS reporting. The State of New York had a statute requiring mental health facilities in the State to report NICS data to the State mental health agency, the State's designated repository of NICS data.[37] As a result, the Privacy Rule permitted such disclosures to the repository as required-by-law disclosures. However, the statute did not expressly require the mental health agency, which was a covered entity under HIPAA that did not have hybrid entity status, to report the data it collected to the NICS; the Privacy Rule thus did not permit the agency to disclose this data. Ultimately, the legislature needed to revise the statute to expressly require the agency to report the data to the NICS.[38]

In addition to removing barriers, an additional benefit of the rule as described more fully below is that it provides clarity about the applicability of the Privacy Rule and its relationship to State law in this area, as well as provides an avenue for NICS reporting that may obviate the need to enact legislation at the State level.

Comment: One commenter requested that the Department clarify how HIPAA's preemption provisions would apply to State laws requiring or prohibiting covered entities' disclosures of NICS data.

Response: We clarify that this final rule does not change HIPAA's existing preemption provisions, which provide that the HIPAA rules preempt contrary State laws (with certain exceptions, such as where the contrary provision of State law is more stringent than the HIPAA provision).[39] Accordingly, because the Privacy Rule, as modified by this final rule, only permits (but does not require) the disclosure for NICS reporting purposes, State laws that prohibit such disclosures are not contrary to the Privacy Rule, and covered entities in States with such laws remain subject to any applicable prohibitions against the disclosures under State law. That is, the covered entity could comply with both HIPAA and such State law by not disclosing PHI to the NICS.

Moreover, HIPAA contains an express permission for disclosures that are required by other law, such as State law. Accordingly, State laws that require disclosures, for any purposes, remain in effect, as such laws are not contrary to the Privacy Rule.

Comment: One commenter expressed concern that the rule would create an opportunity for the abuse of private information, for example, by allowing the government to disarm political dissidents who seek mental health care,

[35] 5 U.S.C. Subchapter II.

[36] We note that at least three states have laws permitting, but not requiring the disclosure of mental health records to the NICS: Missouri, New Jersey and West Virginia. See Mo. Rev. Stat. 630.140 (2013); N.J. Stat. Ann. 30:4–24.3 (2013); W.Va. Code 61–7A–3 (2013).

[37] 2008 N.Y. Laws 491, codified at N.Y. Mental Hyg. §§ 7.09(j); 13.09(g), 31.11(5), 33.13(b), (c) (2011); N.Y. Jud. Ct. Acts § 212(q) (2011).

[38] NY Secure Ammunition and Firearms Enforcement (SAFE) Act of 2013.

[39] See 45 CFR 160.203.

or making it possible for medical personnel to abuse their authority and remove an individual's rights for illegitimate reasons.

Response: Concerns about governmental or private actors taking advantage of this permission to target vulnerable persons are addressed by the procedural framework built into the statute that established the Federal mental health prohibitor and its implementing regulations, which this final rule does not change. As we previously have noted, the Federal mental health prohibitor, which makes an individual reportable to the NICS, applies only to the extent that the individual is involuntarily committed or determined by a court, board, commission, or other lawful authority to be a danger to self or others, or is unable to manage his or her own affairs due to a mental illness or condition. [40] These involuntary commitments and other adjudications are not made independently by individual health care providers without any form of official legal review.

Comments: Some commenters expressed concern that, by relaxing HIPAA's privacy requirements, the proposed rule could result in increased disclosures of private health information to the government. Several commenters argued that the Federal government has a poor record on protecting individuals' privacy and should not be entrusted with health information. In contrast, another commenter noted that Federal law, including the Privacy Act, prohibits access to the information in the NICS database outside of the limited purposes authorized by law, and information about specific firearms transfers is destroyed the day after the transaction.

Response: We agree that it is important to protect the privacy and security of the information that is reported to the NICS and we note that the NICS is subject to specific privacy and security protections.[41] In addition, we again emphasize that only very limited information may be disclosed under this rule, and disclosures of diagnostic or clinical information are expressly prohibited.

Comment: Finally, one commenter requested clarification on whether, in States where a covered entity is also a lawful authority that orders involuntary commitments or conducts other adjudications that make individuals subject to the Federal mental health prohibitor, there is intended to be a separation between the covered entity and lawful authority functions of the entity.

Response: We note that, under the Privacy Rule, both before and after the modification made in this final rule, a covered entity could provide for such separation by operating as a hybrid entity, and disclose information through its non-HIPAA covered NICS reporting unit. However, it is our understanding that some covered entities may be unable to achieve hybrid entity status for administrative or other reasons. This is another reason for including the express permission described in the final rule.

VI. Regulatory Analyses

A. Introduction

We have prepared a regulatory impact statement in compliance with Executive Order 12866 (September 1993, Regulatory Planning and Review), Executive Order 13563 (January 2011, Improving Regulation and Regulatory Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (UMRA) (March 22, 1995, Pub. L. 104–4), and Executive Order 13132 on Federalism.

1. Executive Order 12866 and Executive Order 13563

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

A regulatory impact analysis must be prepared for all major rules that have economically significant effects ($100 million or more in any one year) or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities (58 FR 51741). Because the final rule does not contain any new requirements or prohibitions for covered entities, we estimate that the rule will be cost neutral. We did not receive public comments on this assumption or information indicating that covered entities will incur any costs as a result of the rule.

Although we expect the economic impact of the rule, including non-quantifiable costs and savings discussed in the regulatory analysis below, to be less than $100 million annually, we nevertheless conducted an analysis of the costs of the final rule.

2. Entities Subject to the Rule

This final rule applies only to covered entities that function as repositories of information relevant to the Federal mental health prohibitor on behalf of a State or that are responsible for ordering the involuntary commitments or other adjudications that make an individual subject to the Federal mental health prohibitor. We do not have sufficient data to determine the number of affected entities, but, based on the information available to us, we believe there would be very few. Our understanding is that, for the most part, formal adjudications and repository functions of this nature are conducted by entities, such as court systems or law enforcement agencies, that are not covered by HIPAA. In addition, even covered entities in some states will not be affected because they currently do not face HIPAA barriers to reporting either because state law requires reporting or they have created hybrid entities, as described above in the preamble. We did not receive public comments on the number of covered entities that will be affected by this rule.

B. Why is this rule needed?

This final rule is needed to ensure that, where HIPAA covered entities make adjudications causing individuals to become subject to the Federal mental health prohibitor, or serve as repositories of records of such adjudications on behalf of States, those covered entities can report the identities of those individuals to the NICS. This rule change can help further the important public safety goal of strengthening the background check system to ensure that individuals who are prohibited from purchasing or possessing firearms are not able to obtain them. Specific permission under the Privacy Rule for these disclosures is necessary to the extent that some States have not enacted laws requiring reporting to the NICS, but a covered entity in the State is nevertheless responsible for such reporting and does not become a hybrid entity. Importantly, the final rule permits only a small subset of HIPAA covered entities (*i.e.,*

[40] 18 U.S.C. 922(g)(4); 27 CFR 478.11.

[41] See 63 FR 58303 (October 30, 1998), codified at 28 CFR part 25.

those that perform the relevant mental health adjudications or repository functions) to use or disclose only limited, non-clinical information, for NICS purposes. This narrowly tailored permission permits these important uses or disclosures for public safety to occur while maintaining a separation between reporting functions and the mental health treatment a patient might be receiving.

C. Qualitative Analysis of Unquantified Costs

The rule is cost neutral with respect to HIPAA covered entities. The rule does not require entities that already have a NICS reporting process in place to change their current system and does not create new reporting or recordkeeping requirements for any covered entity. The small number of covered entities that are newly permitted to report to the NICS or a State repository under the rule can begin to report and may need to develop policies and procedures to do so. As the Privacy Rule only allows the use or disclosure of information, and does not require it, any resulting burden of reporting and associated procedures are attributable to the choice made by an entity to report information, the Federal statutory mental health prohibitor, and the NICS system itself. See 28 CFR part 25, subpart A. We acknowledge that those entities that choose to begin reporting may wish to address this change in their HIPAA policies and procedures, as well as explain their procedures to office staff. However, the rule does not require any changes to existing HIPAA policies and procedures. In addition, with respect to training, the rule does not require workforce training beyond what is already required under the HIPAA Privacy and Security Rules. We expect that entities that choose to report under the rule would also take steps to ensure that their office staff have copies of the new policies and procedures, which would not involve any significant additional costs. We did not receive public comments contradicting these assumptions or estimating the number of entities that might begin to report to the NICS for the first time, if any.

To the extent that the rule permits some covered entities to report to the NICS for the first time, there may be an increase in the number of individuals whose identities are newly included in the NICS and who are denied a firearm transfer as a result. Therefore, there may be a concomitant increase in applications for ''relief from disabilities'' in states that provide such a relief program. However, any burden to individuals completing and submitting the relief application form is attributable to the Federal mental health prohibitor and the procedures established by the State where the commitment or adjudication occurred. The procedures for applying for relief in States that have established mental health prohibitor ''relief from disabilities'' programs pursuant to the NICS Improvement Amendments Act of 2007 vary.

We received a number of comments on the NPRM asserting that creating an express permission in the Privacy Rule for NICS reporting would discourage individuals from seeking needed mental health care. We appreciate these concerns and agree with commenters who asserted that individuals' health and the public's safety are best served by encouraging appropriate treatment. We also recognize that discouraging treatment could increase the burden of untreated mental conditions to individuals, in the form of increased suffering and loss of productivity; to the health care system, when individuals with untreated mental illness need emergency hospitalization, for example; and to the public's safety. However, many of these commenters expressed the mistaken belief that the permission would allow or require most mental health care providers to report their patients to the NICS.

As explained above, we have carefully and narrowly tailored the final rule to apply only to a small number of covered entities that may be responsible for the adjudications that make an individual subject to the Federal mental health prohibitor, or that serve as repositories of data about such adjudications. The rule generally maintains a separation between treatment functions and NICS reporting functions. In addition, the rule does not permit the use or disclosure of any diagnostic or clinical information, or any other information about an individual that is not needed for NICS reporting purposes. Because of these strict limitations on the permitted uses and disclosures, we believe that individuals will not be dissuaded from seeking needed mental health care services as a result of the rule.

Finally, we recognize the intangible burden to individuals of the negative attitudes and misperceptions associated with mental health conditions. We note that the Federal mental health prohibitor does not apply to all individuals with mental health conditions, but instead to a subset of individuals who have been involuntarily committed or determined by a lawful authority to be a danger to themselves or others, or unable to manage their own affairs, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease. This rule permits a limited number of HIPAA covered entities to report to the NICS the identities of individuals in a particular subcategory of persons who are currently prohibited by Federal law from possessing firearms. This permission facilitates the enforcement of prohibitions that were established by the Gun Control Act. Therefore, we do not expect that this rule will exacerbate negative attitudes or misperceptions associated with mental health conditions.

D. Qualitative Analysis of Unquantified Benefits

While we believe that there may be benefits to public safety as a result of the rule, we are not able to monetize the value of such benefits.

For example, by removing a barrier to reporting, the rule may result in increased reporting to the NICS of individuals who may pose a risk of gun violence related to a serious mental health condition. To the extent that this rule permits covered entities to report those individuals' identities for NICS purposes, the rule provides a public safety benefit. One comment submitted in response to the NPRM noted that increased reporting could contribute to lowering the substantial financial costs of gun violence itself, which was estimated at $174 billion in medical and lost productivity expenses in 2010.[42] However, we do not have information about whether, or how many, covered entities would begin to report or increase reporting to the NICS as a result of the rule, nor do we have a basis for estimating the impact, if any, on the financial costs associated with gun violence.

An additional benefit of the rule is that it provides clarity about the applicability of the Privacy Rule and its relationship to State law. Specifically, the rule alleviates the concerns of State lawmakers who, according to several commenters on the ANPRM, may be reluctant to pursue State legislation requiring entities to report Federal mental health prohibitor information for NICS purposes because of a misconception that the HIPAA Privacy Rule would preempt such requirements. As explained more fully above, the Privacy Rule permits uses and disclosures that are required by law, and

[42] This comment cited Miller TR. *The Cost of Firearm Violence.* Children's Safety Network Economics and Data Analysis Resource Center, at Pacific Institute for Research and Evaluation, December 2012.

thus would not preempt a State law requiring disclosures to NICS. However, to the extent that State lawmakers harbor this misconception, this preamble clarifies HIPAA's preemption provisions and the final rule provides an avenue for NICS reporting that may obviate the need to enact legislation at the State level.

E. Additional Regulatory Analyses

1. Regulatory Flexibility Act

The RFA requires agencies to analyze and consider options for reducing regulatory burden if a rule will impose a significant burden on a substantial number of small entities. The Act requires the head of the agency either to certify that the rule will not impose such a burden or to perform a regulatory flexibility analysis and consider alternatives to lessen the burden. For the reasons explained more fully above in the summary of costs and benefits, it is not expected that the rule will result in compliance costs for covered entities of any size because the rule does not impose new requirements. Therefore, the Secretary certifies that the rule will not have a significant impact on a substantial number of small entities.

2. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates would require spending in any one year $100 million in 1995 dollars, updated annually for inflation. In 2013, that threshold is approximately $141 million dollars. UMRA does not address the total cost of a rule. Rather, it focuses on certain categories of cost, mainly those ''Federal mandate'' costs resulting from: (1) Imposing enforceable duties on State, local, or Tribal governments, or on the private sector; or (2) increasing the stringency of conditions in, or decreasing the funding of, State, local, or Tribal governments under entitlement programs. As this rule does not impose enforceable duties or affect entitlement programs, UMRA does not require us to prepare an analysis of the costs and benefits of the rule. Nonetheless, we have done so in accordance with Executive Orders 12866 and 13563, and present this analysis in sections C and D above.

3. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

The Federalism implications of the HIPAA Privacy and Security Rules were assessed as required by Executive Order 13132 and published as part of the preambles to the final rules on December 28, 2000 (65 FR 82462, 82797) and February 20, 2003 (68 FR 8334, 8373), respectively. This final rule does not impose requirements, or any associated costs, on State and local governments. Regarding preemption, the preamble to the final Privacy Rule explained that the HIPAA statute dictates the relationship between State law and Privacy Rule requirements. Therefore, the Privacy Rule's existing preemption provisions do not raise Federalism issues, and these provisions are not affected by this rule.

One commenter argued that a permission for entities other than States to report to the NICS would bypass the decisions of the States regarding the submission of reports and, therefore, raises federalism implications. In response, we again emphasize that this rule does not require covered entities to make disclosures that are prohibited by State law, nor does it prevent disclosures required by State law. Further, States retain discretion to determine which entities within the State are authorized to report information to the NICS. For these reasons, the rule does not have Federalism implications.

F. Accounting Statement

Whenever a rule is considered a significant rule under Executive Order 12866, we are required to develop an accounting statement indicating the costs associated with the rule. As explained above, we expect that the rule is cost neutral. We did not receive public comments on any unanticipated costs associated with the rule, including costs to covered entities that choose to amend written HIPAA policies and procedures or to provide additional training to staff.

VII. Collection of Information Requirements

This final rule does not contain requests or requirements to report information to the government, nor does it impose new requirements for recordkeeping or disclosures to third-parties or the public. Therefore, the requirements of the Paperwork Reduction Act with respect to information collections do not apply.

List of Subjects in 45 CFR Part 164

Administrative practice and procedure, Computer technology, Electronic information system, Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health records, Hospitals, Medicaid, Medical research, Medicare, Privacy, Reporting and recordkeeping requirements, and Security.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR Subtitle A, Subchapter C, part 164, as set forth below:

PART 164—SECURITY AND PRIVACY

■ 1. The authority citation for part 164 continues to read as follows:

Authority: 42 U.S.C. 1302(a); 42 U.S.C. 1320d–1320d–9; sec. 264, Public Law 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2(note)); and secs. 13400–13424, Public Law 111–5, 123 Stat. 258–279.

■ 2. Amend § 164.512 by adding paragraph (k)(7) to read as follows:

§ 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.

* * * * *

(k) * * *

(7) *National Instant Criminal Background Check System.* A covered entity may use or disclose protected health information for purposes of reporting to the National Instant Criminal Background Check System the identity of an individual who is prohibited from possessing a firearm under 18 U.S.C. 922(g)(4), provided the covered entity:

(i) Is a State agency or other entity that is, or contains an entity that is:

(A) An entity designated by the State to report, or which collects information for purposes of reporting, on behalf of the State, to the National Instant Criminal Background Check System; or

(B) A court, board, commission, or other lawful authority that makes the commitment or adjudication that causes an individual to become subject to 18 U.S.C. 922(g)(4); and

(ii) Discloses the information only to:

(A) The National Instant Criminal Background Check System; or

(B) An entity designated by the State to report, or which collects information for purposes of reporting, on behalf of the State, to the National Instant Criminal Background Check System; and

(iii)(A) Discloses only the limited demographic and certain other information needed for purposes of reporting to the National Instant Criminal Background Check System; and

(B) Does not disclose diagnostic or clinical information for such purposes.

* * * * *

Dated: December 30, 2015.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2015–33181 Filed 1–4–16; 4:15 pm]

BILLING CODE 4153–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GN Docket No. 12–268; WT Docket Nos. 14–70, 05–211; RM–11395; FCC 15–80]

Updating Competitive Bidding Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that on December 10, 2015, the Office of Management and Budget (OMB) approved, on an emergency basis, for a period for six months, a revision to an approved information collection to implement a modified collection requirement under 47 CFR 1.2105(c)(4) contained in the *Part 1 Report and Order,* Updating Competitive Bidding Rules, FCC 15–80. This document is consistent with the *Part 1 Report and Order,* which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of the rule and requirement.

DATES: 47 CFR 1.2105(c)(4), published at 80 FR 56764 on September 18, 2015, is effective on January 6, 2016.

FOR FURTHER INFORMATION CONTACT: Contact Cathy Williams, *Cathy.Williams@fcc.gov*, (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that, on December 10, 2015, OMB approved, on an emergency basis, a revision to an approved information collection to implement a modified information collection requirement under 47 CFR 1.2105(c)(4), published at 80 FR 56764 on September 18, 2015. The OMB Control Number is 3060–0995. The Commission publishes this document as an announcement of the effective date of the rule and requirement. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–0995, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov*.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received emergency approval from OMB on December 10, 2015 for the revised information collection requirements contained in the information collection 3060–0995, Section 1.2105(c), Bidding Application and Certification Procedures; Sections 1.2105(c) and Section 1.2205, Prohibition of Certain Communications.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0995. The foregoing document is required by the Paperwork Reduction Act of 1995, Pub. L. 104–13, October 1, 1995, and 44 U.S.C. 3507.

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

OMB Control Number: 3060–0995.

OMB Approval Date: December 10, 2015.

OMB Expiration Date: June 30, 2016.

Title: Section 1.2105(c), Bidding Application and Certification Procedures; Sections 1.2105(c) and Section 1.2205, Prohibition of Certain Communications.

Form No.: N/A.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 10 respondents; 10 responses.

Estimated Time per Response: 1.5 hours to 2 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 154(i), 309(j), and 1452(a)(3) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 309(j)(5), and 1452(a)(3), and section 1.2105(c)(4) of the Commission's rules, 47 CFR 1.2105(c)(4).

Total Annual Burden: 50 hours.

Total Annual Cost: $9,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission will take all reasonable steps to protect the confidentiality of all Commission-held data of a reverse auction applicant consistent with the confidentiality requirements of the Spectrum Act and the Commission's rules. *See* 47 U.S.C. 1452(a)(3); 47 CFR 1.2206. In addition, to the extent necessary, a full power or Class A television broadcast licensee may request confidential treatment of any report of a prohibited communication submitted to the Commission that is not already being treated as confidential pursuant to section 0.459 of the Commission's rules. *See* 47 CFR 0.459. Forward auction applicants are entitled to request confidentiality in accordance with section 0.459 of the Commission's rules, 47 CFR 0.459.

Needs and Uses: In the *Broadcast Incentive Auction Report and Order,* Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, FCC 14–50, the Commission adopted a new rule for forward auction applicants prohibiting certain communications in the context of the television broadcast incentive auction (BIA), and amended an existing rule to require forward auction applicants that make or receive a communication that is prohibited under the new rule to file a report of such a communication with the Commission. *See* 47 CFR 1.2105(c)(4), 1.2105(c)(6). Subsequently, as a result of amendments to various other provisions in section 1.2105(c) adopted in the *Part 1 Report and Order,* the new rule for forward auction applicants prohibiting certain communications in the context of the BIA and the amended reporting requirement for forward auction applicants were redesignated as 1.2105(c)(4) and 1.2105(c)(6), respectively, without any changes to the scope or substance of either rule. *See* 47 CFR 1.2105(c)(4), 1.2105(c)(6). The Commission's rules prohibiting certain communications in Commission auctions are designed to reinforce existing antitrust laws, facilitate detection of collusive conduct, and deter anticompetitive behavior, without being so strict as to discourage procompetitive arrangements between

auction participants. They also help assure participants that the auction process will be fair and objective, and not subject to collusion. The revised information collection implements the modified, BIA-specific rule in section 1.2105(c)(4) by making clear the responsibility of parties who receive information that potentially violates the rules to promptly submit a report notifying the Commission, thereby helping the Commission enforce the prohibition on covered parties, and further assuring incentive auction participants that the auction process will be fair and competitive. The prohibited communication reporting requirement required of covered parties will enable the Commission to ensure that no bidder gains an unfair advantage over other bidders in its auctions and thus enhances the competitiveness and fairness of Commission's auctions. The information collected will be reviewed and, if warranted, referred to the Commission's Enforcement Bureau for possible investigation and administrative action. The Commission may also refer allegations of anticompetitive auction conduct to the Department of Justice for investigation.

Federal Communications Commission.

Sheryl Todd,

Deputy Secretary, Office of the Secretary.

[FR Doc. 2015–33241 Filed 1–5–16; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 81, No. 3
Wednesday, January 6, 2016

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 274, and 278

RIN 0584–AE45

Supplemental Nutrition Assistance Program (SNAP) Photo Electronic Benefit Transfer (EBT) Card Implementation Requirements

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: Under Section 7(h)(9) of the Food and Nutrition Act of 2008, as amended (the Act), States have the option to require that a Supplemental Nutrition Assistance Program (SNAP) Electronic Benefit Transfer (EBT) card contains a photo of one or more household members. The Act and existing program regulations further provide that a State that implements a photo on the EBT card shall establish procedures to ensure that any other appropriate member of the household or any authorized representative of the household may use the card. This proposed rule would provide clear parameters on these requirements. In addition, this rule proposes to amend program regulations to codify guidance that was issued December 29, 2014, requiring States that intend to implement the photo EBT card option to submit a comprehensive Implementation Plan that addresses certain operational issues to ensure State implementation is consistent with all Federal requirements and that program access is protected for participating households. In this proposed rule, the United States Department of Agriculture (the Department or USDA) would clarify that the State option to place a photo on an EBT card is a function of issuance. Pursuant to this, State agencies would be prohibited from having photo EBT card requirements affect the eligibility process. This includes ensuring that the option is appropriately implemented in a manner that does not impose additional conditions of eligibility or adversely impact the ability of appropriate household members to access the nutrition assistance they need. Failure to cooperate may result in penalties, including loss of federal financial participation. The proposed rule would also codify other program updates to reflect the current operations of the program.

DATES: Written comments must be received on or before March 7, 2016 to be assured of consideration.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to Vicky T. Robinson, Chief, Retailer Management and Issuance Branch, Rm. 426, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302.
- All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the Internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky T. Robinson, Chief, Retailer Management and Issuance Branch, Rm. 426, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302, 703–305–2476.

SUPPLEMENTARY INFORMATION:

Background

Acronyms or Abbreviations

In the discussion of this proposed rule, we use the following acronyms or other abbreviations to stand in for certain words or phrases:

Phrase	Acronym, abbreviation, or symbol
Code of Federal Regulations	CFR.
Electronic Benefit Transfer	EBT.
Food and Nutrition Act of 2008, as amended.	Act.
Food and Nutrition Service	FNS.
Personal Identification Number	PIN.
Point of Sale	POS.
Supplemental Nutrition Assistance Program.	SNAP.
United States Code	U.S.C.
U.S. Department of Agriculture	the Department or USDA.

Under Section 7(h)(9) of the Act, 7 U.S.C. 2016(h)(9), States have the option to require that a SNAP EBT card contain a photo of one or more household members. The statute also stipulates that if a State agency chooses to place photographs on EBT cards, the State must establish procedures to ensure that any appropriate member of the household or any authorized representative of the household may utilize the card.

Pursuant to this statutory provision, existing regulations in 7 CFR 274.8(b)(5)(iv) provide that should a State agency require a photo on EBT cards, it must also establish procedures to ensure this same participant access is maintained. However, recent State implementation of the photo EBT card option revealed significant legal and operational complexities and challenges associated with having a photo on the card that, in the Department's view, calls for more regulatory guidance in this area. As a result, the Department is proposing to amend regulations in several areas to more explicitly define participant protections that must be maintained as well as implementation requirements if the State agency elects to implement a photo EBT card. In particular, this proposed regulation would clarify that the State option to place a photograph on an EBT card is a function of issuance. Pursuant to this, State agencies would be prohibited from having photo EBT card requirements affect the household eligibility or the certification process. Moreover, this rule would clarify the right of all household members and their authorized representatives to use the EBT card, regardless of whether their photo is on the card, and further define the responsibility of State agencies to ensure that retailers understand photo EBT requirements when processing transactions involving SNAP.

Implications of Photo EBT Card Option

While the photo EBT card option was provided to States through the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, few States have implemented the option to date. However, recent efforts have shown that implementation of the photo EBT card option involves complex legal, operational, and civil rights issues that, if not well planned and implemented, can adversely affect access for program participants. Recent photo EBT card rollouts have had major implementation issues, raising concerns about program access, and leading to confusion in the retailer community.

These issues in turn prompted the Department to issue guidance on the subject on December 29, 2014. This proposed rule would expand on and codify this guidance to help ensure clients' access to benefits is maintained in practice and that sufficient measures are taken to ensure access before the photo EBT option is rolled out.

There has been some question as to whether adding the photo to an EBT card adds value to the integrity of SNAP. Statute requires that any household member or any authorized representative must be able to use the EBT card, regardless of whether their photo is on the card. For this reason, and because trafficking often involves a willing retailer, placing a photo on the EBT card will have limited impact in addressing fraud. In fact, some State agencies have investigated the possible benefits of adding the photo and, upon further analysis, decided it was not worth the cost to do so. Nevertheless, the Act provides States with the option to implement the photo on the EBT card and these proposed regulations are intended to fill the existing policy gaps in this area for the reasons cited above.

Discussion of the Rule's Provisions

State Agency Requirements for Photo EBT Card Implementation

This proposed rule provides that State agencies would be required to meet certain requirements in order to implement a photo EBT card policy. The implementation requirements firmly establish SNAP policy that the photo EBT card option is a function of issuance and not a condition of eligibility; certification policy may not be impacted by the implementation of the option; all appropriate household members and authorized representatives, as defined in 7 CFR 273.2(n)(3), shall continue to be able to use the EBT card; program access is not inhibited at retail stores; and program access and program integrity are ensured through all stages of the process. A State considering a photo EBT card policy will need to lay out how it will operationalize the policy and develop and implement an Implementation Plan and photo EBT option that upholds all SNAP requirements.

To establish the requirements for the photo EBT card provisions, a new section would be codified in 7 CFR 274.8(f), addressing all the requirements associated with implementing a photo EBT card policy. Changes are also proposed to paragraphs within 7 CFR part 273 to further clarify that photo EBT card processes do not impact the certification of eligible households.

Minimum Requirements

Implementation of the photo EBT card option takes substantial resources and requires substantial changes to State systems and procedures. Due to these challenges, States that have recently implemented photo EBT card implementations have had significant issues with providing timely, accurate, and fair service to SNAP applicants and participants and with meeting other statutory and regulatory requirements. For this reason, the Department would require that States demonstrate to FNS successful administration of SNAP based on SNAP performance standards to be eligible to implement the photo EBT card option. Successful program administration would be based on an evaluation of metrics related to program access, the State's payment error rate, the State's Case and Procedural Error Rate, application processing timeliness, including 7-day expedited service and the 30-day processing standards, timeliness of recertification actions, and other metrics, as determined by the Secretary, that may be relevant to the implementation of a State's photo EBT card option. States would need to document in the Implementation Plan that they are meeting FNS performance expectations. The Department is interested in comments from the public about other metrics that FNS should consider in the context of determining successful program administration including metrics related to access to benefits. These performance standards will allow FNS to evaluate whether clients are receiving timely, accurate, and fair service before the State may be eligible to implement a photo EBT card option. This provision would be codified in 7 CFR 274.8(f)(1).

Function of Issuance

The proposed rule clarifies that the photo EBT card option is a function of issuance and not a condition of certification. Any implementation of the photo EBT card option must not impact certification of households. State agencies shall not deny or terminate a household based solely on whether one or more household members comply with the requirement to have a photo on the EBT card.

The State agency's photo EBT card policy must not affect the certification process for purposes of determining eligibility regardless of whether an individual has his/her photo placed on the EBT card. For example, an application would be considered complete and be subject to 7 and 30-day processing timelines regardless of the status of the photo. Application processing timeliness requirements would not be different for photo EBT cards. This provision would be codified in 7 CFR 274.8(f)(2).

Voluntary vs Mandatory

The proposed rule would allow for State agencies to implement the SNAP photo EBT card on a mandatory or voluntary basis. Regardless of whether the photo is mandatory or voluntary, clients must be informed that their household's certification will not be impacted by whether they agree to the photo. If the policy is mandatory, State agencies must establish which member(s) of the household would be required to be photographed and must establish procedures that allow eligible nonexempt household members who do not agree to the photo to come into compliance at a later time. The photo may be of the head of household and/or other participating nonexempt household member(s). State agencies must issue benefits to compliant or exempt household members and, as noted earlier, non-compliance with a photo requirement by household members who choose not to be photographed must not negatively impact the household's eligibility determination.

If the policy is voluntary, clients would be able to elect to have their photo on the household EBT card but would not be required to do so and would not have to be in an exempted category to opt out of the photo option. State agencies implementing a voluntary photo EBT card policy would be required to make clients aware of the voluntary nature of the photo and the fact that benefit issuance would not be impacted by their decision to have or not have a photo on their card. In voluntary implementations, households would opt in to have a photo on their cards rather than opt out of the option. Therefore, EBT cards with photos would not be the default.

FNS has concerns that States implementing voluntary photo EBT card policies to date have been unsuccessful in communicating the nature of the program to clients and remains concerned about how such lack of information could affect SNAP households, especially those with non-applicant heads of household. The Department is seeking comment about suggestions for how to strengthen the requirements on States to provide clear and effective information that ensures clients understand the State's photo EBT policies. Additionally, to ensure States' implementation of the photo EBT option does not create disparate impacts on members of any protected class, as proposed, States would not be allowed to photograph non-applicants or put their photo on an EBT card, regardless of whether the State's program is voluntary or mandatory. As proposed, States could not offer non-applicant heads of households the option to opt in to have their photos taken to ensure that clients would not be pressured by States, intentionally or inadvertently, to have a photo taken. Nevertheless, FNS would like to better understand if there is any potential benefit of allowing non-applicants to have their photograph taken under a voluntary implementation and whether such benefits outweigh potential problems.

These provisions would be codified in 7 CFR 274.8(f)(3) and 7 CFR 27.8(f)(4).

Exemptions

Because recent implementation by States showed inconsistency and confusion in the application of State-defined exemption criteria, the Department is making clear in this proposed rule who must be exempted from photo EBT card requirements. State implementation showed there were circumstances where even exempt clients as defined by those States, such as the elderly, disabled, or domestic violence victims, were not actually exempted from the photo EBT requirement. In addition, many clients were not clearly informed that they were exempt under the State's exemption criteria and were under the impression that they had to comply with the State's photo EBT card policy in order to receive program benefits.

To ensure that a State's photo EBT card requirement will not place undue burden on vulnerable clients, the proposed rule requires States implementing a mandatory implementation to exempt, at a minimum, the elderly, the disabled, children under 18, homeless households, and victims of domestic violence. FNS proposes that victims of domestic violence would be able to self-attest and States would not be permitted to require clients to submit documentation to verify that they have been victims of domestic violence. The ability to self-attest must be applied equally regardless of whether the victim is a female or male. A State agency may establish additional exempted categories, including, but not limited to, categories described in hardship criteria as specified in 7 CFR 273.2(e)(2).

As noted in the previous section, as proposed, non-applicants shall not be required nor permitted to have their photographs taken or put on EBT cards. This provision would be codified in 7 CFR 274.8(f)(4).

Serving Clients With Hardship

The proposed rule requires that State agencies have sufficient capacity and a process to issue photo EBT cards, taking into account households that face hardship situations as determined by the State agency and that would receive non photo EBT cards. These hardship conditions include, but are not limited to: Illness, transportation difficulties, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from having photos taken in-office.

Issuance of Photo EBT Card

There are a variety of SNAP policy and operational questions that States must consider in developing their issuance process for photo EBT cards, including the technical aspects relating to software, hardware, and the taking, storage, and security of photos.

The proposed rule would require that States demonstrate sufficient capacity to issue photo EBT cards before they may receive an authorization from FNS to implement the option. As noted in the previous section on hardship, any State implementing a photo EBT card option would have to establish a process to issue cards to households that may not be able to reach a local office due to a hardship condition. Furthermore, the process for issuing and activating photo EBT cards must not inhibit or delay access to benefits nor cause a gap in access to benefits for any eligible households. Any card issued as part of the implementation of the photo EBT card option may not count against the household as part of the maximum threshold of replacement cards as specified in 7 CFR 274.6(b)(5) and 7 CFR 274.6(b)(6). Most importantly, as noted earlier, non-compliance with a photo requirement cannot impact the eligibility determination of the household as the photo EBT card option is an issuance function, not a condition of eligibility.

States that have recently implemented a photo EBT policy have struggled with operational challenges during the transition from regular EBT cards to photo EBT cards. In one State, some clients lost access to their benefits during the period between the deactivation of their previous EBT card and activation of the new EBT photo card. This proposed rule would require that States implementing the photo EBT card option establish a process to ensure that the replacement of cards does not disrupt households' access to benefits, consistent with the requirements of 7 U.S.C. 2016(h)(9). Additionally, State card issuance procedures developed for new SNAP households would need to ensure adherence to the application processing standards of 7 days in the case of expedited households and 30 days for all other households, as required by 7 CFR 273.2(g) and 7 CFR 273.2(i).

As proposed, if a household meets expedited criteria in 7 CFR 273.2(i), the State must issue benefits and issue the EBT card to the entire household without delay. Regardless of whether the State's photo EBT policy is voluntary or mandatory, the State could not delay, hold in abeyance, or prorate benefits for any household that meets expedited criteria in order to obtain a photo on the EBT card. Under a mandatory implementation, a non-exempt household member could be required to comply at the next recertification after expedited benefits have been issued to the household. If the non-exempt household member is not in compliance by the time the household is recertified, then the State could determine whether that member's share of benefits must be held in abeyance prospectively. Under the proposed rule, State agencies implementing a photo EBT card option must also meet the card replacement issuance card requirements stipulated in 7 CFR 274.6, which, among other things require States to issue replacement EBT cards within 2 business days following notice by the household that the card has been lost, stolen, or damaged.

This provision would be codified in 7 CFR 274.8(f)(6).

Prorating Household Benefits When Photo EBT Card Is Mandatory

State agencies would not be able to deny benefits to an entire household because a nonexempt household member(s), required by the State to be photographed, refuses to be photographed. Unless the household

meets expedited criteria, this proposed rule would require the State to issue a prorated share of benefits to the remaining household members, so they can use their share of the benefits that they are entitled to receive.

As proposed, for multi-person households, that would be a straight pro-ration of benefits. The State would divide the household's benefit allotment by the household size and multiply that number by the number of household members to be issued benefits. To illustrate, if a four-person household's monthly benefit allotment is $200 and one nonexempt household member does not comply with the requirement to have a photo placed on the EBT card, the $200 would be divided by 4 to equal $50, and then multiplied by 3 to equal $150. The $150 amount would be posted and available for use by the household. Any decision that impacts benefits under this provision would be subject to fair hearings in accordance with 7 CFR 273.15. For a single person household, the State agency would hold the entire benefit in abeyance until the household complies. This proposed provision is addressed in 7 CFR 274.8(f)(7) of the regulation.

Benefits Held for Noncompliance

FNS proposes that the pro-rated benefit amounts held for noncompliance with a State's photo EBT card requirement would be tracked and retained for future issuance by the State agency if and when any noncompliant household member(s) that previously chose not to be photographed comes into compliance. The pro-rated benefits withheld for that individual or individuals must promptly be issued within two business days of the time the individual(s) comes into compliance. Benefits withheld for non-compliance would not remain authorized for perpetuity and States must treat such benefits in accordance with the same timeframe used for handling expungements under 7 CFR 274.2(h)(2). This would allow States to better manage benefits that have not been issued.

This proposed provision is addressed in 7 CFR 274.8(f)(8) of the regulation.

Household and Authorized Representatives Card Usage

The Food and Nutrition Act requires States implementing photo EBT to ''establish procedures to ensure that any other appropriate member of the household or any authorized representative of the household may utilize the card.'' All household members, authorized representatives as defined in 7 CFR 273.2(n)(3), and non-applicants applying on behalf of others have a right to access SNAP benefits by using the household EBT card with a valid PIN even if their picture is not on the card or there is no picture on the card. The State agency must take steps to ensure that individuals who are not pictured on the card can continue to access SNAP benefits in accordance with the Section 7(h)(9)(B) of the Act.

The ability for authorized representatives to use the card is particularly critical to ensure food access for the elderly, disabled, or other homebound recipients who may have difficulty getting to grocery stores and require assistance in obtaining food.

This provision would be codified in 7 CFR 274.8(f)(9).

Client and Staff Training

This proposed rule would require that States ensure all staff and clients are trained on photo EBT card requirements. At a minimum, this training would include information about whether the photo EBT card is voluntary or mandatory, that all appropriate household members and authorized representatives are able to use the card, and with regards to mandatory implementation, which household members (if any) must comply with the photo requirement, which household members and/or household applicant categories are exempt. This proposed rule would also require that all retailer and client notices pertaining to the photo EBT card must also clearly describe the following statutory and regulatory requirement: All household members and any authorized representative of the household regardless of whether they are pictured on the card, may utilize the card without having to submit additional verification of identity as long as the transaction is secured by the use of the PIN. This proposed rule would also stipulate that State agencies may not specifically reference groups exempt from the photo requirement in any materials designed for retailers, as providing the categories of exempt groups may encourage speculation as to the age or circumstances of cardholders. External stakeholder materials should simply note that EBT cards without a photo are also valid. This provision would be codified in 7 CFR 274.8(f)(10).

Retailer Education and Responsibilities

Although retailer participation in SNAP is authorized and managed by USDA, this rule, as proposed, recognizes State agencies opting to implement a photo EBT card would impact SNAP transactions at the point of sale. Per the statutory requirement, State agencies are required to ensure access to benefits by household members other than the member(s) whose photo is on the card, as well as authorized representatives. Therefore, in paragraph 7 CFR 274.8(f)(10), this proposed rule would require State agencies to provide information to all retailers about the State agencies' implementation and operational plans so retailers are prepared for the changes, as well as to convey the Federal rules stipulating that all household members and authorized representatives must be allowed to use the EBT card regardless of the picture on the card. Furthermore, Federal rules prohibit retailers from treating SNAP participants differently from other customers at the point of sale. According to the equal treatment regulation in 7 CFR 278.2(b), SNAP customers cannot be singled out for special treatment in any way.

A State agency would need to provide documentary evidence that all retailers in the State and contiguous areas, including smaller independent retailers, have received notices from the State that explain the statutory and regulatory requirements related to photos on EBT cards described above and have a full understanding of those requirements. State agencies would be required to describe in the Implementation Plan when they will provide FNS with this documentary evidence in advance of implementation. This provision would be codified in 7 CFR 274.8(f)(11).

Interoperability

Section 7(j) of the Act requires that EBT cards be interoperable, which means that they can be used in any State regardless of where the benefits were issued. Without sufficient education for clients and retailers in both the implementing State and neighboring States, the implementation of the photo EBT card option could inhibit this required access to benefits. For example, a SNAP recipient who lives in a State with a photo EBT card may find it more convenient or cost effective to shop in another bordering State that does not have photo EBT cards. Likewise, a SNAP recipient may live in a State without a photo EBT card requirement, but shop in a State with such a card requirement. To ensure interoperability, clients, and retailers must be fully informed that the photo EBT cards remain interoperable and that authorized retailers must accept EBT cards from all States as long as the household member or authorized representative presents the valid PIN. Before introducing the new photo EBT cards, this proposed rule would require State agencies to conduct sufficient

outreach to clients and retailers, including those in contiguous areas, to ensure access to benefits is not inhibited and all parties understand their rights and responsibilities.

This provision would be codified in 7 CFR 274.8(f)(12).

Advance Planning Document

As the Act allows for photo EBT cards, appropriate implementation and administration of this option is an allowable State administrative cost which FNS would reimburse at approximately 50 percent. To ensure that FNS does not exceed the SNAP budget authority for State administration, States should be aware that any EBT contract modifications that increase costs must be approved by FNS before they may be signed. Increased EBT costs, whether contractual or resulting from other sources, also require an Implementation Advance Planning Document Update. This provision would be codified in 7 CFR 274.8(f)(13).

Implementation Plan

In 7 CFR 274.8(f)(14), this proposed rule would require State agencies to submit an Implementation Plan prior to photo EBT implementation that delineates how the State will operationalize this option. Upon receipt of the State's Implementation Plan, FNS would review the plan and either issue an approval, request modifications before an approval could be granted, or issue an approval subject to conditions. In cases where the Department finds that the steps outlined in the Implementation Plan are not sufficient for a successful implementation, the Department might issue an approval subject to conditions, such as requiring the State agency to demonstrate a rollout in a pilot in a selected region of the State before the State may be approved to implement statewide or, FNS might approve the Implementation Plan for a statewide implementation upon the completion of an appropriate successful pilot project that establishes the State agency's ability to implement a full statewide rollout. Should a State be required to implement a pilot before statewide implementation, that requirement would be documented as a condition of the State's Implementation Plan approval, along with any information that the State must report to FNS before the State may be granted approval to implement statewide.

FNS expects that the process for FNS review and approval of photo EBT Implementation Plans will take at least 120 days. Obtaining FNS approval of the Implementation Plan is the first step States must take. However, a State may not actually issue EBT cards with photos until FNS has given the State an authorization to do so as described below. The multi-step approval process ensures that the State carries out the steps detailed in the Implementation Plan and has the opportunity to make any adjustments needed prior to issuing EBT cards with photos. Similarly if FNS has approved an Implementation Plan subject to conditions, such as requiring the State agency to conduct a pilot prior to statewide implementation, the State may not issue EBT cards with photos in the context of the pilot until FNS has given the State an authorization to do so. Approval from FNS would also be necessary for a State to proceed from pilot to statewide implementation. Any movement to implement without prior approval would be viewed as a violation of program requirements and could result in additional penalties including a loss of Federal financial participation.

FNS would not consider a State eligible or authorize a State to proceed with a photo EBT card option unless that State meets performance requirements noted earlier and established in 7 CFR 274.8(f)(1). States would need to demonstrate in the Implementation Plan that they are meeting FNS performance expectations. The Implementation Plan would also be required to include a description of the State's card issuance procedures, a detailed description of how client protections such as processing timelines and benefit access will be preserved, specific information about exempted recipients, a description of how the State will obtain photographs for the EBT card, training materials and training plans for State staff, examples of letters and other materials communicating the policy to recipients and to retailers, a proposed timeline for implementation, and any other information as required by the Secretary. If a State agency plans to disclose SNAP applicant or client data in accordance with 7 CFR 272.1(c) for purposes of implementing photo EBT cards, such as to obtain photos from another source like the State's Department of Motor Vehicles the proposed rule requires the State to also include any necessary memoranda of understanding as part of its Implementation Plan. Any information collected for the purpose of SNAP must be securely stored and can only be shared in accordance with 7 CFR 272.1(c).

State Implementation Plans would also be required to describe: The specific action steps that the State agency and its EBT contractor must take in order to implement the photo EBT card option as planned, together with the anticipated timetable for each step; the State's capacity to issue photo EBT cards; and the submission of the documentation that all retailers, including small and independent retailers, would receive notice from the State about the photo EBT card policy. The plan would also need to describe how the State will ensure that the photo EBT cards are provided to clients and activated at the same time or before the active non-photo cards are deactivated. With regard to the State's capacity to issue photo EBT cards, the plan would include the description of the capacity at the facility where photo EBT cards will be produced, both for transitional and ongoing production, and assurance that the State and its EBT contractor will continue to meet regulatory timeliness requirements for all EBT card issuances. The Implementation Plan should also describe measures against which the photo EBT card implementation will be evaluated for the post-implementation evaluation required by 7 CFR 274.8(f)(16), and how the requisite data will be collected.

The State would also be required to include in its plan for FNS review all applicable written policy changes necessary to implement the photo EBT card option, as well as copies of all materials that will be used to inform clients, retailers and other stakeholders regarding photo EBT card implementation. Along with these materials, the States would need to provide a detailed description of how the notifications, communication, policies, and procedures regarding the implementation of the photo EBT card option will comply with all applicable civil rights laws.

Finally, the State would need to provide a description of the mechanisms in place to handle complaint calls and questions from clients, retailers, and external stakeholders and address any other issues related to the photo EBT card option, as well as detail how substantive information about those complaints will be tracked and reported. A State would not be authorized to issue EBT cards with photos until FNS grants the State an authorization to implement as specified by 7 CFR 274.8(f)(15).

Upon approval of the Implementation Plan, the State would be allowed to proceed with tasks described in the Implementation Plan, as modified by the approval, but not proceed to issuing actual cards until FNS provides authorization to implement.

An approved Implementation Plan would be considered public and would

be posted on the FNS Web site. The Department is interested in receiving comments on any benefits and concerns of posting the approved Implementation Plan.

Authorization To Issue Photo EBT Cards

The authorization to implement would allow the State agency to begin issuing EBT cards with photos. After the Implementation Plan is approved, FNS will review State actions at an appropriate time interval to ensure that the process and steps outlined by the State agency in the Implementation Plan have in fact been carried out in a satisfactory manner. For example, prior to obtaining authorization to implement, a State would need to confirm and/or demonstrate that robust client and retailer outreach, as detailed in its Implementation Plan, has been completed.

If FNS finds that the State agency has not acted in accordance with the steps outlined in the State's photo EBT Implementation Plan, FNS could deny authorization for the State to issue EBT cards with photos until the State has done so in a satisfactory manner. FNS could also require the State to implement in a phased manner, which may include criteria as determined by the Secretary. This provision would be codified in 7 CFR 274.8(f)(15).

Post-Implementation Assessment and Evaluation

As already noted, 7 CFR 274.8(f)(16) would require States to submit to FNS a post-implementation evaluation conducted by from an independent evaluator, which describes the State's implementation to date, including any issues that arose and how they were addressed, the degree to which State staff, clients and retailers properly understood and implemented the relevant policies and procedures, and in the case of a mandatory implementation, the number of clients that complied with adding the photo or did not comply, and the number that had their share of the benefits withheld from issuance and for how long. The evaluation must include, at a minimum, a survey of retailers and clients to measure their understanding of the State's photo EBT policy, and a report which includes the number of households and percent of households with photo EBT cards in the State and the number and scope of complaints related to photo EBT implementation, including a detailed summary of the types of complaints, the SNAP performance metrics as established in section 7 CFR 274.8(f)(1) and other information as determined by the Secretary.

For States implementing a mandatory implementation, the report must also detail the amounts and percent of benefits withheld for non-compliance, the number of households affected by the withholding of benefits due to noncompliance, the number and percent of persons exempt from the photo EBT card requirement, and the number and percent of exempted households and persons who opted to have the photo on the EBT card.

State agencies would be required to deliver this report to FNS within 120 days of implementation. This report would cover the first 90 days of implementation. The Department reserves the right to conduct its own review of the State's implementation.

Ongoing Monitoring

Based on observed implementation to date, there is cause for concern about possible impacts of photo EBT implementations, both as they are first implemented and over time. There is a need for additional assurance on an ongoing basis that state implementation of photo EBT cards is carried out in a manner consistent with all relevant laws and regulations, including Federal civil rights laws, that protect households' ability to access or utilize SNAP benefits for which they are eligible, and in a manner that does not adversely impact program participation.

As set forth in the proposed rule, in addition to the post-implementation report, a State agency that has implemented a photo EBT policy would be required to provide to FNS, on an ongoing basis, data on established metrics to monitor the impact of the photo EBT policy. The reporting requirements might require State agencies to conduct additional surveys, evaluations, or reviews of their operations, as determined by the Secretary. These ongoing reporting requirements would include information on the amounts and percent of benefits withheld for non-compliance, the number of households affected by the withholding of benefits due to non-compliance, the number and percent of household exempt from the photo EBT card requirement, benefit redemption rates, participation rates, the number and percent of households exempt from photo EBT cards who opted out of the photo requirement, the number and percent of exempted households who opted to have the photo on the EBT card, and any other information as requested by the Secretary. We are interested in receiving comments on other data that should be required from States on an ongoing basis, how frequently States should be required to report, or any other feedback relevant to the ongoing monitoring of this policy. As with other Program information and plans, this information would be available to the public upon request, subject to the Freedom of Information Act provisions.

While staff, client, and retailer education is a critical component, it is not always a perfect indicator of whether actual barriers to access exist in practice. In the context of housing discrimination, ''testers'' have been utilized to proactively determine whether fair housing laws are being upheld consistently. One question is whether a similar mechanism should be used to ensure that, in practice, SNAP participants and their authorized representatives are able to use their benefits to purchase food at authorized retailers, regardless of whether they are pictured on the EBT card. We invite comment on this question as well as on the topic of how to verify appropriate implementation on an ongoing basis, particularly on ongoing mechanisms for identifying access issues resulting from photo EBT cards.

Modifying Implementation of Photo EBT Option

As part of FNS's management and oversight responsibilities, FNS regularly conducts management evaluation reviews of State agencies' administration and operation of SNAP to determine compliance with program requirements. FNS will conduct management evaluation reviews, as appropriate, to monitor State implementation of photo EBT cards.

If FNS identifies deficiencies in a State's implementation or operations, FNS may require a corrective action plan consistent with 7 CFR 275.16 to reduce or eliminate deficiencies. If a State does not take appropriate actions to address the deficiencies, FNS would consider possible actions such as requiring an updated photo EBT Implementation Plan, suspension of implementation and/or withholding funds in accordance with 7 CFR 276.4. Along these lines the Department is seeking comments on whether a State should be required to stop or suspend issuing photos on EBT cards if the State agency fails to establish procedures to ensure that all members of the household or any authorized representatives of the household are able to utilize the card, and what requirements, if any, should apply to that process.

Provisions Beyond 7 CFR 274.8(f)

Beyond Part 7 CFR 274.8(f), changes are proposed to 7 CFR parts 271, 272, 273, and other paragraphs within Parts 274 and 278. While some of these changes are related to photo EBT card requirements, others involve updating SNAP regulations or enhancing integrity provisions.

7 CFR Part 271

The Department proposes to amend the definition of Identification (ID) card in 7 CFR 271.2. ID card in this definition refers to a card that was issued when program benefits were issued in the form of food stamp coupons. This ID card, which was used to establish the recipient as eligible to receive food stamp coupons, such as when picking up coupons at the State office or other central location is no longer widely used in the program. Today, program benefits are automatically deposited into the household's EBT account each month and are redeemed through EBT cards. The PIN on the EBT card establishes whether a household recipient or authorized representative can redeem program benefits. However, this ID is still used in Alaska to identify households that are dependent upon hunting and fishing for subsistence. The definition for Identification (ID) would be amended to reflect only cases in which ID cards are currently used in the Program.

7 CFR Part 272

The Department proposes changes to 7 CFR part 272 to ensure that regulatory language is in line with current program operations. In alignment with the change to 7 CFR 271.2, FNS proposes removing all references to ''ID card'' associated with the obsolete paper coupons. It would result in the removal of 7 CFR 272.1(g)(30) and 7 CFR 272.1(g)(47).

7 CFR Part 273

FNS proposes several changes to 7 CFR part 273. The Department proposes adding language in 7 CFR 273.2(a)(1) to clarify that the implementation of the photo EBT card option cannot be treated as a condition of eligibility as it is a function of issuance. Further, this paragraph would be amended to ensure that, for the purpose of certification, States shall not treat households subject to a photo EBT card policy differently from households not subject to a photo EBT card policy. To ensure that expedited and standard application processing requirements are still met in photo EBT card situations, 7 CFR 273.2(a)(2) would be revised by adding that State agencies shall ensure that processing times are not delayed by implementation of the photo EBT card option. Third, the Department proposes to clarify the rules governing interviews in 7 CFR 273.2(e). State agencies may not require an in person interview solely for the purpose of taking a photo. Since this option is a function of issuance and not a condition of eligibility, households must be treated equally with regards to certification activities regardless of whether they are subject to or choose to comply with a photo requirement. However, households may be called in for a photo to be taken as a matter of issuance, not eligibility. In 7 CFR 273.2(n)(2), the reference to the ID card would be removed as it is obsolete. In 7 CFR 273.2(n)(3), the proposed language would change the word ID to EBT card. The proposal would change ''its ID card and benefits'' to ''the EBT card.''

7 CFR Part 274

The Department proposes changes to 7 CFR 274.8(b)(5)(ii) to modify EBT cards in States implementing the photo EBT card option, in accordance with 7 CFR 274.8(f). States would be required to add text to all EBT cards to ensure retailers are aware that all household members and authorized representatives must be allowed to use the EBT card even if their photo is not on the card or no photo is on the card. Experience has shown that, when a photo is included on the EBT card, some retailers believe the card may only be used by the person pictured. In concert with other required measures to ensure that retailers understand the State's photo EBT implementation, adding a statement on photo EBT cards would help alleviate confusion at retailer checkout and ensure compliance with the Federal statute that requires all household members and authorized members be able to access program benefits. This rule would propose that the States print the text: ''Any user with valid PIN can use SNAP benefits on card and need not be pictured.'' or alternative text approved by FNS. The Department is willing to consider alternative language suggested by States as long as it achieves the same goal of clearly informing retailers and clients as to the correct policy in this area.

7 CFR Part 278

The Department is proposing changes in Part 278 to remove language that is no longer in line with program operations and update language to enhance program integrity. The Department has recently become aware of instances in which SNAP authorized retailers, unauthorized retailers, and other individuals have purchased multiple EBT cards illegally. Generally, these individuals are not SNAP recipients. Frequently they use three or more EBT cards at a time and use the cards to purchase a large amount of eligible foods that are then used to replenish store inventory or sold as inventory to other retailers or restaurants. To address this area of potential fraud in which individuals use multiple cards they have procured illegally, the Department is proposing new language to require retailers to ask for identification of anyone who presents three or more EBT cards at checkout. Specifically, this proposed rule would require SNAP authorized retailers to ask these individuals for photo identification, such as a driver's license, and an explanation as to why multiple cards are being used. Furthermore, should the store believe there is a potential for fraud, retailers would be allowed to record information from the individual's identification, EBT card number, and reason for using three or more EBT cards. The retailers would be required to report this information to the USDA OIG Fraud Hotline. If the retailer suspects fraud is being committed and the individual refuses to show identification, the retailer has the option to deny a sale when three or more EBT cards are being used during a transaction. The Department understands that occasionally an individual or an individual shopping for an elderly client working for an authorized group home or other authorized facility may use multiple cards in order to purchase food legally for clients. Given these concerns regarding program access and program integrity, the Department is interested in comments from the public on whether there are other possible approaches to preventing individuals from using multiple EBT cards that they have obtained illegally, such as establishing a dollar threshold for individuals using three or more cards. These changes are proposed in 7 CFR 278.2(h).

The Department also proposes the removal of two paragraphs, (i) and (k) in 7 CFR 278.2. The paragraphs refer to an outdated method of establishing identity and operations based on paper coupons. These paragraphs currently represent a redundancy and could cause confusion as they refer to an ID card that is only used in Alaska. This process has been replaced by the EBT system. Furthermore, the proof of eligibility is established through EBT and other systems implemented by State agencies.

7 CFR 274.7(i) already addresses this procedure by establishing that State agencies shall implement a method to ensure that access to prepared meals and hunting fishing equipment is limited to eligible households. Eligible households are defined in 7 CFR 274.7(g) and (h).

Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

As required for all rules that have been designated as Significant by the Office of Management and Budget, a Regulatory Impact Analysis (RIA) was developed for this proposed rule. The full RIA is included in the supporting documents of the rule docket at *www.regulations.gov.* The following summarizes the conclusions of the regulatory impact analysis.

Need for Action: This proposed rule would incorporate into regulation and expand on guidance that was issued December 29, 2014 to certain State agencies. Based on observed implementation to date, there is cause for concern about possible impacts of photo EBT programs, both as they are first implemented and over time. This guidance requires States that intend to implement the photo EBT card option to submit a comprehensive Implementation Plan for FNS approval that addresses key operational issues to ensure State implementation complies with all Federal requirements and that program access is protected for participating households.

In this proposed rule, the Department would clarify that the State option to place a photo on an EBT card is a function of issuance. Pursuant to this, State agencies would be prohibited from having photo EBT requirements affect the eligibility process. This includes ensuring that the photo EBT option is implemented in a manner that does not impose additional conditions of eligibility or adversely impact the ability of eligible Americans to access the nutrition assistance they need.

Benefits: The Department anticipates that this proposed rule will provide qualitative benefits to State Agencies, SNAP participants, and authorized retailers. The Act and existing program regulations provide that States that implement a photo on the EBT card must establish procedures to ensure that any other appropriate member of the household or any authorized representative of the household may use the card. This proposed rule will provide clear parameters for States wishing to implement photo EBT to ensure that State implementation is consistent with all Federal requirements and that program access is protected for participating households, which will safeguard the rights of clients, provide training to staff, clients, and retailers, and improve program administration.

Costs: States choosing the photo EBT option may incur additional administrative costs, which may vary based on the size and scope of the State's operations and whether implementation of the photo EBT card option is mandatory or voluntary. Regardless of whether the option is mandatory or voluntary, all States that implement photo EBT cards will incur certain implementation costs to include: Preparing an implementation plan, communications and training for program staff, clients, and retailers, ongoing training costs to maintain an understanding of Photo EBT policies, programming costs for mandatory policies, and costs for the post-implementation assessment, evaluation and on-going monitoring. States with mandatory photo EBT will also incur costs associated with prorating and storing benefits for noncompliant household members that choose not to be photographed. The Department estimates the total cost to be approximately $9.8 million over five years, assuming six States choose to implement a mandatory Photo EBT policy. Costs would be lower if some or all of these States choose to implement voluntary, rather than mandatory, Photo EBT policies. The estimate of six States is based on information from State legislatures that are either currently considering or discussing the possibility of considering such a policy. Given the projected timelines for these legislative actions, the Department assumes that the costs of implementing a Photo EBT system will be phased in over a five year period, as all six States are unlikely to approve and implement the policy in the same year. The two States that have already implemented photo EBT as a State option will not be required to retroactively submit Implementation Plans, but may continue to incur minimal costs associated with ongoing training and monitoring required for program staff, clients, and retailers.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this proposed rule would not have a significant impact on a substantial number of small entities. This proposed rule primarily impacts State agencies. As part of the requirements, State agencies would have to educate retailers about the photo EBT card. There will not be a substantial impact on small entities such as small retailers since the treatment of clients with EBT cards and photo EBT cards do not vary. Minimal changes will be required of retailers. Retailers will need to be aware that some clients may present photo EBT cards but clients shall not be treated any differently. In addition, retailers will be required to request identification of individuals using three or more EBT cards. This is not expected to create a burden on retailers.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of $100 million or more in any one year. Thus, the proposed rule is not subject to the

requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Supplemental Nutrition Assistance Program is listed in the Catalog of Federal Domestic Assistance Programs under 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121.

The Department has determined that this proposed rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This proposed rule is intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. State agencies that have already implemented a photo EBT card must meet all requirements of regulations except the requirement to submit an Implementation Plan prior to State's planned implementation date. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. On February 18, 2015, the agency held a consultation. During the consultation, no comments were received on the proposal. We are unaware of any current Tribal laws that could be in conflict with the proposed rule.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of religion, age, race, color, national origin, sex, political beliefs, or disability. After a careful review of the rule's intent and provisions and understanding the intent of this rule is to in part to protect the civil rights of recipients, FNS has determined that this rule is not expected to adversely affect the participation of protected individuals in the Supplemental Nutrition Assistance Program.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) to approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this proposed rule does not contain information collections that are subject to review and approval by the Office of Management and Budget.

This rule proposes reporting requirements for States to submit to FNS an Implementation Plan, a post-implementation evaluation of the photo EBT implementation, and related on-going measures. As the PRA requirements are applicable to collection of information from ten or more respondents, there are no information collection requirements that are subject to OMB review at this time. Should the number of estimated respondents reach ten or more, FNS will publish a notice for comment and submit the applicable requirements to OMB for review and approval.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 271

Food stamps, Grant programs-Social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Employment, Food stamps, Fraud, Government employees, Grant programs-social programs, Income taxes, Reporting and recordkeeping requirements, Students, Supplemental Security Income (SSI), Wages.

7 CFR Part 274

Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR 278

Banks, banking, Food stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, 7 CFR parts 271, 273, 274, 278 are proposed to be amended as follows:

■ 1. The authority citation for parts 271, 273, 274 and 278 is revised to read as follows:

Authority: 7 U.S.C. 2011–2036c.

PART 271—GENERAL INFORMATION AND DEFINITIONS

■ 2. In § 271.2, revise the definition of *Identification (ID) card* to read as follows

§ 271.2 Definitions.

* * * * *

''*Identification (ID) card* means a card for the purposes of 7 CFR 278.2(j).''

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

§ 272.1 [Amended]

■ 3. In § 272.1, remove and reserve paragraphs (g)(30) and (47).

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOULD

■ 4. In § 273.2:

■ a. Amend paragraph (a)(1) by adding to the end of the third sentence the

words '', including in the implementation of a photo EBT card policy''

■ b. Amend paragraph (a)(2) by adding a new fourth sentence before the last sentence the words '' ''

■ c. Amend paragraph (e)(1) by adding a new fourth sentence after the third sentence.

■ d. Amend paragraph (n)(2) by removing in the third sentence the words ''and on the food stamp identification (ID) card, as provided in 7 CFR 274.10(a)(1) of this chapter'' and by removing the last sentence.

■ e. Amend paragraph (n)(3) by removing the word ''ID card and benefits'' and adding it its place adding the word ''EBT card.''

The additions read as follows:

§ 273.2 Office operations and application processing.

(a) * * *

(1) * * * The State agency's photo EBT card policy must not affect the certification process for purposes of determining eligibility regardless whether an individual has his/her photo placed on the EBT card. * * *

(2) * * * States must meet application processing timelines, regardless of whether a State agency implements a photo EBT card policy. * * *

* * * * *

(e) * * * State agencies may not require an in person interview solely to take a photo. * * *

* * * * *

PART 274—ISSUANCE AND USE OF PROGRAM BENEFITS

■ 5. In § 274.8:

■ a. Redesignate paragraphs (b)(5)(ii) through (iv) as paragraphs (b)(5)(iii) through (v), respectively, and adding a new paragraph (b)(5)(ii).

■ b. Add paragraph (f).

The additions read as follows:

§ 274.8 Functional and technical EBT system requirements.

* * * * *

(b) * * *

(5) * * *

(ii) State agencies that implement the photo EBT card option in accordance with paragraph (f) of this section must print on the EBT cards the text ''Any user with valid PIN can use SNAP benefits on card and need not be pictured.'' or similar alternative text approved by FNS.

* * * * *

(f) *State agency requirements for photo EBT card implementation*—(1) *Minimum requirements.* Prior to implementation, State agencies must be performing sufficiently well in program administration to be eligible to implement the photo EBT card option. Prior to implementation, State agencies must demonstrate to FNS successful administration of SNAP based on SNAP performance standards. Successful program administration will take into account at a minimum the metrics related to program access, the State's payment error rate, the State's Case and Procedural Error Rate, application processing timeliness, including both the 7-day expedited processing and the 30-day processing standards, timeliness of recertification actions, and other metrics, as determined by the Secretary, that may be relevant to the State agency's implementation of photo EBT cards.

(2) *Function of issuance.* The photo EBT card option is a function of issuance and not a condition of eligibility. Any implementation of the option to place a photo on the EBT card must not impact the certification of households. An application will be considered complete with or without a photo and a case shall be certified regardless of the status of a photo in accordance with timeframes established under 7 CFR 273.2. If a State agency chooses to implement a voluntary photo EBT card policy, issuance shall not be impacted. If a State agency chooses to implement a mandatory photo EBT card policy, a State agency may not deny or terminate a household because a household member who is exempted by paragraph (f)(4) of this section does not comply with the requirement to place a photo on the EBT card.

(3) *Voluntary* vs *mandatory.* (i) State agencies shall have the option to implement a photo on EBT cards on a mandatory or voluntary basis. Regardless of whether the photo is mandatory or voluntary, the certification process must not be altered in order to facilitate photos, and clients must be informed that certification will not be impacted by whether or not a photo is on the card.

(ii) Under mandatory implementation, State agencies must exempt certain clients, as stated in paragraph (f)(4) of this section. State agencies must establish which member(s) of the household would be required to be photographed and the procedures that allow eligible nonexempt household members who do not agree to the photo to come into compliance at a later time.

(iii) Under voluntary implementation, clients must be clearly informed of the voluntary nature of the option. Applicant members of households are not required to be in an exempted category to opt out of the photo requirement. States shall not require a photo be taken during a voluntary implementation and clients must opt in to have a photo on their card.

(4) *Exemptions.* Under a mandatory implementation, the State agency must exempt, at a minimum, the elderly, the disabled, children under 18, homeless households, and victims of domestic violence. A victim of domestic violence shall be able to self-attest and cannot be required to submit documentation to prove domestic violence. The ability to self-attest must be applied equally regardless of if the victim is a female or male. Non-applicants cannot have a photo taken for an EBT card whether or not they desire to have their photo taken. A State agency may establish additional exempted categories.

(5) *Serving clients with hardship.* State agencies must have sufficient capacity and a process to issue photo EBT cards, taking into account households that meet hardship conditions and who would receive non photo EBT card. Examples of hardship conditions include, but are not limited to: Illness, transportation difficulties, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from being available during having photos taken in-office.

(6) *Issuance of photo EBT card.* (i) States can require households to come in to be photographed, but cannot do so for the purposes of certification. The amount of time provided to households to come in and be photographed needs to be sufficient and reasonable and be documented in the Implementation Plan as required in paragraph (f)(14) of this section. If a household meets expedited criteria, the State must issue the benefits to the entire household without delay. Regardless of whether the State's photo EBT policy is voluntary or mandatory, the State may not delay, hold in abeyance, or prorate benefits for any household that meets expedited criteria in order to obtain a photo on the EBT card. Card issuance procedures for new SNAP households must ensure adherence to application processing standards as required in 7 CFR 273.2(g) and (i). Additionally, State agencies shall not store photos that are collected in conjunction with its photo EBT card policy but are not placed on an EBT card.

(ii) The process for issuing and activating photo EBT cards must not disrupt, inhibit or delay access to benefits nor cause a gap in access for ongoing benefits for eligible households.

(iii) Any card issued as part of the implementation of the photo EBT card option may not count against the household as part of the card replacement threshold defined in 7 CFR 274.6(b)(5).

(7) *Prorating household benefits when photo EBT cards are mandatory.* For multi-person households, State agencies shall not withhold benefits for an entire household because nonexempt household members do not comply with the photo EBT card policy. If benefits of the nonexempt household member(s) are to be withheld, a prorated share of benefits shall be issued to the household member(s) that are in compliance with or are exempt from the photo requirement. Benefits that are not issued as a result of individual(s) not being in compliance with the photo requirement must be held and promptly issued once individual(s) comply with the requirement to have their photo placed on the card. For example, if there are four household members and one household member is not in compliance with the photo requirement, ¾ of the household's monthly benefit allotment must be issued, and ¼ of the benefit allotment must be held in abeyance and allowed to accrue until the household member complies. For a single person household, the State agency would hold all the benefits in abeyance until the household complies.

(8) *Benefits held for noncompliance.* Benefits held for noncompliance with the photo EBT card requirement must be withheld from issuance in accordance with paragraph (f)(6) of this section. Benefits withheld for non-compliance shall not remain authorized for perpetuity and States must treat such benefits in accordance with the same timeframe used for handling expungements under 7 CFR 274.2(h)(2). If the noncompliant member comes into compliance, the non-expired benefits must be issued within two business days of when the client has their photo taken by the State agency. Any action to withhold benefits from issuance is subject to fair hearings in accordance with 7 CFR 273.15.

(9) *Household and authorized representatives card usage.* The State agency must establish procedures to ensure that all appropriate household members and any authorized representatives, as defined in 7 CFR 273.2(n)(3), can access SNAP benefits for the household regardless of who is pictured on the card or if there is no picture.

(10) *Client and staff training.* State agencies must ensure staff and clients are properly trained on photo EBT card requirements. At a minimum, this training shall include: Whether the State option is voluntary or mandatory, who must comply with the photo requirement, which household members are exempt, and that all appropriate household members and authorized representatives are able to use the card regardless of who is pictured on the card or if there is no picture.

(i) All staff and client training materials must clearly describe the following statutory and regulatory requirements:

(A) Retailers must allow all appropriate household members and any authorized representative of the household, regardless of whether they are pictured on the card, to utilize the card without having to submit additional verification of identity as long as the transaction is secured by the use of the PIN;

(B) EBT cards with or without a photo are valid in any State; and

(C) Retailers must treat all SNAP clients in the same manner as non-SNAP clients;

(ii) State agencies may not specifically reference which categories of individuals are exempt from the photo EBT requirement in any materials to retailers.

(11) *Retailer education and responsibility.* State agencies must conduct sufficient education of retailers if photos are used on cards. The State agency must clearly inform all retailers in the State and contiguous areas of implementation. State agency communications with retailers must clearly state:

(i) All household members, authorized representatives, and individuals authorized by the household are entitled to use the EBT card regardless of the picture on the card if the EBT card is presented with the valid PIN;

(ii) Retailers must treat all SNAP clients in the same manner as non-SNAP clients in accordance with 7 CFR 278.2(b);

(iii) Retailers must not prohibit appropriate household members or authorized representatives from using an EBT card because they are not pictured on the card or there is no picture on the card;

(iv) EBT cards from any State are valid with or without a photo.

(12) *Interoperability.* Interoperability of EBT cards will remain the same regardless of whether or not there is a photo and regardless of which State issued the card. State agencies must conduct sufficient education of clients and retailers, including retailers in contiguous areas, to inform them that the photo EBT cards remain interoperable and authorized retailers must accept EBT cards from all States as long as the household member or authorized representative uses a valid PIN.

(13) *Advance Planning Document.* Appropriate implementation and administration of the photo EBT card consistent with all applicable requirements is an allowable State administrative cost that FNS shall reimburse at 50 percent in accordance with 7 CFR 277.9. Increased costs related to placing photos on the EBT card, whether contractual or produced from other sources, require an Implementation Advance Planning Document Update.

(14) *Implementation Plan.* (i) State agencies must submit an Implementation Plan for approval prior to implementation that delineates how the State agency will operationalize the photo EBT option. FNS shall review the plan and issue an approval, request modifications prior to granting approval, or issue an approval subject to conditions. In cases where FNS finds that the steps outlined in the Implementation Plan are not sufficient for a successful implementation, FNS may issue an approval subject to conditions, such as requiring the State agency to implement a successful pilot in a selected region of the State before a statewide implementation. Should a State be required to implement a pilot before statewide implementation, that requirement would be documented in the State's Implementation Plan approval, along with any information the State must report to FNS before expansion approval would be provided by FNS.

(ii) State agencies must demonstrate successful administration of SNAP based on SNAP performance standards as established in paragraph (f)(1) of this section. State agencies shall not issue EBT cards with photos before the State's Implementation Plan is approved and the State agency has also received FNS authorization to proceed to issue photo EBT cards.

(iii) The Implementation Plan shall include but not be limited to a description of card issuance procedures, a detailed description of how client protections and ability to use SNAP benefits will be preserved, specific information about exempted recipients and the State agency's exemption criteria, a description of how the State agency will obtain photographs for the EBT card, training materials and training plans for State agency staff, examples of letters and other materials communicating the policy to clients and retailers, and a timeline for the

implementation. If the State agency plans to share SNAP client data in accordance with 7 CFR 272.1(c) for purposes of implementing its photo EBT card option, the State agency must also include any draft memoranda of understanding as part of its Implementation Plan. Any information collected must be securely stored and can only be shared for the purpose of SNAP in accordance with 7 CFR 272.1(c).

(iv) The Implementation Plan shall also address the anticipated timetable with specific action steps for the State agency and contractors, if any, that may be involved regarding implementation of the photo EBT card option, the State agency's capacity to issue photo EBT cards, and the logistics that shall allow for activation of the photo EBT card simultaneously or followed by deactivation of the active non-photo EBT card. This shall also include the description of the capacity at the facility where the photo EBT cards will be produced, both for transition and ongoing production, and confirmation that the State agency and any contractor will continue to meet regulatory time requirements for all EBT card issuances and replacements, including for expedited households. The Implementation Plan must also include indicators related to the photo EBT card implementation that will be collected and analyzed for the post implementation evaluation required by paragraph (f)(16) of this section.

(v) The State agency shall provide all applicable proposed written policy for staff to implement the photo EBT card option to FNS for review. State agencies shall include copies of all materials that will be used to inform clients, retailers and other stakeholders regarding photo EBT card implementation. In addition, the State agencies shall provide a detailed description of how the notifications, communication, policies, and procedures regarding the implementation of any new photo EBT card option will comply with applicable civil rights laws.

(vi) The State agency's Implementation Plan shall also include:

(A) An education component for retailers and clients to ensure all eligible household members and authorized representatives are able to use the EBT card and understand the timeframes associated with the implementation and rollout,

(B) A description of the resources that will be in place to handle complaint calls from clients, retailers, and external stakeholders, and

(C) A description of procedures to address unexpected events related to the photo EBT card option,

(D) Upon approval of the Implementation Plan by FNS, the State may proceed with tasks described in the Implementation Plan, as modified by the approval, but may not proceed to issuing actual cards until it receives FNS authorization to do so. FNS may also require the State to implement in a phased manner, which may include criteria as determined by the Secretary.

(15) *Authorization to issue photo EBT cards.* States agencies shall not be permitted to issue EBT cards with photos until FNS provides an explicit authorization to issue photo EBT cards. After an Implementation Plan is approved, FNS will review the State agency's actions at an appropriate time interval to ensure that the process and steps outlined by the State agency in the Implementation Plan are fulfilled. In cases where the State agency has not acted consistently with the process and steps outlined in its photo EBT card Implementation Plan, FNS may deny authorization for the State agency to issue EBT cards with photos until the State agency has done so successfully.

(16) *Post implementation assessment and evaluation.* State agencies must submit to FNS a post-implementation assessment that provides FNS with a report of the results of its implementation, including any issues that arose and how they were resolved, the degree to which State agency staff, clients and retailers properly understood and implemented the new provisions.

(i) This report shall be delivered to FNS within 120 days of implementation. This report shall cover the first 90 days of implementation. The Department also reserves the right to conduct its own review of the State agency's implementation. The State agency's post-implementation report shall include at a minimum:

(A) A survey of clients conducted by an independent evaluator to demonstrate their clear understanding of the State agency's photo EBT policy;

(B) A survey of retailers conducted by an independent evaluator that demonstrates evidence that at least 80% of retailers, including smaller independent retailers, demonstrate a full understanding of the policies related to the photo EBT card;

(C) The amount and percent of benefits held for noncompliance if mandatory;

(D) The number and percent of households with photo EBT cards;

(E) The number of households affected by withholding for noncompliance, if mandatory;

(F) The number and percent of households exempt from the photo EBT card requirement if mandatory;

(G) ????????????

(H) The number and percent of exempted households who opted for photo EBT cards if mandatory;

(I) The number and scope of complaints related to the implementation of the policy;

(J) The State agency's Case and Procedural Error Rate; and

(K) SNAP performance metrics as established in section 7 CFR 274.8(f)(1) and other SNAP performance metrics that may have been adversely affected by the implementation of the State agency's photo EBT card option, as determined by the Secretary.

(ii) Reserved.

(17) *Ongoing monitoring.* FNS will continue to monitor and evaluate the operation of the option and may require additional information from the State on an ongoing basis.

(18) *Modifying implementation of photo EBT option* If any review or evaluation of a State's operations, including photo EBT operation implementation, finds deficiencies, FNS may require a corrective action plan consistent with 7 CFR 275.16 to reduce or eliminate deficiencies. If a State does not take appropriate actions to address the deficiencies, FNS would consider possible actions such as requiring an updated photo EBT Implementation Plan, suspension of implementation and/or withholding funds in accordance with 7 CFR 276.4.

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

■ 6. In § 278.2, revise paragraph (h) and remove and reserve paragraphs (i) and (k).

The revision reads as follows:

§ 278.2 Participation of retail food stores.

* * * * *

(h) *Identifying benefit users.* Retailers must accept payment from EBT cardholders who have proper PIN regardless of which State the card is from or whether the individual is pictured on the card. However, benefits may not knowingly be accepted from persons who have no right to possession of benefits. Where photo EBT cards are in use, the person presenting the photo EBT card need not be pictured on the card, nor does the individual's name need to match the one on the card if

States includes names on the card. Retailers shall ask for identification from any individual using three or more EBT cards and an explanation as to why multiple cards are being used. The identified individual's name does not need not match the name on the EBT cards, but rather is to be used for the limited purposes of reporting suspected fraud. Should a retailer believe that fraud is occurring the retailer may record the individual's information, such as a driver's license information, as well as the EBT card number, and the reason for using 3 or more cards. If a retailer collects such information due to suspected fraud, the retailer shall be required to report the individual to the USDA OIG Fraud Hotline. If an individual presents 3 or more EBT cards and does not show identification when requested by the retailer, the retailer has the option to deny the sale if fraud is suspected.

* * * * *

Dated: December 22, 2015.

Kevin Concannon,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 2015–33053 Filed 1–5–16; 8:45 am]

BILLING CODE 3410–30–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–112; NRC–2015–0213]

Determining Which Structures, Systems, Components and Functions are Important to Safety

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of docketing and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a petition for rulemaking (PRM) requesting that the NRC amend its ''Domestic licensing of production and utilization facilities'' regulations to define the term ''important to safety'' and provide a set of specific criteria for determining which structures, systems, components (SSCs), and functions are ''important to safety.'' The petition, dated July 20, 2015, was submitted by Kurt T. Schaefer (the petitioner) and was supplemented on August 31, 2015. The petition was docketed by the NRC on September 4, 2015, and was assigned Docket Number PRM–50–112. The NRC is examining the issues raised in this petition to determine whether it should be considered in rulemaking. The NRC is requesting public comments on this petition for rulemaking.

DATES: Submit comments by March 21, 2016. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0213. 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.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions contact Robert Beall, Office of Nuclear Reactor Regulation, telephone: 301–415–3847, email: *Robert.Beall@nrc.gov.* For questions related to the PRM process contact Anthony de Jesús, Office of Administration, telephone: 301–415–1106, email: *Anthony.deJesus@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0213 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–2015–0057.
- *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 the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2015–0213 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. The Petitioner

On July 20, 2015, Mr. Kurt T. Schaefer filed a PRM with the Commission, PRM–50–112 (ADAMS Accession No. ML15278A208), which was subsequently supplemented on August 31, 2015 (ADAMS Accession No. ML15278A211). The petitioner states that he is a nuclear engineer with over 40 years of nuclear experience, and 30 years of nuclear power plant licensing experience. The petitioner claims to have taught numerous classes related to

§ 50.59 of title 10 of the *Code of Federal Regulations* (CFR), ''Changes, test, and experiments.'' The petitioner notes that he is a nuclear licensing contractor and consultant, and that he is ''supporting utility and vendor implementation of the United Arab Emirates Federal Authority of Nuclear Regulation (FANR) version of 10 CFR 50.59.''

III. The Petition

The petitioner requests that the NRC amend 10 CFR 50.2, ''Definitions,'' to include a definition of ''Important to safety'' that provides specific criteria for determining what SSCs and functions are ''important to safety.''

IV. Discussion of the Petition

The petitioner requests that the NRC amend its regulations in 10 CFR 50.2 to include a definition with specific criteria for determining what SSCs and functions are ''important to safety.'' The petitioner states that ''[t]he nuclear industry is on its third generation of engineers and regulators with no clear definition of what is 'important to safety' '' and that ''there is no excuse for not having a concise set of functional criteria defining such a used term.''

The petitioner notes that the ''NRC staff's current position is that SSCs 'important to safety' consists of two subcategories, 'safety-related' and 'nonsafety-related'.'' The petitioner asserts that while safety-related SSCs are defined in 10 CFR 50.2, ''the regulations do not provide an equivalent set of criteria for determining which nonsafety-related SSCs are 'important to safety.' '' The petitioner notes that there is very little agreement about what ''nonsafety-related structures, systems and components (SSCs) should be categorized as 'important to safety'.'' Furthermore, the petitioner states that ''there is only a general description of what is 'important to safety' in 10 CFR 50 Appendix A, and the regulations do not provide a specific set of criteria for determining which SSCs are 'important to safety'.'' The petitioner states that NRC Generic Letter 84–01, ''NRC use of the terms, 'Important to Safety' and 'Safety Related','' and its attachments (January 5, 1984; ADAMS Accession No. ML031150515), sought to clarify the NRC staff's use of these terms, but did not ''provide a specific set of criteria for determining which nonsafety-related SSCs are to be categorized as 'important to safety'.'' The petitioner asserts that this lack of clarity is problematic because ''important to safety'' is used ''in numerous regulations and NRC guidance documents.'' The petitioner notes that consequently, ''there are regulations, regulatory guidance and routinely generated regulatory evaluations, based on SSCs with no specific criteria that determines what are the applicable SSCs.''

The petitioner requests that the NRC define ''important to safety'' as SSCs and functions that are:

(a) Safety-related SSCs (including supporting auxiliaries) as defined in 10 CFR 50.2 and their associated safety-related functions;

(b) Equipment and function(s) assumed or used to mitigate the anticipated operational occurrences and non-accident events evaluated in the Final Safety Analysis Report (as updated) or Design Control Document Tier 2 safety analyses;

(c) Equipment and functions assumed or used to prevent or mitigate internal events that involve common cause failures and/or failures beyond the 10 CFR part 50, appendix A, single failure criterion, which have been postulated to demonstrate some specific mitigation capability in accordance with regulatory requirements, as described in the Final Safety Analysis Report (as updated) or Design Control Document Tier 2;

(d) Equipment and functions whose failure or malfunction could impair the ability of other equipment to perform a safety-related function;

(e) Equipment and functions requiring (for ensuring nuclear safety) elevated quality assurance or design requirements (*i.e.,* special treatment), but not to full safety-related standards;

(f) Nonsafety-related readiness functions of installed plant equipment and their associated plant condition(s) assumed, prior to the initiation of an accident, in any accident safety analysis described in the Final Safety Analysis Report (as updated) or Design Control Document Tier 2;

(g) Nonsafety-related structures, systems, components and functions specifically included in the plant design to control the release of radioactive materials within 10 CFR part 20 limits, as described in the Final Safety Analysis Report (as updated) or Design Control Document Tier 2;

(h) Specific (10 CFR 50.150) aircraft impact assessment design features and functional capabilities, as described in the Final Safety Analysis Report (as updated) or Design Control Document Tier 2;

(i) Fukushima Dai-ichi accident mitigation related new or modified manual actions and equipment (including associated functional capabilities), as described in the current plant licensing basis; and

(j) Severe accident mitigation related new or modified manual actions and equipment (including associated functional capabilities), as described in the current plant licensing basis.

V. Specific Requests for Comments

The NRC is seeking advice and recommendations from the public on the PRM. We are particularly interested in comments and supporting rationale from the public on the following:

1. On January 5, 1984, the NRC issued Generic Letter 84–01, ''NRC Use of the Terms, 'Important to Safety' and Safety Related','' to address concerns on the NRC use of the terms ''important to safety'' and ''safety related'' and provided the NRC staff's position on safety classification. In SECY–85–119, ''Issuance of Proposed Rule on the Important-To-Safety Issue,'' dated April 5, 1985 (ADAMS Accession No. ML15322A002), the NRC staff requested Commission approval to clarify the terms ''important to safety'' and ''safety related'' through rulemaking. The proposed rule would have defined these terms generally and clarified specifically the nature and extent of certain affected quality assurance requirements. The NRC staff also looked at determining what equipment should be classified as important to safety and what requirements are imposed on this class of equipment. In the Staff Requirements Memorandum (SRM) to SECY–85–119, SRM–SECY–85–119, ''Issuance of Proposed Rule on the Important-To-Safety Issue,'' dated December 31, 1985 (ADAMS Accession No. ML15322A003), the Commission disapproved the NRC staff's proposed rulemaking actions. In the SRM, the Commission informed the NRC staff that the proposed rule did not adequately differentiate nor clarify the terms ''Important-to-Safety'' and ''Safety Related.'' The Commission reiterated in the SRM that it continues to believe that it is necessary to resolve the apparent confusion surrounding usage of the term ''Important-to-Safety.'' In SECY–86–164, ''Proposed Rule on the Important-To-Safety,'' dated May 29, 1986 (ADAMS Accession No. ML15322A005), the NRC staff recommended changes to the proposed rule in SECY–85–119 that would address the Commission comments in the SRM to SECY–85–119. In a memo from the Secretary of the Commission dated June 24, 1991 (ADAMS Accession No. ML15322A006), the request for rulemaking in SECY–86–164 was withdrawn. Please provide any new information and analysis that could provide the basis for changes to the NRC's regulations.

2. The NRC requests specific examples where the lack of a formal NRC definition (*i.e.,* codified in 10 CFR chapter I) of the terms, ''safety related,''

and ''important to safety'' directly resulted in adverse consequences to external stakeholders. The NRC's evaluation of the cost and benefits of adopting a formal definition would be enhanced if commenters provided a quantitative estimate of the costs and/or unachieved benefits due to the lack of formal definitions of these two terms.

3. What regulations would have to be revised to reflect the new definition, and what would be the nature (objective) of the revision for each provision of the regulation which must be revised?

4. What, if any, guidance would be needed to implement the new definition, and what should be the scope, level of detail, and content of the guidance?

VI. Conclusion

The NRC has determined that the petition meets the threshold sufficiency requirements for docketing a petition for rulemaking under 10 CFR 2.802, ''Petition for rulemaking,'' and the petition has been docketed as PRM–50–112. The NRC will examine the issues raised in PRM–50–112 to determine whether they should be considered in rulemaking.

Dated at Rockville, Maryland, this 30th day of December, 2015.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2015–33287 Filed 1–5–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2015–0156]

RIN 3150–AJ63

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System; Amendment No. 9, Revision 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the Holtec International (Holtec or the applicant) HI–STORM 100 Cask System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 9, Revision 1, to Certificate of Compliance (CoC) No. 1014. Amendment No. 9, Revision 1, changes cooling time limits for thimble plug devices, removes certain testing requirements for the fabrication of Metamic HT neutron-absorbing structural material, and reduces certain minimum guaranteed values used in bounding calculations for this material. Amendment No. 9, Revision 1, also changes fuel definitions to classify certain boiling water reactor fuel within specified guidelines as undamaged fuel.

DATES: Submit comments by February 5, 2016. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0156. 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.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Robert D. MacDougall, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–5175, email: *Robert.MacDougall@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0156 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–2015–0156.
- *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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2015–0156 in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Procedural Background

This proposed rule is limited to the changes contained in Amendment No. 9, Revision 1, to CoC No. 1014 and does not include other aspects of the Holtec HI–STORM 100 Cask System design. Because the NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule

concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on March 21, 2016. If the NRC receives significant adverse comments on this proposed rule by February 5, 2016, then the NRC will publish a **Federal Register** notice withdrawing the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to these proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or Technical Specifications.

For additional procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that ''the Secretary [of the U.S. Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [U.S. Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule (65 FR 25241; May 1, 2000) that approved the HI–STORM 100 Cask System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214, ''List of approved spent fuel storage casks,'' as CoC No. 1014. Most recently, the NRC issued a final rule effective on March 11, 2014 (78 FR 73379), that approved the HI–STORM 100 Cask System design amendment subject to this rulemaking and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1014, Amendment No. 9.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No.
Proposed CoC 1014 Amendment No. 9, Revision 1	ML15156A941
Proposed CoC 1014 Amendment No. 9, Revision 1 Technical Specifications, Appendix A	ML15156A956
Proposed CoC 1014 Amendment No. 9, Revision 1 Technical Specifications, Appendix B	ML15156A970
Proposed CoC 1014 Amendment No. 9, Revision 1 Technical Specifications, Appendix A–100U	ML15156A982
Proposed CoC 1014 Amendment No. 9, Revision 1 Technical Specifications, Appendix B–100U	ML15156B000
Preliminary CoC 1014 Amendment No. 9, Revision 1 Safety Evaluation Report	ML15156B011
Request for Revision Application dated July 1, 2014	ML14182A486
Notification by general licensees of voluntary acceptance of Revision 1 requirements dated August 28, 2015	ML15240A233
Interim Staff Guidance 1, Classifying the Condition of Spent Nuclear Fuel for Interim Storage and Transportation Based on Function.	ML071420268
Interim Staff Guidance 11, Revision 3, Cladding Considerations for the Transportation and Storage of Spent Fuel	ML033230335
Interim Staff Guidance 23, Application of ASTM Standard Practice C1671–07 when performing technical reviews of spent fuel storage and transportation packaging licensing actions.	ML103130171

The NRC may post materials related to this document, including public comments, on the Federal rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2015–0156. The Federal Rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2015–0156); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Hazardous waste, Indians, Intergovernmental relations, Manpower training programs, Nuclear energy, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

Section 72.44(g) also issued under Nuclear Waste Policy Act secs. 142(b) and 148(c), (d) (42 U.S.C. 10162(b), 10168(c), (d)).

Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154).

Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)).

Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)).

Subpart K also issued under sec. 218(a) (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance No. 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.

Initial Certificate Effective Date: May 31, 2000.

Amendment Number 1 Effective Date: July 15, 2002.

Amendment Number 2 Effective Date: June 7, 2005.

Amendment Number 3 Effective Date: May 29, 2007.

Amendment Number 4 Effective Date: January 8, 2008.

Amendment Number 5 Effective Date: July 14, 2008.

Amendment Number 6 Effective Date: August 17, 2009.

Amendment Number 7 Effective Date: December 28, 2009.

Amendment Number 8 Effective Date: May 2, 2012, as corrected on November 16, 2012. (ADAMS Accession No. ML12213A170).

Amendment Number 9 Effective Date: March 11, 2014, superseded by Amendment Number 9, Revision 1 on March 21, 2016.

Amendment Number 9, Revision 1, Effective Date: March 21, 2016.

SAR Submitted by: Holtec International.

SAR Title: Final Safety Analysis Report for the HI–STORM 100 Cask System.

Docket Number: 72–1014.

Certificate Expiration Date: May 31, 2020.

Model Number: HI–STORM 100.

* * * * *

Dated at Rockville, Maryland, this 22nd day of December, 2015. For the Nuclear Regulatory Commission.

Glenn M. Tracy,

Acting, Executive Director for Operations.

[FR Doc. 2015–33279 Filed 1–5–16; 8:45 am]

BILLING CODE 7590–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R07–OAR–2015–0733; FRL–9941–05–Region 7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Nebraska; Sewage Sludge Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the Clean Air Act (CAA) section 111(d)/129 negative declaration for the state of Nebraska, for existing sewage sludge incinerator (SSI) units. This negative declaration certifies that existing SSI units subject to sections 111(d) and 129 of the CAA do not exist within the jurisdiction of Nebraska. EPA is accepting the negative declaration in accordance with the requirements of the CAA.

DATES: Comments must be received on or before February 5, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2015–0733, to *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 *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Paula Higbee, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7028 or by email at *higbee.paula@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. 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 in relation to this action. If 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 action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed

from the remainder of the rule, EPA may adopt as final those parts 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**.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements, Sewage sludge incinerators.

Dated: December 23, 2015.

Mark Hague,

Regional Administrator, Region 7.

[FR Doc. 2015–33291 Filed 1–5–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[EPA–HQ–OW–2015–0671; FRL–9939–88–OW]

RIN 2040–AF57

National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System General Permit Remand

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing changes to the regulations governing small municipal separate storm sewer system (MS4) permits to respond to a remand from the United States Court of Appeals for the Ninth Circuit in *Environmental Defense Center, et al.* v. *EPA,* 344 F.3d 832 (9th Cir. 2003). In that decision, the court determined that the regulations for providing coverage under small MS4 general permits did not provide for adequate public notice and opportunity to request a hearing. Additionally, the court found that EPA failed to require permitting authority review of the best management practices (BMPs) to be used at a particular MS4 to ensure that the small MS4 permittee reduces pollutants in the discharge from their systems to the ''maximum extent practicable'' (MEP), the standard established by the Clean Water Act for such permits. EPA's proposal would revise the small MS4 regulations to ensure that the permitting authority determines the adequacy of BMPs and other requirements and provides public notice and the opportunity to request a public hearing on the requirements for each MS4. The proposal would not establish any new substantive requirements for small MS4s.

DATES: Comments must be received on or before March 21, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2015–0671, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. 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, 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: Greg Schaner, Office of Wastewater Management, Water Permits Division (M4203), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–0721; email address: *schaner.greg@epa.gov*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information

A. Does this action apply to me?

Entities potentially regulated by this proposed action include:

Category	Examples of regulated entities	North American Industry Classification System (NAICS) code
Federal and state government	EPA or state NPDES stormwater permitting authorities	924110

Category	Examples of regulated entities	North American Industry Classification System (NAICS) code
Local governments	Operators of small municipal separate storm sewer systems	924110

This table is not intended to be exhaustive, but rather provides 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 or otherwise affected by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in § 122.32 title 40 of the Code of Federal Regulations, and the discussion in the preamble. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the agency taking?

EPA is proposing a change to its regulations governing the way in which small MS4s obtain coverage under National Pollutant Discharge Elimination System (NPDES) general permits. The proposal results from a decision by the Ninth Circuit U.S. Court of Appeals in *Environmental Defense Center, et al.* v. *EPA,* in 344 F.3d 832 (9th Cir. 2003) (''*EDC* decision''), which found that EPA regulations for obtaining coverage under a small MS4 general permit did not provide for adequate public notice, the opportunity to request a hearing, or permit authority review to determine whether the BMPs selected by each MS4 in its stormwater management program (SWMP) meets the Clean Water Act (CWA) requirements including the requirement to ''reduce pollutants to the maximum extent practicable.'' The preamble discusses two options for addressing the remand, and a third option that is a hybrid of the two alternatives. One option (called the ''Traditional General Permit Approach'') would align the process for issuing small MS4 general permits with the way NPDES general permits are issued for other categories of discharges. This would entail requiring the permitting authority to establish within the permit all requirements that MS4s must meet within the term of the general permit to meet the standard applicable to MS4s (to reduce pollutants to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA), which would be subject to public notice and comment and an opportunity to request a hearing. A second option (called the ''Procedural Approach'') would add procedural requirements to the existing rule structure that would require the MS4 to inform the permitting authority in its Notice of Intent (NOI) to be covered by the permit of the BMPs it would undertake through its SWMP. Under the Procedural Approach, the public would be given an opportunity to comment on the proposed BMPs and request a hearing, and the permitting authority would have the opportunity to require changes to the proposed BMPs before the permitting authority authorizes a discharge under the general permit. A third option (called the ''State Choice Approach'') would enable the permitting authority to choose between the Traditional General Permit and Procedural Approaches, or to implement a combination of these approaches in issuing and authorizing coverage under a general permit.

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

The authority for this rule is the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.,* including sections 402 and 501.

II. Background

A. Statutory and Regulatory Overview

Stormwater discharges are a significant cause of water quality impairment because they contain a variety of pollutants such as sediment, nutrients, chlorides, pathogens, metals, and trash. Furthermore, the increased volume and velocity of stormwater discharges that result from the creation of impervious cover can alter streams and rivers by causing scouring and erosion. These surface water impacts threaten public health and safety due to flooding and pollutants; lead to economic losses to property and fishing industries; increase drinking water treatment costs; and decrease opportunities for recreation, swimming, and wildlife uses.

Stormwater discharges are subject to regulation under section 402(p) of the CWA. Under this provision, Congress required only the following stormwater discharges to be subject to NPDES permitting requirements: Stormwater discharges for which NPDES permits were issued prior to February 4, 1987; discharges ''associated with industrial activity''; discharges from MS4s serving populations of 100,000 or more; and any stormwater discharge determined by EPA or a state to ''contribute . . . to a violation of a water quality standard or to be a significant contributor of pollutants to waters of the United States.'' With respect to MS4s, section 402(p)(3)(B) provides that NPDES permits may be issued on a system-wide or jurisdiction-wide basis, and requires that MS4 NPDES permits ''include a requirement to effectively prohibit non-stormwater discharges into the storm sewers'' and require ''controls to reduce the discharge of pollutants to the maximum extent practicable . . . and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.''

EPA developed the stormwater regulations under section 402(p) in two phases, as directed by the statute. In the first phase, under section 402(p)(4), EPA promulgated regulations establishing application and other requirements for NPDES permits for stormwater discharges from medium (serving populations of 100,000 to 250,000) and large (serving populations of 250,000 or more) MS4s, and stormwater discharges associated with industrial activity. EPA published the final Phase I rule on November 16, 1990 (55 FR 47990).

The Phase I rule, among other things, defined ''municipal separate storm sewer'' as publicly-owned conveyances or systems of conveyances that discharge to waters of the U.S. and are designed or used for collecting or conveying stormwater, are not combined sewers, and are not part of a publicly-owned treatment works at 40 CFR 122.26(b)(8). EPA included construction sites disturbing five acres or more in the definition of ''stormwater discharges associated with industrial activity'' at 40 CFR 122.26(b)(14)(x).

In the second phase, under section 402(p)(5) and (6), EPA was required to conduct a study to identify other stormwater discharges that needed further controls ''to protect water

quality,'' report to Congress on the results of the study, and to designate for regulation additional categories of stormwater discharges not regulated in Phase I on the basis of the study and in consultation with state and local officials. EPA promulgated the Phase II rule on December 8, 1999, designating discharges from certain small MS4s and from small construction sites (disturbing equal to or greater than one acre and less than five acres) and requiring NPDES permits for these discharges (64 FR 68722, December 8, 1999). A regulated small MS4 is generally defined as any MS4 that is not already covered by the Phase I program and that is located within the urbanized area boundary as determined by the latest U.S. Decennial Census. Separate storm sewer systems such as those serving military bases, universities, large hospital or prison complexes, and highways are also included in the definition of ''small MS4.'' 40 CFR 122.26(b)(16). In addition, the Phase II rule includes authority for EPA (or states authorized to administer the NPDES program) to require NPDES permits for currently unregulated stormwater discharges by a designation process. 40 CFR 122.26(a)(9)(i)(C) and (D). Other small MS4s located outside of an urbanized area may be designated as a regulated small MS4 if the NPDES permitting authority determines that its discharges cause, or have the potential to cause, an adverse impact on water quality. See 40 CFR 122.32(a)(2) and 123.35(b)(3).

B. MS4 Permitting Requirements

The Phase I regulations are primarily application requirements that identify components that must be addressed in applications for individual permits from large and medium MS4s. The regulations at 40 CFR 122.26(d)(2)(iv) require these MS4s to develop a SWMP, which is considered by EPA or the authorized state permitting authority when establishing permit conditions to reduce pollutants to the MEP.

Like the Phase I rule, the Phase II rule requires regulated small MS4s to develop and implement SWMPs. 40 CFR 122.34(a) requires that SWMPs be designed to reduce pollutants discharged from the MS4 ''to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,'' and requires that the SWMPs include six ''minimum control measures.'' The minimum control measures are: Public education and outreach, public participation and involvement, illicit discharge detection and elimination, construction site runoff control, post construction runoff control, pollution prevention and good housekeeping. 40 CFR 122.34(b). Under the Phase II rule, a regulated small MS4 may seek coverage under an available general permit or may apply for an individual permit. To be authorized to discharge under a general permit, the rule requires submission of an NOI to be covered by the general permit containing a description of the BMPs to be implemented and the measurable goals for each of the BMPs, including timing and frequency, as appropriate. 40 CFR 122.33(a)(1), 122.34(d)(1).

EPA anticipated that under the first two or three permit cycles, whether individual permits or general permits, BMP-based SWMPs implementing the six minimum control measures would, if properly implemented, ''be sufficiently stringent to protect water quality, including water quality standards, so that additional, more stringent and/or more prescriptive water quality based effluent limitations will be unnecessary.'' (64 FR 68753, December 8, 1999). In the final Phase II rule preamble, EPA also stated that it ''has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting. MS4s need the flexibility to optimize reductions in storm water pollutants on a location-by-location basis. . . . Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process.'' (64 FR 68754, December 8, 1999).

The Agency described this process in the preamble to the Phase II rule as an ''iterative process'' of developing, implementing, and improving stormwater control measures contained in SWMPs. As EPA further stated in the preamble to the Phase II rule, ''MEP should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards. Successive iterations of the mix of BMPs and measurable goals will be driven by the objective of assuring maintenance of water quality standards. . . . If, after implementing the six minimum control measures there is still water quality impairment associated with discharges from the MS4, after successive permit terms the permittee will need to expand or better tailor its BMPs within the scope of the six minimum control measures for each subsequent permit.'' (64 FR 68754, December 8, 1999).

III. Judicial Review of the Phase II Rule and Partial Remand

A. Decision in Environmental Defense Center et al. v. EPA

The Phase II rule was challenged in petitions for review filed by environmental groups, municipal organizations, and industry groups, resulting in a partial remand of the rule. *Environmental Defense Center* v. *U.S. Environmental Protection Agency,* 344 F.3d. 832 (9th Cir. 2003). The court remanded the Phase II rule's provisions for small MS4 NPDES general permits because they lacked procedures for permitting authority review and public notice and the opportunity to request a hearing on NOIs submitted under general MS4 permits.

In reviewing how the Phase II rule provided for general permit coverage for small MS4s, the court found that NOIs under the rule were not like NOIs for other NPDES general permits. Other general permits contain the specific effluent limitations and conditions applicable to the class of dischargers for which the permit is available, and authorization to discharge under a general permit is obtained by filing an NOI in which the discharger agrees to comply with the terms of the general permit. In contrast, the court held that under the Phase II rule, because the NOI submitted by the MS4 contains the information as to what the MS4 decides it will do to reduce pollutants to the MEP, it is the ''functional equivalent'' of a permit application. *Environmental Defense Center* v. *U.S. Environmental Protection Agency,* 344 F.3d. at 857. Because the CWA requires public notice and the opportunity to request a public hearing for all permit applications, the court held that failure to require public notice and the opportunity for a public hearing for NOIs under the Phase II rule is contrary to the Act. 344 F.3d. at 858.

Similarly, the court found the Phase II rule allows the MS4 to identify the BMPs that it will undertake in its SWMP without any permitting authority review. The court held that the lack of review ''to ensure that the measures that any given operator of a small MS4 has decided to undertake will *in fact* reduce discharges of pollutants to the maximum extent practicable'' also does not comport with CWA requirements. The court stated, ''That the Rule allows a permitting authority to review an NOI is not enough; every permit must comply with the standards articulated by the Clean Water Act, and unless every NOI issued under general permit is reviewed, there is no way to ensure that such compliance has been achieved.'' 344 F.3d. at 855 n.32.

The court therefore vacated and remanded ''those portions of the Phase II Rule that address these procedural issues . . . so that EPA may take appropriate action to comply with Clean Water Act.'' 344 F.3d. at 858.

B. EPA Action Following the Partial Remand of the Phase II Rule

EPA issued interim guidance to address the need for permitting authority review of NOIs and to provide for public notice and opportunity for public hearing in April 2004. This guidance memorandum, *Implementing the Partial Remand of the Stormwater Phase II Regulations Regarding Notices of Intent and NPDES General Permitting for Phase II MS4s,* outlined recommendations as to how permitting authorities should retroactively provide for public notice and the opportunity to request a hearing, provided options for holding a public hearing if granting a request, and highlighted ways to conduct appropriate review of NOIs already submitted.[1] The memorandum also provided guidance on ways to ensure the requisite public notice and review opportunities and permitting authority review of NOIs under new general permits. As a result of the *EDC* decision, EPA Regions that issue NPDES permits have taken various approaches to provide opportunity for public review. For example, EPA Region 1, the permitting authority for Massachusetts and New Hampshire, uses its Web site to post NOIs and notices of availability for public comment, as well as the annual reports submitted by each permitted MS4.[2] EPA Region 6, the permitting authority in New Mexico and in Indian Country in Oklahoma and New Mexico, has established a Web site with information on how to submit comments and opportunity to request a public hearing, and posts the NOI and each MS4's SWMP on its Web site.[3] EPA Region 10, the permitting authority in Idaho, has only issued individual permits to small MS4s in that state.

In addition, the EPA Regions and some authorized state permitting authorities have included more specific and definitive requirements in small MS4 general permits, rather than leaving the identification of stormwater controls needed to reduce pollutants to the MEP, protect water quality and meet the water quality requirements of the CWA up to the permittees. In the time since promulgation of the Phase II rule and the partial remand of the rule, permits for small MS4 discharges have evolved, both to reflect the advancement and improvement in stormwater management approaches and techniques and to reflect the need for the specific requirements for compliance with the CWA to be incorporated into MS4 permits. Please see Section V.A of this preamble for a detailed discussion of current EPA and state permitting practices for small MS4 NPDES permits.

IV. Scope of This Rulemaking

The proposed revisions to the Phase II MS4 NPDES permitting requirements are solely for the purpose of responding to the partial remand of the Phase II rule in *Environmental Defense Center* v. *U.S. Environmental Protection Agency,* 344 F.3d. 832 (9th Cir. 2003) with respect to small MS4 general permits. To conform to the court's decision, the rule needs to ensure that permitting authorities determine what requirements are needed to reduce pollutants from each permitted small MS4 ''to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,'' as currently required for small MS4 permits under 40 CFR 122.34(a). The proposed rule must also require NPDES permitting authorities to provide the public with the opportunity to review, submit comments, and request a public hearing on these requirements.

EPA is not reopening any of the substantive requirements that were promulgated in the Phase II rule (nor is EPA reopening or seeking comment on any aspect of the Phase I rule, which is described in this preamble for informational purposes only). In addition, EPA will address the other aspect of the Ninth Circuit's remand regarding possible regulation of stormwater discharges from forest roads in a separate action.

V. EPA's Evaluation and Selection of Rulemaking Options

A. Current Permitting Authority Practice

The EPA collected information on how NPDES permitting authorities have been administering their small MS4 general permits in the years since the *EDC* decision and the issuance of the EPA's guidance on implementing the remand and compiled this information in a state-by-state spreadsheet (titled *Current NPDES Authority Practices in Administering Small MS4 General Permits,* EPA, 2015), which is available in the docket for the proposed rule at *http://www.regulations.gov* under Docket ID No. EPA–HQ–OW–2015–0671. This information provides a basis for understanding how and to what degree different rule options would affect the current MS4 general permit programs in different states.

This research indicates that permitting authorities are using an array of approaches to provide permit coverage to their small MS4s, many of which are unique to the specific state. EPA's guidance following the *EDC* decision suggested ways to implement a general permit program that would be consistent with the court's ruling. As mentioned, some states chose to develop more definitive general permits that do not rely on MS4 identification of BMPs to establish requirements that meet the applicable CWA standards. Other states require that each NOI undergo individualized permitting authority review and a dedicated public comment period prior to authorizing the discharge. Still other states require the MS4 to provide for public notice and the opportunity to submit comments on the NOI and the SWMP document being submitted. Notwithstanding the disparity in approaches between NPDES authorities, this information has equipped EPA with a sense of how the different options under consideration would be implemented if promulgated, and what types of adjustments may be necessary in some programs depending on the rule approach that is adopted. EPA used the approaches being implemented in certain states to inform the proposed rule options.

Not surprisingly, general permits are used as the permitting vehicle to authorize small MS4 discharges in the vast majority of states (*i.e.,* 43 of 50 states, which represents 94 percent of the 6789 permitted small MS4s). In the remaining states, individual permits are issued to their small MS4 permittees. In the 43 states where general permits are used, 26 of these permitting authorities make their NOIs publicly available through a Web site or some other means, and 27 indicate that they provide a ''waiting period'' of some length between the time the NOI is submitted and discharge authorization. Currently, most states are not providing a second public comment period for individual NOIs (in addition to the public comment period for the draft general permit). However, 12 states have established such a comment period. EPA notes that four states require the prospective small MS4 permittee to provide for its own public comment period for the NOI and, in some cases, the SWMP. In 23 states, the permitting

[1] EPA. April 16, 2004. Memo from James Hanlon, Director, Office of Wastewater Management to EPA Water Management Division Directors in EPA Regions I–X. *http://www.epa.gov/npdes/pubs/hanlonphase2apr14signed.pdf.*

[2] *http://www.epa.gov/region1/npdes/stormwater/2003-permit-archives.html.*

[3] *http://www.epa.gov/region6/water/npdes/sw/sms4/sms4noi.htm.*

authority requires the SWMP document to be submitted for review along with the NOI; in 14 of these states, the permitting authority reviews and approves the SMWP document. See *Current NPDES Authority Practices in Administering Small MS4 General Permits,* EPA, 2015.

EPA also found some states that have moved to develop general permits with more clear and specific requirements as a way of cutting down on the need for additional review procedures for individual NOIs. For instance, rather than requiring NOIs with information on BMPs and measurable goals, California and Washington include in their general permits the specific tasks, milestones, and schedules that are to be met by each permittee. Therefore, once coverage under the general permit in these states is authorized, the enforceable components of the permit are locked in place for each permittee, and the permitting authority is no longer required to review the information submitted by individual MS4s prior to authorizing the discharge. What matters is whether the permittee is complying with the specific requirements of the permit.

B. Description of Process Used To Evaluate Options

EPA met separately with various categories of stakeholders during the development of the proposed rulemaking. The purpose of these meetings was to obtain individual feedback from stakeholders on the type of regulatory changes that would best address the court remand, and which would work best considering how Phase II general permits have been administered to date. The following is a summary of what EPA learned from these meetings.

EPA participated in several meetings with the Association of Clean Water Administrators and their member state stormwater coordinators, and met with the Environmental Council of the States. Many state permitting authority staff appeared receptive to the idea of clarifying in the regulations that the general permit should define all of the applicable requirements necessary to reduce the discharge of pollutants from the MS4 to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA. At the same time, some state staff questioned how they would incorporate requirements into their general permits in a way that would work for all MS4s within their state, given the large number and diversity of the municipal entities regulated. Other state staff indicated a concern for retaining the correct balance between establishing detailed, prescriptive requirements and providing flexibility where appropriate. There are also a few state permitting authorities that are implementing an approach similar to what is being described as the ''Procedural Approach'' (see Section VI.B), and some expressed the interest in finding a way in the proposed rule to accommodate this approach. Most state permitting staff appeared concerned with the prospect of spending additional time and resources to implement a procedural approach requiring individualized review and public notice of all NOIs, as discussed in the court's decision. Other state permitting staff suggested exploring the concept of allowing permitting authorities to choose which option to follow, without restricting the rule to one approach. Alternatively, a few state permitting staff suggested that permitting authorities be allowed to apply a hybrid of the two approaches, whereby a state could implement one permit using the Traditional General Permit Approach (*e.g.,* for traditional MS4s) and another permit using the Procedural Approach (*e.g.,* for non-traditional MS4s), or use a blend of the options for issuing a general permit and authorizing coverage under the permit.

EPA met with organizations representing state and local elected officials, as well as with small MS4 permittees and organizations that include small MS4s as members. MS4s, in particular, are interested in retaining the flexibility of the existing Phase II regulations, where they are able to make decisions on which BMPs are implemented locally based on factors that are unique to their municipality and environmental concerns. At the same time, many of these same MS4s understand the need for permit requirements that are clear to all parties and the public.

EPA also met with representatives from a number of environmental, non-profit organizations. Many of the representatives expressed an interest in seeing the quality of small MS4 permits improve, and appeared to be supportive of the concept of adopting the Traditional General Approach as a way of addressing the remand. Asked at what point in the current permitting process their organizations tend to provide input, most indicated that they focus their attention on providing comments at the proposed permit stage, as compared to submitting comments on individual NOIs. That being said, a few representatives indicated that they have submitted comments on individual NOIs pertaining to the proposed water quality implementation plans of several small MS4s.

C. Considerations in Evaluating Options

Any option for responding to the remand must meet the CWA requirements for public participation and transparency in section 402(b)(3), consistent with the Ninth Circuit's decision. When individual permits are issued to small MS4s, the standard process for issuing an NPDES permit applies. This process provides for public participation and permitting authority determination as to what set of permit terms and conditions satisfy the requirement to reduce the discharge of pollutants from the MS4 to the MEP, to protect water quality, and to meet the applicable water quality requirements of the CWA. While the court's opinion focused on the Phase II rule's requirement for the NOI to be covered by a general permit, and the procedural steps that need to be taken with respect to the NOI in order for the rule to comply with the CWA, the court's fundamental concern was that the permitting authority must determine which MS4 permit requirements are sufficient to reduce the discharge of pollutants to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA, and that the public have the opportunity to review and comment on those permit requirements and to request a hearing. For example, the court stated that ''every permit must comply with the standards articulated by the Clean Water Act, and unless every NOI issued under a general permit is reviewed, there is no way to ensure that such compliance has been achieved.'' *EDC* v. *EPA.* 344 F.3d at 855, n. 32. Accordingly, EPA has determined that certain factors must be met by any option to revise the rule, as discussed in subsections 1 (Permitting Authority Review), 2 (Public Participation Requirements), and 3 (Other Factors Considered).

1. Permitting Authority Review

The court viewed the NOI as the document that identifies the requirements necessary to meet the MEP standard: ''Because a Phase II NOI establishes what the discharger will do to reduce discharges to the 'maximum extent practicable,' the Phase II NOI crosses the threshold from being an item of procedural correspondence to being a substantive component of a regulatory scheme.'' 344 F.3d at 853. As a result, the role of the permitting authority to determine which requirements are necessary to meet the applicable statutory standard is not, according to the court, accomplished under this

scheme. In addition, the court observed that because 40 CFR 122.34(a) in the 1999 Phase II rule states that compliance with the SWMP written by the MS4 constitutes compliance with the MEP standard (without providing for further action by the permitting authority), the regulation put the MS4 in charge of establishing its own requirements. ''Therefore, under the Phase II Rule nothing prevents the operator of a small MS4 from misunderstanding or misrepresenting its own stormwater situation and proposing a set of minimum measures for itself that would reduce discharges by far less than the maximum extent practicable.'' 344 F.3d at 855.

While EPA has always expected the permitting authority to establish the necessary requirements for reducing discharges to the MEP, protecting water quality, and satisfying the appropriate water quality requirements of the CWA, the existing regulations do not fully address the permitting authorities' responsibilities in this regard. To be consistent with the court's decision, one criterion that any option must meet is that it must ensure the permitting authority provides a final determination on whether the requirements to which the MS4 is subject, whether articulated fully in the permit itself or defined in whole or part by the MS4 operator in the NOI, meet the NPDES requirements to reduce discharges to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the Act.

2. Public Participation Requirements

The court's other concern was that MS4s would choose what requirements apply to them, without being subject to the public participation procedures applicable to all NPDES permit applications and permits, which is contrary to CWA section 402(b)(3). As discussed, the court found the NOI to be the ''functional equivalent'' of a permit application. The importance of the NOI as identified by the court was that the NOI contained the requirements that would be considered to meet the applicable standards and therefore this was the document that needed to be subject to public notice. See 344 F.3d at 857. To be consistent with the court's decision, any option chosen must provide for public notice and the opportunity to request a public hearing on what is considered necessary for a permitted MS4 to meet the requirement to reduce discharges to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA, regardless of where those requirements are defined.

3. Other Factors Considered

General permits are premised on the idea that the terms and conditions of the permit are the same for all entities covered by the general permit and that handling permitting for multiple entities in one proceeding is more efficient. In the context of MS4 permits, the Phase II rule sought to establish a general permit scheme that allows each MS4 to address the specific conditions that prevail in its jurisdiction. As stated in the Phase II preamble, ''The pollutant reductions that represent MEP may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process.'' (64 FR 68754, December 8, 1999). While the court clearly rejected EPA regulations to the extent that the court found they established a system of MS4 self-regulation, it also recognized the value in having MS4 input on what it could do to meet the MEP standard. ''Involving regulated parties in the development of individualized stormwater pollution control programs is a laudable step . . . But EPA is still required to ensure that the individual programs adopted are consistent with the law.'' 344 F.3d at 856. There is a need for strong MS4 input into the implementation of the program, and for that reason EPA made flexibility an underlying principle of the Phase II regulations. Individual permits provide the greatest ability to define MS4-specific requirements and small MS4s always have the option of seeking an individual permit if this would best accommodate their specific circumstances. However, with over 94 percent of regulated small MS4s currently covered by general permits, an important consideration for this rulemaking is how to provide flexibility to MS4s while retaining the general permit option in a manner that comports with the remand. The challenge is to balance the flexibility provided to the MS4 to determine how best it can meet the applicable regulatory requirements with the permitting authorities' responsibility to ensure that the terms and conditions to which MS4s will be held accountable are adequate to reduce the discharge to the MEP, protect water quality, and satisfy the appropriate water quality requirements of the CWA. In selecting any regulatory option to comport with the court remand, EPA will consider the need for maintaining this balance in light of the nearly 15-year history of implementing the Phase II program, and the considerable knowledge and expertise about implementing stormwater controls that have emerged during that time.

Another factor requiring consideration is the impact on existing authorized NPDES state permitting programs. Currently 46 states and one territory are authorized under section 402(b) to administer the NPDES permit program in their jurisdictions. EPA recognizes that states have limited resources and face different challenges in meeting the permitting demands within their various NPDES programs. Immediately after the *EDC* decision, EPA sought to provide state permitting authorities with potential interim strategies that would balance the need to move forward with implementing the Phase II program, while acknowledging the need for state flexibility in how permitting decisions need to be made. See *Implementing the Partial Remand of the Stormwater Phase II Regulations Regarding Notices of Intent & NPDES General Permitting for Phase II MS4s* (EPA, 2004).[4] As discussed more fully elsewhere in this preamble, authorized states [and EPA regional permitting authorities] have taken a variety of approaches in response to the court's decision (and in some cases, decisions by state courts) and EPA guidance. A significant consideration in this rulemaking is the extent to which states would need to make changes to comply with the rule and consideration of the need to minimize disruption to existing state programs, particularly for those states that have chosen approaches that already comport with the *EDC* decision. EPA clarifies that if, upon promulgation of the final rule, a state is already implementing an approach that is consistent with the final rule EPA would not expect that the permitting authority would need to make any changes to its current approach. Similarly, it is EPA's intention that permitting authorities that only issue individual permits to small MS4s (*e.g.,* EPA Region 10 in Idaho, Delaware, Michigan, and Oregon) would not need to make any changes because the process for issuing individual permits already encompasses the necessary permitting attributes found missing in the Phase II regulations by the Ninth Circuit (*i.e.,* permitting authority determination, public notice, and opportunity to request a hearing). However, state permitting authorities that are using general permits and are

[4] See *http://www.epa.gov/npdes/pubs/hanlonphase2apr14signed.pdf.*

currently not implementing strategies that address the core problems found by the court will need to make some degree of change to their general permit process for small MS4s to comply with the modified regulations.

VI. Analysis of Options for Proposal

EPA is proposing three rule options for public comment, each of which would address the Ninth Circuit remand. Each of these options shares in common the fact that, as a result of the permitting process, the permitting authority must determine which requirements a small MS4 must meet in order to satisfy the Phase II regulatory requirement ''to reduce the discharge of pollutants from [the] MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirement of the Clean Water Act.'' The key difference between the options, especially between the ''Traditional General Permit Approach'' (Option 1) and the ''Procedural Approach'' (Option 2), is that they make this determination at different points in time during the permitting process. For Option 1 (the ''Traditional General Permit Approach''), the determination as to what requirements are needed to reduce the discharge of pollutants to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA is made as part of the initial issuance of the general permit. By contrast, under Option 2 (the ''Procedural Approach''), the permitting authority would make this determination after reviewing each individual NOI and after public comment and the opportunity for a hearing on the NOI. Each of these options is described more fully in this section, as is a third option (the ''State Choice Approach''), which would give the permitting authority the discretion to determine whether it will administer Option1 or Option 2, or a hybrid of options chosen for the final rule.

A. Option 1—Traditional General Permit Approach

The ''Traditional General Permit Approach'' provides a mechanism for addressing the procedural deficiencies identified by the court by requiring all substantive permit requirements to be in the general permit. The rationale behind the Traditional General Permit Approach is that by requiring permitting authorities to include any and all requirements that establish what is necessary to ''. . . reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriating water quality requirements of the Clean Water Act,'' the minimum required procedural steps to issue a final general permit, including providing public notice and the minimum 30-day comment period on the draft permit, and the opportunity to request a public hearing, will fulfill the permitting authority review and public participation requirements of the CWA that the court found missing from the Phase II regulations.

Under the proposed Traditional General Permit Approach, the NPDES authority must establish in any small MS4 general permit the full set of requirements that are deemed adequate ''to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,'' and the administrative record would explain the rationale for its determination. The permittee would have the opportunity, as it always has had, to provide feedback on what requirements are established in the general permit during the development of the draft permit and to submit comments during the public comment period. Furthermore, the permittee could continue to have flexibility in determining how it will implement the permit requirements based on considerations such as pollutant removal and cost effectiveness. However, once the permit is issued, and the terms and conditions in the permit are fixed for the term of the permit, neither the development of a SWMP document nor the submittal of an NOI for coverage would represent new permit requirements. In turn, because the permit contains all of the requirements that will be used to assess permittee compliance, the permitting authority would no longer need to rely on the MS4's NOI as the mechanism for ascertaining what will occur during the permit term. Under this approach, the function of the NOI would be more similar to that of any other general permit NOI, and more specifically other stormwater general permits, where the NOI is used to establish certain minimum facts about the discharger, including the operator's contact details, the discharge location(s), and confirmation that the operator is eligible for permit coverage and has agreed to comply with the terms of the permit. By removing the possibility that effluent limits could be proposed in the NOI (and for that matter in the SWMP) and made part of the permit once permit coverage is provided, the NOI would no longer look and function like an individual permit application, as the court found with respect to MS4 NOIs under the Phase II regulations currently in effect. Therefore, it would not be necessary to carry out the type of additional permitting authority review and public participation steps contemplated by the court.

Under the proposed Traditional General Permit Approach, 40 CFR 122.34(a) would be revised to expressly require the permitting authority to articulate in sufficient detail in the permit what is required to meet the minimum statutory and regulatory requirements, and to ensure that the applicable requirements are enforceable and understandable to the permittee and the public. A general permit would need to make it clear to all what level of effort is expected of the permittee during the permit term for each permit provision. These proposed revisions to 40 CFR 122.34(a) respond to the court's finding that under the Phase II rule, ''the operator of a small MS4 has complied with the requirement of reducing discharges to the 'maximum extent practicable' when it implements its stormwater management program, *i.e.,* when it implements its Minimum Measures. 40 CFR 122.34(a).'' 344 F.3d at 856. The court continued, ''Nothing in the Phase II regulations requires that NPDES permitting authorities review these Minimum Measures to ensure that the measures that any given operator of a small MS4 had decided to undertake will *in fact* reduce discharges to the maximum extent practicable.'' 344 F.3d at 855. By clearly shifting the decision as to what is needed to meet the MEP standard and water quality requirements from the permittee to the permitting authority, the Traditional General Permit Approach would address the court's concern.

EPA continues to view MEP as iterative, in that each successive permit needs to define what is required to meet the MEP standard for that permit term. The Traditional General Permit Approach would clarify that the requirements for meeting MEP (and to protect water quality and satisfy CWA water quality requirements) would be required to be established in each successive permit by the permitting authority, while the SWMP implemented by the MS4 would be a planning and programmatic document that the MS4 would be able to update and revise during the permit term as necessary to comply with the terms of the permit. In other words, this option would make it clear that the SWMP document would not contain enforceable requirements. Likewise, it would be unnecessary for the NOI to

identify the BMPs selected in the SWMP for each minimum control measure nor for it to undergo public or permitting authority review prior to discharge authorization under the general permit.

Moreover, it was never EPA's intent that the SWMP required by 40 CFR 122.34(a) itself be considered enforceable under the permit. Rather, the SWMP was intended to be the means for the MS4 to engage in an adaptive management process during the term of the permit. ''EPA envisions application of the MEP standards as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards.'' (64 FR 68754, December 8, 1999).

The Traditional General Permit Approach would include regulatory text to reflect EPA's guidance to permitting authorities regarding the types of permit requirements for MS4s that are considered most effective. For instance, EPA advises permitting authorities to use permit conditions that are ''clear, specific, and measurable.'' See *MS4 Permit Improvement Guide* [5] (p. 5–6), and *Revisions to the November 22, 2002 Memorandum Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs* [6] (p. 5). The *MS4 Permit Improvement Guide* explains EPA's recommendation as follows:

> In order for permit language to be clear, specific, measurable and enforceable, each Permit Requirement will ideally specify: What needs to happen; Who needs to do it; How much they need to do; When they need to get it done; and Where it is to be done.
>
> For each Permit Requirement: 'What' is usually the stormwater control measure or activity required. 'Who' in most cases is implied as the permittee (although in some cases the permitting authority may need to specify who exactly will carry out the requirement if there are co-permittees or the MS4 will rely on another entity to implement one of the minimum control measures). 'How much' is the performance standard the permittee must meet (*e.g.,* how many inspections). 'When' is a specific time (or a set frequency) when the stormwater control measure or activity must be completed. 'Where' indicates the specific location or area (if necessary). These questions will help determine compliance with the permit requirement.

The proposed rule for the Traditional General Permit Approach would obligate the permitting authority to establish requirements that are ''clear, specific, and measurable.'' See proposed 40 CFR 122.34(a). The proposed rule further explains that effluent limitations may be expressed as BMPs that include, but are not limited to, ''specific tasks, BMP design requirements, performance requirements or benchmarks, schedules for implementation and maintenance, and frequency of actions.'' *Id.* Where permits incorporate clear, specific, and measurable requirements, EPA expects there to be greater certainty and understanding as to what must be accomplished during each permit term.

A foundational principle of MS4 permits is that from permit term to permit term iterative progress will be made towards meeting water quality objectives, and that adjustments in the form of modified permit requirements will be made where necessary to reflect current water quality conditions, BMP effectiveness, and other current relevant information. This principle is incorporated into the proposed Traditional General Permit Approach in the requirement for NPDES authorities to revisit permit requirements during the permit issuance process, and to make any necessary changes in order to ensure that the subsequent permit continues to meet the NPDES requirements ''to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), protect water quality, and to satisfy the water quality requirements of the Clean Water Act.'' Thus, in advance of issuing any successive small MS4 general permit, the permitting authority would need to review, among other things, information on the relative progress made by permittees to meet applicable milestones, compliance problems that may have arisen, the effectiveness of the required activities and selected BMPs under the existing permit, and any improvements or degradation in water quality. Sources of this information include, but are not limited to:

- Past annual reports;
- Current SWMP documents;
- NPDES MS4 audit reports, construction/industrial/commercial site inspection reports;
- Monitoring and other information on quality of receiving waters;
- Existing MS4 permit requirements; and
- Approved TMDLs that include wasteload allocations applicable to small MS4s.

1. Current Examples of Clear, Specific, and Measurable Permit Requirements

As discussed in the previous section, a key component of the proposed Traditional General Permit Approach is that permits be written with sufficient clarity and specificity to enable permittees, the public, and regulatory authorities alike to understand what is required to measure progress. EPA acknowledges that meeting the requirement to include more detailed terms and conditions in small MS4 permits and to ensure, among other things, that the permit terms satisfy the regulatory requirement to reduce pollutant discharges from the MS4 to the MEP (and meet the requirement to protect water quality and meet the appropriate water quality requirements of the CWA) will not be easy for some states. States that have not already written permits in this way would need to evaluate the quality of the existing SWMPs, the track record of each MS4 in implementing their respective SWMPs, the types of BMPs that have proven effective, and information that may suggest what is necessary to address existing water quality conditions, including whether additional requirements are needed to address an applicable TMDL. Among other factors that the state would need to consider when issuing a new, or the next, general permit are how long the MS4 has been permitted, the degree of progress made by the small MS4 permittees as a whole and for individual MS4s as well, the reasons for any lack of progress, and the capability of these MS4s to achieve more focused requirements. EPA finds promise in some of the strategies that EPA and state permitting authorities are already implementing, which will serve as useful models to those permitting authorities needing advice on how to write their permits under the proposed Traditional General Permit Approach. For example, permitting authorities may find that subcategorizing MS4s by experience, size, or other factors, and creating different requirements for each subcategory, may be desirable. Permitting authorities may also consider whether watershed-wide general permits may be an option, especially where the receiving waters are impaired.

In addition to the model permit language in the *MS4 Permit Improvement Guide,* EPA recently compiled a number of examples where small MS4 general permits have already included requirements that are clear, specific, and measurable in a document entitled *MS4 General Permits and the Six Minimum Control Measures: A*

[5] EPA. 2010. *MS4 Permit Improvement Guide.* Office of Wastewater Management. Washington, DC. EPA 833–R–10–001. *http://water.epa.gov/polwaste/npdes/stormwater/upload/ms4permit_improvement_guide.pdf.*

[6] EPA. November 26, 2014. Memo from Andrew Sawyers, Director, Office of Wastewater Management to EPA Water Management Division Directors in EPA Regions I–X. *http://water.epa.gov/polwaste/npdes/stormwater/upload/EPA_SW_TMDL_Memo.pdf.*

National Compendium of Clear, Specific, and Measurable Requirements, which can be accessed in the docket for this proposed rule. Additional examples of clear, specific, and measurable permit requirements in MS4 general permits, focusing on post-construction requirements and water quality-based effluent limits, are included in EPA's *Municipal Separate Storm Sewer System Permits: Post-Construction Performance Standards & Water Quality-Based Requirements: A Compendium of Permitting Approaches.*[7] The fact that many permitting authorities have already included provisions that would qualify as clear, specific, and measurable under the proposed rule indicates that making this a requirement for all permits is reasonable and achievable. EPA requests comment on what additional examples should be highlighted as being clear, specific, and measurable in current small MS4 general permits.

2. Types of Permit Language Lacking Sufficient Detail To Qualify as Clear, Specific, and Measurable

Just as there are a number of examples to be highlighted where states are already writing their permits consistent with the proposed Traditional General Permit Approach, EPA also found permits that lack adequate detail and would not qualify as clear, specific, and measurable under the proposed rule modifications. Permit requirements that do not appear to have the type of detail that would be needed under the proposed rule approach may have some of the following characteristics:

- Permit provisions that simply copy the language of the Phase II regulations verbatim without providing further detail on the level of effort required or that do not include the minimum actions that must be carried out during the permit term. For instance, where a permit includes the language in 40 CFR 122.34(b)(4)(ii)(B) (*i.e.,* requiring ''. . . construction site operators to implement appropriate erosion and sediment control best management practices'') and does not provide further details on the minimum set of accepted practices, the requirement would not provide clear, specific, and measurable requirements within the intended meaning of the proposed Traditional General Permit Approach. The same would also be true if the permit just copies the language from the other minimum control measure provisions in 40 CFR 122.34(b) without further detailing the particular actions and schedules that must be achieved during the permit term.
- Permit requirements that include ''caveat'' language, such as ''if feasible,'' ''if practicable,'' ''to the maximum extent practicable,'' and ''as necessary'' or ''as appropriate'' unless defined. Without defining parameters for such terms (for example, ''infeasible'' means ''not technologically possible or not economically practicable and achievable in light of best industry practices''), this type of language creates uncertainty as to what specific actions the permittee is expected to take, and is therefore difficult to comply with and assess compliance.
- Permit provisions that preface the requirement with non-mandatory words, such as ''should'' or ''the permittee is encouraged to . . . .'' This type of permit language makes it difficult to assess compliance since it is ultimately left to the judgment of the permittee as to whether it will comply. EPA notes that the Phase II regulations include ''guidance'' in places (*e.g.,* 40 CFR 122.34(b)(1)(ii), (b)(2)(ii), and (b)(3)(iv)), which suggest practices for adoption by MS4s and within permits, but does not mandate that they be adopted. This guidance language is intended for permitting authorities to consider in establishing their permit requirements. While permitting authorities may find it helpful to their permittees to include guidance language within their permits in order to provide suggestions to their permittees, such language would not qualify as a permit requirement under the proposed Traditional General Permit Approach.
- Permit requirements that lack a measurable component. For instance, several permits include language implementing the construction minimum control measure that requires inspections ''at a frequency determined by the permittee'' based on a number of factors. This type of provision includes no minimum frequency that can be used to measure adequacy and, therefore, would not constitute a measurable requirement for the purposes of the proposed rule.
- Permit requires the development of a plan to implement one of the minimum control measures, but does not include details on the minimum contents or requirements for the plan, or the required outcomes, deadlines, and corresponding milestones. For example, some permits require the MS4 to develop a plan to implement the public education minimum control measure, which informs the public about steps they can take to reduce stormwater pollution. The requirement leaves all of the decisions on what specific actions will be taken during the permit term to comply with this provision to the MS4 permittee, thus enabling almost any type of activity, no matter how minor or insubstantial, to be considered compliance with the permit. In EPA's view, this type of permit provision would not qualify as a clear, specific, and measurable requirement under the proposed Traditional General Permit Approach.

3. Summary/Description of Proposed Rule Changes

The following is a section-by-section summary of the proposed regulatory changes.

Proposed Changes to 40 CFR 122.33

The following changes to 40 CFR 122.33 are proposed to complement the changes made to implement the Traditional General Permit Approach option:

- Throughout the section references to ''you'' or ''your'' would be replaced with references to ''the operator.'' This change is proposed for consistency with revisions to 40 CFR 122.34 and 40 CFR 122.35.
- The requirements for obtaining coverage under a general permit would now be the same as those for any other general permit in 40 CFR 122.28(b)(2). The NOI would no longer be required to include information on the MS4's BMPs and measurable goals.
- The requirements for applying for an individual permit would be consolidated in 40 CFR 122.33(b)(2), whereas these requirements now appear in both 40 CFR 122.31 and in 40 CFR 122.34(d).
- The deadline of March 10, 2003 for MS4s wishing to implement a program that differed from 40 CFR 122.34 to submit an individual permit application would be removed since the date has passed and is no longer relevant. Similarly, the deadline of March 10, 2003 for MS4s designated for regulation by 40 CFR 122.32(a)(1) would be deleted since the date has passed and is no longer relevant.

Proposed Changes to 40 CFR 122.34

Most of the proposed changes to 40 CFR 122.34 are made to clarify that it is the permitting authority's responsibility, and not that of the small MS4 permittee, to establish permit terms that meet the small MS4 regulatory standard (*i.e.,* ''. . . to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to

[7] EPA. 2014. *Municipal Separate Storm Sewer System Permits: Post-Construction Performance Standards & Water Quality-Based Requirements: A Compendium of Permitting Approaches.* Office of Water. Washington, DC. EPA 833.R.14.003. *http://water.epa.gov/polwaste/npdes/stormwater/upload/sw_ms4_compendium.pdf.*

protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act.''), and to delineate the requirements for implementing the six minimum control measures, other more stringent effluent limitations as necessary, as well as other requirements. The proposed modifications do not alter the existing, substantive requirements of the six minimum control measures in 40 CFR 122.34(b), but instead emphasize the way in which the permitting authority makes the determination as to what requirements are included in small MS4 permits, including general permits. For instance, a typical change in the proposed Traditional General Permit Approach is made in 40 CFR 122.34(b)(3)(ii), which transfers the obligation to address certain categories of non-stormwater discharges from the small MS4 operator (referred to as ''you'') to the permitting authority by requiring that ''the permit must require the permittee to address the following categories of non-storm water discharges.'' Otherwise, unless specified, there is no change to the language of the existing rule.

Proposed Changes to 40 CFR 122.34(a)

The following changes to 40 CFR 122.34(a) are proposed:

• The proposed regulatory text clarifies that the permitting authority is required to include in any small MS4 permit conditions that ensure pollutant discharges from the MS4 are reduced to the MEP, are protective of water quality, and satisfy the water quality requirements of the CWA. In order to ensure that these permit conditions are of adequate detail and their meaning is clear to all parties, the proposed rule emphasizes that permit requirements must be written in a ''clear, specific, and measurable'' form. This language is consistent with the recommendation in EPA's *MS4 Permit Improvement Guide* (2010), which advised permitting authorities to write MS4 permits with permit provisions that are ''clear, specific, measurable, and enforceable.'' In addition, the proposed regulatory text for the Traditional General Permit Approach emphasizes that the permit requirements must be adequate to collectively meet the regulatory standard, that is: ''to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act (CWA).'' EPA notes that no changes are proposed to the wording of this regulatory standard.

• The proposed regulatory text reiterates that effluent limitations may be in the form of BMPs, and provides examples of how these BMP requirements may appear in the permit, such as in the form of specific tasks, BMP design requirements, performance requirements or benchmarks, schedules for implementation and maintenance, and the frequency of actions. This list of examples is not intended to be exclusive, and EPA anticipates that permitting authorities will, over time, develop other ways to establish requirements that are consistent with this language. It is EPA's view that this proposed language serves the same underlying purpose as the provision it modifies in the current regulation (*i.e.,* ''. . . narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed satisfy technology requirements . . . and to protect water quality.'')

• The following provision from the existing regulations is proposed to be removed: ''Implementation of best management practices consistent with the provisions of the storm water management program required pursuant to this section and the provisions of the permit required pursuant to § 122.33 constitutes compliance with the standard of reducing pollutants to the 'maximum extent practicable.' '' The court in *EDC* found this sentence to be particularly problematic in light of the lack of permitting authority review of NOIs. Based in part on this language, the court observed that ''the operator of a small MS4 needs to do nothing more than decide for itself what reduction in discharges would be the maximum practical reduction.'' *EDC* at 855. Furthermore, the court found that ''under the Phase II Rule, nothing prevents the operator of a small MS4 from misunderstanding or misrepresenting its own stormwater situation and proposing a set of minimum measures for itself that would reduce discharges by far less than the maximum extent practicable.'' *Id.* EPA addresses these concerns by removing this language, and instead clarifying, as it does through the other proposed changes to 40 CFR 122.34(a), that it is the permitting authority who is responsible for establishing requirements that constitute compliance with requirement to reduce the discharge of pollutants from the MS4 to the MEP, to protect water quality, and to satisfy the water quality requirements of the CWA.

• The language in the existing regulations providing permittees with up to five years from the date of permit issuance to implement their SWMPs is modified to apply to new permittees, recognizing that this 5-year period has passed for existing permittees. Another clarification is included to explain that when a permit is expiring and a new permit is being developed, the permitting authority must ensure that the new permit meets the requirements of 40 CFR 122.34(a) based on current water quality conditions, the record of BMP effectiveness, and other current relevant information. This revision would not change the status quo; it merely recognizes that first-time small MS4 permittees have up to five years to develop and implement their SWMPs, while small MS4s that have already been permitted will have developed and implemented their SWMP when they reapply for permit coverage or submit an NOI under the next small MS4 general permit.

Proposed Changes to 40 CFR 122.34(b)

The following changes are proposed to be made to 40 CFR 122.34(b):

• In the proposed regulatory text, the small MS4 operator is still required to develop a SWMP; however, the stated purpose of the SWMP is clarified to emphasize the fact that it is a tool for describing how the permittee will comply with the permit requirements implementing the six minimum control measures, and does not contain effluent limitations or permit conditions. The effluent limitations and other enforceable conditions would be stated in the permit itself. The proposed regulatory text for the Traditional General Permit Approach would clarify that for general permits, documentation of the measurable goals in the SWMP should include schedules that are consistent with any deadlines already established in the general permit. The purpose of this proposed requirement is to preserve the SWMP as a tool for permittees to describe [in more detail] how the MS4 will implement the BMPs required by the permit and to document updates to the SWMP as needed during the permit term if changes are called for to comply with the permit. This language is intended to support the underlying clarification in the proposal that it is in the permit where the enforceable requirements are established, while the role of the SWMP document or other document(s) is to describe in writing how the permittee will comply with these requirements. Under this formulation, a permittee's failure to develop a SWMP document would constitute a violation of the permit, but a permittee's failure to install a specific control measure that is

described in the SWMP document would not be a violation of the permit, unless the permit required that this specific control measure be installed as a required BMP. EPA notes that the proposed regulatory text also includes language to clarify that whether or not the SWMP can be found in one document or a series of documents, there should be a written description in some form that explains how the permittee will comply with the permit's minimum control measure requirements. In other words, the ''SWMP document'' refers to the documentation, whether located in one place or comprised of multiple documents (*e.g.,* ordinances, manuals, documented procedures, and other documentation), that is the written form of the permittee's SWMP. Reference to a ''document'' in the proposed rule is not intended to create a new documentation requirement.

• Changes in various provisions in 40 CFR 122.34(b)(1) through (6) are proposed to emphasize the permitting authority's role in including requirements that address the minimum control measures as compared to the current regulations, which give this responsibility to the MS4. In most instances, the proposed modifications are merely changing a few words to switch from the first person (*i.e.,* ''you'') to the third person (*i.e.,* ''the MS4''). The proposed modifications do not alter the existing, substantive requirements of the six minimum control measures in 40 CFR 122.34(b).

Proposed Changes to 40 CFR 122.34(d)

The following changes are proposed to be made to 40 CFR 122.34(d).

• The proposed regulatory text for the Traditional General Permit Approach would remove existing paragraph (d) from 40 CFR 122.34. The information required to be included in permit applications for individual permits in paragraph (d)(1) would be moved to 40 CFR 122.33(b)(2)(i). This information would no longer be required to be submitted with NOIs. Because EPA and many states have issued menus of BMPs, paragraph (d)(2) is no longer relevant, and under the Traditional General Permit Approach, paragraph (d)(3) would also no longer be needed.

• For general permits, the information required to be included in the NOI would track with the requirements for general permits in 40 CFR 122.28(b)(2)(ii). See discussion on 40 CFR 122.33. There would be no change to the requirement that an MS4 seeking an individual permit must submit an application with its proposed BMPs to implement the six minimum control measures and measurable goals for BMP implementation.

Proposed Changes to 40 CFR 122.34(e) and (f)

The following changes are proposed to be made to 40 CFR 122.34(e) and (f):

• The proposal would consolidate the current requirements in 40 CFR 122.34(e)(1) and (f) under one section, 40 CFR 122.34(c), entitled ''Other applicable requirements.''

• EPA proposes to remove the guidance in the current regulations at § 122.34(e)(2). The guidance reflects EPA's recommendation for the initial round of permit issuance, which has already occurred for all permitting authorities. The phrasing of the guidance language no longer represents EPA policy with respect to including additional, more stringent requirements. EPA has found that a number of permitting authorities are already including specific requirements in their small MS4 permits that address not only wasteload allocations in TMDLs, but also other more stringent requirements that are in addition to the six minimum measures irrespective of the status of EPA's 40 CFR 122.37 evaluation. See EPA's *Municipal Separate Storm Sewer System Permits—Post-Construction Performance Standards & Water Quality-Based Requirements: A Compendium of Permitting Approaches* (2014). Based on the advancements made by specific permitting programs, and information that points to stormwater discharges continuing to cause waterbody impairments around the country, EPA has advised in guidance that permitting authorities write MS4 permits with provisions that are ''clear, specific, measurable, and enforceable,'' incorporating such requirements as clear performance standards, and including measurable goals or quantifiable targets for implementation. See *EPA's MS4 Permit Improvement Guide* (2010). This guidance is a more accurate reflection of the Agency's current views on how the Phase II regulations should be implemented than the guidance currently in 40 CFR 122.34(e)(2).

Proposed Renumbering of 40 CFR 122.34(c) and (g)

The following changes are proposed to be made to 40 CFR 122.34(c) and (g):

• The existing ''qualifying local program'' provision currently in 40 CFR 122.34(c) would be renumbered as 40 CFR 122.34(e).

• The ''evaluation and assessment'' provision currently in 40 CFR 122.34(g) would be renumbered as 40 CFR 122.34(d). Conforming changes would be made to 40 CFR 122.35 to update the cross-references in that section.

B. Option 2—Procedural Approach

Another option, called the ''Procedural Approach,'' for which EPA requests comment would address the remand by incorporating additional permitting authority and public review steps into the existing regulatory framework for providing coverage to small MS4s under general permits. EPA is not proposing specific regulatory text for this option, but has included a detailed description of how the Procedural Approach would work. In addition to comments on the merits of the option, EPA solicits comments recommending specific regulatory text for this option.

Under the existing regulation, 40 CFR 122.34(d)(1), MS4s seeking authorization to discharge under a general permit must submit an NOI that identifies the BMPs that the MS4 will implement for each of the six minimum control measures. The NOI must also state the measurable goals for each of the BMPs, including the timing and frequency of their implementation. Under the Procedural Approach, once an MS4 operator submits its NOI requesting coverage under the general permit, an additional step would take place in which the permitting authority would review, and the public would be given an opportunity to comment and request a hearing on, the merits of the MS4's proposed BMPs and measurable goals for complying with the requirement to reduce discharges to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA.

Under the ''Procedural Approach'' option, the existing regulatory requirement for the small MS4 to submit an NOI with the BMPS and measurable goals as provided in 40 CFR 122.34(d) and the requirement in 40 CFR 122.34(a) to develop, implement, and enforce a SWMP to meet the six minimum measures and to reduce pollutant discharges to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA would be retained. In this option, the NOI would continue to be used in the same way as the court considered the NOI in the *EDC* case. The NOI would continue to serve as the document that describes the BMPs and measurable goals that would be considered to be the enforceable requirements applicable to the permittee, in addition to the terms and conditions of the general permit. While a SWMP would still need to be developed, it would not establish enforceable requirements beyond those

identified in the NOI that would have undergone public notice and comment and permitting authority review.

The process would occur in the following sequence: Following the receipt of an NOI for coverage under the general permit, the permitting authority would review the NOI to assess whether the proposed BMPs and measurable goals meet the requirements to reduce pollutants to the MEP, protect water quality, and satisfy the water quality requirements of the CWA. If not, the permitting authority would request supplemental information or revisions as necessary to ensure that the submission satisfies the regulatory requirements. Once satisfied with the submission, the Procedural Approach would require the permitting authority to provide public notice of the NOI and an opportunity to request a hearing on the NOI, in accordance with 40 CFR 124.10 through 124.13. After consideration of comments received and a hearing, if held, the permitting authority would provide notice of its decision to authorize coverage under the general permit and with the specific requirements each MS4 must meet, in accordance with 40 CFR 124.15, or as provided by state law for providing notice of a final permit decision in authorized states. Upon completion of this process, the MS4-specific requirements in the NOI, together with the terms and conditions set forth in the general permit, would be incorporated as requirements of the permit for the particular MS4.

Where the state is the permitting authority, it would also provide EPA an opportunity to review the individual NOIs and submit comments or objections to the state regarding the adequacy of the NOI before it is made available for public review, consistent with requirements under 40 CFR part 124 for NPDES permit applications and under 40 CFR 123.44 for draft permits. This two-step Procedural Approach is similar to the procedure used to establish ''terms of the nutrient management plan'' permit requirements proposed by concentrated animal feeding operations (CAFOs) seeking coverage under a general permit under 40 CFR 122.23(h). While Option 2 still relies on the use of a general permit, it follows several of the same process steps as those used for an individual permit.

Some states, including Minnesota and Texas, have used a similar procedural approach as a way to address the problems identified in the *EDC* decision. In Minnesota, for example, the state has developed a detailed form that must be completed by any small MS4 seeking coverage under the Minnesota general permit, which when completed will become in effect its SWMP document (referred to as a ''Stormwater Pollution Prevention Plan Document'' of ''SWPPP Document''). The state then reviews the MS4's submission and determines whether revisions are needed to meet the requirements of the permit. After any necessary revisions, the state provides public notice of the NOI and SWPPP Document, and makes them available for public review and comment, and for any requests to hold a public hearing. After considering public comments, the state then makes a final determination on whether to authorize coverage under the general permit, and, if authorized, the contents of the SWPPP Document (as revised when necessary following public comment) become enforceable under the general permit. The Minnesota approach gives MS4s flexibility by providing a range of options from which an MS4 can choose for its particular circumstances. It also provides the public with the opportunity to review the MS4's proposed choices and the permitting authority's determination of adequacy, and to provide comment and request a hearing. The MS4's proposed program for implementing the six minimum measures goes into effect only after the state has made an affirmative determination that the MS4's program has met the burden of showing that pollutant discharges will be reduced to the MEP, will be protective of water quality, and will satisfy the appropriate water quality goals of the CWA, thus providing the necessary permitting authority review.

Texas also reviews individual MS4 program documents to determine whether they meet the minimum permit and regulatory requirements. In contrast to the more detailed NOI checklist used by Minnesota, Texas uses a relatively short NOI form but requires the MS4 to submit its entire SWMP document for review after the general permit is issued. It does so with the intent to have the SWMP document identify the MS4-specific enforceable requirements, rather than to have this information contained in the NOI. Texas requires the MS4 to provide the public notice of the state's preliminary determination to authorize coverage under the general permit in accordance with the SWMP document and an opportunity to comment on the SWMP document and request a hearing. Comments on the adequacy of the SWMP document and requests for public hearings are submitted directly to the state and the state also determines whether there is sufficient interest to hold a public hearing on the SWMP document.

Under the Procedural Approach, EPA would preserve one of the core attributes of the existing regulations, that is the flexibility afforded the MS4 to identify the BMPs that it determines are needed to meet the minimum regulatory requirements to reduce pollutant discharges to the MEP, to protect water quality, and to satisfy the water quality requirements of the CWA in its SWMP. This approach may appeal to states that accept the notion that the MS4 should have the initial opportunity to propose the BMPs that it believes will meet the regulatory requirements, and that each program may differ substantially from MS4 to MS4.

However, the need to undergo a second round of public notice and comment at the state level, in addition to the one provided for the general permit, for approximately 6800 small MS4s, may be seen as a drawback due to the additional workload placed on permitting authorities that do not already follow this approach. The value added by the second comment period is also a consideration. Staff in Minnesota's program reported that while they received over 1500 comments in response to proposing the state-level general permits, only a handful of comments were submitted on the individual MS4 NOI and SWPPP Document submissions during the second public comment period. Staff in Texas' program reported that the state received no comments when it provided public notice on the individual MS4 SWMPs.

Another factor to consider is that under the Procedural Approach some changes to the BMPs and measurable goals identified in the NOI during the term of the permit could constitute a modification to the permit, and would be subject to permit modification procedures applicable to all NPDES permits. See 40 CFR 122.62 and 122.63. For example, if the MS4 decides to discontinue implementing a particular BMP that it included in its NOI (and which became an enforceable permit requirement) and to substitute a different BMP, a permit modification would be needed. It is not clear whether states are currently using permit modification procedures to process changes to a MS4's SWMP. One possibility for addressing the need for change would be for the permitting authority to establish in the general permit itself a process for making changes to the SWMP without triggering the permit modification procedures, as long as it identifies what changes could be made and under what circumstances.

EPA seeks comment on whether to provide in the regulations the option for modifying the general permit under the minor modification procedures in 40 CFR 122.63 for ''nonsubstantial revisions'' to BMPs, as provided for changes to terms of a CAFO's nutrient management plan that are ''not substantial'' under 40 CFR 122.42(e)(6). EPA also seeks comment on what criteria should apply for distinguishing between when a change to BMPs is ''substantial'' requiring a full public participation process or ''not substantial'' that would be subject to public notice but not public comment under a permit modification process similar to the process in 40 CFR 122.42(e)(6).

Like several other states, Texas requires the MS4s to provide local public notice and the opportunity to provide comments on individual MS4 NOIs (or the SWMP, as in Texas). What stands out in the Texas approach is that, even though the MS4 must provide the necessary notice, public comments are submitted to the state agency, and the state clearly maintains the decision making over the adequacy of the MS4's SWMP to meet permit and regulatory requirements. The state does so by reviewing the SWMP document before it is public noticed and evaluating for itself any public comments on the SWMP document and whether there is sufficient interest to require a public hearing. EPA seeks comment on whether a rule establishing a procedural approach should enable permitting authorities that rely on the MS4 to public notice its NOI to be able to use this approach to satisfy the public notice requirement for the individual NOIs. If allowed, should it be limited to when the State clearly makes the ultimate decisions about what requirements are sufficient to meet the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of CWA?

The Texas approach appears to differ from the current procedures that apply to NPDES permits outlined in 40 CFR part 124 in the level of detail about the various procedural requirements such as who must be notified of the proposed action. In this respect, the Texas program resembles EPA's approach to establishing or changing terms of nutrient management plans under CAFO general permits by modifying selected elements of the public participation requirements that apply to individual permits, for example, by shortening the length of public comment period or the period for requesting a public hearing (see 40 CFR 122.23(h)(1) and 122.42(e)(6)), or by allowing web-based public notice alternatives in addition to those identified in 40 CFR 124.10 (c). If EPA chooses to adopt this option, it would largely rely on the existing requirements in 40 CFR part 124 to govern what procedures are necessary to approve the BMPs in the NOI as enforceable provisions of the general permit. However, as discussed, EPA is considering some variations in these 40 CFR part 124 procedural requirements similar to those applicable to incorporating terms of the nutrient management plan into CAFO permits.

Based on the experiences of states that use a similar procedural approach, EPA estimates that conducting individualized reviews of NOIs and requiring an additional notice and comment period for the initial authorization and subsequent permit modifications in states that do not already provide it would require a significant dedication of staff time, in an amount estimated at 24 hours per MS4. Based on Minnesota's experience, EPA expects the workload to be greatest in the first permit cycle but to decrease by some amount in subsequent cycles as the permitting authority takes advantage of efficiencies gained from having gone through the process before and as the quality of the MS4 submissions improve over time. For states that already use a two-step process, some modest amount of workload increase may be necessary to ensure that all of the process steps are carried out, including additional time needed to process and approve SWMP modifications that change the BMPs in the NOI that have been approved and have become enforceable terms of the permit.

The following regulatory modifications are envisioned if the Procedural Approach is selected for the final rule.

- Include additional language indicating that to the extent that the permitting authority chooses to rely on the MS4 operator to describe in its NOI the BMPs, measurable goals, schedules, and other activities in its SWMP that it plans to implement to reduce pollutant discharges to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA, the permitting authority will need to incorporate these as enforceable elements of the permit in accordance with the procedures for public notice, the opportunity to request a hearing, and permitting authority final determination in 40 CFR part 124.
- With respect to determining the appropriate 40 CFR part 124 procedures to follow, one model that EPA could utilize in crafting applicable rule language is the regulatory procedures in 40 CFR 122.23(h) for CAFO general permits. While the CAFO and MS4 programs differ fundamentally from one another in many ways, there are some aspects of the CAFO general permit procedures that could be modified in a manner that would make them suitable to small MS4 general permits. Thus, based on some of the key elements of the CAFO general permit procedures in 40 CFR 122.23(h), EPA is considering including the following provisions in revised 40 CFR 122.33(b)(1) as subparagraphs (i)–(iii):

—At a minimum, the operator must include in the NOI the BMPs that it proposes to implement to comply with the permit, the measurable goals for each BMP, the person or persons responsible for implementing the SWMP, and any additional information required in the NOI by the general permit.

—The Director must review the NOI to ensure that it includes adequate information to determine if the proposed BMPs, timelines, and any other actions are adequate to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. When the Director finds that additional information is necessary to complete the NOI or clarify, modify, or supplement previously submitted material, the Director may request such additional information from the MS4 operator.

—If the Director makes a preliminary determination that the NOI contains the required information and that the proposed BMPs, schedules, and any other actions necessary to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act, the permitting authority must notify the public of its proposal to authorize the MS4 to discharge under the general permit and, consistent with 40 CFR 124.10, make available for public review and comment and opportunity for public hearing the NOI, and the specific BMPs, milestones, and schedules from the NOI that the Director proposes to be incorporated into the permit as enforceable requirements. The process for submitting public comments and hearing requests, and the hearing process if a hearing is granted, must follow the procedures applicable to draft permits in 40 CFR 124.11

through 124.13. The permitting authority must respond to significant comments received during the comment period, as provided in 40 CFR 124.17, and, if necessary revise the proposed BMPs and/or timelines to be included as terms of the permit.

—When the Director authorizes coverage for the MS4 to discharge under the general permit, the specific elements identified in the NOI are incorporated as terms and conditions of the general permit for that MS4. The permitting authority must, consistent with 40 CFR 124.15, notify the MS4 operator and inform the public that coverage has been authorized and of the elements from the NOI that are incorporated as terms and conditions of the general permit applicable to the MS4.

• To accompany these regulatory changes, EPA is also considering specifying what specific information the MS4 will need to provide as part of the NOI in order to obtain coverage under a general permit that will use a procedural approach, such as the approach described previously. The MS4 would need to provide the same information as is required for an application for an individual permit under proposed 40 CFR 122.33(b)(2)(ii). This includes general background information as specified in § 122.21(f) as well as the information currently required by 40 CFR 122.34(d), and any other information requested by the permitting authority.

• If the final rule includes the Procedural Approach or allows for a hybrid approach under Option 3 (the ''State Choice Approach''), authorized states would need to revise their approved programs to include the option(s) chosen by the permitting authority and to establish or reference the public notice and comment, hearing request, and other procedures necessary to implement the chosen option(s).

For both the Procedural Approach and State Choice Approach (see Section VI.C), the Agency chose to describe the regulatory changes that would accompany these options if promulgated as opposed to providing line-by-line rule text changes as it has for the Traditional General Permit Approach. In EPA's view, presenting the rule language in this way will aid in the public's review of the three different options as compared to presenting three different sets of line-by-line changes.

EPA requests comment on whether the Agency should adopt as its final rule option the procedural approach for permitting small MS4s. EPA has concerns with adopting this approach as the sole rule option since it would require all but a handful of permitting authorities to change their permitting procedures to conform to this new approach. Due to these concerns, EPA also separately requests comment (see next section) on whether the final rule should give permitting authorities a choice of which approach, either the Traditional General Permit Approach or the Procedural Approach, to adopt for their permitting program, or whether there is support for allowing permitting authorities to use a combination of these two approaches.

Among the concerns EPA has with choosing Option 2 for the final rule is the increase in workload for permitting authorities that would be associated with reviewing and approving, and providing for notice and comment, and providing public hearing opportunities, on each individual NOI. For many permitting authorities, the advantage of providing flexibility to MS4s to propose what they believe will meet the applicable regulatory standards will be outweighed by the resource-intensive procedures that this approach requires. In EPA's discussions with state permitting authorities, the Agency heard a number of concerns about their ability to implement new procedures such as these from a staff and resource perspective. Permitting authorities are also concerned about making individual decisions on what set of MS4 actions are sufficient to meet the regulatory requirements without the benefit of established standards to assist them in making these determinations. Concerns were also raised by many MS4 permittees, who emphasized the effects of these procedures on the timeliness of their discharge authorization, and the fear that states will turn to MS4s to conduct more notice and comment procedures on their behalf. EPA notes that there are also those states that are supportive of making the procedural approach a part of the final rule in some way or form.

Beyond the workload concerns raised about this option, EPA observes that the need for flexibility among MS4s to develop and implement individually tailored SWMPs is different than the type of flexibility required for CAFO operators in developing and implementing nutrient management plans. AFO permit operators must consider where several key and interdependent variables must be considered to account for site-specific factors such as type of crop grown, soil type, terrain, choice of method for calculating application rates, in particular with respect to land application requirements. Each MS4 faces unique circumstances, but for the most part, the BMPs used to meet minimum control measures are not interdependent in the same way as choices needed to develop land application rates under CAFO regulations. EPA and states have developed menus of different BMPs for the various minimum control measures. As discussed previously, some states have developed detailed manuals for the selection, design, installation, and maintenance of allowable BMPs, which further standardizes the practices to be used for pollutant control at MS4s. Also, the need for small MS4 flexibility may have been greater when the small MS4 program was first established. However, this flexibility may be less critical now that most small MS4s have established programs, and they and the corresponding permitting authorities have gained experience in implementing various BMPs and evaluating the results. Permitting authorities already have the flexibility to issue different general permits or include different general permit terms and conditions for different categories of MS4, such as when there is a new group of MS4s that have not been previously regulated (for example, because a new Census is published creating additional urbanized areas) and a group of existing MS4s that may be on their third or fourth permit. By including specific requirements that only apply to some of the MS4s, they undergo permitting authority review and public comment as part of the process and can be part of the general permit itself. (This would be analogous to EPA's Multi Sector General Permit for Stormwater from Industrial Activity, in which different requirements apply to different sectors in the Appendices to the permit).[8] For truly unique situations or in instances where the MS4 wishes to implement a different program, individual permits are always an alternative. These factors point to the benefit of using the Traditional General Permit Approach as the preferred way to modify the general permitting regulations for small MS4s. Though there would certainly be increases in workload associated with the Traditional General Permit Approach, EPA's permits and a growing number of state general permits are being written in this manner and therefore would not require significant alteration. Additionally, as the list of examples of clear, specific, and measurable provisions in general permits grows, presumably other states should be able to take advantage of

[8] *http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp2015_finalpermit.pdf.*

these ideas for their own permits, and thereby save on permit development time. Requiring the procedural approach on a national level would impose pressures on state programs that arguably can be handled in the general permit itself, and therefore avoided.

C. Option 3—State Choice Approach

EPA requests comments on a third option, which would allow permitting authorities to choose either the Traditional General Permit Approach or the Procedural Approach, or some combination of the two as best suits their needs and circumstances. For example, a state could choose to use Option 1 for small MS4s that have fully established programs and uniform core requirements, and Option 2 for MS4s that it finds would benefit from the additional flexibility to address unique circumstances, such as some non-traditional MS4s. Alternatively, a state could apply a hybrid of the two approaches within one permit by defining some elements within the general permit, which are deemed to reduce the discharge of pollutants to the MEP, to protect water quality, and to satisfy the water quality requirements of the CWA, and enabling other elements to be established through a separate process that allows for more MS4-specific actions, using the Procedural Approach. An example of such a hybrid approach might be where a state incorporates into its general permit a requirement to implement certain minimum construction BMP requirements, such as implementation of provisions set forth in a separate statewide manual, which constitute compliance with the regulatory requirements, but leaves it to the MS4 to propose the BMPs that it will implement to meet the public education and outreach requirements of the permit. The former permit requirements would implement the Traditional General Permit Approach and would require no further permitting authority review and public participation procedures during the process of authorizing individual MS4 discharges; however, for the management practices that the MS4 proposes for its public education and outreach, the permitting authority would need to follow the Procedural Approach for incorporating these standards into the permit as requirements of the permit. The benefit of the State Choice Approach is that the fundamental CWA requirements of permitting authority review and public participation would be met irrespective of whether this occurs as a result of the permit issuance itself or whether these procedures take place in a second step that occurs after permit issuance but before the MS4 is authorized to discharge under the permit. This approach would provide for more options for permit development other than traditional individual or general permits. EPA will continue to encourage greater specificity in establishing clear, specific, and measurable permit terms and conditions in the general permit itself, and expects to provide guidance to assist permitting authorities in accomplishing this objective. Nevertheless, the Agency recognizes that permitting authorities may prefer some flexibility in determining the balance between the efficiencies of a general permit and the desirability of providing maximum flexibility to small MS4s in how they will meet the MEP standard.

The particular balance between specificity and flexibility a state chooses could evolve over time as the program continues to mature. The benefit of this option may be that it is the least disruptive to how state programs operate now and would impose the least burden on state permitting authorities, unless a state determines that for its situation (*e.g.,* number and variability among small MS4s, available resources, requirements under state law, etc.) more choices in structuring permits would be desirable. If EPA adopts this option as part of the final rule, the following rule changes would be necessary:

- Adopt the rule changes proposed in this document associated with the Traditional General Permit Approach, as modified pursuant to public comment; and
- Adopt the rule changes described in the discussion under Option 2.

EPA requests comment on whether the final rule should adopt Option 3, as opposed to selecting either Option 1 or Option 2 in the final rule. EPA is also interested in comments from permitting authorities as to which approach they are likely to choose (*i.e.,* Option 1 or Option 2, or a hybrid) if Option 3 is finalized.

EPA also requests comment on whether under Option 3, EPA should consider establishing which permit requirements must be developed using the Traditional General Permit Approach (Option 1), and which may be developed using the Procedural Approach (Option 2). For instance, EPA is interested in finding out whether there is support for requiring permitting authorities to use Option 1 to develop permit conditions implementing the minimum control measures in 40 CFR 122.34(b), while providing the permitting authority with the choice of whether to use an Option 2 approach to establish any more stringent effluent limitations, such as those based on an approved TMDL. Using this approach, the general permit would define the specific actions, performance requirements, and implementation schedules considered necessary to reduce pollutant discharges to the MEP, to protect water quality, and to satisfy the water quality requirements of the CWA. However, this approach would provide the permitting authority the additional flexibility to allow the MS4 to propose in its NOI the specific components of a TMDL implementation plan in order to comply with permit requirements based on applicable wasteload allocation(s). To ensure that the specific actions and timelines of the TMDL plan are properly incorporated as elements of the permit, the permitting authority would then be required to review and approve the small MS4's proposed plan using the process required by the Procedural Approach (Option 2). Additionally, with respect to this concept of specifying which aspects of the small MS4 regulations must be incorporated into permits using the Option 1 approach, while allowing some permit conditions to be developed using the Option 2 approach, EPA requests comment on which permit requirements should be required to be established using Option 1 and which should be given the flexibility to be established using Option 2.

VII. Incremental Costs of Proposed Rule Options

The economic analysis estimates the incremental costs of modifying the Phase II MS4 regulations to address the court's remand. EPA assumed that all other costs accrued as a result of the existing small MS4 program, which were accounted for in the economic analysis accompanying the 1999 final Phase II MS4 regulations, remain the same and are not germane to the economic analysis, unless the proposed rule change would affect the baseline program costs. In this respect, EPA focused only on new costs that may be imposed as a result of implementing any of the three options being proposed for comment. It is, therefore, unnecessary to reevaluate the total program costs of the Phase II rule, since those costs were part of the original economic analysis conducted for the 1999 Phase II rule (see 64 FR 68722, December 8, 1999). For further information, refer to the Economic Analysis that is included in the proposed rule docket.

The following table summarizes the estimated costs for each of the proposed rule options under consideration.

Proposed rule option	Net present value	Annualized cost
1—Traditional General Permit Approach	$9,579,921	$802,477
2—Procedural Approach	8,279,962	693,584
3—State Choice Approach	9,189,933	769,809

These estimates are all below the threshold level established by statute and various executive orders for determining that a rule has a significant or substantial impact on affected entities. See further discussion in Section VIII of this document.

The Economic Analysis assumes that all costs will be borne by NPDES permitting authorities in the form of increased administrative costs to write more detailed permits for Option 1, or to review and approve and process comments on NOIs submitted for general permit coverage for Option 2. Likewise, Option 3 costs reflect the estimated increase in NPDES permitting authority workload (for both EPA and state permitting authorities), which is a function of an assumed amount of NPDES permitting authorities who will choose to implement Option 1 versus Option 2. EPA does not attribute new costs to regulated small MS4s beyond what they are already subject to under the Phase II regulations. This is because the focus of the proposed rule is on the administrative manner in which general permits are issued and/or coverage under those permits is granted. EPA is changing through this rulemaking any of the underlying requirements in the Phase II regulations to which small MS4s are subject.

EPA chose conservative assumptions about impacts on state workloads, meaning that the estimated economic costs of the policy change are most likely lower than what is actually presented. For instance, EPA did not reduce the number of hours necessary for permitting authorities to draft specific permits pursuant to the Option 1 requirements in the second and third permit term despite the fact that the Agency expects that most permitting authorities, after drafting a specific permit to address Option 1 for the first time would spend less time in subsequent rounds reissuing the same permit. Similarly, in its modeling of Option 2, EPA did not reduce the average number of hours to review each NOI in the second and third permit term, even though EPA expects that most NOIs would address any deficiencies after the first review, therefore resulting in less review time needed in subsequent rounds.

EPA considers the cost assumptions in Option 1 to be conservative because as more permitting authorities write general permits to establish requirements consistent with the proposed Option 1, other permitting authorities could use and build on those examples, reducing the amount of time it takes to draft the permit requirements. EPA has issued guidance to permitting authorities on how to write better MS4 permits (EPA 2010 and EPA 2014), and has included additional examples of permit language from existing permits in the docket for this rule. See *General Permits and the Six Minimum Control Measures: A National Compendium of Clear, Specific, and Measurable Requirements.* EPA also anticipates providing further guidance once the rule is promulgated to assist states in implementing the new rule requirements, which should make permit writing more efficient.

VIII. Statutory and Executive Orders Reviews

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

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket for this action. In addition, EPA prepared an analysis of the potential costs associated with this action. This analysis, ''Economic Analysis for the Proposed Municipal Separate Storm Sewer System (MS4) General Permit Remand Rule,'' is summarized in Section V.II and is available in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040–0004.

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. Although small MS4s are regulated under the Phase II regulations, this rule does not propose changes to the underlying requirements to which these entities are subject. Instead, the focus of this rule is on ensuring that the process by which NPDES permitting authorities authorize discharges from small MS4s using general permits. This action will have an impact on state government agencies that administer the Phase II MS4 permitting program. The impact to states that are NPDES permitting authorities may range from $6,792,106 to $11,356,092 annually. Details of this analysis are presented in ''Economic Analysis for the Proposed Municipal Separate Storm Sewer System (MS4) General Permit Remand Rule.''

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538. This action does not significantly or uniquely affect small governments because this rulemaking only affects the way in which state permitting authorities administer general permit coverage to small MS4s. Nonetheless, EPA consulted with small governments concerning the regulatory requirements that might indirectly affect them, as described in section V.B.

E. Executive Order 13132: Federalism

This rule will not have substantial direct effects on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The rule proposes changes to the way in which NPDES permitting authorities, including authorized state government agencies, provide general permit coverage to small MS4s. The impact to states which are NPDES permitting authorities may range from $6,792,106 to $11,356,092 annually, depending upon the rule option that is finalized. Details of this analysis are presented in ''Economic Analysis for the Proposed Municipal Separate Storm Sewer System (MS4) General Permit Remand Rule,'' which is available in the docket for the proposed rule at *http://www.regulations.gov*

under Docket ID No. EPA–HQ–OW–2015–0671.

Keeping with the spirit of E.O. 13132 and consistent with EPA's policy to promote communications between EPA and state and local governments, EPA met with state and local officials throughout the process of developing the proposed rule and received feedback on how proposed options would affect them. EPA engaged in extensive outreach via conference calls to authorized states and regulated MS4s to gather input on how EPA's current regulations are affecting them, and to enable officials of affected state and local governments to have meaningful and timely input into the development of the options presented in this proposed rule.

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

This action does not have tribal implications as specified in Executive Order 13175 since it does not have a direct substantial impact on one or more federally recognized tribes. The proposed rule affects the way in which small MS4s are covered under a general permit for stormwater discharges and primarily affects the NPDES permitting authorities. No tribal governments are authorized NPDES permitting authorities. The rule could have an indirect impact on an Indian tribe that is a regulated MS4 in that the NOI required for coverage under a general permit may be changed as a result of the rule (if finalized) or may be subject to closer scrutiny by the permitting authority and more of the requirements could be established as enforceable permit conditions. However, the substance of what an MS4 must do in its SWMP will not change significantly as a result of this rule. Thus, Executive Order 13175 does not apply to this action.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, EPA conducted outreach to tribal officials during the development of this action. EPA spoke with tribal members during a conference call with the National Tribal Water Council to gather input on how tribal governments are currently affected by MS4 regulations and may be affected by the options in this proposed rule. Based on this outreach and additional, internal analysis, EPA confirmed that this proposed action would have little tribal impact and would be of little interest to tribes.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and 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 does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211, because it does not significantly affect energy supply, distribution or use.

I. National Technology Transfer and Advancement Act

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 determined that 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. This action affects the procedures by which NPDES permitting authorities provide general permit coverage for small MS4s, to help ensure that small MS4s ''reduce the discharge of pollutants to the maximum extent practicable (MEP), to protect water quality and to satisfy the water quality requirements of the Clean Water Act.'' It does not change any current human health or environmental risk standards.

List of Subjects in 40 CFR Part 122

Environmental protection, Storm water, Water pollution.

Dated: December 17, 2015.

Gina McCarthy,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 122 as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 2. Revise § 122.33 to read as follows:

§ 122.33 Requirements for obtaining permit coverage for regulated small MS4s.

(a) The operator of any regulated small MS4 under § 122.32 must seek coverage under an NPDES permit issued by the applicable NPDES permitting authority. If the small MS4 is located in an NPDES authorized State, Tribe, or Territory, then that State, Tribe, or Territory is the NPDES permitting authority. Otherwise, the NPDES permitting authority is the EPA Regional Office.

(b) The operator of any regulated small MS4 must seek authorization to discharge under a general or individual NPDES permit, as follows:

(1) If seeking coverage under a general permit issued by the Director, the operator must submit a Notice of Intent (NOI) consistent with § 122.28(b)(2). The operator may file its own NOI, or the operator and other municipalities or governmental entities may jointly submit an NOI. If the operator wants to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, the operator must submit an NOI that describes which minimum measures it will implement and identify the entities that will implement the other minimum measures within the area served by the MS4.

(2)(i) If seeking authorization to discharge under an individual permit and wishing to implement a program under § 122.34, the operator must submit an application to the appropriate NPDES permitting authority that includes the information required under § 122.21(f) and the following:

(A) The best management practices (BMPs) that the operator or another entity proposes to implement for each of the storm water minimum control measures described in § 122.34(b)(1) through (6);

(B) The measurable goals for each of the BMPs including, as appropriate, the months and years in which the operator will undertake required actions, including interim milestones and the frequency of the action;

(C) The person or persons responsible for implementing or coordinating the storm water management program;

(D) An estimate of square mileage served by the small MS4; and

(E) Any additional information that the NPDES permitting authority requests.

(ii) If seeking authorization to discharge under an individual permit and wishing to implement a program that is different from the program under § 122.34, the operator will need to comply with the permit application requirements in § 122.26. The operator will need to submit both parts of the application requirements in § 122.26 (d)(1) and (2) at least 180 days before the operator proposes to be covered by an individual permit. The operator does not need to submit the information required by § 122.26(d)(1)(ii) and (d)(2) regarding its legal authority, unless the operator intends for the permit writer to take such information into account when developing other permit conditions.

(iii) If allowed by the Director, the operator of the regulated small MS4 and another regulated entity may jointly apply under either paragraph (b)(2)(i) or (ii) of this section to be co-permittees under an individual permit.

(3) If the regulated small MS4 is in the same urbanized area as a medium or large MS4 with an NPDES storm water permit and that other MS4 is willing to have the small MS4 participate in its storm water program, the parties may jointly seek a modification of the other MS4 permit to include the small MS4 as a limited co-permittee. As a limited co-permittee, the operator of the small MS4 will be responsible for compliance with the permit's conditions applicable to its jurisdiction. If the operator of the small MS4 chooses this option it will need to comply with the permit application requirements of § 122.26, rather than the requirements of paragraph (b)(2)(i) of this section. The operator of the small MS4 does not need to comply with the specific application requirements of § 122.26(d)(1)(iii) and (iv) and (d)(2)(iii) (discharge characterization). The operator of the small MS4 may satisfy the requirements in § 122.26 (d)(1)(v) and (d)(2)(iv) (identification of a management program) by referring to the other MS4's storm water management program.

(4) *Guidance for paragraph (b)(3)* of this section. In referencing an MS4's storm water management program, the regulated small MS4 should briefly describe how the existing program will address discharges from the small MS4 or would need to be supplemented in order to adequately address the discharges. The regulated small MS4 should also explain its role in coordinating storm water pollutant control activities in the MS4, and detail the resources available to the MS4 to accomplish the program.

(c) If the regulated small MS4 is designated under § 122.32(a)(2), the operator of the MS4 must apply for coverage under an NPDES permit, or apply for a modification of an existing NPDES permit under paragraph (b)(3) of this section, within 180 days of notice, unless the NPDES permitting authority grants a later date.

■ 3. Revise § 122.34 to read as follows:

§ 122.34 Minimum permit requirements for regulated small MS4 permits.

(a) *General requirement for regulated small MS4 permits.* In each permit issued under this section, the Director must include permit conditions that establish in specific, clear, and measurable terms what is required to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. For the purposes of this section, effluent limitations may be expressed as requirements to implement best management practices (BMPs) with clear, specific, and measurable requirements, including, but not limited to, specific tasks, BMP design requirements, performance requirements or benchmarks, schedules for implementation and maintenance, and frequency of actions. For permits being issued to a small MS4 for the first time, the Director may specify a time period of up to 5 years from the date of permit issuance for the permittee to fully comply with the conditions of the permit and to implement necessary BMPs. Each successive permit must meet the requirements of this section based on current water quality conditions, record of BMP effectiveness, and other relevant information.

(b) *Minimum control measures.* The permit must include requirements that ensure the permittee implements, or continues to implement, the minimum control measures in paragraphs (b)(1) through (6) of this section during the permit term. The permit must also require a written storm water management program document or documents that, at a minimum, describe how the permittee intends to comply with the permit's requirements for each minimum control measure.

(1) *Public education and outreach on storm water impacts.* (i) The permit must require implementation of a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

(ii) *Guidance for permitting authorities and regulated small MS4s.* The permittee may use storm water educational materials provided by the State, Tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The public education program should inform individuals and households about the steps they can take to reduce storm water pollution, such as ensuring proper septic system maintenance, ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. EPA recommends that the program inform individuals and groups how to become involved in local stream and beach restoration activities as well as activities that are coordinated by youth service and conservation corps or other citizen groups. EPA recommends that the permit require the permittee to tailor the public education program, using a mix of locally appropriate strategies, to target specific audiences and communities. Examples of strategies include distributing brochures or fact sheets, sponsoring speaking engagements before community groups, providing public service announcements, implementing educational programs targeted at school age children, and conducting community-based projects such as storm drain stenciling, and watershed and beach cleanups. In addition, EPA recommends that the permit should require that some of the materials or outreach programs be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant storm water impacts. For example, providing information to restaurants on the impact of grease clogging storm drains and to garages on the impact of oil discharges. The permit should encourage the permittee to tailor the outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as any special concerns relating to children.

(2) *Public involvement/participation.* (i) The permit must require implementation of a public involvement/participation program that complies with State, Tribal, and local public notice requirements.

(ii) *Guidance for permitting authorities and regulated small MS4s.* EPA recommends that the permit

include provisions addressing the need for the public to be included in developing, implementing, and reviewing the storm water management program and that the public participation process should make efforts to reach out and engage all economic and ethnic groups. Opportunities for members of the public to participate in program development and implementation include serving as citizen representatives on a local storm water management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, or participating in volunteer monitoring efforts. (Citizens should obtain approval where necessary for lawful access to monitoring sites.)

(3) *Illicit discharge detection and elimination.* (i) The permit must require the development, implementation, and enforcement of a program to detect and eliminate illicit discharges (as defined at § 122.26(b)(2)) into the small MS4. At a minimum, the permit must require the permittee to:

(A) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls;

(B) To the extent allowable under State, Tribal or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into the storm sewer system and implement appropriate enforcement procedures and actions;

(C) Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to your system; and

(D) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

(ii) The permit must require the permittee to address the following categories of non-storm water discharges or flows (*i.e.,* illicit discharges) only if they are identified as significant contributors of pollutants to the small MS4: Water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(b)(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the United States).

(ii) *Guidance for permit writers and regulated small MS4s.* EPA recommends that the permit require the plan to detect and address illicit discharges include the following four components: Procedures for locating priority areas likely to have illicit discharges; procedures for tracing the source of an illicit discharge; procedures for removing the source of the discharge; and procedures for program evaluation and assessment. EPA recommends that the permit require the permittee to visually screen outfalls during dry weather and conduct field tests of selected pollutants as part of the procedures for locating priority areas. Illicit discharge education actions may include storm drain stenciling, a program to promote, publicize, and facilitate public reporting of illicit connections or discharges, and distribution of outreach materials.

(4) *Construction site storm water runoff control.* (i) The permit must require the permittee to develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the NPDES permitting authority waives requirements for storm water discharges associated with small construction activity in accordance with § 122.26(b)(15)(i), the permittee is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites. The permit must require the development and implementation of, at a minimum:

(A) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State, Tribal, or local law;

(B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(C) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(D) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(E) Procedures for receipt and consideration of information submitted by the public, and

(F) Procedures for site inspection and enforcement of control measures.

(ii) *Guidance for permit writers and regulated small MS4s.* Examples of sanctions to ensure compliance include non-monetary penalties, fines, bonding requirements and/or permit denials for non-compliance. EPA recommends that the procedures for site plan review include the review of individual pre-construction site plans to ensure consistency with local sediment and erosion control requirements. Procedures for site inspections and enforcement of control measures could include steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving water quality. EPA also recommends that the permit encourage the permittee to provide appropriate educational and training measures for construction site operators. The permit should also include a requirement for the permittee to require a storm water pollution prevention plan for construction sites within the MS4's jurisdiction that discharge into the system. See § 122.44(s) (NPDES permitting authorities' option to incorporate qualifying State, Tribal and local erosion and sediment control programs into NPDES permits for storm water discharges from construction sites). Also see § 122.35(b) (The NPDES permitting authority may recognize that another government entity, including the permitting authority, may be responsible for implementing one or more of the minimum measures on your behalf.)

(5) *Post-construction storm water management in new development and redevelopment.* (i) The permit must require the development, implementation, and enforcement of a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the small MS4. The permit must ensure that controls are in place that would prevent or minimize water quality

impacts. The permit must require the permittee to:

(A) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for the community;

(B) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal or local law; and

(C) Ensure adequate long-term operation and maintenance of BMPs.

(ii) *Guidance for permit writers and regulated small MS4s.* If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. EPA recommends that the permit ensure that BMPs chosen: Be appropriate for the local community; minimize water quality impacts; and attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, EPA encourages the permittee to participate in locally-based watershed planning efforts, which attempt to involve a diverse group of stakeholders including interested citizens. When developing a program that is consistent with this measure's intent, EPA recommends that the permit require the permittee to adopt a planning process that identifies the municipality's program goals (*e.g.,* minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation strategies (*e.g.,* adopt a combination of structural and/or non-structural BMPs), operation and maintenance policies and procedures, and enforcement procedures. In developing the program, the permit should also require the permittee to assess existing ordinances, policies, programs and studies that address potential impacts of storm water runoff to water quality. In addition to assessing these existing documents and programs, the permit should require the permittee to provide opportunities to the public to participate in the development of the program. Non-structural BMPs are preventative actions that involve management and source controls such as: Policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; education programs for developers and the public about project designs that minimize water quality impacts; and measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. Structural BMPs include: Storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. EPA recommends that the permit ensure the appropriate implementation of the structural BMPs by considering some or all of the following: Pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and maintenance of BMPs; and penalty provisions for the noncompliance with design, construction or operation and maintenance. Storm water technologies are constantly being improved, and EPA recommends that the permit requirements be responsive to these changes, developments or improvements in control technologies.

(6) *Pollution prevention/good housekeeping for municipal operations.* (i) The permit must require the development and implementation of an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, the State, Tribe, or other organizations, the program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

(ii) *Guidance for permit writers and regulated small MS4s.* EPA recommends that the permit address the following: Maintenance activities, maintenance schedules, and long-term inspection procedures for structural and non-structural storm water controls to reduce floatables and other pollutants discharged from the separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by the permittee, and waste transfer stations; procedures for properly disposing of waste removed from the separate storm sewers and areas listed (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways to ensure that new flood management projects assess the impacts on water quality and examine existing projects for incorporating additional water quality protection devices or practices. Operation and maintenance should be an integral component of all storm water management programs. This measure is intended to improve the efficiency of these programs and require new programs where necessary. Properly developed and implemented operation and maintenance programs reduce the risk of water quality problems.

(c) *Other applicable requirements.* (1) Any more stringent effluent limitations, including permit requirements that modify, or are in addition to, the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis that determines such limitations are needed to protect water quality.

(2) Other applicable NPDES permit requirements, standards and conditions established in the individual or general permit, developed consistent with the provisions of §§ 122.41 through 122.49, as appropriate.

(d) *Evaluation and assessment requirements.* The permit must require the permittee to:

(1) *Evaluation.* Evaluate permit compliance, the appropriateness of its identified best management practices, and progress towards achieving identified measurable goals.

Note to paragraph (d)(1): The NPDES permitting authority may determine monitoring requirements for the permittee in accordance with State/Tribal monitoring plans appropriate to the watershed. Participation in a group monitoring program is encouraged.

(2) *Recordkeeping.* Keep records required by the NPDES permit for at least 3 years, and to submit such records to the NPDES permitting authority when specifically asked to do so. The permit must require the permittee to make records, including a written description of the storm water management program, available to the public at reasonable times during regular business hours (see § 122.7 for confidentiality provision). (The permittee may assess a reasonable charge for copying. The permit may allow the permittee to require a member of the public to provide advance notice.)

(3) *Reporting.* Unless the permittee is relying on another entity to satisfy its NPDES permit obligations under § 122.35(a), the permit must require the permittee to submit annual reports to the NPDES permitting authority for the first permit term. For subsequent permit terms, the permit must require that permittee to submit reports in year two and four unless the NPDES permitting authority requires more frequent reports. The report must include:

(i) The status of compliance with permit conditions, an assessment of the appropriateness of the permittee's identified best management practices and progress towards achieving its identified measurable goals for each of the minimum control measures;

(ii) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(iii) A summary of the storm water activities the permittee plans to undertake during the next reporting cycle;

(iv) A change in any identified best management practices or measurable goals for any of the minimum control measures; and

(v) Notice that the permittee is relying on another governmental entity to satisfy some of the permit obligations (if applicable), consistent with § 122.35(a).

(e) *Qualifying local program.* If an existing qualifying local program requires the permittee to implement one or more of the minimum control measures of paragraph (b) of this section, the NPDES permitting authority may include conditions in the NPDES permit that direct the permittee to follow that qualifying program's requirements rather than the requirements of paragraph (b) of this section. A qualifying local program is a local, State or Tribal municipal stormwater management program that imposes the relevant requirements of paragraph (b) of this section.

■ 4. Amend § 122.35 by revising the second and third sentences of paragraph (a)(3) to read as follows:

§ 122.35 As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities.

(a) * * *

(3) * * * In the reports you must submit under § 122.34(d)(3), you must also specify that you rely on another entity to satisfy some of your permit obligations. If you are relying on another governmental entity regulated under section 122 to satisfy all of your permit obligations, including your obligation to file periodic reports required by § 122.34(d)(3), you must note that fact in your NOI, but you are not required to file the periodic reports.* * *

* * * * *

[FR Doc. 2015–33174 Filed 1–5–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R7–ES–2015–0167; FF07C00000 FXES11190700000 167F1611MD]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Alexander Archipelago Wolf as an Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Alexander Archipelago wolf (*Canis lupus ligoni*) as an endangered or threatened species and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). The petitioners provided three listing options for consideration by the Service: Listing the Alexander Archipelago wolf throughout its range; listing Prince of Wales Island (POW) as a significant portion of its range; or listing the population on Prince of Wales Island as a distinct population segment (DPS). After review of the best available scientific and commercial information, we find that listing the Alexander Archipelago wolf is not warranted at this time throughout all or a significant portion of its range, including POW. We also find that the Alexander Archipelago wolf population on POW does not not meet the criteria of the Service's DPS policy, and, therefore, it does not constitute a listable entity under the Act. We ask the public to submit to us any new information that becomes available concerning the threats to the Alexander Archipelago wolf or its habitat at any time.

DATES: The finding announced in this document was made on January 6, 2016.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R7–ES–2015–0167. Supporting documentation we used in preparing this finding will be available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Anchorage Fish and Wildlife Field Office, 4700 BLM Rd., Anchorage, AK 99507–2546. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Soch Lor, Field Supervisor, Anchorage Fish and Wildlife Field Office (see **ADDRESSES**); by telephone at 907–271–2787; or by facsimile at 907–271–2786. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

This finding is based upon the ''Status Assessment for the Alexander Archipelago Wolf (*Canis lupus ligoni*)'' (Service 2015, entire) (hereafter, Status Assessment) and the scientific analyses of available information prepared by Service biologists from the Anchorage Fish and Wildlife Field Office, the Alaska Regional Office, and the Headquarters Office. The Status Assessment contains the best scientific and commercial data available concerning the status of the Alexander Archipelago wolf, including the past, present, and future stressors. As such, the Status Assessment provides the scientific basis that informs our regulatory decision in this document, which involves the further application

of standards within the Act and its implementing regulations and policies.

Previous Federal Actions

On December 17, 1993, the Service received a petition, from the Biodiversity Legal Foundation, Eric Holle, and Martin Berghoffen, to list the Alexander Archipelago wolf as an endangered or threatened species under the Act. On May 20, 1994, we announced a 90-day finding that the petition presented substantial information indicating that the requested action may be warranted, and we initiated a status review of the Alexander Archipelago wolf and opened a public comment period until July 19, 1994 (59 FR 26476). On August 26, 1994, we reopened the comment period on the status review to accept comments until October 1, 1994 (59 FR 44122). The Service issued its 12-month finding that listing the Alexander Archipelago wolf was not warranted on February 23, 1995 (60 FR 10056).

On February 7, 1996, the Southwest Center for Biological Diversity, Biodiversity Legal Foundation, Save the West, Save America's Forests, Native Forest Network, Native Forest Council, Eric Holle, Martin Berghoffen, and Don Muller filed suit in the U.S. Court for the District of Columbia challenging the Service's not-warranted finding. On October 9, 1996, the U.S. District Court remanded the 12-month finding to the Secretary of the Interior, instructing him to reconsider the determination ''on the basis of the current forest plan, and status of the wolf and its habitat, as they stand today'' (96 CV 00227 DDC). The Court later agreed to the Service's proposal to issue a new finding on June 1, 1997. On December 5, 1996, we published a document announcing the continuation of the status review for the Alexander Archipelago wolf and opening a public comment period until January 21, 1997 (61 FR 64496). The comment period was then extended or reopened through three subsequent publications (61 FR 69065, December 31, 1996; 62 FR 6930, February 14, 1997; 62 FR 14662, March 27, 1997), until it closed on April 4, 1997.

Prior to the publication of a 12-month finding, however, the U.S. Forest Service (USFS) issued the 1997 Tongass Land and Resource Management Plan Revision, which superseded the 1979 version of the plan. In keeping with the U.S. District Court's order that a finding be based upon the ''current forest plan,'' the District Court granted us an extension until August 31, 1997, to issue our 12-month finding so that the petitioners, the public, and the Service could reconsider the status of the Alexander Archipelago wolf under the revised Tongass Land and Resource Management Plan. Therefore, the Service reopened the public comment period on the status review of the Alexander Archipelago wolf from June 12, 1997, to July 28, 1997 (62 FR 32070, June 12, 1997), and we then reevaluated all of the best available information on the Alexander Archipelago wolf, as well as long-term habitat projections for the Tongass National Forest included in the 1997 Tongass Land and Resource Management Plan Revision. On September 4, 1997, we published a 12-month finding that listing the Alexander Archipelago wolf was not warranted (62 FR 46709).

On August 10, 2011, we received a petition dated August 10, 2011, from the Center for Biological Diversity and Greenpeace, requesting that the Alexander Archipelago wolf be listed as an endangered or threatened species under the Act and critical habitat be designated. Included in the petition was supporting information regarding the subspecies' taxonomy and ecology, distribution, abundance and population trends, causes of mortality, and conservation status. The petitioners also requested that we consider: (1) Prince of Wales Island (POW) as a significant portion of the range of the Alexander Archipelago wolf; and (2) wolves on POW and nearby islands as a distinct population segment. We note here that a significant portion of the range is not a listable entity in and of itself, but instead provides an independent basis for listing and is part of our analysis to determine whether or not listing as an endangered or threatened species is warranted. We published the 90-day finding for the Alexander Archipelago wolf on March 31, 2014, stating that the petition presented substantial information indicating that listing may be warranted (79 FR 17993).

On June 20, 2014, the Center for Biological Diversity, Greenpeace, Inc., and The Boat Company (collectively, plaintiffs) filed a complaint against the Service for failure to complete a 12-month finding for the Alexander Archipelago wolf within the statutory timeframe. On September 22, 2014, the Service and the aforementioned plaintiffs entered into a stipulated settlement agreement stating that the Service shall review the status of the Alexander Archipelago wolf and submit to the **Federal Register** a 12-month finding as to whether listing as endangered or threatened is warranted, not warranted, or warranted but precluded by other pending proposals, on or before December 31, 2015. In Fiscal Year 2015, the Service initiated work on a 12-month finding for the Alexander Archipelago wolf.

On September 14, 2015, the Service received a petition to list on an emergency basis the Alexander Archipelago wolf as an endangered or threatened species under the Act. The petition for emergency listing was submitted by Alaska Wildlife Alliance, Cascadia Wildlands, Center for Biological Diversity, Greater Southeast Alaska Conservation Community, Greenpeace, and The Boat Company. The petitioners stated that harvest of the Alexander Archipelago wolf in Game Management Unit (GMU) 2, in light of an observed recent population decline, would put the population in danger of extinction. On September 28, 2015, the Service acknowledged receipt of the petition for emergency listing to each of the petitioners. In those letters, we indicated that we would continue to evaluate the status of the Alexander Archipelago wolf as part of the settlement agreement and that if at any point we determined that emergency listing was warranted, an emergency rule may be promptly developed.

This document constitutes the 12-month finding on the August 10, 2011, petition to list the Alexander Archipelago wolf as an endangered or threatened species. For additional information and a detailed discussion of the taxonomy, physical description, distribution, demography, and habitat of the Alexander Archipelago wolf, please see the Status Assessment for Alexander Archipelago Wolf (*Canis lupus ligoni*) (Service 2015, entire) available under Docket No. FWS–R7–ES–2015–0167 at *http://www.regulations.gov,* or from the Anchorage Fish and Wildlife Field Office (see **ADDRESSES**).

Current Taxonomy Description

Goldman (1937, pp. 39–40) was the first to propose the Alexander Archipelago wolf as a subspecies of the gray wolf. He described *C. l. ligoni* as a dark colored subspecies of medium size and short pelage (fur) that occupied the Alexander Archipelago and adjacent mainland of southeastern Alaska. Additional morphometric analyses supported the hypothesis that wolves in southeastern Alaska were phenotypically distinct from other gray wolves in Alaska (Pedersen 1982, pp. 345, 360), although results also indicated similarities with wolves that historically occupied coastal British Columbia, Vancouver Island, and perhaps the contiguous western United States (Nowak 1983, pp. 14–15; Friis 1985, p. 82). Collectively, these findings demonstrated that wolves in southeastern Alaska had a closer affinity

to wolves to the south compared to wolves to the north, suggesting that either *C. l. ligoni* was not confined to southeastern Alaska and its southern boundary should be extended southward (Friis 1985, p. 78) or that *C. l. ligoni* should be combined with *C. l. nubilus,* the subspecies that historically occupied the central and western United States (Nowak 1995, p. 396). We discuss these morphological studies and others in detail in the Status Assessment (Service 2015, ''Morphological analyses'').

More recently, several molecular ecology studies have been conducted on wolves in southeastern Alaska and coastal British Columbia, advancing our knowledge of wolf taxonomy beyond morphometric analyses. Generally, results of these genetic studies were similar, suggesting that coastal wolves in southeastern Alaska and coastal British Columbia are part of the same genetic lineage (Breed 2007, pp. 5, 27, 30; Weckworth *et al.* 2011, pp. 2, 5) and that they appear to be genetically differentiated from interior continental wolves (Weckworth *et al.* 2005, p. 924; Munoz-Fuentes *et al.* 2009, p. 9; Weckworth *et al.* 2010, p. 368; Cronin *et al.* 2015, pp. 1, 4–6). However, interpretation of the results differed with regard to subspecific designations; some authors concluded that the level of genetic differentiation between coastal and interior continental wolves constitutes a distinct coastal subspecies, *C. l. ligoni* (Weckworth *et al.* 2005, pp. 924, 927; Munoz-Fuentes *et al.* 2009, p. 12; Weckworth *et al.* 2010, p. 372; Weckworth *et al.* 2011, p. 6), while other authors asserted that it does not necessitate subspecies status (Cronin *et al.* 2015, p. 9). Therefore, the subspecific identity, if any, of wolves in southeastern Alaska and coastal British Columbia remained unresolved. As a cautionary note, the inference of these genetic studies depends on the type of genetic marker used and the spatial and temporal extent of the samples analyzed; we review these studies and their key findings as they relate to wolf taxonomy in detail in the Status Assessment (Service 2015, ''Genetic analyses'').

In the most recent meta-analysis of wolf taxonomy in North America, Chambers *et al.* (2012, pp. 40–42) found evidence for differentiating between coastal and inland wolves, although ultimately the authors grouped wolves in southeastern Alaska and coastal British Columbia with wolf populations that historically occupied the central and western United States (*C. l. nubilus*). One of their primary reasons for doing so was because coastal wolves harbored genetic material that also was found only in historical samples of *C. l. nubilus* (Chambers *et al.* 2012, p. 41), suggesting that prior to extirpation of wolves by humans in the western United States, *C. l. nubilus* extended northward into coastal British Columbia and southeastern Alaska. However, this study was conducted at a broad spatial scale with a focus on evaluating taxonomy of wolves in the eastern and northeastern United States and therefore was not aimed specifically at addressing the taxonomic status of coastal wolves in western North America. Further, Chambers *et al.* (2012, p. 41) recognized that understanding the phylogenetic relationship of coastal wolves to other wolf populations assigned as *C. l. nubilus* is greatly impeded by the extirpation of wolves (and the lack of historical specimens) in the western United States. Lastly, Chambers *et al.* (2012, p. 2) explicitly noted that their views on subspecific designations were not intended as recommendations for management units or objects of management actions, nor should they be preferred to alternative legal classifications for protection, such as those made under the Act. Instead, the authors stated that the suitability of a subspecies as a unit for legal purposes requires further, separate analysis weighing legal and policy considerations.

We acknowledge that the taxonomic status of wolves in southeastern Alaska and coastal British Columbia is unresolved and that our knowledge of wolf taxonomy in general is evolving as more sophisticated and powerful tools become available (Service 2015, ''Uncertainty in taxonomic status''). Nonetheless, based on our review of the best available information, we found persuasive evidence suggesting that wolves in southeastern Alaska and coastal British Columbia currently form an ecological and genetic unit worthy of analysis under the Act. Although zones of intergradation exist, contemporary gene flow between coastal and interior continental wolves appears to be low (*e.g.,* Weckworth *et al.* 2005, p. 923; Cronin *et al.* 2015, p. 8), likely due to physical barriers, but perhaps also related to ecological differences (Munoz-Fuentes *et al.* 2009, p. 6); moreover, coastal wolves currently represent a distinct portion of genetic diversity for all wolves in North America (Weckworth *et al.* 2010, p. 363; Weckworth *et al.* 2011, pp. 5–6). Thus, we conclude that at most, wolves in southeastern Alaska and coastal British Columbia are a distinct subspecies, *C. l. ligoni,* of gray wolf, and at least, are a remnant population of *C. l. nubilus.* For the purpose of this 12-month finding, we assume that the Alexander Archipelago wolf (*C. l. ligoni*) is a valid subspecies of gray wolf that occupies southeastern Alaska and coastal British Columbia and, therefore, is a listable entity under the Act.

Species Information

Physical Description

The Alexander Archipelago wolf has been described as being darker and smaller, with coarser and shorter hair, compared to interior continental gray wolves (Goldman 1937, pp. 39–40; Wood 1990, p. 1), although a comprehensive study or examination has not been completed. Like most gray wolves, fur coloration of Alexander Archipelago wolves varies considerably from pure white to uniform black, with most wolves having a brindled mix of gray or tan with brown, black, or white. Based on harvest records and wolf sightings, the black color phase appears to be more common on the mainland of southeastern Alaska and coastal British Columbia (20–30 percent) (Alaska Department of Fish and Game [ADFG] 2012, pp. 5, 18, 24; Darimont and Paquet 2000, p. 17) compared to the southern islands of the Alexander Archipelago (2 percent) (ADFG 2012, p. 34), and some of the gray-colored wolves have a brownish-red tinge (Darimont and Paquet 2000, p. 17). The variation in color phase of Alexander Archipelago wolves is consistent with the level of variation observed in other gray wolf populations (*e.g.,* Central Brooks Range, Alaska) (Adams *et al.* 2008, p. 170).

Alexander Archipelago wolves older than 6 months weigh between 49 and 115 pounds (22 and 52 kilograms), with males averaging 83 pounds (38 kilograms) and females averaging 69 pounds (31 kilograms) (British Columbia Ministry of Forests, Lands and Natural Resource Operations [BCMO] 2014, p. 3; Valkenburg 2015, p. 1). On some islands in the archipelago (*e.g.,* POW) wolves are smaller on average compared to those on the mainland, although these differences are not statistically significant (Valkenburg 2015, p. 1) (also see Service 2015, ''Physical description''). The range and mean weights of Alexander Archipelago wolves are comparable to those of other populations of gray wolves that feed primarily on deer (*Odocoileus* spp.; *e.g.,* northwestern Minnesota) (Mech and Paul 2008, p. 935), but are lower than those of adjacent gray wolf populations that regularly feed on larger ungulates

such as moose (*Alces americanus*) (*e.g.,* Adams *et al.* 2008, p. 8).

Distribution and Range

The Alexander Archipelago wolf currently occurs along the mainland of southeastern Alaska and coastal British Columbia and on several island complexes, which comprise more than 22,000 islands of varying size, west of the Coast Mountain Range. Wolves are found on all of the larger islands except Admiralty, Baranof, and Chichagof islands and all of the Haida Gwaii, or Queen Charlotte Islands (see Figure 1, below) (Person *et al.* 1996, p. 1; BCMO 2014, p. 14). The range of the Alexander Archipelago wolf is approximately 84,595 square miles (mi^2) (219,100 square kilometers [km^2]), stretching roughly 932 mi (1,500 km) in length and 155 mi (250 km) in width, although the northern, eastern, and southern boundaries are porous and are not defined sharply.

The majority (67 percent) of the range of the Alexander Archipelago wolf falls within coastal British Columbia, where wolves occupy all or portions of four management ''regions.'' These include Region 1 (entire), Region 2 (83 percent of entire region), Region 5 (22 percent of entire region), and Region 6 (17 percent of entire region) (see Figure 1, below). Thirty-three percent of the range of the Alexander Archipelago wolf lies within southeastern Alaska where it occurs in all of GMUs 1, 2, 3, and 5, but not GMU 4. See the Status Assessment (Service 2015, ''Geographic scope'') for a more detailed explanation on delineation of the range.

The historical range of the Alexander Archipelago wolf, since the late Pleistocene period when the last glacial ice sheets retreated, was similar to the current range with one minor exception. Between 1950 and 1970, wolves on Vancouver Island likely were extirpated by humans (Munoz-Fuentes *et al.* 2010, pp. 547–548; Chambers *et al.* 2012, p. 41); recolonization of the island by wolves from mainland British Columbia occurred naturally and wolves currently occupy Vancouver Island.

In southeastern Alaska and coastal British Columbia, the landscape is dominated by coniferous temperate rainforests, interspersed with other habitat types such as sphagnum bogs, sedge-dominated fens, alpine areas, and numerous lakes, rivers, and estuaries. The topography is rugged with numerous deep, glacially-carved fjords and several major river systems, some of which penetrate the Coast Mountain Range, connecting southeastern Alaska and coastal British Columbia with interior British Columbia and Yukon Territory. These corridors serve as intergradation zones of variable width with interior continental wolves; outside of them, glaciers and ice fields dominate the higher elevations, separating the coastal forests from the adjacent inland forest in continental Canada.

Within the range of the Alexander Archipelago wolf, land stewardship largely lies with State, provincial, and Federal governments. In southeastern Alaska, the majority (76 percent) of the land is located within the Tongass National Forest and is managed by the USFS. The National Park Service manages 12 percent of the land, most of which is within Glacier Bay National Park. The remainder of the land in southeastern Alaska is managed or owned by the State of Alaska (4 percent), Native Corporations (3 percent), and other types of ownership (*e.g.,* private, municipal, tribal reservation; 5 percent). In British Columbia (entire), most (94 percent) of the land and forest are owned by the Province of British Columbia (*i.e.,* Crown lands), 4 percent is privately owned, 1 percent is owned by the federal government, and the remaining 1 percent is owned by First Nations and others (British Columbia Ministry of Forests, Mines, and Lands 2010, p. 121).

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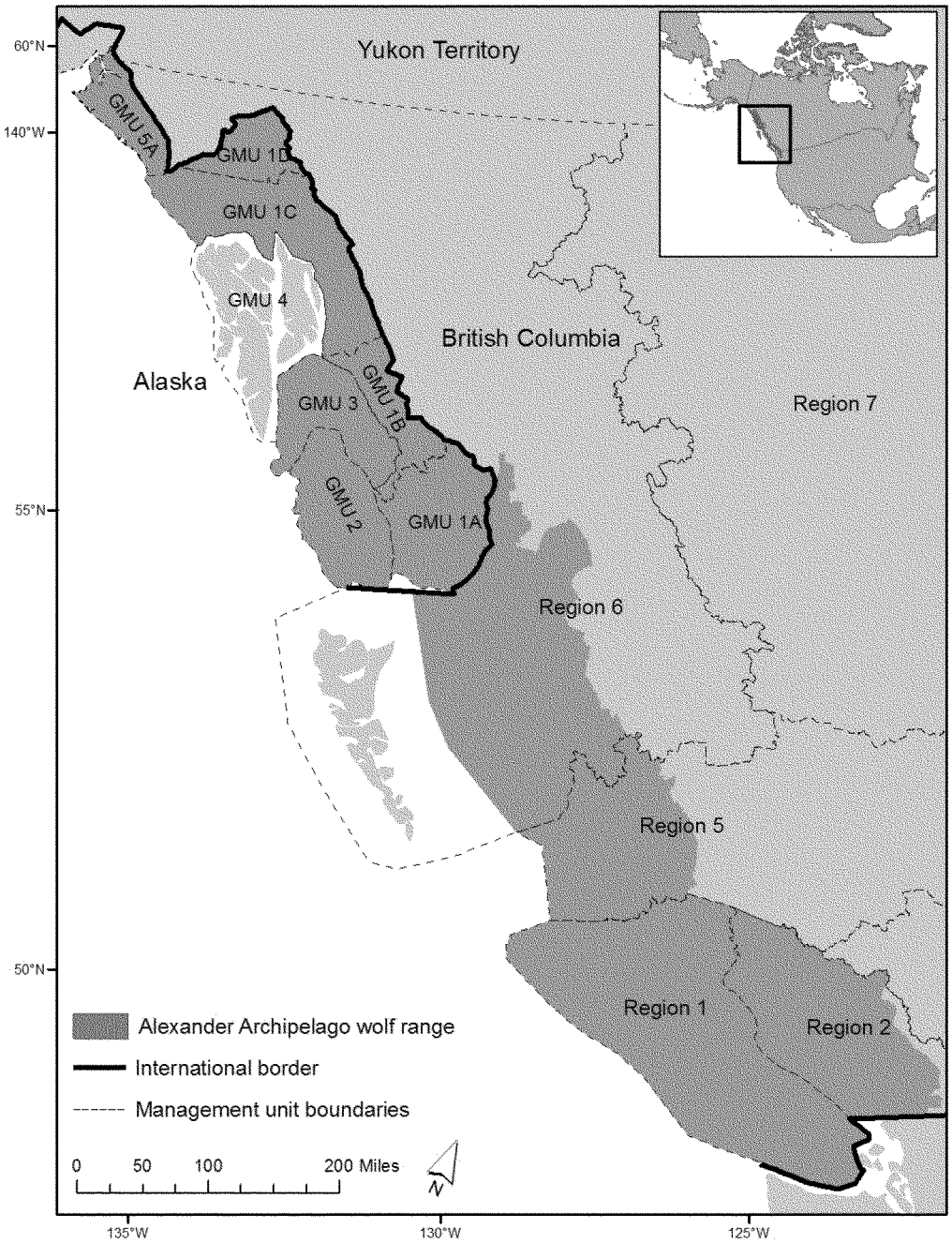

Figure 1. Assumed range of the Alexander Archipelago wolf with Game Management Unit (GMU) boundaries in southeastern Alaska, as used by the Alaska Department of Fish and Game, and Region boundaries in coastal British Columbia, as used by the Ministry of Forests, Lands, and Natural Resource Operations.

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Life History

In this section, we briefly describe vital rates and population dynamics, including population connectivity, of the Alexander Archipelago wolf. For this 12-month finding, we considered a population to be a collection of individuals of a species in a defined area; the individuals in a population may or may not breed with other groups of that species in other places (Mills 2013, p. 3). We delineated wolves into populations based on GMUs in southeastern Alaska and Regions in British Columbia (coastal portions only) because these are defined areas and wolf populations are managed at these spatial

scales (see Figure 1). For example, GMU 2 comprises one population of wolves on POW and adjacent islands.

Abundance and Trend

Using the most recent and best available information, we estimate a current, rangewide population of 850–2,700 Alexander Archipelago wolves. The majority (roughly 62 percent) occurs in coastal British Columbia with approximately 200–650 wolves in the southern portion (Regions 1 and 2; about 24 percent of rangewide population) and 300–1,050 wolves in the northern portion (Regions 5 and 6; about 38 percent of rangewide population) (see Figure 1). In southeastern Alaska, we estimate that currently the mainland (GMUs 1 and 5A) contains 150–450 wolves (about 18 percent of rangewide population), the islands in the middle portion of the area (GMU 3) contain 150–350 wolves (about 14 percent of rangewide population), and the southwestern set of islands (GMU 2) has 50–159 wolves (95 percent confidence intervals [CI], mean = 89 wolves; about 6 percent of rangewide population) (Person *et al.* 1996, p. 13; ADFG 2015a, p. 2). Our estimates are based on a variety of direct and indirect methods with the only empirical estimate available for GMU 2, which comprises POW and surrounding islands. See the Status Assessment (Service 2015, ''Abundance and density'') for details on derivation, assumptions, and caveats.

Similar to abundance, direct estimates of population trend of the Alexander Archipelago wolf are available only for GMU 2 in southeastern Alaska. In this GMU, fall population size has been estimated on four occasions (1994, 2003, 2013, and 2014). Between 1994 and 2014, the population was reduced from 356 wolves (95 percent CI = 148–564) (Person *et al.* 1996, pp. 11–12; ADFG 2014, pp. 2–4) to 89 wolves (95 percent CI = 50–159) (ADFG 2015a, pp. 1–2), equating to an apparent decline of 75 percent (standard error [SE] = 15), or 6.7 percent (SE = 2.8) annually. Although the numerical change in population size over the 20-year period is notable, the confidence intervals of the individual point estimates overlap. The most severe reduction occurred over a single year (2013–2014), when the population dropped by 60 percent and the proportion of females in the sample was reduced from 0.57 (SE = 0.13) to 0.25 (SE = 0.11) (ADFG 2015a, p. 2). In the remainder of southeastern Alaska, the trend of wolf populations is not known.

In British Columbia, regional estimates of wolf population abundance are generated regularly using indices of ungulate biomass, and, based on these data, the provincial wolf population as a whole has been stable or slightly increasing since 2000 (Kuzyk and Hatter 2014, p. 881). In Regions 1, 2, 5, and 6, where the Alexander Archipelago wolf occurs in all or a portion of each of these regions (see *Distribution and Range,* above), the same trend has been observed (BCMO 2015a, p. 1). Because estimates of population trend are not specific to the coastal portions of these regions only, we make the necessary scientific assumption that the trend reported for the entire region is reflective of the trend in the coastal portion of the region. This assumption applies only to Regions 5 and 6, where small portions (22 and 17 percent, respectively) of the region fall within the range of the Alexander Archipelago wolf; all of Region 1 and nearly all (83 percent) of Region 2 are within the range of the coastal wolf (see Figure 1). Thus, based on the best available information, we found that the wolf populations in coastal British Columbia have been stable or slightly increasing over the last 15 years. See the Status Assessment (Service 2015, ''Abundance and density'') for a more thorough description of data assumptions and caveats.

Reproduction and Survival

Similar to the gray wolf, sizes of litters of the Alexander Archipelago wolf can vary substantially (1–8 pups, mean = 4.1) with inexperienced breeding females producing fewer pups than older, more experienced mothers (Person and Russell 2009, p. 216). Although uncommon, some packs fail to exhibit denning behavior or produce litters in a given year, and no pack has been observed with multiple litters (Person and Russell 2009, p. 216). Age of first breeding of the Alexander Archipelago wolf is about 22 to 34 months (Person *et al.* 1996, p. 8).

We found only one study that estimated survival rates of Alexander Archipelago wolves. Based on radio-collared wolves in GMU 2 between 1994 and 2004, Person and Russell (2008, p. 1545) reported mean annual survival rate of wolves greater than 4 months old as 0.54 (SE = 0.17); survival did not differ between age classes or sexes, but was higher for resident wolves (0.65, SE = 0.17) compared to nonresidents (*i.e.,* wolves not associated with a pack; 0.34, SE = 0.17). Average annual rates of mortality attributed to legal harvest, unreported harvest, and natural mortality were 0.23 (SE = 0.12), 0.19 (SE = 0.11), and 0.04 (SE = 0.05), respectively, and these rates were correlated positively with roads and other landscape features that created openings in the forest (Person and Russell 2008, pp. 1545–1546).

In 2012, another study was initiated (and is ongoing) in GMU 2 that involves collaring wolves, but too few animals have been collared so far to estimate annual survival reliably (n = 12 wolves between 2012 and May 2015). Nonetheless, of those 12 animals, 5 died from legal harvest, 3 from unreported harvest, and 1 from natural causes; additionally, the fate of 2 wolves is unknown and 1 wolf is alive still (ADFG 2015b, p. 4). Thus, overall, harvest of Alexander Archipelago wolves by humans has accounted for most of the mortality of collared wolves in GMU 2. Our review of the best available information did not reveal any estimates of annual survival or mortality of wolves on other islands or the mainland of southeastern Alaska and coastal British Columbia.

Dispersal and Connectivity

Similar to gray wolves, Alexander Archipelago wolves either remain in their natal pack or disperse (Person *et al.* 1996, p. 10), here defined as permanent movement of an individual away from its pack of origin. Dispersers typically search for a new pack to join or associate with other wolves and ultimately form a new pack in vacant territories or in vacant areas adjacent to established territories. Dispersal can occur within or across populations; when it occurs across populations, then population connectivity is achieved. Both dispersal and connectivity contribute significantly to the health of individual populations as well as the taxon as a whole.

Dispersal rates of the Alexander Archipelago wolf are available only for GMU 2, where the annual rate of dispersal of radio-collared wolves was 39 percent (95 percent CI = 23 percent, n = 18) with adults greater than 2 years of age composing 79 percent of all dispersers (Person and Ingle 1995, p. 20). Minimum dispersal distances from the point of capture and radio-collaring ranged between 8 and 113 mi (13 and 182 km); all dispersing wolves remained in GMU 2 (Person and Ingle 1995, p. 23). Successful dispersal of individuals tends to be short in duration and distance in part because survival of dispersing wolves is low (annual survival rate = 0.16) (*e.g.,* Peterson *et al.* 1984, p. 29; Person and Russell 2008, p. 1547).

Owing to the rugged terrain and island geography across most of southeastern Alaska and coastal British Columbia, population connectivity probably is more limited for the

Alexander Archipelago wolf compared to the gray wolf that inhabits interior continental North America. Of the 67 Alexander Archipelago wolves radio-collared in GMU 2, none emigrated to a different GMU (Person and Ingle 1995, p. 23; ADFG 2015c, p. 2); similarly, none of the four wolves collared in northern southeastern Alaska (GMU 1C and 1D) attempted long-distance dispersal, although the home ranges of these wolves were comparatively large (ADFG 2015c, p. 2). Yet, of the three wolves opportunistically radio-collared on Kupreanof Island (GMU 3), one dispersed to Revillagigedo Island (GMU 1A) (USFS 2015, p. 1), an event that required at least four water crossings with the shortest being about 1.2 mi (2.0 km) in length (see Figure 1). Thus, based on movements of radio-collared wolves, demographic connectivity appears to be more restricted for some populations than others; however, few data exist outside of GMU 2, where the lack of emigration is well documented but little is known about the rate of immigration.

Likewise, we found evidence suggesting that varying degrees of genetic connectivity exist across populations of the Alexander Archipelago wolf, indicating that some populations are more insular than others. Generally, of the populations sampled, gene flow was most restricted to and from the GMU 2 wolf population (Weckworth *et al.* 2005, p. 923; Breed 2007, p. 19; Cronin *et al.* 2015, Supplemental Table 3), although this population does not appear to be completely isolated. Breed (2007, pp. 22–23) classified most wolves in northern coastal British Columbia (Regions 5 and 6) as residents and more than half of the wolves in the southern portion of southeastern Alaska (GMUs 1A and 2) as migrants of mixed ancestry. Further, the frequency of private alleles (based on nuclear DNA) in the GMU 2 wolf population is low relative to other Alexander Archipelago wolves (Weckworth *et al.* 2005, p. 921; Breed 2007, p. 18), and the population does not harbor unique haplotypes (based on mitochondrial DNA), both of which suggest that complete isolation has not occurred. Thus, although some genetic discontinuities of Alexander Archipelago wolves is evident, likely due to geographical disruptions to dispersal and gene flow, genetic connectivity among populations seems to be intact, albeit at low levels for some populations (*e.g.,* GMU 2). The scope of inference of these genetic studies depends on the type of genetic marker used and the spatial and temporal extent of the samples analyzed; we review key aspects of these studies in more detail in the Status Assessment (Service 2015, ''Genetic analyses,'' ''Genetic connectivity'').

Collectively, the best available information suggests that demographic and genetic connectivity among Alexander Archipelago wolf populations exists, but at low levels for some populations such as that of GMU 2, likely due to geographical disruptions to dispersal and gene flow. Based on the range of samples used by Breed (2007, pp. 21–23), gene flow to GMU 2 appears to be uni-directional, which is consistent with the movement data from wolves radio-collared in GMU 2 that demonstrated no emigration from that population (ADFG 2015c, p. 2). These findings, coupled with the trend of the GMU 2 wolf population (see ''Abundance and Trend,'' above), suggest that this population may serve as a sink population of the Alexander Archipelago wolf; conversely, the northern coastal British Columbian population may be a source population to southern southeastern Alaska, as suggested by Breed (2007, p. 34). This hypothesis is supported further with genetic information indicating a low frequency of private alleles and no unique haplotypes in the wolves occupying GMU 2. Nonetheless, we recognize that persistence of this population may be dependent on the health of adjacent populations (*e.g.,* GMU 3), but conclude that its demographic and genetic contribution to the rangewide population likely is lower than other populations such as those in coastal British Columbia.

Ecology

In this section, we briefly describe the ecology, including food habits, social organization, and space and habitat use, of the Alexander Archipelago wolf. Again, we review each of these topics in more detail in the Status Assessment (Service 2015, entire).

Food Habits

Similar to gray wolves, Alexander Archipelago wolves are opportunistic predators that eat a variety of prey species, although ungulates compose most of their overall diet. Based on scat and stable isotope analyses, black-tailed deer (*Odocoileus hemionus*), moose, mountain goat (*Oreamnos americanus*), and elk (*Cervus* spp.), either individually or in combination, constitute at least half of the wolf diet across southeastern Alaska and coastal British Columbia (Fox and Streveler 1986, pp. 192–193; Smith *et al.* 1987, pp. 9–11, 16; Milne *et al.* 1989, pp. 83–85; Kohira and Rexstad 1997, pp. 429–430; Szepanski *et al.* 1999, p. 331; Darimont *et al.* 2004, p. 1871; Darimont *et al.* 2009, p. 130; Lafferty *et al.* 2014, p. 145). Other prey species regularly consumed, depending on availability, include American beaver (*Castor canadensis*), hoary marmot (*Marmota caligata*), mustelid species (*Mustelidae* spp.), salmon (*Oncorhynchus* spp.), and marine mammals (summarized more fully in the Status Assessment, Service 2015, ''Food habits'').

Prey composition in the diet of the Alexander Archipelago wolf varies across space and time, usually reflecting availability on the landscape, especially for ungulate species that are not uniformly distributed across the islands and mainland. For instance, mountain goats are restricted to the mainland and Revillagigedo Island (introduced). Similarly, moose occur along the mainland and nearby islands as well as most of the islands in GMU 3 (*e.g.,* Kuiu, Kupreanof, Mitkof, and Zarembo islands); moose distribution is expanding in southeastern Alaska and coastal British Columbia (Darimont *et al.* 2005, p. 235; Hundertmark *et al.* 2006, p. 331). Elk also occur only on some islands in southeastern Alaska (*e.g.,* Etolin Island) and on Vancouver Island. Deer are the only ungulate distributed throughout the range of the Alexander Archipelago wolf, although abundance varies greatly with snow conditions. Generally, deer are abundant in southern coastal British Columbia, where the climate is mild, with their numbers decreasing northward along the mainland due to increasing snow depths, although they typically occur in high densities on islands such as POW, where persistent and deep snow accumulation is less common.

Owing to the disparate patterns of ungulate distribution and abundance, some Alexander Archipelago wolf populations have a more restricted diet than others. For example, in GMU 2, deer is the only ungulate species available to wolves, but elsewhere moose, mountain goat, elk, or a combination of these ungulates are available. Szepanski *et al.* (1999, pp. 330–331) demonstrated that deer and salmon contributed equally to the diet of wolves on POW (GMU 2), Kupreanof Island (GMU 3), and the mainland (GMUs 1A and 1B) (deer = 45–49 percent and salmon = 15–20 percent), and that ''other herbivores'' composed the remainder of the diet (34–36 percent). On POW, ''other herbivores'' included only beaver and voles (*Microtus* spp.), but on Kupreanof Island, moose also was included, and on the mainland, mountain goat was added

to the other two herbivore prey species. Therefore, we hypothesize that wolves in GMU 2, and to a lesser extent in parts of GMU 3, are more vulnerable to changes in deer abundance compared to other wolf populations that have a more diverse ungulate prey base available to them.

Given the differences in prey availability throughout the range of the Alexander Archipelago wolf, some general patterns in their food habits exist. On the northern mainland of southeastern Alaska, where deer occur in low densities, wolves primarily eat moose and mountain goat (Fox and Streveler 1986, pp. 192–193; Lafferty *et al.* 2014, p. 145). As one moves farther south and deer become more abundant, they are increasingly represented in the diet, along with correspondingly smaller proportions of moose and mountain goat where available (Szepanski *et al.* 1999, p. 331; Darimont *et al.* 2004, p. 1869). On the outer islands of coastal British Columbia, marine mammals compose a larger portion of the diet compared to other parts of the range of the Alexander Archipelago wolf (Darimont *et al.* 2009, p. 130); salmon appear to be eaten regularly by coastal wolves in low proportions (less than 20 percent), although some variation among populations exists. Generally, the diet of wolves in coastal British Columbia appears to be more diverse than in southeastern Alaska (*e.g.,* Kohira and Rexstad 1997, pp. 429–430; Darimont *et al.* 2004, pp. 1869, 1871), consistent with a more diverse prey base in the southern portion of the range of the Alexander Archipelago wolf. We review these diet studies and others in the Status Assessment (Service 2015, ''Food habits'').

One of the apparently unusual aspects of the Alexander Archipelago wolf diet is consumption of marine-derived foods. However, we found evidence suggesting that this behavior is not uncommon for gray wolves in coastal areas or those that have inland access to marine prey (*e.g.,* spawning salmon). For example, wolves on the Alaska Peninsula in western Alaska have been observed catching and eating sea otters (*Enhydra lutris*), using offshore winter sea ice as a hunting platform and feeding on marine mammal carcasses such as Pacific walrus (*Odobenus rosmarus divergens*) and beluga whale (*Delphinapterus leucas*) (Watts *et al.* 2010, pp. 146–147). In addition, Adams *et al.* (2010, p. 251) found that inland wolves in Denali National Park, Alaska, ate salmon in slightly lower but similar quantities (3–17 percent of lifetime diet) compared to Alexander Archipelago wolves (15–20 percent of lifetime diet; Szepanski *et al.* 1999, p. 327). These findings and others suggest that marine-derived resources are not a distinct component of the diet of the Alexander Archipelago wolf. Nonetheless, marine prey provide alternate food resources to coastal wolves during periods of the year with high food and energy demands (*e.g.,* provisioning of pups when salmon are spawning; Darimont *et al.* 2008, pp. 5, 7–8) and when and where abundance of terrestrial prey is low.

Social Organization

Wolves are social animals that live in packs usually composed of one breeding pair (*i.e.,* alpha male and female) plus offspring of 1 to 2 years old. The pack is a year-round unit, although all members of a wolf pack rarely are observed together except during winter (Person *et al.* 1996, p. 7). Loss of alpha members of a pack can result in social disruption and unstable pack dynamics, which are complex and shift frequently as individuals age and gain dominance, disperse from, establish or join existing packs, breed, and die (Mech 1999, pp. 1197–1202). Although loss of breeding individuals impacts social stability within the pack, at the population level wolves appear to be resilient enough to compensate for any negative impacts to population growth (Borg *et al.* 2015, p. 183).

Pack sizes of the Alexander Archipelago wolf are difficult to estimate owing to the heavy vegetative cover throughout most of its range. In southeastern Alaska, packs range from one to 16 wolves, but usually average 7 to 9 wolves with larger packs observed in fall than in spring (Smith *et al.* 1987, pp. 4–7; Person *et al.* 1996, p. 7; ADFG 2015c, p. 2). Our review of the best available information did not reveal information on pack sizes from coastal British Columbia.

Space and Habitat Use

Similar to gray wolves in North America, the Alexander Archipelago wolf uses a variety of habitat types and is considered a habitat generalist (Person and Ingle 1995, p. 30; Mech and Boitani 2003, p. xv). Person (2001, pp. 62–63) reported that radiocollared Alexander Archipelago wolves spent most of their time at low elevation during all seasons (95 percent of locations were below 1,312 feet [ft] [400 m] in elevation), but did not select for or against any habitat types except during the pup-rearing season. During the pup-rearing season, radiocollared wolves selected for open- and closed-canopy old-growth forests close to lakes and streams and avoided clearcuts and roads (Person 2001, p. 62), a selection pattern that is consistent with den site characteristics.

Alexander Archipelago wolves den in root wads of large living or dead trees in low-elevation, old-growth forests near freshwater and away from logged stands and roads, when possible (Darimont and Paquet 2000, pp. 17–18; Person and Russell 2009, pp. 211, 217, 220). Of 25 wolf dens monitored in GMU 2, the majority (67 percent) were located adjacent to ponds or streams with active beaver colonies (Person and Russell 2009, p. 216). Although active dens have been located near clearcuts and roads, researchers postulate that those dens probably were used because suitable alternatives were not available (Person and Russell 2009, p. 220).

Home range sizes of Alexander Archipelago wolves are variable depending on season and geographic location. Generally, home ranges are about 50 percent smaller during denning and pup-rearing periods compared to other times of year (Person 2001, p. 55), and are roughly four times larger on the mainland compared to the islands in southeastern Alaska (ADFG 2015c, p. 2). Person (2001, pp. 66, 84) found correlations between home range size, pack size, and the proportion of ''critical winter deer habitat''; he thought that the relation between these three factors was indicative of a longer-term influence of habitat on deer density. We review space and habitat use of Alexander Archipelago wolf and Sitka black-tailed deer, the primary prey item consumed by wolves throughout most of their range, in detail in the Status Assessment (Service 2015, ''Space and habitat use'').

Summary of Species Information

In summary, we find that the Alexander Archipelago wolf currently is distributed throughout most of southeastern Alaska and coastal British Columbia with a rangewide population estimate of 850–2,700 wolves. The majority of the range (67 percent) and the rangewide population (approximately 62 percent) occur in coastal British Columbia, where the population is stable or increasing. In southeastern Alaska, we found trend information only for the GMU 2 population (approximately 6 percent of the rangewide population) that indicates a decline of about 75 (SE = 15) percent since 1994, although variation around the point estimates (n = 4) was substantial. This apparent decline is consistent with low estimates of annual survival of wolves in GMU 2, with the primary source of mortality being harvest by humans. For the remainder of

southeastern Alaska (about 32 percent of the rangewide population), trends of wolf populations are not known.

Similar to the continental gray wolf, the Alexander Archipelago wolf has several life-history and ecological traits that contribute to its resiliency, or its ability to withstand stochastic disturbance events. These traits include high reproductive potential, ability to disperse long distances (over 100 km), use of a variety of habitats, and a diverse diet including terrestrial and marine prey. However, some of these traits are affected by the island geography and rugged terrain of most of southeastern Alaska and coastal British Columbia. Most notably, we found that demographic and genetic connectivity of some populations, specifically the GMU 2 population, is low, probably due to geographical disruptions to dispersal and gene flow. In addition, not all prey species occur throughout the range of the Alexander Archipelago wolf, and, therefore, some populations have a more limited diet than others despite the opportunistic food habits of wolves. Specifically, the GMU 2 wolf population is vulnerable to fluctuations in abundance of deer, the only ungulate species that occupies the area. We postulate that the insularity of this population, coupled with its reliance on one ungulate prey species, likely has contributed to its apparent recent decline, suggesting that, under current conditions, the traits associated with resiliency may not be sufficient for population stability in GMU 2.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to the Alexander Archipelago wolf in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat; we then attempt to determine if that factor rises to the level of a threat, meaning that it may drive or contribute to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate, however; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of an endangered or threatened species under the Act.

In making our 12-month finding on the petition we considered and evaluated the best available scientific and commercial information.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Alexander Archipelago wolf uses a variety of habitats and, like other gray wolves, is considered to be a habitat generalist. Further, it is an opportunistic predator that eats ungulates, rodents, mustelids, fish, and marine mammals, typically killing live prey, but also feeding on carrion if fresh meat is not available or circumstances are desirable (*e.g.,* large whale carcass). For these reasons and others (*e.g.,* dispersal capability), we found that wolf populations often are resilient to changes in their habitat and prey. Nonetheless, we also recognize that the Alexander Archipelago wolf inhabits a distinct ecosystem, partially composed of island complexes, that may restrict wolf movement and prey availability of some populations, thereby increasing their vulnerability to changes in habitat.

In this section, we review stressors to terrestrial and intertidal habitats used by the Alexander Archipelago wolf and its primary prey, specifically deer. We identified timber harvest as the principal stressor modifying wolf and deer habitat in southeastern Alaska and coastal British Columbia, and, therefore, we focus our assessment on this stressor by evaluating possible direct and indirect impacts to the wolf at the population and rangewide levels. We also consider possible effects of road development, oil development, and climate-related events on wolf habitat. We describe the information presented here in more detail in the Status Assessment (Service 2015, ''Cause and effect analysis'').

Timber Harvest

Throughout most of the range of the Alexander Archipelago wolf, timber harvest has altered forested habitats, especially those at low elevations, that are used by wolves and their prey. Rangewide, we estimate that 19 percent of the productive old-growth forest has been logged, although it has not occurred uniformly across the landscape or over time. A higher percentage of productive old-growth forest has been logged in coastal British Columbia (24 percent) compared to southeastern Alaska (13 percent), although in both areas, most of the harvest has occurred since 1975 (85 percent and 66 percent, respectively). Within coastal British Columbia, the majority of harvest (66 percent of total harvest) has happened in Region 1, where 34 percent of the forest has been logged; in the coastal portions of Regions 2, 5, and 6, timber harvest has been comparatively lower, ranging from 12 to 17 percent of the productive forest in these regions. Similarly, in southeastern Alaska, logging has occurred disproportionately in GMU 2, where 23 percent of the forest has been logged (47 percent of all timber harvest in southeastern Alaska); in other GMUs, only 6 to 14 percent of the forest has been harvested. We discuss spatial and temporal patterns of timber harvest in more detail in the Status Assessment (Service 2015, ''Timber harvest'').

Owing to past timber harvest in southeastern Alaska and coastal British Columbia, portions of the landscape currently are undergoing succession and will continue to do so. Depending on site-specific conditions, it can take up to several hundred years for harvested stands to regain old-growth forest characteristics fully (Alaback 1982, p. 1939). During the intervening period, these young-growth stands undergo several successional stages that are relevant to herbivores such as deer. Briefly, for 10 to 15 years following clearcut logging, shrub and herb biomass production increases (Alaback 1982, p. 1941), providing short-term benefits to herbivores such as deer, which select for these stands under certain conditions (*e.g.,* Gilbert 2015, p.

129). After 25 to 35 years, early seral stage plants give way to young-growth coniferous trees, and their canopies begin to close, intercepting sunlight and eliminating most understory vegetation. These young-growth stands offer little nutritional browse for deer and therefore tend to be selected against by deer (*e.g.,* Gilbert 2015, pp. 129–130); this stage typically lasts for at least 50 to 60 years, at which point the understory layer begins to develop again (Alaback 1982, pp. 1938–1939). An understory of deciduous shrubs and herbs, similar to pre-harvest conditions, is re-established 140 to 160 years after harvest. Alternative young-growth treatments (*e.g.,* thinning, pruning) are used to stimulate understory growth, but they often are applied at small spatial scales, and their efficacy in terms of deer use is unknown; regardless, to date, over 232 mi^2 (600 km^2) of young-growth has been treated in southeastern Alaska (summarized in Service 2015, ''Timber harvest'').

We expect timber harvesting to continue to occur throughout the range of the Alexander Archipelago wolf, although given current and predicted market conditions, the rate of future harvest is difficult to project. In southeastern Alaska, primarily in GMUs 2 and 3, some timber has been sold by the USFS already, but has not yet been cut. In addition, new timber sales currently are being planned for sale between 2015 and 2019, and most of this timber is expected to be sourced from GMUs 2 and 3; however, based on recent sales, it is unlikely that the planned harvest will be implemented fully due to lack of bidders. Also, we anticipate at least partial harvest of approximately 277 km^2 of land in GMU 2 that was transferred recently from the Tongass National Forest to Sealaska Native Corporation. In coastal British Columbia, we estimate that an additional 17 percent of forest will be harvested by 2100 on Vancouver Island (Region 1) and an additional 39 percent on the mainland of coastal British Columbia; however, some of this timber volume would be harvested from old young-growth stands. See the Status Assessment for more details (Service 2015, ''Future timber harvest'').

Since 2013, the USFS has been developing a plan to transition timber harvest away from primarily logging old-growth and toward logging young-growth stands, although small amounts of old-growth likely will continue to be logged. An amendment to the current Tongass Land and Resource Management Plan is underway and is expected to be completed by the end of 2016. Although this transition is expected to reduce further modification of habitat used by wolves and deer, the amendment that outlines the transition is still in the planning phase.

Potential Effects of Timber Harvest

After reviewing the best available information, we determined that the only potential direct effect from timber harvest to Alexander Archipelago wolves is the modification of and disturbance at den sites. Although coastal wolves avoided using den sites located in or near logged stands, other landscape features such as gentle slope, low elevation, and proximity to freshwater had greater influence on den site use (Person and Russell 2009, pp. 217–219). Further, our review of the best available information did not indicate that denning near logged stands had fitness consequences to individual wolves or that wolf packs inhabiting territories with intensive timber harvest were less likely to breed due to reduced availability of denning habitat. Therefore, we conclude that modification of and disturbance at den sites as a result of timber harvest does not constitute a threat to the Alexander Archipelago wolf at the population or rangewide level.

We then examined reduction in prey availability, specifically deer, as a potential indirect effect of timber harvest to the Alexander Archipelago wolf. Because deer selectively use habitats that minimize accumulation of deep snow in winter, including productive old-growth forest (*e.g.,* Schoen and Kirchhoff, 1990, p. 374; Doerr *et al.* 2005, p. 322; Gilbert 2015, p. 129), populations of deer in areas of intensive timber harvest are expected to decline in the future as a result of long-term reduction in the carrying capacity of their winter habitat (*e.g.,* Person 2001, p. 79; Gilbert *et al.* 2015, pp. 18–19). However, we found that most populations of Alexander Archipelago wolf likely will be resilient to predicted declines in deer abundance largely owing to their ability to feed on alternate ungulate prey species and non-ungulate species, including those that occur in intertidal and marine habitats (greater than 15 percent of the diet; see ''Food Habits,'' above) (Szepanski *et al.* 1999, p. 331; Darimont *et al.* 2004, p. 1871, Darimont *et al.* 2009, p. 130). Moreover, in our review of the best available information, we found nothing to suggest that these intertidal and marine species, non-ungulate prey, and other ungulate species within the range of the Alexander Archipelago wolf (*i.e.,* moose, goat, elk) are affected significantly by timber harvest (Service 2015, ''Response of wolves to timber harvest''). Therefore, we focus the remainder of this section on predicted response of wolves to reduction in deer numbers as a result of timber harvest and availability of alternate ungulate prey.

In coastal British Columbia, where a greater proportion of productive old-growth forest has been harvested compared to southeastern Alaska, deer populations are stable (Regions 1, 2, and 5) or decreasing (Region 6) (BCMO 2015b, p. 1). Yet, corresponding wolf populations at the regional scale are stable or slightly increasing (Kuzyk and Hatter 2014, p. 881; BCMO 2015a, p. 1). We attribute the stability in wolf numbers, in part, to the availability of other ungulate species, specifically moose, mountain goat, and elk (Region 1 only), which primarily have stable populations and do not use habitats affected by timber harvest. Therefore, we presume that these wolf populations have adequate prey available and are not being affected significantly by changes in deer abundance as a result of timber harvest.

Similarly, throughout most of southeastern Alaska, wolves have access to multiple ungulate prey species in addition to deer. Along the mainland (GMUs 1 and 5A), where deer densities are low naturally, moose and mountain goats are available, and, in GMU 3, moose occur on all of the larger islands and elk inhabit Etolin and Zarembo islands. Also, although we expect deer abundance in these GMUs to be lower in the future, deer will continue to be available to wolves; between 1954 and 2002, deer habitat capability was reduced by only 15 percent in parts of GMU 1 and by 13 to 23 percent in GMU 3 (Albert and Schoen 2007, p. 16). Thus, although we lack estimates of trend in these wolf populations, we postulate that they have sufficient prey to maintain stable populations and are not being impacted by timber harvest.

Only one Alexander Archipelago wolf population, the GMU 2 population, relies solely on deer as an ungulate prey species and therefore it is more vulnerable to declines in deer numbers compared to all other populations. Additionally, timber harvest has occurred disproportionately in this area, more so than anywhere else in the range of the wolf except Vancouver Island (where the wolf population is stable). As a result, in GMU 2, deer are projected to decline by approximately 21 to 33 percent over the next 30 years, and, correspondingly, the wolf population is predicted to decline by an average of 8 to 14 percent (Gilbert *et al.* 2015, pp. 19, 43). Further, the GMU 2 wolf population already has been reduced by about 75

percent since 1994, although most of the apparent decline occurred over a 1-year period between 2013 and 2014 (see ''Abundance and Trend,'' above), suggesting that the cause of the decline was not specifically long-term reduction in deer carrying capacity, although it probably was a contributor. These findings indicate that for this wolf population, availability of non-ungulate prey does not appear to be able to compensate for declining deer populations, especially given other present stressors such as wolf harvest (see discussion under *Factor B*). Therefore, we conclude that timber harvest is affecting the GMU 2 wolf population by reducing its ungulate prey and likely will continue to do so in the future.

In reviewing the best available information, we conclude that indirect effects from timber harvest likely are not having and will not have a significant effect on the Alexander Archipelago wolf at the rangewide level. Although timber harvest has reduced deer carrying capacity, which in turn is expected to cause declines in deer populations, wolves are opportunistic predators, feeding on a variety of prey species, including intertidal and marine species that are not impacted by timber harvest. In addition, the majority (about 94 percent) of the rangewide wolf population has access to ungulate prey species other than deer. Further, currently the wolf populations in coastal British Columbia, which constitute 62 percent of the rangewide population, are stable or slightly increasing despite intensive and extensive timber harvest.

However, we also conclude that the GMU 2 wolf population likely is being affected and will continue to be affected by timber harvest, but that any effects will be restricted to the population level. This wolf population represents only 6 percent of the rangewide population, is largely insular and geographically peripheral to other populations, and appears to function as a sink population (see ''Abundance and Trend'' and ''Dispersal and Connectivity,'' above). For these reasons, we find that the demographic and genetic contributions of the GMU 2 wolf population to the rangewide population are low. Thus, although we expect deer and wolf populations to decline in GMU 2, in part as a result of timber harvest, we find that these declines will not result in a rangewide impact to the Alexander Archipelago wolf population.

Road Development

Road development has modified the landscape throughout the range of the Alexander Archipelago wolf. Most roads were constructed to support the timber industry, although some roads were built as a result of urbanization, especially in southern coastal British Columbia. Below, we briefly describe the existing road systems in southeastern Alaska and coastal British Columbia using all types of roads (*e.g.,* sealed, unsealed) that are accessible with any motorized vehicle (*e.g.,* passenger vehicle, all-terrain vehicle). See the Status Assessment for a more detailed description (Service 2015, ''Road construction and management'').

Across the range of the Alexander Archipelago wolf, the majority (86 percent) of roads are located in coastal British Columbia (approximately 41,943 mi [67,500 km] of roads), where mean road density is 0.76 mi per mi^2 (0.47 km per km^2), although road densities are notably lower in the northern part of the province (Regions 5 and 6, mean = 0.21–0.48 mi per km^2 [0.13–0.30 km per km^2]) compared to the southern part (Regions 1 and 2, mean = 0.85–0.89 mi per mi^2 [0.53–0.55 km per km^2]), largely owing to the urban areas of Vancouver and Victoria. In southeastern Alaska, nearly 6,835 mi [11,000 km] of roads exist within the range of the Alexander Archipelago wolf, resulting in a mean density of 0.37 mi per mi^2 (0.23 km per km^2). Most of these roads are located in GMU 2, where the mean road density is 1.00 mi per mi^2 (0.62 km per km^2), more than double that in all other GMUs, where the mean density ranges from 0.06 mi per mi^2 (0.04 km per km^2) (GMU 5A) to 0.42 mi per mi^2 (0.26 km per km^2) (GMU 3). Thus, most of the roads within the range of the Alexander Archipelago wolf are located in coastal British Columbia, especially in Regions 1 and 2, but the highest mean road density occurs in GMU 2 in southeastern Alaska, which is consistent with the high percentage of timber harvest in this area (see ''Timber Harvest,'' above). In addition, we anticipate that most future road development also will occur in GMU 2 (46 mi [74 km] of new road), with smaller additions to GMUs 1 and 3 (Service 2015, ''Road construction and management'').

Given that the Alexander Archipelago wolf is a habitat generalist, we find that destruction and modification of habitat due to road development likely is not affecting wolves at the population or rangewide level. In fact, wolves occasionally use roads as travel corridors between habitat patches (Person *et al.* 1996, p. 22). As reviewed above in ''Timber Harvest,'' we recognize that wolves used den sites located farther from roads compared to unused sites; however, other landscape features were more influential in den site selection, and proximity to roads did not appear to affect reproductive success or pup survival, which is thought to be high (Person *et al.* 1996, p. 9; Person and Russell 2009, pp. 217–219). Therefore, we conclude that roads are not a threat to the habitats used by the Alexander Archipelago wolf, although we address the access that they afford to hunters and trappers as a potential threat to some wolf populations under *Factor B*.

Oil and Gas Development

We reviewed potential loss of habitat due to oil and gas development as a stressor to the Alexander Archipelago wolf. We found no existing oil and gas projects within the range of the coastal wolf, although two small-scale exploration projects occurred in Regions 1 and 2 of coastal British Columbia, but neither project resulted in development. In addition, we considered a proposed oil pipeline project (*i.e.,* Northern Gateway Project) intended to transport oil from Alberta to the central coast of British Columbia, covering about 746 mi (1,200 km) in distance. If the proposed project was approved and implemented, risk of oil spills on land and on the coast within the range of the Alexander Archipelago wolf would exist. However, given its diverse diet, terrestrial habitat use, and dispersal capability, we conclude that wolf populations would not be affected by the pipeline project even if an oil spill occurred because exposure would be low. Further, oil development occurs in portions of the range of the gray wolf (*e.g.,* Trans Alaska Pipeline System) and is not thought to be impacting wolf populations negatively. We conclude that oil development is not a threat to the Alexander Archipelago wolf now and is not likely to become one in the future.

Climate-Related Events

We considered the role of climate and projected changes in climate as a potential stressor to the Alexander Archipelago wolf. We identified three possible mechanisms through which climate may be affecting habitats used by coastal wolves or their prey: (1) Frequency of severe winters and impacts to deer populations; (2) decreasing winter snow pack and impacts to yellow cedar; and (3) predicted hydrologic change and impacts to salmon productivity. We review each of these briefly here and in

more detail in the Status Assessment (Service 2015, ''Climate-related events'').

Severe winters with deep snow accumulation can negatively affect deer populations by reducing availability of forage and by increasing energy expenditure associated with movement. Therefore, deer selectively use habitats in winter that accumulate less snow, such as those that are at low elevation, that are south-facing, or that can intercept snowfall (*i.e.,* dense forest canopy). Timber harvest has reduced some of these preferred winter habitats. However, while acknowledging that severe winters can result in declines of local deer populations, we postulate that those declines are unlikely to affect wolves substantially at the population or rangewide level for several reasons.

First, in southern coastal British Columbia where 24 percent of the rangewide wolf population occurs, persistent snowfall is rare except at high elevations. Second, in GMU 2, where wolves are limited to deer as ungulate prey and therefore are most vulnerable to declines in deer abundance, the climate is comparatively mild and severe winters are infrequent (Shanley *et al.* 2015, p. 6); Person (2001, p. 54) estimated that six winters per century may result in general declines in deer numbers in GMU 2. Lastly, climate projections indicate that precipitation as snow will decrease by up to 58 percent over the next 80 years (Shanley *et al.* 2015, pp. 5–6), reducing the likelihood of severe winters. Therefore, we conclude that winter severity, and associated interactions with timber harvest, is not a threat to the persistence of the Alexander Archipelago wolf at the population or rangewide level now or in the future.

In contrast to deer response to harsh winter conditions, recent and ongoing decline in yellow cedar in southeastern Alaska is attributed to warmer winters and reduced snow cover (Hennon *et al.* 2012, p. 156). Although not all stands are affected or affected equally, the decline has impacted about 965 mi^2 (2,500 km^2) of forest (Hennon *et al.* 2012, p. 148), or less than 3 percent of the forested habitat within the range of the Alexander Archipelago wolf. In addition, yellow cedar is a minor component of the temperate rainforest, which is dominated by Sitka spruce and western hemlock and neither of these tree species appears to be impacted negatively by reduced snow cover (*e.g.,* Schaberg *et al.* 2005, p. 2065). Therefore, we conclude that any effects (positive or negative) to the wolf as a result of loss of yellow cedar would be negligible given that it constitutes a small portion of the forest and that the wolf is a habitat generalist.

Predicted hydrologic changes as a result of changes in climate are expected to reduce salmon productivity within the range of the Alexander Archipelago wolf (*e.g.,* Edwards *et al.* 2013, p. 43; Shanley and Albert 2014, p. 2). Warmer winter temperatures and extreme flow events are predicted to reduce egg-to-fry survival of salmon, resulting in lower overall productivity. Although salmon compose 15 to 20 percent of the lifetime diet of Alexander Archipelago wolves in southeastern Alaska (Szepanski *et al.* 1999, pp. 330–331) and 0 to 16 percent of the wolf diet in coastal British Columbia (Darimont *et al.* 2004, p. 1871; Darimont *et al.* 2009, p. 13) (see ''Food Habits,'' above), we do not anticipate negative effects to them in response to projected declines in salmon productivity at the population or rangewide level owing to the opportunistic predatory behavior of wolves.

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

We are not aware of any nonregulatory conservation efforts, such as habitat conservation plans, or other voluntary actions that may help to ameliorate potential threats to the habitats used by the Alexander Archipelago wolf.

Summary of Factor A

Although several stressors such as timber harvest, road development, oil development, and climate-related events may be impacting some areas within the range of the Alexander Archipelago wolf, available information does not indicate that these impacts are affecting or are likely to affect the rangewide population. First and foremost, wolf populations in coastal British Columbia, where most (62 percent) of the rangewide population occurs, are stable or slightly increasing even though the landscape has been modified extensively. In fact, a higher proportion of the forested habitat has been logged (24 percent) and the mean road density (0.76 mi per mi^2 [0.47 km per km^2]) is higher in coastal British Columbia compared to southeastern Alaska (13 percent and 0.37 mi per mi^2 [0.23 km per km^2], respectively). Second, we found no direct effects of habitat-related stressors that resulted in lower fitness of Alexander Archipelago wolves, in large part because the wolf is a habitat generalist. Third, although deer populations likely will decline in the future as a result of timber harvest, we found that most wolf populations will be resilient to reduced deer abundance because they have access to alternate ungulate and non-ungulate prey that are not impacted significantly by timber harvest, road development, or other stressors that have altered or may alter habitat within the range of the wolf. Only the GMU 2 wolf population likely is being impacted and will continue to be impacted by reduced numbers of deer, the only ungulate prey available; however, we determined that this population does not contribute substantially to the other Alexander Archipelago wolf populations or the rangewide population. Therefore, we posit that most (94 percent) of the rangewide population of Alexander Archipelago wolf likely is not being affected and will not be affected in the future by loss or modification of habitat.

We conclude, based on the best scientific and commercial information available, that the present or threatened destruction, modification, or curtailment of its habitat or range does not currently pose a threat to the Alexander Archipelago wolf at the rangewide level, nor is it likely to become a threat in the future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Alexander Archipelago wolf is harvested by humans for commercial and subsistence purposes. Mortality of wolves due to harvest can be compensated for at the population or rangewide level through increased survival, reproduction, or immigration (*i.e.,* compensatory mortality), or harvest mortality may be additive, causing overall survival rates and population growth to decline. The degree to which harvest is considered compensatory, partially compensatory, or at least partially additive is dependent on population characteristics such as age and sex structure, productivity, immigration, and density (*e.g.,* Murray *et al.* 2010, pp. 2519–2520). Therefore, each wolf population (or group of populations) is different, and a universal rate of sustainable harvest does not exist. In our review, we found rates of human-caused mortality of gray wolf populations varying from 17 to 48 percent, with most being between 20 and 30 percent (Fuller *et al.* 2003, pp. 184–185; Adams *et al.* 2008, p. 22; Creel and Rotella 2010, p. 5; Sparkman *et al.* 2011, p. 5; Gude *et al.* 2012, pp. 113–116). For the Alexander Archipelago wolf in GMU 2, Person and Russell (2008, p. 1547) reported that total annual mortality greater than 38 percent was unsustainable and that natural mortality averaged about 4 percent (SE

= 5) annually, suggesting that human-caused mortality should not exceed 34 percent annually. In our review, we did not find any other estimates of sustainable harvest rates specific to the coastal wolf.

Across the range of the Alexander Archipelago wolf, hunting and trapping regulations, including reporting requirements, vary substantially. In southeastern Alaska, wolf harvest regulations are set by the Alaska Board of Game for all resident and nonresident hunters and trappers, and by the Federal Subsistence Board for federally-qualified subsistence users on Federal lands. In all GMUs, each hunter can harvest a maximum of five wolves, and trappers can harvest an unlimited number of wolves; all harvested wolves must be reported and sealed within a specified time following harvest. In GMU 2 only, an annual harvest guideline is applied; between 1997 and 2014, the harvest guideline was set as 25 to 30 percent of the most recent fall population estimate, and in 2015, this guideline was reduced to 20 percent in response to an apparent decline in the population (see ''Abundance and Trend,'' above). If the annual harvest guideline is exceeded, then an emergency order closing the hunting and trapping seasons is issued. In coastal British Columbia, the provincial government manages wolf harvest, following an established management plan. The hunting bag limit is three wolves per hunter annually, and, similar to southeastern Alaska, no trapping limit is set. In Regions 1 and 2, all wolf harvest is required to be reported, but no compulsory reporting program exists for Regions 5 and 6.

In this section, we consider wolf harvest as a stressor to the Alexander Archipelago wolf at the population and rangewide levels. Given that harvest regulations and the biological circumstances (*e.g.,* degree of insularity; see ''Dispersal and Connectivity,'' above) of each wolf population vary considerably, we examined possible effects of wolf harvest to each population by first considering the current condition of the population. If the population is stable or increasing, we presumed that wolves in that population are not being overharvested; if the population is declining or unknown, we assessed mean annual harvest rates based on reported wolf harvest. Because some wolves are harvested and not reported, even in areas where reporting is required, we then applied proportions of unreported harvest to reported harvest for a given year to estimate total harvest, where it was appropriate to do so. We used the population-level information collectively to evaluate impacts of total harvest to the rangewide population of the Alexander Archipelago wolf. We present our analyses and other information related to wolf harvest in southeastern Alaska and coastal British Columbia in more detail in the Status Assessment (Service 2015, ''Wolf harvest'').

In coastal British Columbia, populations of the Alexander Archipelago wolf are considered to be stable or slightly increasing (see ''Abundance and Trend,'' above), and, therefore, we presume that current harvest levels are not impacting those populations. Moreover, in Regions 1 and 2, where reporting is required, few wolves are being harvested on average relative to the estimated population size; in Region 1, approximately 8 percent of the population was harvested annually on average between 1997 and 2012, and in Region 2, the rate is even lower (4 percent). It is more difficult to assess harvest in Regions 5 and 6 because reporting is not required; nonetheless, based on the minimum number of wolves harvested annually from these regions, we estimated that 2 to 7 percent of the populations are harvested on average with considerable variation among years, which could be attributed to either reporting or harvest rates. Overall, we found no evidence indicating that harvest of wolves in coastal British Columbia is having a negative effect on the Alexander Archipelago wolf at the population level and is not likely to have one in the future.

In southeastern Alaska, the GMU 2 wolf population apparently has declined considerably, especially in recent years, although the precision of individual point estimates was low and the confidence intervals overlapped (see ''Abundance and Trend,'' above). In our review, we found compelling evidence to suggest that wolf harvest likely contributed to this apparent decline. Although annual reported harvest of wolves in GMU 2 equated to only about 17 percent of the population on average between 1997 and 2014 (range = 6–33 percent), documented rates of unreported harvest (*i.e.,* illegal harvest) over a similar time period were high (approximately 38 to 45 percent of total harvest) (Person and Russell 2008, p. 1545; ADFG 2015b, p. 4). Applying these unreported harvest rates, we estimate that mean total annual harvest was 29 percent with a range of 11 to 53 percent, suggesting that in some years, wolves in GMU 2 were being harvested at unsustainable rates; in fact, in 7 of 18 years, total wolf harvest exceeded 34 percent of the estimated population (following Person and Russell [2008, p. 1547], and accounting for natural mortality), suggesting that harvest likely contributed to or caused the apparent population decline. In addition, it is unlikely that increased reproduction and immigration alone could reverse the decline, at least in the short term, owing to this population's insularity (see ''Dispersal and Connectivity,'' above) and current low proportion of females (see ''Abundance and Trend,'' above). Thus, we conclude that wolf harvest has impacted the GMU 2 wolf population and, based on the best available information, likely will continue to do so in the near future, consistent with a projected overall population decline on average of 8 to 14 percent (Gilbert *et al.* 2015, pp. 43, 50), unless total harvest is curtailed.

Trends in wolf populations in the remainder of southeastern Alaska are not known, and, therefore, to evaluate potential impact of wolf harvest to these populations, we reviewed reported wolf harvest in relation to population size and considered whether or not the high rates of unreported harvest in GMU 2 were applicable to populations in GMUs 1, 3, and 5A. Along the mainland (GMUs 1 and 5A) between 1997 and 2014, mean percent of the population harvested annually and reported was 19 percent (range = 11–27), with most of the harvest occurring in the southern portion of the mainland. In GMU 3, the same statistic was 21 percent, ranging from 8 to 37 percent, but with only 3 of 18 years exceeding 25 percent. Thus, if reported harvested rates from these areas are accurate, wolf harvest likely is not impacting wolf populations in GMUs 1, 3, and 5A because annual harvest rates typically are within sustainable limits identified for populations of gray wolf (roughly 20 to 30 percent), including the Alexander Archipelago wolf (approximately 34 percent) (Fuller *et al.* 2003, pp. 184–185; Adams *et al.* 2008, p. 22; Person and Russell 2008, p. 1547; Creel and Rotella 2010, p. 5; Sparkman *et al.* 2011, p. 5; Gude *et al.* 2012, pp. 113–116). In our review, we found evidence indicating that unreported harvest occasionally occurs in GMUs 1 and 3 (Service 2015, ''Unreported harvest''), but we found nothing indicating that it is occurring at the high rates documented in GMU 2.

Harvest rates of wolves in southeastern Alaska are associated with access afforded primarily by boat and motorized vehicle (85 percent of successful hunters and trappers) (ADFG 2012, ADFG 2015d). Therefore, we considered road density, ratio of

shoreline to land area, and the total number of communities as proxies to access by wolf hunters and trappers and determined that GMU 2 is not representative of the mainland (GMUs 1 and 5A) or GMU 3 and that applying unreported harvest rates from GMU 2 to other wolf populations is not appropriate. Mean road density in GMU 2 (1.00 mi per mi^2 [0.62 km per km^2]) is more than twice that of all other GMUs (GMU 1 = 0.13 [0.08], GMU 3 = 0.42 [0.26], and GMU 5A = 0.06 [0.04]). Similarly, nearly all (13 of 15, 87 percent) of the Wildlife Analysis Areas (smaller spatial units that comprise each GMU) that exceed the recommended road density threshold for wolves (1.45 mi per mi^2 [0.9 km per km^2]) (Person and Russell 2008, p. 1548) are located in GMU 2; one each occurs in GMUs 1 and 3. In addition, the ratio of shoreline to land area, which serves as an indicator of boat acess, in GMU 2 (1.30 mi per mi^2 [0.81 km per km^2]) is greater than all other GMUs (GMU 1 = 0.29 [0.18], GMU 3 = 1.00 [0.62], and GMU 5A = 0.19 [0.12]). Lastly, although the human population size of GMU 2 is comparatively smaller than in the other GMUs, 14 communities are distributed throughout the unit, more than any other GMU (GMU 1 = 11, GMU 3 = 4, and GMU 5A = 1).

Collectively, these data indicate that hunting and trapping access is greater in GMU 2 than in the rest of southeastern Alaska and that applying unreported harvest rates from GMU 2 to elsewhere is not supported. Therefore, although we recognize that some level of unreported harvest likely is occurring along the mainland of southeastern Alaska and in GMU 3, we do not know the rate at which it may be occurring, but we hypothesize that it likely is less than in GMU 2 because of reduced access. We expect wolf harvest rates in the future to be similar to those in the past because we have no basis from which to expect a change in hunter and trapper effort or success. Consequently, we think that reported wolf harvest rates for GMUs 1, 3, and 5A are reasonably accurate and that wolf harvest is not impacting these populations nor is it likely to do so in the future.

In summary, we find that wolf harvest is not affecting most populations of the Alexander Archipelago wolf. In coastal British Columbia, wolf populations are stable or slightly increasing, suggesting that wolf harvest is not impacting those populations; in addition, mean annual harvest rates of those populations appear to be low (2 to 8 percent of the population based on the best available information). In southeastern Alaska, we determined that the GMU 2 wolf population is being affected by intermediate rates of reported harvest (annual mean = 17 percent) and high rates of unreported harvest (38 to 45 percent of total harvest), which have contributed to an apparent population decline that is projected to continue. We also find that wolf populations in GMUs 1, 3, and 5A experience intermediate rates of reported harvest, 19 to 21 percent of the populations annually, but that these populations likely do not experience high rates of unreported harvest like those estimated for GMU 2 because of comparatively low access to hunters and trappers. In addition, these GMUs are less geographically isolated than GMU 2 and likely have higher immigration rates of wolves. Therefore, based on the best available information, we conclude that wolf harvest of these populations (GMUs 1, 3, and 5A) is occurring at rates similar to or below sustainable harvest rates proposed for gray wolf (roughly 20 to 30 percent) and the Alexander Archipelago wolf (approximately 34 percent) (Fuller *et al.* 2003, pp. 184–185; Adams *et al.* 2008, p. 22; Person and Russell 2008, p. 1547; Creel and Rotella 2010, p. 5; Sparkman *et al.* 2011, p. 5; Gude *et al.* 2012, pp. 113–116).

Although wolf harvest is affecting the GMU 2 wolf population and likely will continue to do so, we conclude that wolf harvest is not impacting the rangewide population of Alexander Archipelago wolf. The GMU 2 wolf population constitutes a small percentage of the rangewide population (6 percent), is largely insular and geographically peripheral to other populations, and appears to function as a sink population (see ''Abundance and Trend'' and ''Dispersal and Connectivity,'' above). Therefore, although we found that this population is experiencing unsustainable harvest rates in some years, owing largely to unreported harvest, we think that the condition of the GMU 2 population has a minor effect on the condition of the rangewide population. The best available information does not suggest that wolf harvest is having an impact on the rangewide population of Alexander Archipelago wolf, nor is it likely to have an impact in the future.

Our review of the best available information does not suggest that overexploitation of the Alexander Archipelago wolf due to scientific or educational purposes is occurring or is likely to occur in the future.

Conservation Efforts To Reduce Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The ADFG has increased educational efforts with the public, especially hunters and trappers, in GMU 2 with the goal of improving communication and coordination regarding management of the wolf population. In recent years, the agency held public meetings, launched a newsletter, held a workshop for teachers, and engaged locals in wolf research. We do not know if these efforts ultimately will be effective at lowering rates of unreported harvest.

We are not aware of any additional conservation efforts or other voluntary actions that may help to reduce overutilization for commercial, recreational, scientific, or educational purposes of the Alexander Archipelago wolf.

Summary of Factor B

We find that wolf harvest is not affecting most Alexander Archipelago wolf populations. In coastal British Columbia, wolf harvest rates are low and are not impacting wolves at the population level, as evidenced by stable or slightly increasing populations. In southeastern Alaska, we found that the GMU 2 wolf population is experiencing high rates of unreported harvest, which has contributed to an apparent population decline, and, therefore, we conclude that this population is being affected by wolf harvest and likely will continue to be affected. We determined that wolf harvest in the remainder of southeastern Alaska is occurring at rates that are unlikely to result in population-level declines. Overall, we found that wolf harvest is not having an effect on the Alexander Archipelago wolf at the rangewide level, although we recognize that the GMU 2 population likely is being harvested at unsustainable rates, especially given other stressors facing the population (*e.g.,* reduced prey availability due to timber harvest). Thus, based on the best available information, we conclude that overexploitation for commercial, recreational, scientific, or educational purposes does not currently pose a threat to the Alexander Archipelago wolf throughout its range, nor is it likely to become a threat in the future.

Factor C. Disease or Predation

In this section, we briefly review disease and predation as stressors to the Alexander Archipelago wolf. We describe information presented here in more detail in the Status Assessment (Service 2015, ''Disease'').

Disease

Several diseases have potential to affect Alexander Archipelago wolf populations, especially given their social behavior and pack structure (see ''Social Organization,'' above). Wolves are susceptible to a number of diseases that can cause mortality in the wild, including rabies, canine distemper, canine parvovirus, blastomycosis, tuberculosis, sarcoptic mange, and dog louse (Brand *et al.* 1995, pp. 419–422). However, we found few incidences of diseases reported in Alexander Archipelago wolves; these include dog louse in coastal British Columbia (Hatler *et al.* 2008, pp. 88–91) and potentially sarcoptic mange (reported in British Columbia, but it is unclear whether or not it occurred along the coast or inland; Miller *et al.* 2003, p. 183). Both dog louse and mange results in mortality only in extreme cases and usually in pups, and, therefore, it is unlikely that either disease is having or is expected to have a population- or rangewide-level effect on the Alexander Archipelago wolf.

Although we found few reports of diseases in Alexander Archipelago wolves, we located records of rabies, canine distemper, and canine parvovirus in other species in southeastern Alaska and coastal British Columbia, suggesting that transmission is possible but unlikely given the low number of reported incidences. Only four individual bats have tested positive for rabies in southeastern Alaska since the 1970s; bats also are reported to carry rabies in British Columbia, but we do not know whether or not those bats occur on the coast or inland. Canine distemper and parvovirus have been found in domestic dogs on rare occasions; we found only one case of canine distemper, and information suggested that parvovirus has been documented but is rare due to the high percentage of dogs that are vaccinated for it. Nonetheless, we found no documented cases of rabies, canine distemper, or canine parvovirus in wolves from southeastern Alaska or coastal British Columbia.

We acknowledge that diseases such as canine distemper and parvovirus have affected gray wolf populations in other parts of North America (Brand *et al.* 1995, p. 420 and references therein), but the best available information does not suggest that disease, or even the likelihood of disease in the future, is a threat to the Alexander Archipelago wolf. We conclude that, while some individual wolves may be affected by disease on rare occasions, disease is not having a population- or rangewide-level effect on the Alexander Archipelago wolf now or in the future.

Predation

Our review of the best available information did not indicate that predation is affecting or will affect the Alexander Archipelago wolf at the population or rangewide level. As top predators in the ecosystem, predation most likely would occur by another wolf as a result of inter- or intra-pack strife or other territorial behavior. The annual rate of natural mortality, which includes starvation, disease, and predation, was 0.04 (SE = 0.05) for radio-collared wolves in GMU 2 (Person and Russell 2008, p. 1545), indicating that predation is rare and is unlikely to be having a population or rangewide effect. Therefore, we conclude that predation is not a threat to the Alexander Archipelago wolf, nor is it likely to become one in the future.

Conservation Efforts To Reduce Disease or Predation

We are not aware of any conservation efforts or other voluntary actions that may help to reduce disease or predation of the Alexander Archipelago wolf.

Summary of Factor C

We identified several diseases with the potential to affect wolves and possible vectors for transmission, but we found only a few records of disease in individual Alexander Archipelago wolves, and, to the best of our knowledge, none resulted in mortality. Further, we found no evidence that disease is affecting the Alexander Archipelago wolf at the population or rangewide level. Therefore, we conclude that disease is not a threat to the Alexander Archipelago wolf and likely will not become a threat in the future.

We also determined that the most likely predator of individual Alexander Archipelago wolves is other wolves and that this type of predation is a component of their social behavior and organization. Further, predation is rare and is unlikely to be having an effect at population or rangewide levels. Thus, we conclude that predation is not a threat to the Alexander Archipelago wolf, nor is it likely to become one in the future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

In this section, we review laws aimed to help reduce stressors to the Alexander Archipelago wolf and its habitats. However, because we did not find any stressors examined under *Factors A, B,* and *C* (described above) and *Factor E* (described below) to rise to the level of a threat to the Alexander Archipelago wolf rangewide, we also did not find the existing regulatory mechanisms authorized by these laws to be inadequate for the Alexander Archipelago wolf. In other words, we cannot find an existing regulatory mechanism to be inadequate if the stressor intended to be reduced by that regulatory mechanism is not considered a threat to the Alexander Archipelago wolf. Nonetheless, we briefly discuss relevant laws and regulations below.

Southeastern Alaska

National Forest Management Act (NFMA)

The National Forest Management Act (NFMA; 16 U.S.C. 1600 *et seq.*) is the primary statute governing the administration of National Forests in the United States, including the Tongass National Forest. The stated objective of NFMA is to maintain viable, well-distributed wildlife populations on National Forest System lands. As such, the NFMA requires each National Forest to develop, implement, and periodically revise a land and resource management plan to guide activities on the forest. Therefore, in southeastern Alaska, regulation of timber harvest and associated activities is administered by the USFS under the current Tongass Land and Resource Management Plan that was signed and adopted in 2008.

The 2008 Tongass Land and Resource Management Plan describes a conservation strategy that was developed originally as part of the 1997 Plan with the primary goal of achieving objectives under the NFMA. Specifically, the conservation strategy focused primarily on maintaining viable, well-distributed populations of old-growth dependent species on the Tongass National Forest, because these species were considered to be most vulnerable to timber harvest activities on the forest. The Alexander Archipelago wolf, as well as the Sitka black-tailed deer, was used to help design the conservation strategy. Primary components of the strategy include a forest-wide network of old-growth habitat reserves linked by connecting corridors of forested habitat, and a series of standards and guidelines that direct management of lands available for timber harvest and other activities outside of the reserves. We discuss these components in more detail in the Status Assessment (Service 2015, ''Existing conservation mechanisms'').

As part of the conservation strategy, we identified two elements specific to the Alexander Archipelago wolf (USFS 2008a, p. 4–95). The first addresses

disturbance at and modification of active wolf dens, requiring buffers of 366 m (1,200 ft) around active dens (when known) to reduce risk of abandonment, although if a den is inactive for at least 2 years, this requirement is relaxed. The second pertains to elevated wolf mortality; in areas where wolf mortality concerns have been identified, a Wolf Habitat Management Program will be developed and implemented, in conjunction with ADFG; such a program might include road access management and changes to wolf harvest limit guidelines. However, this element, as outlined in the Plan, does not offer guidance on identifying how, when, or where wolf mortality concerns may exist, but instead it is left to the discretion of the agencies. The only other specific elements relevant to the Alexander Archipelago wolf in the strategy are those that relate to providing sufficient deer habitat capability, which is intended first to maintain sustainable wolf populations, then to consider meeting estimated human deer harvest demands. The strategy offers guidelines for determining whether deer habitat capability within a specific area is sufficient or not.

We find the 2008 Tongass Land and Resource Management Plan, including the conservation strategy, not to be inadequate as a regulatory mechanism aimed to reduce stressors to the Alexander Archipelago wolf and its habitats. Although some parts of the Tongass National Forest have sustained high rates of logging in the past, the majority of it occurred prior to the enactment of the Plan and the conservation strategy. We think that the provisions included in the current Plan are sufficient to maintain habitat for wolves and their prey, especially given that none of the stressors evaluated under *Factors A, B, C,* and *E* constitutes a threat to the Alexander Archipelago wolf.

However, we recognize that some elements of the Plan have not been implemented fully yet, as is required under the NFMA. For example, despite evidence of elevated mortality of wolves in GMU 2 (see discussion under *Factor B,* above), the USFS and ADFG have not developed and implemented a Wolf Habitat Management Program for GMU 2 to date. The reason for not doing so is because the agencies collectively have not determined that current rates of wolf mortality in GMU 2 necessitate concern for maintaining a sustainable wolf population. Although we think that a Wolf Habitat Management Program would benefit the GMU 2 wolf population, we do not view the lack of it as enough to deem the entire Plan, or the existing regulatory mechanisms driving it, to be inadequate for the Alexander Archipelago wolf rangewide. Thus, we conclude that the 2008 Tongass Land and Resource Management Plan is not inadequate to maintain high-quality habitat for the Alexander Archipelago wolf and its prey.

Roadless Rule

On January 12, 2001, the USFS published a final rule prohibiting road construction and timber harvesting in ''inventoried roadless areas'' on all National Forest System lands nationwide (hereafter Roadless Rule) (66 FR 3244). On the Tongass National Forest, 109 roadless areas have been inventoried, covering approximately 14,672 mi^2 (38,000 km^2), although only 463 mi^2 (1,200 km^2) of these areas have been described as ''suitable forest land'' for timber harvest (USFS 2008a, p. 7–42; USFS 2008b, pp. 3–444, 3–449). All of these roadless areas are located within the range of the Alexander Archipelago wolf. However, the Roadless Rule was challenged in court and currently a ruling has not been finalized and additional legal challenges are pending; in the meantime, the Tongass is subject to the provisions in the Roadless Rule, although the outcome of these legal challenges is uncertain. Thus, currently, the Roadless Rule protects 14,672 mi^2 (38,000 km^2) of land, including 463 mi^2 (1,200 km^2) of productive forest, from timber harvest, road construction, and other development, all of which is within the range of the Alexander Archipelago wolf.

State Regulations

The Alaska Board of Game sets wolf harvest regulations for all resident and nonresident hunters and trappers, and the ADFG implements those regulations. (However, for federally-qualified subsistence users, the Federal Subsistence Board sets regulations, and those regulations are applicable only on Federal lands.) Across most of southeastern Alaska, State regulations of wolf harvest appear not to be resulting in overutilization of the Alexander Archipelago wolf (see discussion under *Factor B*, above). However, in GMU 2, wolf harvest is having an effect on the population, which apparently has declined over the last 20 years (see ''Abundance and Trend,'' above). Although the population decline likely was caused by multiple stressors acting synergistically (see *Cumulative Effects from Factors A through E*, below), overharvest of wolves in some years was a primary contributor, suggesting that the wolf harvest regulations for GMU 2 have been allowing for greater numbers to be harvested than would be necessary to maintain a viable wolf population.

In March 2014, ADFG and the USFS, Tongass National Forest, as the in-season manager for the Federal Subsistence Program, took emergency actions to close the wolf hunting and trapping seasons in GMU 2, yet the population still declined between fall 2013 and fall 2014, likely due to high levels of unreported harvest (38 to 45 percent of total harvest, summarized under *Factor B*, above). In early 2015, the agencies issued another emergency order and, in cooperation with the Alaska Board of Game, adopted a more conservative wolf harvest guideline for GMU 2, but an updated population estimate is not available yet, and, therefore, we do not know if the recent change in regulation has been effective at avoiding further population decline. Therefore, based on the best available information, we think that wolf harvest regulations in GMU 2 are inadequate to avoid exceeding sustainable harvest levels of Alexander Archipelago wolves, at least in some years. In order to avoid future unsustainable harvest of wolves in GMU 2, regulations should consider total harvest of wolves, including loss of wounded animals, not just reported harvest. Although we found that regulations governing wolf harvest in GMU 2 have been inadequate, we do not expect their inadequacy to impact the rangewide population of Alexander Archipelago wolf for reasons outlined under *Factor B*, above.

The Alexander Archipelago wolf receives no special protection as an endangered species or species of concern by the State of Alaska (AS 16.20.180). However, in the draft State Wildlife Action Plan, which is not yet finalized, the Alexander Archipelago wolf is identified as a ''species of greatest conservation need'' because it is a species for which the State has high stewardship responsibility and it is culturally and ecologically important (ADFG 2015e, p. 154).

Coastal British Columbia

In coastal British Columbia, populations of the Alexander Archipelago wolf have been stable or slightly increasing for the last 15 years (see ''Abundance and Trend,'' above). Nonetheless, we identified several laws that ensure its continued protection such as the Forest and Range Practices Act (enacted in 2004), Wildlife Act of British Columbia (amended in 2008), Species at Risk Act, Federal Fisheries Act, Convention on International Trade in Endangered Species of Wild Fauna

and Flora (CITES), and other regional land use and management plans. We review these laws in more detail in the Status Assessment (Service 2015, ''Existing conservation measures'').

In 1999, the gray wolf was designated as ''not at risk'' by the Committee on the Status of Endangered Wildlife in Canada, because it has a widespread, large population with no evidence of a decline over the last 10 years (BCMO 2014, p. 2). In British Columbia, the gray wolf is ranked as ''apparently secure'' by the Conservation Data Centre and is on the provincial Yellow list, which indicates ''secure.'' We note here that Canada does not recognize the Alexander Archipelago wolf as a subspecies of gray wolf that occupies coastal British Columbia, and, therefore, these designations are applicable to the province or country scale.

Summary of Factor D

The laws described above regulate timber harvest and associated activities, protect habitat, minimize disturbance at den sites, and aim to ensure sustainable harvest of Alexander Archipelago wolves in southeastern Alaska and coastal British Columbia. As discussed under *Factors A, B, C,* and *E,* although we recognize that some stressors such as timber harvest and wolf harvest are having an impact on the GMU 2 wolf population, we have not identified any threat that would affect the taxon as a whole at the rangewide level. Therefore, we find that the existing regulatory mechanisms authorized by the laws described above are not inadequate for the rangewide population of the Alexander Archipelago wolf now and into the future.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

In this section, we consider other natural or manmade factors that may be affecting the continued persistence of the Alexander Archipelago wolf and were not addressed in *Factors A* through *D* above. Specifically, we examined effects of small and isolated populations, hybridization with dogs, and overexploitation of salmon runs.

Small and Isolated Population Effects

In the petition, island endemism was proposed as a possible stressor to the Alexander Archipelago wolf. An endemic is a distinct, unique organism found within a restricted area or range; a restricted range may be an island, or group of islands, or a restricted region (Dawson *et al.* 2007, p. 1). Although small, isolated populations are more vulnerable to extinction than larger ones due to demographic stochasticity, environmental variability, genetic problems, and catastrophic events (Lande 1993, p. 921), endemism or ''rarity'' alone is not a stressor. Therefore, we instead considered possible effects associated with small and isolated populations of the Alexander Archipelago wolf.

Several aspects of the life history of the Alexander Archipelago wolf result in it being resilient to effects associated with small and isolated populations. First, the coastal wolf is distributed across a broad range and is not concentrated in any one area, contributing to its ability to withstand catastrophic events, which typically occur at small scales (*e.g.,* wind-caused disturbance) in southeastern Alaska and coastal British Columbia. Second, the Alexander Archipelago wolf is a habitat and diet generalist with high reproductive potential and high dispersal capability in most situations, making it robust to environmental and demographic variability. However, owing to the island geography and steep, rugged terrain within the range of the Alexander Archipelago wolf, some populations are small (fewer than 150 to 250 individuals, following Carroll *et al.* 2014, p. 76) and at least partially isolated, although most are not. Nonetheless, we focus the remainder of this section on possible genetic consequences to small, partially isolated populations of the Alexander Archipelago wolf.

The primary genetic concern of small, isolated wolf populations is inbreeding, which, at extreme levels, can reduce litter size and increase incidence of skeletal effects (*e.g.,* Liberg *et al.* 2005, p. 17; Raikkonen *et al.* 2009, p. 1025). We found only one study that examined inbreeding in the Alexander Archipelago wolf. Breed (2007, p. 18) tested for inbreeding using samples from Regions 5 and 6 in northern British Columbia and GMUs 1 and 2 in southern southeastern Alaska, and found that inbreeding coefficients were highest for wolves in GMU 1, followed by GMU 2, then by Regions 5 and 6. This finding was unexpected given that GMU 2 is the smaller, more isolated population, indicating that inbreeding likely is not affecting the GMU 2 population despite its comparatively small size and insularity. Further, we found no evidence of historic or recent genetic bottlenecking in the Alexander Archipelago wolf (Weckworth *et al.* 2005, p. 924; Breed 2007, p. 18), although Weckworth *et al.* (2011, p. 5) speculated that a severe bottleneck may have taken place long ago (over 100 generations).

Therefore, while we recognize that some populations of the Alexander Archipelago wolf are small and insular (*e.g.,* GMU 2 population), our review of the best available information does not suggest that these characteristics currently are having a measurable effect at the population or rangewide level. However, given that the GMU 2 population is expected to decline by an average of 8 to 14 percent over the next 30 years, inbreeding depression and genetic bottlenecking may be a concern for this population in the future, but we think that possible future genetic consequences experienced by the GMU 2 population will not have an effect on the taxon as a whole. Thus, we conclude that small and isolated population effects do not constitute a threat to the Alexander Archipelago wolf, nor are they likely to become a threat in the future.

Hybridization With Dogs

We reviewed hybridization with domestic dogs as a potential stressor to the Alexander Archipelago wolf. Based on microsatellite analyses, Munoz-Fuentes *et al.* (2010, p. 547) found that at least one hybridization event occurred in the mid-1980s on Vancouver Island, where wolves were probably extinct at one point in time, but then recolonized the island from the mainland. Although hybridization has been documented and is more likely to occur when wolf abundance is unusually low, most of the range of the Alexander Archipelago wolf is remote and unpopulated by humans, reducing the risk of interactions between wolves and domestic dogs. Therefore, we conclude that hybridization with dogs does not rise to the level of a threat at the population or rangewide level and is not likely to do so in the future.

Overexploitation of Salmon Runs

As suggested in the petition, we considered overexploitation of salmon runs and disease transmission from farmed Atlantic salmon (*Salmo salar*) in coastal British Columbia as a potential stressor to the Alexander Archipelago wolf (Atlantic salmon are not farmed in southeastern Alaska). The best available information does not indicate that the status of salmon runs in coastal British Columbia is having an effect on coastal wolves. First, Alexander Archipelago wolf populations in coastal British Columbia are stable or slightly increasing, suggesting that neither overexploitation of salmon runs nor disease transmission from introduced salmon are impacting the wolf populations. Second, in coastal British Columbia, only 0 to 16 percent of the

diet of the Alexander Archipelago wolf is salmon (Darimont *et al.* 2004, p. 1871; Darimont *et al.* 2009, p. 130). Given the opportunistic food habits of the coastal wolf, we postulate that reduction or even near loss of salmon as a food resource may impact individual wolves in some years, but likely would not result in a population- or rangewide-level effect. Further, our review of the best available information does not suggest that this is happening or will happen, or that coastal wolves are acquiring diseases associated with farmed salmon. Therefore, we conclude that overexploitation of salmon runs and disease transmission from farmed salmon do not constitute a threat to the Alexander Archipelago wolf at the population or rangewide level and are not likely to do so in the future.

Conservation Efforts To Reduce Other Natural or Manmade Factors Affecting Its Continued Existence

We are not aware of any conservation efforts or other voluntary actions that may help to reduce effects associated with small and isolated populations, hybridation with dogs, overexploitation of salmon runs, disease transmission from farmed salmon, or any other natural or manmade that may be affecting the Alexander Archipelago wolf.

Summary of Factor E

We find that other natural or manmade factors are present within the range of the Alexander Archipelago wolf, but that none of these factors is having a population or rangewide effect on the Alexander Archipelago wolf. We acknowledge that some populations of the coastal wolf are small and partially isolated, and therefore are susceptible to genetic problems, but we found no evidence that inbreeding or bottlenecking has resulted in a population or rangewide impact to the Alexander Archipelago wolf. In addition, even though some populations are small in size, many populations of the Alexander Archipelago wolf exist and are well distributed on the landscape, greatly reducing impacts from any future catastrophic events to the rangewide population. We also found that the likelihood of hybridation with dogs is low and that any negative impacts associated with the status of salmon in coastal British Columbia are unfounded at this time; neither of these potential stressors is likely to affect the continued persistence of the Alexander Archipelago wolf at the population or rangewide level. Therefore, based on the best available information, we conclude that other natural or manmade factors do not pose a threat to the Alexander Archipelago wolf, nor are they likely to become threats in the future.

Cumulative Effects From Factors A Through E

The Alexander Archipelago wolf is faced with numerous stressors throughout its range, but none of these individually constitutes a threat to the taxon as a whole now or in the future. However, more than one stressor may act synergistically or compound with one another to impact the Alexander Archipelago wolf at the population or rangewide level. Some of the identified stressors described above have potential to impact wolves directly (*e.g.,* wolf harvest), while others can affect wolves indirectly (*e.g.,* reduction in ungulate prey availability as a result of timber harvest); further, not all stressors are present or equally present across the range of the Alexander Archipelago wolf.

In this section, we consider cumulative effects of the stressors described in *Factors A* through *E.* If multiple factors are working together to impact the Alexander Archipelago wolf negatively, the cumulative effects should be manifested in measurable and consistent demographic change at the population or species level. Therefore, for most populations such as those in coastal British Columbia and in GMU 2, we relied on trend information to inform our assessment of cumulative effects. For populations lacking trend information (*e.g.,* GMUs 1, 3, and 5A), we examined the severity, frequency, and certainty of stressors to those populations and relative to the populations for which we have trend information to evaluate cumulative effects. We then assess the populations collectively to draw conclusions about cumulative effects that may be impacting the rangewide population.

In coastal British Columbia, Alexander Archipelago wolf populations are stable or slightly increasing (see ''Abundance and Trend,'' above), despite multiple stressors facing these populations at levels similar to or greater than most populations in southeastern Alaska. The stability of the wolf populations in coastal British Columbia over the last 15 years suggests that cumulative effects of stressors such as timber harvest, road development, and wolf harvest are not negatively impacting these populations.

The GMU 2 population of the Alexander Archipelago wolf apparently experienced a gradual decline between 1994 and 2013, and then declined substantially between 2013 and 2014, although the overall decline is not statistically significant owing to the large variance surrounding the point estimates (see ''Abundance and Trend,'' above). Nonetheless, we found evidence that timber harvest (*Factor A*) and wolf harvest (*Factor B*) are impacting this population, and these two stressors probably have collectively caused the apparent decline. Given reductions in deer habitat capability as a result of extensive and intensive timber harvest, we expect the GMU 2 wolf population to be somewhat depressed and unable to sustain high rates of wolf harvest. However, in our review of the best available information, we found that high rates of unreported harvest are resulting in unsustainable total harvest of Alexander Archipelago wolves in GMU 2 and that roads constructed largely to support the timber industry are facilitating unsustainable rates of total wolf harvest. Based on a population model specific to GMU 2, Gilbert *et al.* (2015, p. 43) projected that the wolf population will decline by another 8 to 14 percent, on average, over the next 30 years, largely owing to compounding and residual effects of logging, but also wolf harvest, which results in direct mortality and has a more immediate impact on the population. These stressors and others such as climate related events (*i.e.,* snowfall) are interacting with one another to impact the GMU 2 wolf population and are expected to continue to do so in the future provided that circumstances remain the same (*e.g.,* high unreported harvest rates).

In the remainder of southeastern Alaska where the Alexander Archipelago wolf occurs (*i.e.,* GMUs 1, 3, and 5A), we lack trend and projected population estimates to inform our assessment of cumulative effects, and, therefore, we considered the intensity, frequency, and certainty of stressors present. We found that generally the stressors facing wolf populations in GMUs 1, 3, and 5A occur in slightly higher intensity compared to populations in coastal British Columbia (Regions 5 and 6), but significantly lower intensity than the GMU 2 population. In fact, the percent of logged forest and road densities are among the lowest in the range of the Alexander Archipelago wolf. Although wolf harvest rates were moderately high in GMUs 1, 3, and 5A, given the circumstances of these populations, we found no evidence to suggest that they were having a population-level effect. Importantly, our review of the best available information did not suggest that unreported harvest was occurring at high rates like in GMU 2, and hunter

and trapper access was comparatively lower (*i.e.,* road density, ratio of shoreline to land area). In addition, the populations in GMUs 1, 3, and 5A are most similar biologically to the coastal British Columbian populations; all of these wolf populations have access to a variety of ungulate prey and are not restricted to deer, and none is as isolated geographically as the GMU 2 population. We acknowledge that elements of GMU 3 are similar to those in GMU 2 (*e.g.,* island geography), but ultimately we found that GMU 3 had more similarities to GMUs 1 and 5A and coastal British Columbia.

Therefore, in considering all of the evidence collectively, we presume that Alexander Archipelago wolf populations in GMUs 1, 3, and 5A likely are stable and are not being impacted by cumulative effects of stressors because these populations face similar stressors as the populations in coastal British Columbia, which are stable or slightly increasing. The weight of the available information led us to make this presumption regarding the Alexander Archipelago wolf in GMUs 1, 3, and 5A, and we found no information to suggest otherwise. We think our reasoning is fair and supported by the best available information, although we recognize the uncertainties associated with it.

In summary, we acknowledge that some of the stressors facing Alexander Archipelago wolves interact with one another, particularly timber harvest and wolf harvest, but we determined that all but one of the wolf populations do not exhibit impacts from cumulative effects of stressors. We found that about 62 percent of the rangewide population of the Alexander Archipelago wolf is stable (all of coastal British Columbia), and another 32 percent is presumed to be stable (GMUs 1, 3, and 5A), suggesting that approximately 94 percent of the rangewide population is not experiencing negative and cumulative effects from stressors, despite their presence. Therefore, we conclude that cumulative impacts of identified stressors do not rise to the level of a threat to the Alexander Archipelago wolf and are unlikely to do so in the future.

Finding

As required by the Act, we considered the five factors in assessing whether the Alexander Archipelago wolf is an endangered or threatened species throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the Alexander Archipelago wolf. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with recognized wolf experts and other Federal, State, and tribal agencies. We prepared a Status Assessment that summarizes all of the best available science related to the Alexander Archipelago wolf and had it peer reviewed by three experts external to the Service and selected by a third-party contractor. We also contracted the University of Alaska Fairbanks to revise an existing population model for the GMU 2 wolf population, convened a 2-day workshop with experts to review the model inputs and structure, and had the final report reviewed by experts (Gilbert *et al.* 2015, entire). As part of our review, we brought together researchers with experience and expertise in gray wolves and the temperate coastal rainforest from across the Service to review and evaluate the best available scientific and commercial information.

We examined a variety of potential threats facing the Alexander Archipelago wolf and its habitats, including timber harvest, road development, oil development, climate change, overexploitation, disease, and effects associated with small and isolated populations. To determine if these risk factors individually or collectively put the taxon in danger of extinction throughout its range, or are likely to do so in the foreseeable future, we first considered if the identified risk factors were causing a population decline or other demographic changes, or were likely to do so in the foreseeable future.

Throughout most of its range, the Alexander Archipelago wolf is stable or slightly increasing or is presumed to be stable based on its demonstrated high resiliency to the magnitude of stressors present. In coastal British Columbia, which constitutes 67 percent of the range and 62 percent of the rangewide population, the Alexander Archipelago wolf has been stable or slightly increasing over the last 15 years. In mainland southeastern Alaska (GMUs 1 and 5A) and in GMU 3, approximately 29 percent of the range and 32 percent of the rangewide population, we determined that the circumstances of these wolf populations were most similar to those in coastal British Columbia, and, therefore, based on the best available information, we reasoned that the Alexander Archipelago wolf likely is stable in GMUs 1, 3, and 5A. In GMU 2, which includes only 4 percent of the range and 6 percent of the rangewide population, the Alexander Archipelago wolf has been declining since 1994, and is expected to continue declining by another 8 to 14 percent, on average, over the next 30 years. Nonetheless, we conclude that the Alexander Archipelago wolf is stable or slightly increasing in nearly all of its range (96 percent), representing 94 percent of the rangewide population of the taxon.

We then identified and evaluated existing and potential stressors to the Alexander Archipelago wolf. We aimed to determine if these stressors are affecting the taxon as a whole currently or are likely to do so in the foreseeable future, are likely to increase or decrease, and may rise to the level of a threat to the taxon, rangewide or at the population level. Because the Alexander Archipelago wolf is broadly distributed across its range and is a habitat and diet generalist, we evaluated whether each identified stressor was expected to impact wolves directly or indirectly and whether wolves would be resilient to any impact.

We examined several stressors that are not affecting the Alexander Archipelago wolf currently and are unlikely to occur at a magnitude and frequency in the future that would result in a population- or rangewide-level effect. We found that oil and gas development, disease, predation, effects associated with small and isolated populations, hybridization with domestic dogs, overexploitation of salmon runs, and disease transmission from farmed salmon are not threats to the Alexander Archipelago wolf (see discussions under *Factors A, C,* and *E,* above). Most of these stressors are undocumented and speculative, rarely occur, are spatially limited, or are not known to impact gray wolves in areas of overlap. Although disease is known to affect populations of gray wolves, we found few reports of disease in the Alexander Archipelago wolf, and none resulted in mortality. Therefore, based on the best available information, we conclude that none of these stressors is having a population- or rangewide-level effect on the Alexander Archipelago wolf, or is likely to do so in the foreseeable future.

Within the range of the Alexander Archipelago wolf, changes in climate are occurring and are predicted to continue, likely resulting in improved conditions for wolves. Climate models for southeastern Alaska and coastal British Columbia project that precipitation as snow will decrease substantially in the future, which will improve winter conditions for deer, the primary prey species of wolves. Although severe winters likely will continue to occur and will affect deer

populations, we expect them to occur less frequently. Therefore, based on the best available information, we conclude that the effects of climate change are not a threat to the Alexander Archipelago wolf, nor are they likely to become a threat in the foreseeable future.

We reviewed timber harvest and associated road development as stressors to the Alexander Archipelago wolf and found that they are not affecting wolves directly, in large part because the wolf is a habitat generalist. Although wolves used den sites farther from logged stands and roads than unused sites, den site selection was more strongly influenced by natural features on the landscape such as slope, elevation, and proximity to freshwater. Further, we did not find evidence indicating that denning near logged stands and roads resulted in lower fitness of wolves. Thus, we conclude that timber harvest and associated road development are not affecting wolves at the population or rangewide levels by decreasing suitable denning habitat. We did not identify any other potential direct impacts to wolves as a result of timber harvest or road development, so next we examined potential indirect effects, specifically reduction of deer habitat capability.

Although the Alexander Archipelago wolf is an opportunistic predator that feeds on a variety of marine, intertidal, and terrestrial species, ungulates compose at least half of the wolf's diet throughout its range, and deer is the most widespread and abundant ungulate available to wolves. Timber harvest has reduced deer habitat capability, which in turn is predicted to reduce deer populations, especially in areas that have been logged intensively. However, based largely on the stability of wolf populations in coastal British Columbia despite intensive timber harvest, we conclude that wolves are resilient to changes in deer populations provided that they have other ungulate prey species available to them. We found that nearly all of the Alexander Archipelago wolves (94 percent of the rangewide population) have access to alternate ungulate prey such as mountain goat, moose, and elk, and, based on wolf diet, Alexander Archipelago wolves are consuming these prey species in areas where they are available. We identified only one Alexander Archipelago wolf population as an exception.

In GMU 2, deer is the only ungulate species available to wolves, and, therefore, wolves in this population have a more restricted ungulate diet and likely are being affected by cascading effects of timber harvest. Both deer and wolves are projected to decline in GMU 2 in the future, largely due to long-term reduction in deer habitat capability. However, we find that the GMU 2 population contributes little to the rangewide population because it constitutes only 4 percent of the range and 6 percent of the rangewide population, is largely insular and geographically peripheral, and appears to function as a sink population. Therefore, while we recognize that timber harvest and associated road development has modified a considerable portion of the range of the Alexander Archipelago wolf, and will continue to do so, we find that the taxon as a whole is not being affected negatively, in large part because the wolf is a habitat and diet generalist. Based on the best available information, we conclude that timber harvest and associated road development do not rise to the level of a threat to the Alexander Archipelago wolf, and are not likely to do so in the future.

Throughout its range, the Alexander Archipelago wolf is harvested for commercial and subsistence purposes, and, therefore, we examined overutilization as a stressor at the population and rangewide levels. In coastal British Columbia, we presume that wolf harvest is not having an effect at the population level given that populations there are stable or slightly increasing. This presumption is supported by the comparatively low rates of reported wolf harvest in coastal British Columbia, although reporting of harvest is required only in Regions 1 and 2, and, therefore, we considered these rates as minimum values. Nonetheless, we found no information suggesting that wolf harvest in coastal British Columbia is affecting wolves at the population level, as evidenced by the stability of the populations.

Within southeastern Alaska, where reporting is required, rates of reported harvest on average are similar across all populations (17 to 21 mean percent of population annually). However, in GMU 2, unreported harvest can be a substantial component of total harvest (38 to 45 percent), resulting in high rates of total harvest in some years, which likely has contributed to the apparent population decline in GMU 2. Although unreported harvest probably occurs in other parts of southeastern Alaska, our review of the best available information does not indicate that it is occurring at the same high rate as documented in GMU 2. Further, access by hunters and trappers is significantly greater in GMU 2 compared to elsewhere (see discussion under *Factor B,* above), and, therefore, we find that applying rates of unreported harvest from GMU 2 to other wolf populations in southeastern Alaska is not appropriate. Thus, based on the best available information, we think that wolf harvest in most of southeastern Alaska (*i.e.,* GMUs 1, 3, and 5A) is not affecting wolves at the population level, but that total wolf harvest in GMU 2 likely has occurred, at least recently, at unsustainable rates, largely due to high rates of unreported harvest, and has contributed to or caused an apparent decline in the population. However, for the same reasons described above, we determined that negative population impacts in GMU 2 do not affect the rangewide population significantly, and, therefore, we conclude that wolf harvest is not having a rangewide-level effect. In conclusion, we find that overutilization is not a threat to the Alexander Archipelago wolf, nor is it likely to become a threat in the foreseeable future.

In summary, we found that the Alexander Archipelago wolf experiences stressors throughout its range, but based on our consideration of the best available scientific and commercial information, we determined that the identified stressors, individually or collectively, do not pose a threat to the taxon at the rangewide level now or in the foreseeable future. We determined that many of the life-history traits and behaviors of the Alexander Archipelago wolf, such as its variable diet, lack of preferential use of habitats, and high reproductive potential, increase its ability to persist in highly modified habitats with numerous stressors. Only one population of the Alexander Archipelago wolf has declined and likely will continue to decline, but this population contributes little to the taxon as a whole, and, therefore, while we acknowledge the vulnerability of this population to stressors such as timber harvest and wolf harvest, we find that its status does not affect the rangewide status significantly. Further, we found that approximately 94 percent of the rangewide population of the Alexander Archipelago wolf is stable or increasing, or presumed with reasonable confidence to be stable. Therefore, based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the threats are not of sufficient imminence, intensity, or magnitude to indicate that the Alexander Archipelago wolf is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout all of its range.

Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so throughout all or a significant portion of its range. The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The term ''species'' includes ''any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' We published a final policy interpreting the phrase ''significant portion of its range'' (SPR) (79 FR 37578, July 1, 2014). The final policy states that (1) if a species is found to be endangered or threatened throughout a significant portion of its range, the entire species is listed as an endangered or a threatened species, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is ''significant'' if the species is not currently endangered or threatened throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service or the National Marine Fisheries Service makes any particular status determination; and (4) if a vertebrate species is endangered or threatened throughout an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The SPR policy is applied to all status determinations, including analyses for the purposes of making listing, delisting, and reclassification determinations. The procedure for analyzing whether any portion is an SPR is similar, regardless of the type of status determination we are making. The first step in our analysis of the status of a species is to determine its status throughout all of its range. If we determine that the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range, we list the species as an endangered (or threatened) species and no SPR analysis will be required. If the species is neither in danger of extinction nor likely to become so throughout all of its range, we determine whether the species is in danger of extinction or likely to become so throughout a significant portion of its range. If it is, we list the species as an endangered or a threatened species, respectively; if it is not, we conclude that listing the species is not warranted.

When we conduct an SPR analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is endangered or threatened throughout a significant portion of its range; rather, it is a step in determining whether a more detailed analysis of the issue is required. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are affecting it uniformly throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats apply only to portions of the range that clearly do not meet the biologically based definition of ''significant'' (*i.e.,* the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), those portions will not warrant further consideration.

If we identify any portions that may be both (1) significant and (2) endangered or threatened, we engage in a more detailed analysis to determine whether these standards are indeed met. The identification of an SPR does not create a presumption, prejudgment, or other determination as to whether the species in that identified SPR is endangered or threatened. We must go through a separate analysis to determine whether the species is endangered or threatened in the SPR. To determine whether a species is endangered or threatened throughout an SPR, we will use the same standards and methodology that we use to determine if a species is endangered or threatened throughout its range.

Depending on the biology of the species, its range, and the threats it faces, it may be more efficient to address the ''significant'' question first, or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.''

We evaluated the current range of the Alexander Archipelago wolf to determine if there is any apparent geographic concentration of potential threats to the taxon. We examined potential threats from timber harvest, oil and gas development, road development, climate change, effects of small and isolated populations, hybridization with dogs, overexploitation of salmon runs, disease transmission from farmed salmon, overutilization, disease, and predation. We found that potential threats are concentrated in GMU 2, where they are substantially greater than in other portions of its range. We considered adjacent parts of the range that are contained in GMUs 1 and 3, but, based on the best available information, we did not find any concentrations of stressors in those parts that were similar in magnitude and frequency to the potential threats in GMU 2. Therefore, we then considered whether GMU 2 is ''significant'' based on the Service's SPR policy, which states that a portion of its range is ''significant'' if the taxon is not currently endangered or threatened throughout all of its range, but the portion's contribution to the viability of the taxon is so important that, without the members in that portion, the taxon would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range.

We reviewed population and rangewide metrics in relation to GMU 2 to estimate the numerical contribution of GMU 2 to the viability of the Alexander Archipelago wolf. We determined that GMU 2 constitutes only 4 percent of the total range and 9 percent of the range below 1,312 ft (400 m) in elevation where these wolves spend most of their time (see ''Space and Habitat Use,'' above). In addition, based on the most current population estimate for GMU 2, which was assessed in 2014, we estimated that only 6 percent of the rangewide population occupies GMU 2. Recognizing the apparent recent decline in the GMU 2 population (see ''Abundance and Trend,'' above), we then estimated that in 2013, the GMU 2 population

composed about 13 percent of the rangewide population. We expect wolf abundance to fluctuate annually at the population and rangewide scales, but generally in recent years, we find that the GMU 2 population composes a somewhat small percentage of the rangewide population. Therefore, we conclude that, numerically, the GMU 2 population contributes little to the viability of the taxon as a whole given that it composes a small percentage of the current rangewide population and it occupies a small percentage of the range of the Alexander Archipelago wolf.

We then considered the biological contribution of the GMU 2 population to the viability of the Alexander Archipelago wolf. We found that given its insularity and peripheral geographic position compared to the rest of the range, the GMU 2 population contributes even less demographically and genetically than it does numerically. In fact, it appears to function as a sink population with gene flow and dispersal primarily occurring uni-directionally from other areas to GMU 2 (see ''Dispersal and Connectivity,'' above). Therefore, overall, we found that GMU 2 represents a small percentage of the range and rangewide population of the Alexander Archipelago wolf, it is insular and geographically peripheral, and it appears to be functioning as a sink population to the Alexander Archipelago wolf. We conclude that, although potential threats are concentrated in GMU 2, this portion's contribution to the viability of the taxon as a whole is not so important that, without the members of GMU 2, the Alexander Archipelago wolf would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range.

Our review of the best available scientific and commercial information indicates that the Alexander Archipelago wolf is not in danger of extinction (endangered) nor likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range. Therefore, we find that listing the Alexander Archipelago wolf as an endangered or threatened species under the Act is not warranted at this time.

Evaluation of the GMU 2 Population of the Alexander Archipelago Wolf as a Distinct Population Segment

After determining that the Alexander Archipelago wolf is not endangered or threatened throughout all or a significant portion of its range and is not likely to become so in the foreseeable future, we then evaluate whether or not the GMU 2 wolf population meets the definition of a distinct population segment (DPS) under the Act, as requested in the petition.

To interpret and implement the DPS provisions of the Act and Congressional guidance, we, in conjunction with the National Marine Fisheries Service, published the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS policy) in the **Federal Register** on February 7, 1996 (61 FR 4722). Under the DPS policy, two basic elements are considered in the decision regarding the establishment of a population of a vertebrate species as a possible DPS. We must first determine whether the population qualifies as a DPS; this requires a finding that the population is both: (1) Discrete in relation to the remainder of the taxon to which it belongs; and (2) biologically and ecologically significant to the taxon to which it belongs. If the population meets the first two criteria under the DPS policy, we then proceed to the third element in the process, which is to evaluate the population segment's conservation status in relation to the Act's standards for listing as an endangered or threatened species. These three elements are applied similarly for additions to or removals from the Federal Lists of Endangered and Threatened Wildlife and Plants.

Discreteness

In accordance with our DPS policy, we detail our analysis of whether a vertebrate population segment under consideration for listing may qualify as a DPS. As described above, we first evaluate the population segment's discreteness from the remainder of the taxon to which it belongs. Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

We found that the GMU 2 population is markedly separated as a consequence of physical, physiological, ecological, or behavioral factors from other populations of the Alexander Archipelago wolf. It occupies a portion of the Alexander Archipelago within the range of wolf that is physically separated from adjacent populations due to comparatively long and swift water crossings and the fact that few crossings are available to dispersing wolves. Although low levels of movement between the GMU 2 population segment and other populations likely occur (see ''Dispersal and Connectivity,'' above), the GMU 2 wolf population is largely insular and geographically peripheral to the rest of the range of the Alexander Archipelago wolf; further, the Service's DPS policy does not require absolute separation to be considered discrete.

In addition, several studies have demonstrated that, based on genetic assignment tests, the GMU 2 wolf population forms a distinct genetic cluster when compared to other Alexander Archipelago wolves (Weckworth *et al.* 2005, pp. 923, 926; Breed 2007, p. 21). Further, estimates of the fixation index (F_{ST}, the relative proportion of genetic variation explained by differences among populations) are markedly higher between the GMU 2 population and all other Alexander Archipelago wolf populations than comparisons between other populations (*e.g.,* Weckworth *et al.* 2005, p. 923; Cronin *et al.* 2015, p. 7). Collectively, these findings indicate genetic discontinuity between wolves in GMU 2 and those in the rest of the range of the Alexander Archipelago wolf. We review these studies and others in more detail in the Status Assessment (Service 2015, ''Genetic analyses'').

We found that the GMU 2 population of the Alexander Archipelago wolf is markedly separated as a consequence of physical (geographic) features and due to genetic divergence from other populations of the taxon. Therefore, we conclude that it is discrete under the Service's DPS policy.

Significance

If a population is considered discrete under one or more of the conditions described in the Service's DPS policy, its biological and ecological significance will be considered in light of Congressional guidance that the authority to list DPSs be used ''sparingly'' while encouraging the conservation of genetic diversity. In making this determination, we consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. As precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might

be used in determining the biological and ecological importance of a discrete population. However, the DPS policy describes four possible classes of information that provide evidence of a population segment's biological and ecological importance to the taxon to which it belongs. As specified in the DPS policy (61 FR 4722), this consideration of the population segment's significance may include, but is not limited to, the following:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon;

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; or

(4) Evidence that the discrete population segment differs markedly from other populations of the taxon in its genetic characteristics.

Given our determination that the GMU 2 wolf population is discrete under the Service's DPS policy, we now evaluate the biological and ecological significance of the population relative to the taxon as a whole. A discrete population segment is considered significant under the DPS policy if it meets one of the four elements identified in the policy under significance (described above), or otherwise can be reasonably justified as being significant. Here, we evaluate the four potential factors suggested by our DPS policy in evaluating significance of the GMU 2 wolf population.

Persistence of the Discrete Population Segment in an Ecological Setting Unusual or Unique to the Taxon

We find that the GMU 2 population does not persist in an ecological setting that is unusual or unique to the Alexander Archipelago wolf. To evaluate this element, we considered whether or not the habitats used by Alexander Archipelago wolves in GMU 2 include unusual or unique features that are not used by or available to the taxon elsewhere in its range. We found that the Alexander Archipelago wolf is a habitat generalist, using a variety of habitats on the landscape and selecting only for those that occur below 1,312 ft (400 m) in elevation (see ''Space and Habitat Use,'' above). Throughout its range, habitats used by and available to the Alexander Archipelago wolf are similar with some variation from north to south and on the mainland and islands, but we found no unique or unusual features specific to GMU 2 that were not represented elsewhere in the range. Although karst is more prevalent in GMU 2, we found no evidence indicating that wolves selectively use karst; in addition, karst is present at low and high elevations in GMUs 1 and 3 (Carstensen 2007, p. 24).

The GMU 2 wolf population has a more restricted ungulate diet, comprised only of deer, than other populations of the Alexander Archipelago wolf (see ''Food Habits,'' above). However, given that the coastal wolf is an opportunistic predator, feeding on intertidal, marine, freshwater, and terrestrial species, we find that differences in ungulate prey base are not ecologically unique or unusual. In addition, Alexander Archipelago wolves feed on deer throughout their range in equal or even higher proportions than wolves in GMU 2 (*e.g.,* Szepanski *et al.* 1999, p. 331; Darimont *et al.* 2009, p. 130), demonstrating that a diet based largely on deer is not unusual or unique. Thus, compared to elsewhere in the range, we found nothing unique or unusual about the diet or ecological setting of wolves in GMU 2. Further, we did not identify any morphological, physiological, or behavioral characteristics of the GMU 2 wolf population that differ from those of other Alexander Archipelago wolf populations, which may have suggested a biological response to an unusual or unique ecological setting. Therefore, we conclude that the GMU 2 wolf population does not meet the definition of significance under this element, as outlined in the Service's DPS policy.

Evidence That Loss of the Discrete Population Segment Would Result in a Significant Gap in the Range of a Taxon

We find that loss of the GMU 2 population of the Alexander Archipelago wolf, when considered in relation to the taxon as a whole, would not result in a significant gap in the range of the taxon. It constitutes only 6 percent of the current rangewide population, only 4 percent of the range, and only 9 percent of the range below 1,312 (400 m) in elevation where the Alexander Archipelago wolf selectively occurs. In addition, the GMU 2 population is largely insular and geographically peripheral to other populations, and appears to function as a sink population (see ''Abundance and Trend'' and ''Dispersal and Connectivity,'' above). For these reasons, we found that the demographic and genetic contributions of the GMU 2 wolf population to the rangewide population are low and that loss of this population would have a minor effect on the rangewide population of the Alexander Archipelago wolf. Also, although rates of immigration to GMU 2 likely are low (see ''Dispersal and Connectivity,'' above), recolonization of GMU 2 certainly is possible, especially given the condition of the remainder of the rangewide population. Therefore, we conclude that the GMU 2 wolf population does not meet the definition of significance under this element, as outlined in the Service's DPS policy.

Evidence That the Discrete Population Segment Represents the Only Surviving Natural Occurrence of a Taxon That May Be More Abundant Elsewhere as an Introduced Population Outside Its Historical Range

The GMU 2 population does not represent the only surviving natural occurrence of the Alexander Archipelago wolf throughout the range of the taxon. Therefore, we conclude that the discrete population of the Alexander Archipelago wolf in GMU 2 does not meet the significance criterion of the DPS policy under this factor.

Evidence That the Discrete Population Segment Differs Markedly From Other Populations of the Taxon in Its Genetic Characteristics

We find that the GMU 2 population does not differ markedly from other Alexander Archipelago wolves in its genetic characteristics. As noted above in *Discreteness*, the GMU 2 population exhibits genetic discontinuities from other Alexander Archipelago wolves due to differences in allele and haplotype frequencies. However, those discontinuities are not indicative of rare or unique genetic characterisics within the GMU 2 population that are significant to the taxon. Rather, several studies indicate that the genetic diversity within the GMU 2 population is a subset of the genetic diversity found in other Alexander Archipelago wolves. For example, the GMU 2 population does not harbor unique haplotypes; only one haplotype was found in the GMU 2 population, and it was found in other Alexander Archipelago wolves including those from coastal British Columbia (Weckworth *et al.* 2010, p. 367; Weckworth *et al.* 2011, p. 2). In addition, the number and frequency of private alleles in the GMU 2 population is low compared to other Alexander Archipelago wolves (*e.g.,* Breed 2007, p. 18). The lack of unique haplotypes and the low numbers of private alleles both indicate that the GMU 2 population has not been completely isolated historically from other Alexander Archipelago wolves. Finally, these genetic studies demonstrate that wolves in GMU 2 exhibit low genetic diversity

(as measured through allelic richness, heterozygosity, and haplotype diversity) compared to other Alexander Archipelago wolves (Weckworth *et al.* 2005, p. 919; Breed 2007, p. 17; Weckworth *et al.* 2010, p. 366; Weckworth *et al.* 2011, p. 2).

Collectively, results of these studies suggest that the genetic discontinuities observed in the GMU 2 population likely are the outcome of restricted gene flow and a loss of genetic diversity through genetic drift or founder effects. Therefore, although the GMU 2 population is considered discrete under the Service's DPS policy based on the available genetic data, it does not harbor genetic characteristics that are rare or unique to the Alexander Archipelago wolf and its genetic contribution to the taxon as a whole likely is minor. Moreover, while we found no genetic studies that have assessed adaptive genetic variation of the Alexander Archipelago wolf, the best available genetic data do not indicate that the GMU 2 population harbors significant adaptive variation, which is supported further by the fact that the GMU 2 population is not persisting in an unusual or unique ecological setting. Therefore, we conclude that the GMU 2 population does not meet the definition of significance under this element, as outlined in the Service's DPS policy.

Summary of Significance

We determine, based on a review of the best available information, that the GMU 2 population is not significant in relation to the remainder of the taxon. Therefore, this population does not qualify as a DPS under our 1996 DPS policy and is not a listable entity under the Act. Because we found that the population did not meet the significance element and, therefore, does not qualify as a DPS under the Service's DPS policy, we will not proceed with an evaluation of the status of the population under the Act.

Determination of Distinct Population Segment

Based on the best scientific and commercial information available, as described above, we find that, under the Service's DPS policy, the GMU 2 population is discrete, but is not significant to the taxon to which it belongs. Because the GMU 2 population is not both discrete and significant, it does not qualify as a DPS under the Act.

Conclusion of 12-Month Finding

Our review of the best available scientific and commercial information indicates that the Alexander Archipelago wolf is not in danger of extinction (endangered) nor likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range. Therefore, we find that listing the Alexander Archipelago wolf as an endangered or threatened species under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, the Alexander Archipelago wolf to our Anchorage Fish and Wildlife Field Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor the Alexander Archipelago wolf and encourage its conservation. If an emergency situation develops for the Alexander Archipelago wolf, we will act to provide immediate protection.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Anchorage Fish and Wildlife Field Office (see **ADDRESSES**).

Authors

The primary authors of this document are the staff members of the Anchorage Fish and Wildlife Field Office.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 15, 2015.

Stephen Guertin,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2015–32473 Filed 1–5–16; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 81, No. 3
Wednesday, January 6, 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

Forest Service

National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule Committee (Committee) will meet in Sacramento, California. Attendees may also participate via webinar and conference call. The Committee operates in compliance with the Federal Advisory Committee Act (FACA) (Pub. L. 92–463). Additional information relating to the Committee, including the meeting summary/minutes, can be found by visiting the Committee's Web site at: *http://www.fs.usda.gov/main/planningrule/committee*.

DATES: The meetings will be held in-person and via webinar/conference call on the following dates and times:

- Thursday, January 14, 2016 from 9:00 a.m. to 5:00 p.m. PST
- Friday, January 15, 2016 from 9:00 a.m. to 5:00 p.m. PST

All meetings are subject to cancellation. For updated status of meetings prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Holiday Inn Capitol Plaza, 300 J Street, Sacramento, California. For anyone who would like to attend via webinar and/or conference call, please visit the Web site listed above or contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the USDA Forest Service Washington Office—Yates Building, 201 14th Street SW., Mail Stop 1104, Washington, DC 20250–1104. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jennifer Helwig, Committee Coordinator, by phone at 202–205–0892, or by email at *jahelwig@fs.fed.us*. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to provide:

1. Continued deliberations on formulating advice for the Secretary,
2. Discussion of Committee work group findings,
3. Hearing public comments, and
4. Administrative tasks.

This meeting is open to the public. The agenda will include time for people to make oral comments of three minutes or less. Individuals wishing to make an oral comment should submit a request in writing by January 7, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee's staff before or after the meeting. Written comments and time requests for oral comments must be sent to Jennifer Helwig, USDA Forest Service, Ecosystem Management Coordination, 201 14th Street SW., Mail Stop 1104, Washington, DC 20250–1104, or by email at *jahelwig@fs.fed.us*. The agenda and summary of the meeting will be posted on the Committee's Web site within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: December 9, 2015.

Brian Ferebee,

Associate Deputy Chief, National Forest System.

[FR Doc. 2015–33275 Filed 1–5–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Fire & Aviation Management Medical Qualifications Program

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with revisions to the information collection, Fire & Aviation Management Medical Qualifications Program.

With this extension, the Agency has changed the name of the information collection to Fire & Aviation Management Medical Qualifications Program.

DATES: Comments must be received in writing on or before March 9, 2015 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Attention: Dr. Jennifer Symonds, USDA Forest Service, National Interagency Fire Center, 3833 South Development Avenue, Boise, Idaho 83705. Comments also may be submitted via facsimile to 208–387–5735 or by email to *jmsymonds@fs.fed.us.*

The public may inspect comments received at the National Interagency Fire Center, during normal business hours. Visitors are encouraged to call ahead to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Dr. Jennifer Symonds, Forest Service Wildland Fire Medical Qualifications Program Manager, at 208–387–5978.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Fire & Aviation Management Medical Qualifications Program.

OMB Number: 0596–0164.

Expiration Date of Approval: March 31, 2016.

Type of Request: Extension with revisions.

Abstract: The Protection Act of 1922 (16 U.S.C. 594) authorizes the Forest Service to fight fires on National Forest System lands. This information collection is an approved Forest Service collection. The collection covers the USDA Forest Service and the Department of the Interior, and contains the information collection activities and burden hours for both agencies.

Wildland firefighters perform long hours of arduous labor in adverse environmental conditions. It is imperative that these firefighters be in sufficient physical condition to avoid injury to themselves or their coworkers. Federal employees and private individuals seeking employment as a firefighter with the Forest Service or the Department of Interior complete the health capability forms. This information collection covers the forms and burden hours associated with the private individuals who apply for firefighter positions with the aforementioned agencies.

Form FS–5100–30, *Work Capacity Test—Informed Consent.* The form is signed by those deemed to be in sufficient health to undergo a Work Capacity Test. The Work Capacity Test determines the level of an individual's aerobic fitness, level of muscular strength, and muscle endurance. The consent form is necessary to ensure the individual taking the test is aware of the various testing levels (arduous, moderate, and light) and the risks involved. The individual indicates the following:

- They have read the information on the form, the brochure ''Work Capacity Test'' and understand the purpose, instructions, and risks of the test;
- They have read the information, understood, and truthfully answered the Health Screen Questionnaire; and
- Test to be taken—pack test (arduous), field test (moderate), or walk test (light).

Failure to collect this data could result in injuries or deaths during the ''Work Capacity Test'' and while working on wildland fires. The information provided by an applicant for Federal employment is stored in secured official files, maintained according to Agency regulations. The information gathered is not available from other sources.

Estimate of Annual Burden: 5.5 Minutes.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: 20,271.

Estimated Annual Number of Responses per Respondents: 1.

Estimated Total Annual Burden on Respondents: 1,858 hours.

Form FS–5100–31, *Health Screening Questionnaire.* Prospective firefighters must complete this form when seeking employment as a new firefighter with the Forest Service or Department of the Interior. This form collects the following information:

- Name and Unit;
- Medical history;
- Current medical symptoms;
- Other health issues; and
- Cardiovascular risk factors.

The information collected pertains to an individual's health status and health history in an effort to determine if any physical conditions exist that might result in injury or death during fitness testing or when fighting a wildfire. If Federal Agency officials determine, based on the collected information, that an individual may not be physically able to train for or take a Work Capacity Test; the agency will require the individual to undergo a physical examination by a physician.

Failure to collect this data could result in injuries or deaths during the ''Work Capacity Test'' and while working on wildland fires. The information provided by an applicant for Federal employment is stored in secured official files, maintained according to Agency regulations. The information gathered is not available from other sources.

Estimate of Annual Burden: 3 Minutes.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: 20,271.

Estimated Annual Number of Responses per Respondents: 1.

Estimated Total Annual Burden on Respondents: 1,014 hours.

Form FS–5100–32, *Arduous Duty Medical Exam.* Federal employees and private individuals seeking employment as a firefighter with the Forest Service will complete the form every three years (years 0, 3, 6, etc.). The form collects the following information:

- Name, Federal Employee Number (if applicable), Sex and Date of Birth;
- Address, Email Address, and Telephone Number;
- Physical Activity Level and Fire Experience with Home Unit and Forest;
- Past Medical History;
- Current medical symptoms; and
- Other health issues.

The information collected pertains to an individual's health status and health history in an effort to determine if any medical or physical conditions exist that might result in injury or death during fitness testing or when fighting a wildfire. If Federal Agency officials determine, based on the collected information, that an individual may not be medically or physically able to train for or take a Work Capacity Test or meet the Medical Standards of arduous duty fire positions, the individual may request a waiver.

The information provided by a firefighter for Federal employment is stored in secured official files, maintained according to Agency regulations. The information gathered is not available from other sources.

Estimate of Annual Burden: 30 Minutes.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: 9,810.

Estimated Annual Number of Responses per Respondents: 1.

Estimated Total Annual Burden on Respondents: 4,905 hours.

Form FS–5100–33, *Self-Certification Statement and Blood Pressure Check.* Federal employees and private individuals seeking employment as a firefighter with the Forest Service will complete the form the years in which the individual does not complete an Arduous Duty Examination. The form collects the following information:

- Name and Date of Birth;
- Home Unit and Forest
- Medical history;
- Current medical symptoms; and
- Other health issues.

The information collected pertains to an individual's health status and health history in an effort to determine if any medical or physical conditions exist that might result in injury or death during fitness testing or when fighting a wildfire. If Federal Agency officials determine, based on the collected information, that an individual may not be medically or physically able to train for or take a Work Capacity Test or meet the Medical Standards of arduous duty fire positions, the individual may request a waiver.

The information provided by a firefighter for Federal employment is stored in secured official files, maintained according to Agency regulations. The information gathered is not available from other sources.

Estimate of Annual Burden: 3 Minutes.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: 9,810.

Estimated Annual Number of Responses per Respondents: 1.

Estimated Total Annual Burden on Respondents: 491 hours.

Total Estimate of Annual Burden: 41.5 Minutes.

Total Type of Respondents: Individuals.

Total Estimated Annual Number of Respondents: 20,271.

Total Estimated Annual Number of Responses per Respondents: 1.

Total Estimated Total Annual Burden on Respondents: 8,268 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden 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 to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: December 17, 2015.

James E. Hubbard,

Deputy Chief, State & Private Forestry.

[FR Doc. 2015–33273 Filed 1–5–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Rural Utilities Service Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to publish Fiscal Year 2016 application requirements and application deadlines for Rural Utilities Service Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes.

SUMMARY: The Rural Utilities Service (RUS) is hereby giving notice that it intends to publish in the near future a notice of solicitation for Fiscal Year 2016 (the ''Notice of Solicitation for Applications'') specifying the timeframe for the submission of applications and program requirements for cooperative and other not-for-profit lenders wishing to participate in RUS's program involving the guarantee of loans for eligible electrification and telephone purposes, as authorized by Section 313A of the Rural Electrification Act of 1936, as amended (7 U.S.C. 940c–1) (the ''Act'') and 7 CFR part 1720 (the ''Program Regulations'').

DATES: It is anticipated that the Notice of Solicitation for Applications will be published in early 2016.

ADDRESSES: For detailed information regarding this notice, contact Amy McWilliams, Management Analyst, Office of Portfolio Management and Risk Assessment, Electric Program, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue SW., Room 0226–S, Washington, DC 20250–1568. Telephone (202) 205–8663; email: *amy.mcwilliams@wdc.usda.gov*

SUPPLEMENTARY INFORMATION: The proceeds of the guaranteed bonds will be used by the guaranteed lender to make loans to borrowers for electrification or telephone purposes eligible for assistance under the Act, the Program Regulations, and the Notice of Solicitation for Applications, or to refinance bonds or notes previously issued by the guaranteed lender for such purposes. The proceeds of the guaranteed bonds are not to be used by the guaranteed lender to directly or indirectly fund projects for the generation of electricity.

In order to promote competition and facilitate its review process, RUS will only accept applications: (1) Prepared in accordance with the Act, the Program Regulations, and the program requirements to be published in the Notice of Solicitation for Applications, and (2) submitted during the application period to be established by the forthcoming Notice of Solicitation for Applications.

Authority: 7 U.S.C. 940c–1.

Dated: December 30, 2015.

Brandon McBride,

Administrator, Rural Utilities Service.

[FR Doc. 2015–33285 Filed 1–5–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–814 and A–570–898]

Chlorinated Isocyanurates From Spain and the People's Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

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

DATES: *Effective Date:* January 6, 2016.

SUMMARY: As a result of these sunset reviews, the Department of Commerce (the Department) finds that revocation of the antidumping duty orders on chlorinated isocyanurates (chlorinated isos) from Spain and the People's Republic of China (PRC) would be likely to lead to continuation or recurrence of dumping at the rates identified in the ''Final Results of Review'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Chien-Min Yang, AD/CVD Operations, Office 7, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–5255 and (202) 482–5484, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty orders on chlorinated isos from Spain and the PRC on June 24, 2005.[1] On September 1, 2015, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), the Department initiated sunset reviews of the antidumping duty orders on chlorinated isos from Spain and the PRC.[2] On September 11, 2015, the Department received a notice of intent to participate from Clearon Corporation (Clearon), Occidental Chemical Corporation (OxyChem), and Bio-Lab, Inc. (Bio-Lab), (collectively, the petitioners), within the deadline specified in 19 CFR 351.218(d)(1)(i). Petitioners are manufacturers of a domestic like product in the United States and, accordingly, are domestic interested parties pursuant to section 771(9)(C) of the Act.

[1] *See Chlorinated Isocyanurates from Spain: Notice of Antidumping Duty Order,* 70 FR 36562 (June 24, 2005) (''*Spain Order*''); *see also Notice of Antidumping Duty Order: Chlorinated Isocyanurates from the People's Republic of China,* 70 FR 36561 (June 24, 2005) (''*PRC Order*'').

[2] *See Initiation of Five-Year (''Sunset'') Review,* 78 FR 60253 (October 1, 2013).

On October 1, 2015, the Department received an adequate substantive response to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department did not receive any responses from the respondent interested parties, *i.e.,* chlorinated isos producers and exporters from Spain and the PRC. On the basis of the notice of intent to participate and adequate substantive response filed by the petitioners and the inadequate response from any respondent interested party, the Department conducted expedited sunset reviews of these orders pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C).

Scope of the Orders

The products covered by the orders are chlorinated isos, which are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isos: (1) Trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dehydrate) ($NaCl_2$ $(NCO)_3(2H_2O)$, and (3) sodium dichloroisocyanurate (anhydrous) ($Nacl_2(NCO)_3$). The orders cover all chlorinated isos. A full description of the scope of the order is contained in the Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Chlorinated Isocyanurates from Spain and the People's Republic of China.

Analysis of Comments Received

The issues discussed in the Decision Memorandum [3] are the likelihood of continuation or recurrence of dumping, and the magnitude of the margins of dumping likely to prevail if these orders were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the Decision Memorandum which is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit in Room B8024 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://trade.gov/enforcement/.* The signed Decision Memorandum and electronic versions of the Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping orders of chlorinated isos from Spain and the PRC would be likely to lead to continuation or recurrence of dumping. Further, we determine that the magnitudes of the margins of dumping likely to prevail are as follows:

SPAIN

Exporter/producer	Margin (percent)
Argonesas Delsa S.A	24.83
All others	24.83

PRC

Exporter/producer	Margin (percent)
Hebei Jiheng Chemical Co	75.78
Nanning Chemical Industry Co., Ltd	285.63
Changzhou Clean Chemical Co., Ltd	137.69
Liaocheng Huaao Chemical Industry Co., Ltd	137.69
Sinochem Hebei Import & Export Corporation	137.69
Sinochem Shanghai Import & Export Corporation	137.69
PRC-wide Entity	285.63

Administrative Protective Order

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

The Department is issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: December 30, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–33290 Filed 1–5–16; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* Department Memorandum, ''Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Chlorinated Isocyanurates from Spain and the People's Republic of China,'' dated concurrently with this notice (Decision Memorandum).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE356

Endangered Species; File No. 19716

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Robert Hardy, 100 8th Avenue Southeast Florida Fish and Wildlife Conservation Commission, Fish & Wildlife Research Institute, St Petersburg, FL 33701, has applied in due form for a permit to take loggerhead (*Caretta caretta*), green (*Chelonia mydas*), Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), and leatherback (*Dermochelys coriacea*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before February 5, 2016.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 19716 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Arturo Herrera or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act

of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant requests a five-year permit to locate and describe surface-pelagic drift communities of the Atlantic Ocean and Gulf of Mexico that serve as developmental habitat for surface-pelagic juvenile and neonate sea turtles, to quantify threats to pelagic sea turtles, and to gather information on their life-history, genetics, movements, behavior, and diet. Researchers would conduct vessel surveys to count and pursue for capture by dip net up to 300 loggerhead, 200 green, 60 hawksbill, 130 Kemp's ridley and 10 leatherback sea turtles annually. An additional 150 loggerheads and 440 leatherbacks could be harassed annually during vessel surveys but would not be pursued for capture. Depending on life stage and size, captured sea turtles would have the following procedures performed prior to release: Measure, weigh, oral swab, esophageal lavage, skin and scute biopsy, flipper and passive integrated transponder tag, and/or epoxy attachment of a satellite or VHF transmitter. Voided fecal samples also would be collected opportunistically.

Dated: December 29, 2015.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–33182 Filed 1–5–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD607

Marine Mammals; File No. 18824

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to Briana Witteveen, Ph.D., University of Alaska, Fairbanks, Kodiak Seafood and Marine Science Center, 118 Trident Way, Kodiak, AK, 99615, to conduct research on humpback (*Megaptera novaeangliae*); killer (*Orcinus orca*); gray (*Eschrichtius robustus*); North Pacific Right (*Eubaelana japonica*); fin (*Balaenoptera physalus*); sei (*B. borealis*); minke whales (*B. acutorostrata*); blue (*B. musculus*); and sperm whales (*Physeter macrocephalus*). Additionally, harbor (*Phocoena phocoena*) and Dall's porpoises (*P. dalli*), Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), Northern fur (*Callorhinus ursinus*) and harbor seals (*Phoca vitulina*), and Steller sea lions (*Eumetopias jubatus*) may be incidentally harassed.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Courtney Smith, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On November 21, 2014, notice was published in the **Federal Register** (79 FR 69432) that a request for a permit to conduct research on the above listed species had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit authorizes non-lethal take using vessels to: Collect identification photographs; record vocalizations; conduct biopsy sampling; collect prey parts and sloughed skin; attach suction-cup tags; and document behavioral response to acoustic deterrents. Research may occur year-round within the Gulf of Alaska. The purpose of this research is to improve understanding of the foraging behavior, prey use, and habitat overlap among sympatric whale species throughout their habitat. The permit is valid through December 1, 2020.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 29, 2015.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–33183 Filed 1–5–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 14–01]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Sarah A. Ragan or Heather N. Harwell, DSCA/LMO, (703) 604–1546/(703) 607–5339.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 14–01 with attached Policy Justification and Sensitivity of Technology.

Dated: December 31, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 0 2 2015

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding a revised Transmittal No. 14-01, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Turkey for defense articles and services estimated to cost $70 million. The original Transmittal was delivered on October 28, 2015, and it erroneously identified the principal contractor as the Raytheon Corporation of Tucson, Arizona. The actual contractor will be the Boeing Company of St. Charles, Missouri. The submission corrects this discrepancy and makes no other changes. After this letter is delivered to your office, we plan to issue a corrected news release to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 14–01

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Turkey

(ii) *Total Estimated Value:*

Major Defense Equipment *	$62 million
Other	$8 million
TOTAL	$70 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Joint Direct Attack Munition (JDAM) tail kits comprised of 400 GBU–31(V)1 for use with Mk84 bombs, 200 GBU–31(V)3 for use with BLU–109 bombs, 300 GBU–38 for use with Mk82 bombs, 100 GBU–54 Laser JDAM kits for use with Mk82 bombs, 200 BLU–109 Hard Target Penetrator Warheads, and 1000 FMU–152A/B fuzes. Non-MDE includes containers, support equipment, spare and repair parts, integration, test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and technical support, and other related elements of logistics support.

(iv) *Military Department:* Air Force (YAF)

(v) *Prior Related Cases, if any:* FMS case YAD–$23M–24Jan13

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 02 DEC 2015

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Turkey—Joint Directed Attack Munitions (JDAM)

The Government of Turkey has requested a possible sale of Joint Direct Attack Munition (JDAM) tail kits comprised of 400 GBU–31(V)1 for use with Mk84 bombs, 200 GBU–31(V)3 for use with BLU–109 bombs, 300 GBU–38 for use with Mk82 bombs, 100 GBU–54 Laser JDAM kits for use with Mk82 bombs, 200 BLU–109 Hard Target Penetrator Warheads, and 1000 FMU–152A/B fuzes. Non-MDE includes containers, support equipment, spare and repair parts, integration, test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and technical support, and other related elements of logistics support. The estimated cost is $70 million.

Turkey is a partner of the United States in ensuring peace and stability in the region. It is vital to the U.S. national interest to assist our NATO ally in developing and maintaining a strong and ready self-defense capability. This proposed sale is consistent with those objectives.

This sale will enhance the Turkish Air Force's ability to defend and provides a capability to contribute to future NATO operations. The proven reliability and compatibility of like-systems will foster increased interoperability between NATO and U.S. forces, and expand regional defenses to counter common threats to air, border, and shipping assets in the region. Turkey will have no difficulty absorbing these additional munitions into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be the Boeing Company of St. Charles, Missouri. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

The number of U.S. government and contractor representatives to support this program will be determined during negotiations with the Government of Turkey.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 14–01

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*

1. The Joint Direct Attack Munition (JDAM) is a guidance kit that converts free-fall bombs into precision-guided munitions. By adding a new tail section containing Inertial Navigation System (INS)/Global Positioning System (GPS) guidance to existing bombs, the cost-effective JDAM provides highly accurate weapon delivery in any flyable weather. The INS, using updates from the GPS, guides the bomb to the target via the use of movable tail fins. With the addition of a laser guidance nose kit, the JDAM is capable of engaging moving targets. The JDAM all-up-round (AUR) is Unclassified; technical data for JDAM is classified up to Secret.

2. The GBU–31(v)1 is a 2000 pound class JDAM consisting of a JDAM tail kit, a Mk-84 warhead, and one of three fuze types: FMU–139, FMU–143, or FMU–152. A DSU–33 sensor can be added to the nose well of the weapon to give the GBU–31(v)1 JDAM AUR a height of burst (HOB) fusing option.

3. The GBU–31(v)3 is a 2000 pound class JDAM consisting of a JDAM tail kit, a BLU–109 hard target penetrator warhead, and one of three fuze types: FMU–139, FMU–143, or FMU–152.

4. The GBU–38 is a 500 pound class JDAM consisting of a JDAM tail kit, a Mk-82 warhead, and one of two fuze types: FMU–139 or FMU–152. A DSU–33 sensor can be added to the nose well of the weapon to give the GBU–38 JDAM AUR a HOB fusing option.

5. The GBU–54 is a 500 pound class JDAM consisting of a JDAM tail kit, a Mk-82 warhead, and one of two fuze types: FMU–139 or FMU–152. A DSU–38/B adds a Precision Laser Guidance Set (PLGS) to the GBU–54 JDAM AUR, giving the weapon system optional semi-active laser guidance in addition to its current GPS/INS guidance.

6. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

7. A determination has been made that the recipient country can provide the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

8. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Turkey.

[FR Doc. 2015–33251 Filed 1–5–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16–03]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Sarah A. Ragan or Heather N. Harwell, DSCA/LMO, (703) 604–1546/(703) 607–5339.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16–03 with attached Policy Justification and Sensitivity of Technology.

Dated: December 31, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

NOV 10 2015

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-03, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of France for defense articles and services estimated to cost $650 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 16–03

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(l) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of France

(ii) *Total Estimated Value:*

Major Defense Equipment*	$355 million
Other	$295 million
TOTAL	$650 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Two (2) C–130J aircraft with Rolls Royce AE–2100D Turboprop Engines

Two (2) KC–130J aircraft with Rolls Royce AE–2100D Turboprop Engines

Four (4) Rolls Royce AE–2100D Turboprop Engines (spares)

Non-Major Defense Equipment (Non-MDE):

Six (6) AN/ALE 47 Electronic Countermeasure Dispensers (1 per aircraft, plus 2 spares)

Six (6) AN/AAR–47A(V)2 Missile Warning Systems (1 per aircraft, plus 2 spares)

Six (6) AN/ALR–56M Radar Warning Receivers (1 per aircraft, plus 2 spares)

Ten (10) Embedded Global Positioning/Inertial Navigation Systems (2 per aircraft, plus 2 spares)

Ten (10) AN/ARC–210 Radios (2 per aircraft, plus 2 spares)

Ten (10) AN/ARC–164 UHF/VF Radios (2 per aircraft, plus 2 spares)
Two (2) HF Voice Radios
Ten (10) KY–100 Secure Voice Terminals (2 per aircraft, plus 2 spares)
Ten (10) KYV–5 Secure Voice Equipment Units (2 per aircraft, plus 2 spares)

Also provided are support and test equipment; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistical and program support.

(iv) *Military Department:* Air Force (SAE)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 10 NOV 2015

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

France—C–130J aircraft

The Government of France has requested a possible sale of:

Major Defense Equipment (MDE):
Two (2) C- 130J aircraft with Rolls Royce AE–2100D Turboprop Engines
Two (2) KC–130J aircraft with Rolls Royce AE–2100D Turboprop Engines
Four (4) Rolls Royce AE–2100D Turboprop Engines (spares)

Non-Major Defense Equipment (Non-MDE):
Six (6) AN/ALE 47 Electronic Countermeasure Dispensers (1 per aircraft, plus 2 spares)
Six (6) AN/AAR–47A(V)2 Missile Warning Systems (1 per aircraft, plus 2 spares)
Six (6) AN/ALR–56M Radar Warning Receivers (1 per aircraft, plus 2 spares)
Ten (10) Embedded Global Positioning/Inertial Navigation Systems (2 per aircraft, plus 2 spares)
Ten (10) AN/ARC–210 Radios (2 per aircraft, plus 2 spares)
Ten (10) AN/ARC–164 UHF/VF Radios (2 per aircraft, plus 2 spares)
Two (2) HF Voice Radios
Ten (10) KY–100 Secure Voice Terminals (2 per aircraft, plus 2 spares)
Ten (10) KYV–5 Secure Voice Equipment Units (2 per aircraft, plus 2 spares)

Also provided are support and test equipment; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistical and program support. The estimated MDE value is $355 million. The total overall estimated value is $650 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the capability of a NATO ally. It is vital to U.S. national interests to assist the French Air Force to increase its airlift, air refueling, and air drop capabilities. These aircraft will provide these capabilities and will be used to support national, NATO, United Nations, and other coalition operations. Providing these aircraft to the French Air Force will greatly increase interoperability between the U.S. Air Force and the French Air Force, as well as other NATO allies.

The C–130Js will provide critical transport, airdrop, and resupply to thousands of French troops in support of current and future operations. The KC–130Js will provide crucial air refueling capability to France's fighter aircraft, light transport aircraft, and helicopters. France will have no difficulty absorbing these aircraft into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

France requests that Lockheed Martin be the sole source provider for the C–130J aircraft. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale may require multiple trips for U.S. contractor representatives to France and potentially to deployed locations to provide initial launch, recovery, and maintenance support.

Transmittal No. 16–03

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AN/ALE–47 Counter-Measures Dispensing System (CMDS) is an integrated, threat-adaptive, software-programmable dispensing system capable of dispensing chaff, flares, and active radio frequency expendables. The threats countered by the CMDS include radar-directed anti-aircraft artillery (AAA), radar command-guided missiles, radar homing guided missiles, and infrared (IR) guided missiles. The system is internally mounted and may be operated as a stand-alone system or may be integrated with other on-board Electronic Warfare and avionics systems. The AN/ALE–47 uses threat data received over the aircraft interfaces to assess the threat situation and to determine a response. Expendable routines tailored to the immediate aircraft and threat environment may be dispensed using one of four operational modes. Hardware is UNCLASSIFIED. Technical data to include threat information files and documentation to be provided could be classified up to SECRET.

2. The AN/AAR–47 missile warning system is a small, lightweight, passive, electro-optic, threat warning device used to detect surface-to-air missiles fired at helicopters and low-flying fixed-wing aircraft and automatically provide countermeasures, as well as audio and visual-sector warning messages to the aircrew. The basic system consists of multiple Optical Sensor Converter (OSC) units, a Computer Processor (CP) and a Control Indicator (Cl). The set of OSC units, which normally consist of four, is mounted on the aircraft exterior to provide omni-directional protection. The OSC detects the rocket plume of missiles and sends appropriate signals to the CP for processing. The CP analyses the data from each OSC and automatically deploys the appropriate countermeasures. The CI displays the incoming direction of the threat, so that the pilot can take appropriate action. Hardware is UNCLASSIFIED. Technical data to include threat information files and documentation to be provided could be classified up to SECRET.

3. The AN/ALR–56M Advanced Radar Warning Receiver continuously detects and intercepts RF signals in certain frequency ranges and analyzes and separates threat signals from non-threat signals. It contributes to full-dimensional protection by providing individual aircraft probability of survival through improved aircrew situational awareness of the radar guided threat environment. The AN/ALR–56M is designed to provide improved performance in a dense signal environment and improved detection of modem threats signals. Hardware is UNCLASSIFIED. Technical data to include threat information files and documentation to be provided could be classified up to SECRET.

4. The AN/ARC–210 multi-mode integrated communications system family offers a two-way secure, jam-resistant, voice and data communications via line-of-sight or satellite communications links in the very high frequency (VHF) and ultra-high frequency (UHF) spectrum. The

RT1794C provides frequency hopping (HAVE QUICK I/II), Single Channel Ground and Airborne Radio Systems (SINCGARS), and embedded COMSEC products. The RT–1556 transceiver is capable of establishing two-way communication links within tactical aircraft environments. The ARC–210 can be tailored for integration on many user platforms and its modular architecture enables addition of specific capabilities depending on user's needs. Hardware is UNCLASSIFIED. Technical data and documentation to be provided is UNCLASSIFIED.

5. The AN/ARC–164 is a modular, slice-constructed, solid-state, 10W UHF transmitter/receiver. It is standard equipment for the U.S. Air Force and U.S. Army with alternative console/panel mounts for each service, the RT–1168 and RT–1167 respectively. As well as MIL–STD–1553B and Have-Quick II, the latest AN/ARC–164 radios feature ANVIS Green A front panel lighting and an electronic fill port. The current AN/ARC–164 system is an F3 (Form, Fit, Function) replacement for older AN/ARC–164 systems and obsolete UHF radios such as the AN/ARC–51. This F3 replacement option eliminates platform Group A modification costs. Hardware is UNCLASSIFIED. Technical data and documentation to be provided is UNCLASSIFIED.

6. KYV–5 COMSEC Module and the Split Remote Control Unit (SRCU) provide narrowband secure voice and data capability and perform all COMSEC, operator control and indication functions. Designed to secure Naval and Joint Service narrowband half-duplex communications over HF, VHF, and UHF SATCOM radios. A SRCU is available for applications where the front panel controls are not accessible. This may include the FYV–5M variant, to remain up to date and interoperable with the most current NATO standard at the time of aircraft delivery. Hardware is UNCLASSIFIED. Technical data and documentation to be provided is SECRET.

7. The Advanced Narrowband Digital Voice Terminal (ANDVT) AIRTERM KY–100 is a piece of secure, tactical airborne terminal which provides secure transmission of voice and data over narrowband radio systems and provides an additional capability for transmission over wideband systems. AIRTERM is the airborne version of the MINTERM and is fully interoperable with the ANDVT family of equipment (MINTERM, KY–99A TACTERM AN/USC–43) and also with the VINSON (KY–57/58) equipment. This may include the KY–100M variant, to remain up to date and interoperable with the most current NATO standard at time of aircraft delivery. Hardware is UNCLASSIFIED. Technical data and documentation to be provided is SECRET.

8. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

9. A determination has been made that the Government of France can provide substantially the same degree of protection for the sensitive technology being released as the United States Government. This sale is necessary in furtherance of the United States foreign policy and national security objectives outlined in the Policy Justification.

10. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of France.

[FR Doc. 2015–33265 Filed 1–5–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (Judicial Proceedings Panel); Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the Judicial Proceedings since Fiscal Year 2012 Amendments Panel (''the Judicial Proceedings Panel'' or ''the Panel''). The meeting is open to the public.

DATES: A meeting of the Judicial Proceedings Panel will be held on Friday, January 22, 2016. The Public Session will begin at 9:00 a.m. and end at 4:45 p.m.

ADDRESSES: The Holiday Inn Arlington at Ballston, 4610 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Carson, Judicial Proceedings Panel, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, VA 22203. Email: *whs.pentagon.em.mbx.judicial-panel@mail.mil*. Phone: (703) 693–3849. Web site: *http://jpp.whs.mil*.

SUPPLEMENTARY INFORMATION: This public meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: In Section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), as amended, Congress tasked the Judicial Proceedings Panel to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice (UCMJ) involving adult sexual assault and related offenses since the amendments made to the UCMJ by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81; 125 Stat. 1404), for the purpose of developing recommendations for improvements to such proceedings. At this meeting, the Panel will deliberate on topics to be included in its upcoming annual report to Congress and the Secretary of Defense. The Panel will also hear presentations and analysis regarding indicators, trends, and patterns for military justice case data for sexual assault offenses from 2012 to 2014. The Panel is interested in written and oral comments from the public, including non-governmental organizations, relevant to these issues or any of the Panel's tasks.

Agenda

9:00 a.m.–12:00 p.m. Panel Deliberations on Annual Report: Article 120, Retaliation, and Restitution & Compensation *(Public meeting begins)*

12:00 p.m.–1:00 p.m. Lunch

1:00 p.m.–4:30 p.m. Review of Military Justice Case Data for Sexual Assault Offenses: Presentations & Analysis from Dr. Cassia Spohn & JPP Staff

4:30 p.m.–4:45 p.m. Public Comment

Availability of Materials for the Meeting: A copy of the January 22, 2016 public meeting agenda or any updates or changes to the agenda, to include individual speakers not identified at the time of this notice, as well as other materials provided to Panel members for use at the public meeting, may be obtained at the meeting or from the Panel's Web site at *http://jpp.whs.mil*.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact the Judicial Proceedings Panel at *whs.pentagon.em.mbx.judicial-panel@*

mail.mil at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Procedures for Providing Public Comments: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Panel about its mission and topics pertaining to this public session. Written comments must be received by the JPP at least five (5) business days prior to the meeting date so that they may be made available to the Judicial Proceedings Panel for their consideration prior to the meeting. Written comments should be submitted via email to the Judicial Proceedings Panel at *whs.pentagon.em.mbx.judicial-panel@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the Judicial Proceedings Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. If members of the public are interested in making an oral statement, a written statement must be submitted along with a request to provide an oral statement. Oral presentations by members of the public will be permitted from 4:30 p.m. to 4:45 p.m. on January 22, 2016 in front of the Panel members. The number of oral presentations to be made will depend on the number of requests received from members of the public on a first-come basis. After reviewing the requests for oral presentation, the Chairperson and the Designated Federal Officer will, if they determine the statement to be relevant to the Panel's mission, allot five minutes to persons desiring to make an oral presentation.

Committee's Designated Federal Officer: The Panel's Designated Federal Officer is Ms. Maria Fried, Department of Defense, Office of the General Counsel, 1600 Defense Pentagon, Room 3B747, Washington, DC 20301–1600.

Dated: December 30, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–33202 Filed 1–5–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents, Uniformed Services University of the Health Sciences; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense; Uniformed Services University of the Health Sciences (''the University'').

ACTION: Quarterly meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following meeting of the Board of Regents, Uniformed Services University of the Health Sciences (''the Board'').

DATES: Tuesday, February 2, 2016, from 8:00 a.m. to 10:50 a.m. (Open Session) and 10:50 a.m. to 11:20 a.m. (Closed Session).

ADDRESSES: Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Everett Alvarez Jr. Board of Regents Room (D3001), Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Jennifer Nuetzi James, Designated Federal Officer, 4301 Jones Bridge Road, D3002, Bethesda, Maryland 20814; telephone 301–295–3066; email *jennifer.nuetzi-james@usuhs.edu.*

SUPPLEMENTARY INFORMATION: This meeting notice is being published under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide advice and recommendations to the Secretary of Defense through the Under Secretary of Defense for Personnel and Readiness, on academic and administrative matters critical to the full accreditation and successful operation of the University. These actions are necessary for the University to pursue its mission, which is to educate, train and comprehensively prepare uniformed services health professionals, officers, scientists and leaders to support the Military and Public Health Systems, the National Security and National Defense Strategies of the United States, and the readiness of our Uniformed Services.

Agenda: The actions scheduled to occur include the approval of the minutes from the Board meeting held on November 3, 2015; recommendations regarding the awarding of post-baccalaureate degrees; recommendations regarding the approval of faculty appointments and promotions; and recommendations regarding award nominations. The University President will provide a report on recent actions affecting academic and operational aspects of the University. Member Reports will include an Academics Summary from the School of Medicine, Graduate School of Nursing, Postgraduate Dental College, University Faculty Senate, Graduate Medical Education and Senior Vice President. Member Reports will also include a Finance and Administration Summary from the Vice President for Finance and Administration, the University Brigade and The Henry M. Jackson Foundation for the Advancement of Military Medicine. The University Vice President for Research will provide a semiannual report on the University Office of Research; the University Inspector General (IG) will provide an update on IG issues involving the University; and a brief overview of the University Center for Global Health Engagement will be provided. A closed session will be held, after the open session, to discuss active investigations and personnel actions.

Meeting Accessibility: Pursuant to Federal statute and regulations (5 U.S.C., Appendix, 5 U.S.C. 552b, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, the meeting is open to the public from 8:00 a.m. to 10:50 a.m. Seating is on a first-come basis. Members of the public wishing to attend the meeting should contact Jennifer Nuetzi James five business days prior to the meeting, at the address and phone number noted in the **FOR FURTHER INFORMATION CONTACT** section.

Pursuant to 5 U.S.C. 552b(c)(2, 5–7), the Department of Defense has determined that the portion of the meeting from 10:50 a.m. to 11:20 a.m. shall be closed to the public. The Under Secretary of Defense (Personnel and Readiness), in consultation with the Office of the DoD General Counsel, has determined in writing that a portion of the committee's meeting will be closed as the discussion will disclose sensitive personnel information, will include matters that relate solely to the internal personnel rules and practices of the agency, will involve allegations of a person having committed a crime or censuring an individual, and may disclose investigatory records compiled for law enforcement purposes.

Written Statements: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Board about its approved agenda pertaining to this

meeting or at any time regarding the Board's mission. Individuals submitting a written statement must submit their statement to the Designated Federal Officer at the address listed in **FOR FURTHER INFORMATION CONTACT**. Written statements that do not pertain to a scheduled meeting of the Board may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at the planned meeting, then these statements must be received at least 5 calendar days prior to the meeting, otherwise, the comments may not be provided to or considered by the Board until a later date. The Designated Federal Officer will compile all timely submissions with the Board's Chair and ensure such submissions are provided to Board Members before the meeting.

Dated: December 31, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–33243 Filed 1–5–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES:

Monday, January 25, 2016 1:00 p.m.–5:00 p.m.

Tuesday, January 26, 2016 8:30 a.m.–5:00 p.m.

ADDRESSES: New Ellenton Community Center, 212 Pine Hill Avenue, New Ellenton, SC 29809.

FOR FURTHER INFORMATION CONTACT: James Giusti, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7684.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, January 25, 2016

1:00 p.m. Opening and Agenda Review
1:20 p.m. Work Plan Update
1:30 p.m. Combined Committees Session

Order of committees:

- Facilities Disposition & Site Remediation
- Administrative & Outreach
- Nuclear Materials
- Waste Management
- Strategic & Legacy Management

4:45 p.m. Public Comments
5:00 p.m. Adjourn

Tuesday, January 26, 2016

8:30 a.m. Opening, Chair Update, and Agenda Review
9:15 a.m. Agency Updates
10:00 a.m. Public Comments
10:15 a.m. Administrative & Outreach Committee Report
10:30 a.m. Break
10:45 a.m. Facilities Disposition & Site Remediation Committee Report
11:15 a.m. Public Comments
11:30 a.m. Lunch Break
1:00 p.m. Waste Management Committee Report
1:30 p.m. Nuclear Materials Committee Report
2:15 p.m. Public Comments
2:30 p.m. Break
2:45 p.m. Strategic & Legacy Management Committee Report
4:45 p.m. Announcement of 2016 Committee Chairs
5:00 p.m. Adjourn

Public Participation: The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact James Giusti at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact James Giusti's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling James Giusti at the address or phone number listed above. Minutes will also be available at the following Web site: *http://cab.srs.gov/srs-cab.html.*

Issued at Washington, DC, on December 31, 2015.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2015–33316 Filed 1–5–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Certification Notice—237]

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 17, 2015, CPV Towantic, LLC, as owner and operator of a new base load electric 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. 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 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 base load electric 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: CPV Towantic, LLC
CAPACITY: 785 megawatts (MW)
PLANT LOCATION: CPV Towantic Energy Center, 16 Woodruff Hill Road, Oxford, CT 06478
IN-SERVICE DATE: May 1, 2018

Issued in Washington, DC, on December 30, 2015.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2015–33317 Filed 1–5–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–612–000]

Greeley Energy Facility, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Greeley Energy Facility, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 19, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33232 Filed 1–5–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14739–000]

Energy Resources USA Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On November 27, 2015, the Energy Resources USA Inc. filed an application for a preliminary permit under section 4(f) of the Federal Power Act proposing to study the feasibility of the proposed Coralville Dam Hydroelectric Project No. 14739–000, to be located at the existing Coralville Dam on the Iowa River, near the City of Coralville, in Johnson County, Iowa. The Coralville Dam is owned by the United States government and operated by the U.S. Army Corps of Engineers.

The proposed project would consist of: (1) A new 90-foot by 13-foot by 18-foot concrete conduit; (2) a new 70-foot by 50-foot reinforced concrete powerhouse containing two 3.5-megawatt Kaplan hydropower turbine-generators having a total combined generating capacity of 7.0 megawatts; (3) one new 100-foot-long by 65-foot-wide tailrace; (4) a new 50-foot-long by 45-foot-wide substation; (5) a new 2-mile-long, 69-kilovolt transmission line; and (6) appurtenant facilities. The project would have an estimated annual generation of 34 gigawatt-hours.

Applicant Contact: Mr. Ander Gonzalez, 2655 Le Jeune Road, Suite 804, Coral Gables, Florida 33134; telephone (954) 248–8425.

FERC Contact: Tyrone A. Williams, (202) 502–6331.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications 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–14739–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14739) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33237 Filed 1–5–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives

notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the PJM Interconnection, L.L.C. (PJM):

PJM Planning Committee

January 7, 2016, 9:30 a.m.–12:00 p.m. (EST)

PJM Transmission Expansion Advisory Committee

January 7, 2016, 11:00 a.m.–3:00 p.m. (EST)

The above-referenced meetings will be held at: PJM Conference and Training Center, PJM Interconnection, 2750 Monroe Boulevard, Audubon, PA 19403.

The above-referenced meetings are open to stakeholders.

Further information may be found at *www.pjm.com.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. ER14–972, *PJM Interconnection, L.L.C.*
Docket No. ER14–1485, *PJM Interconnection, L.L.C.*
Docket Nos. ER13–1944, *et al., PJM Interconnection, L.L.C., et al.*
Docket No. ER15–1344, *PJM Interconnection, L.L.C.*
Docket No. ER15–1387, *PJM Interconnection, L.L.C. and Potomac Electric Power Company*
Docket No. ER15–2562, *PJM Interconnection, L.L.C.*
Docket No. ER15–2563, *PJM Interconnection, L.L.C.*
Docket No. EL15–18, *Consolidated Edison Company of New York, Inc.* v. *PJM Interconnection, L.L.C.*
Docket No. EL15–41, *Essential Power Rock Springs, LLC, et. al.* v. *PJM Interconnection, L.L.C.*
Docket Nos. ER13–1927, *et al., PJM Interconnection, L.L.C., et al.*
Docket No. ER15–2114, *PJM Interconnection, L.L.C. and Transource West Virginia, LLC*
Docket No. EL15–79, *TransSource, LLC* v. *PJM Interconnection, L.L.C.*
Docket No. EL15–95, *Delaware Public Service Commission, et. al.,* v. *PJM Interconnection, L.L.C., et. al.*
Docket No. EL15–67, *Linden VFT, LLC* v. *PJM Interconnection, L.L.C.*
Docket No. EL05–121, *PJM Interconnection, L.L.C.*

For more information, contact the following:

Jonathan Fernandez, Office of Energy Market Regulation, Federal Energy Regulatory Commission, (202) 502–6604, *Jonathan.Fernandez@ferc.gov*
Alina Halay, Office of Energy Market Regulation, Federal Energy Regulatory Commission, (202) 502–6474, *Alina.Halay@ferc.gov*

Dated: December 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33236 Filed 1–5–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–645–000]

RE Barren Ridge 1 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of RE Barren Ridge 1 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 19, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33235 Filed 1–5–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–583–000]

GDF SUEZ Energy Resources NA, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of GDF SUEZ Energy Resources NA, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 19, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an

eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33231 Filed 1–5–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #3

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2799–013; ER10–2801–013; ER10–2385–007; ER11–3727–014; ER10–2262–005; ER12–2413–012; ER11–2062–018; ER10–2346–008; ER10–2812–012; ER10–1291–019; ER10–2843–011; ER11–2508–017; ER11–2863–010; ER11–4307–018; ER10–2347–007; ER10–2348–006; ER12–1711–014; ER10–2350–007; ER10–2846–013; ER12–261–017; ER10–3223–007; ER10–2351–007; ER10–2875–013; ER10–2368–006; ER10–2352–007; ER10–2264–006; ER10–1581–016; ER10–2353–008; ER10–2876–014; ER10–2878–013; ER10–2354–008; ER10–2355–008; ER10–2879–013; ER10–2384–007; ER10–2383–007; ER10–2880–013; ER11–2107–009; ER11–2108–009; ER10–2888–018; ER13–1745–008; ER13–1803–010; ER13–1788–008; ER16–10–001; ER13–1789–008; ER13–1790–010; ER10–2896–013.

Applicants: Devon Power LLC, Dunkirk Power LLC, Elkhorn Ridge Wind, LLC, El Segundo Energy Center LLC, El Segundo Power, LLC, Energy Alternatives Wholesale, LLC, Energy Plus Holdings LLC, Forward WindPower LLC, GenConn Devon LLC, GenConn Energy LLC, GenConn Middletown LLC, GenOn Energy Management, LLC, GenOn Mid-Atlantic, LLC, Green Mountain Energy Company, Groen Wind, LLC, High Lonesome Mesa, LLC, High Plains Ranch II, LLC, Hillcrest Wind, LLC, Huntley Power LLC, Independence Energy Group LLC, Indian River Power LLC, Jeffers Wind 20, LLC, Keystone Power LLC, Laredo Ridge Wind, LLC, Larswind, LLC, Long Beach Generation LLC, Long Beach Peakers LLC, Lookout WindPower, LLC, Louisiana Generating LLC, Middletown Power LLC, Midway-Sunset Cogeneration Company, Midwest Generation, LLC, Montville Power LLC, Mountain Wind Power, LLC, Mountain Wind Power II LLC, NEO Freehold- Gen LLC, North Community Turbines LLC, North Wind Turbines LLC, Norwalk Power LLC, NRG Bowline LLC, NRG California South LP, NRG Canal LLC, NRG Chalk Point CT LLC, NRG Chalk Point LLC, NRG Delta LLC, NRG Energy Center Dover LLC.

Description: Notice of Change in Status of NRG MBR Sellers [Part 2 of 3].

Filed Date: 12/30/15.

Accession Number: 20151230–5308.

Comments Due: 5 p.m. ET 1/20/16.

Docket Numbers: ER16–669–000.

Applicants: GenConn Energy LLC.

Description: Section 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 12/31/2015.

Filed Date: 12/30/15.

Accession Number: 20151230–5313.

Comments Due: 5 p.m. ET 1/20/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33225 Filed 1–5–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–632–000]

Blythe Solar II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Blythe Solar II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 19, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's

Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33233 Filed 1–5–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–582–000]

ENGIE Retail, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of ENGIE Retail, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 19, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33230 Filed 1–5–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–581–000]

ENGIE Portfolio Management, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of ENGIE Portfolio Management, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 19, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33229 Filed 1–5–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Supplemental Notice of Technical Conference

	Docket Nos.
PJM Interconnection, L.L.C	ER15–2562–000. ER15–2563–000.
Consolidated Edison Company of New York, Inc. v. PJM Interconnection, L.L.C.	EL15–18–001.
Linden VFT, LLC v. PJM Interconnection, L.L.C.	EL15–67–000.
Delaware Public Service Commission and Maryland Public Service Commission v. PJM Interconnection, L.L.C.	EL15–95–000.
PJM Interconnection, L.L.C	ER14–972–003.
PJM Interconnection, L.L.C	ER14–1485–005. Not Consolidated.

As noticed on December 4, 2015, the Commission has directed Commission staff to conduct a technical conference in the above-referenced proceedings. The technical conference is scheduled

for January 12, 2016, at the Commission's headquarters at 888 First Street NE., Washington, DC 20426 between 10:00 a.m. and 4:00 p.m. (Eastern Time).

In an order dated November 24, 2015,[1] the Commission found that the assignment of cost allocation for the projects in the filings and complaints listed in the caption using PJM's solution-based distribution factor (DFAX) cost allocation method had not been shown to be just and reasonable and may be unjust, unreasonable, or unduly discriminatory or preferential. The Commission directed its staff to establish a technical conference to explore both whether there is a definable category of reliability projects within PJM for which the solution-based DFAX cost allocation method may not be just and reasonable, such as projects addressing reliability violations that are not related to flow on the planned transmission facility, and whether an alternative just and reasonable *ex ante* cost allocation method could be established for any such category of projects.

An agenda with the list of selected speakers and presentations is attached and will be available on the web calendar on the Commission's Web site, *www.ferc.gov.* A schedule for post-technical conference comments will be established at the technical conference.

The technical conference is open to the public. The Chairman and Commissioners may attend and participate in the technical conference.

Pre-registration through the Commission's Web site *https://www.ferc.gov/whats-new/registration/01-12-16-form.asp* is encouraged, to help ensure sufficient seating is available.

This conference will also be transcribed. Interested persons may obtain a copy of the transcript for a fee by contacting Ace-Federal Reporters, Inc. at (202) 347–3700.

In addition, there will be a free audio cast of the conference. Anyone wishing to listen to the meeting should send an email to Sarah McKinley at *sarah.mckinley@ferc.gov* by January 5, 2016, to request call-in information. Please reference ''call information for PJM cost allocation technical conference'' in the subject line of the email. The call-in information will be provided prior to the meeting.

Persons listening to the technical conference may participate by submitting questions, either prior to or during the technical conference, by emailing *PJMDFAXconfDL@ferc.gov.*

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY); or send a fax to 202–208–2106 with the required accommodations.

For more information about this technical conference, please contact *PJMDFAXconfDL@ferc.gov;* or Sarah McKinley, 202–502–8368, *sarah.mckinley@ferc.gov,* regarding logistical issues.

Dated: December 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33228 Filed 1–5–16; 8:45 am]

BILLING CODE 6717–01–P

[1] *PJM Interconnection, L.L.C., et al.*, 153 FERC ¶ 61,245 (2015) (November 2015 Order).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2265–009; ER12–21–019; ER11–2211–008; ER11–2209–008; ER11–2210–008; ER11–2207–008; ER11–2206–008; ER13–1150–006; ER13–1151–006; ER10–2783–013; ER10–2784–013; ER11–2855–019; ER10–2791–014; ER10–2333–007; ER10–2792–014; ER14–1818–009; ER12–1238–006; ER10–2260–006; ER10–2261–006; ER10–2337–008; ER14–1668–005; ER14–1669–005; ER14–1674–005; ER14–1670–005; ER14–1671–005; ER14–1675–005; ER14–1673–005; ER14–1676–005; ER14–1677–005; ER14–1678–005; ER14–1679–005; ER14–1672–005; ER10–2795–013; ER10–2798–013; ER10–1575–012; ER10–2338–011; ER10–2340–011; ER12–1239–006; ER10–2336–007; ER10–2335–007; ER13–1991–007; ER13–1992–007.

Applicants: NRG Power Marketing LLC, Agua Caliente Solar, LLC, Alta Wind I, LLC, Alta Wind II, LLC, Alta Wind III, LLC, Alta Wind IV, LLC, Alta Wind V, LLC, Alta Wind X, LLC, Alta Wind XI, LLC, Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Avenal Park LLC, Bayou Cove Peaking Power, LLC, Bendwind, LLC, Big Cajun I Peaking Power LLC, Boston Energy Trading and Marketing LLC, Broken Bow Wind, LLC, Cabrillo Power I LLC, Cabrillo Power II LLC, CL Power Sales Eight, L.L.C., Community Wind North 1 LLC, Community Wind North 2 LLC, Community Wind North 3 LLC, Community Wind North 5 LLC, Community Wind North 6 LLC, Community Wind North 7 LLC, Community Wind North 8 LLC, Community Wind North 9 LLC, Community Wind North 10 LLC, Community Wind North 11 LLC, Community Wind North 13 LLC, Community Wind North 15 LLC, Conemaugh Power LLC, Connecticut Jet Power LLC, Cottonwood Energy Company LP, CP Power Sales Nineteen, L.L.C., CP Power Sales Twenty, L.L.C., Crofton Bluffs Wind, LLC, DeGreeff DP, LLC, DeGreeffpa, LLC, Desert Sunlight 250, LLC, Desert Sunlight 250, LLC.

Description: Notice of Change in Status of NRG MBR Sellers [Part 1 of 3].

Filed Date: 12/30/15.

Accession Number: 20151230–5304.

Comments Due: 5 p.m. ET 1/20/16.

Docket Numbers: ER10–2794–018; ER14–2672–003; ER12–1825–016.

Applicants: EDF Trading North America, LLC, EDF Energy Services, LLC, EDF Industrial Power Services (CA), LLC.

Description: Updated Market Power Analysis for the Southwest Power Pool Region of the EDF Sellers.

Filed Date: 12/30/15.

Accession Number: 20151230–5191.

Comments Due: 5 p.m. ET 2/29/16.

Docket Numbers: ER10–2794–019; ER14–2672–004; ER12–1825–017.

Applicants: EDF Trading North America, LLC, EDF Energy Services, LLC, EDF Industrial Power Services (CA), LLC.

Description: Updated Market Power Analysis for the Southwest Region of the EDF Sellers.

Filed Date: 12/30/15.

Accession Number: 20151230–5207.

Comments Due: 5 p.m. ET 2/29/16.

Docket Numbers: ER13–1562–005.

Applicants: Catalina Solar Lessee, LLC.

Description: Southwest Region Triennial Updated Market Power Analysis of Catalina Solar Lessee, LLC.

Filed Date: 12/29/15.

Accession Number: 20151229–5347.

Comments Due: 5 p.m. ET 2/29/16.

Docket Numbers: ER15–758–001.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Correction Filing to 2015 Annual Allocation Update to be effective 1/1/2015.

Filed Date: 12/30/15.

Accession Number: 20151230–5141.

Comments Due: 5 p.m. ET 1/20/16.

Docket Numbers: ER15–2205–003.

Applicants: Prairie Breeze Wind Energy III LLC.

Description: Triennial Report of Prairie Breeze Wind Energy III LLC.
Filed Date: 12/30/15.
Accession Number: 20151230–5222.
Comments Due: 5 p.m. ET 2/29/16.

Docket Numbers: ER15–2647–001.
Applicants: Tres Amigas, LLC.
Description: Compliance filing: Compliance to be effective 12/10/2015.
Filed Date: 12/30/15.
Accession Number: 20151230–5278.
Comments Due: 5 p.m. ET 1/13/16.

Docket Numbers: ER16–665–000.
Applicants: Public Service Company of Colorado.
Description: Section 205(d) Rate Filing: 2015–12–30_PSC-Brlngtn Mtr Agrmt-402 0.0.0 to be effective 2/29/2016.
Filed Date: 12/30/15.
Accession Number: 20151230–5133.
Comments Due: 5 p.m. ET 1/20/16.

Docket Numbers: ER16–666–000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: Section 205(d) Rate Filing: NPPC NYPA Amended Service Agreement No. 2177 to be effective 9/30/2015.
Filed Date: 12/30/15.
Accession Number: 20151230–5206.
Comments Due: 5 p.m. ET 1/20/16.

Docket Numbers: ER16–667–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Section 205(d) Rate Filing: Amendments to SCPSA and CEPCI NITSA and Metering Agmts to be effective 1/1/2016.
Filed Date: 12/30/15.
Accession Number: 20151230–5208.
Comments Due: 5 p.m. ET 1/20/16.

Docket Numbers: ER16–668–000.
Applicants: PJM Interconnection, L.L.C., Ohio Power Company.
Description: Section 205(d) Rate Filing: AEP submits 46th Revised Service Agreement No. 1336 to be effective 11/30/2015.
Filed Date: 12/30/15.
Accession Number: 20151230–5294.
Comments Due: 5 p.m. ET 1/20/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33224 Filed 1–5–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–25–000]

Startrans IO, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On December 30, 2015, the Commission issued an order in Docket No. EL16–25–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of Startrans IO, LLC's proposed transmission revenue requirement reduction. *Startrans, IO, LLC,* 153 FERC ¶ 61,360 (2015).

The refund effective date in Docket No. EL16–25–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register.**

Dated: December 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33227 Filed 1–5–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–36–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

Take notice that on December 21, 2015 National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221 filed a prior notice request pursuant to sections 157.205, 157.208, 157.210 and 157.216 of the Commission's regulations under the Natural Gas Act for authorization to construct and operate four sections of Line R34S totaling approximately 5.524 miles, and an approximately 0.153 mile section of Line R26S, both 12-inch-diameter pipelines located in Chautauqua and Cattaraugus Counties, New York, and abandon approximately 5.677 miles feet of 12-inch-diameter pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Laura P. Berloth, Attorney for National Fuel, 6363 Main Street, Williamsville, New York 14221, by calling (716) 857–7001, or by email at *berlothl@natfuel.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of

the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's 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 commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, 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 via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: December 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33226 Filed 1–5–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–634–000]

AltaGas Pomona Energy Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of AltaGas Pomona Energy Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 19, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33234 Filed 1–5–16; 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: EC16–58–000.
Applicants: ReEnergy Sterling CT Limited Partnership.
Description: Application for Authorization Pursuant to Section 203 of the Federal Power Act to Dispose of Jurisdictional Facilities, Request for Waivers, Expedited Consideration, and Confidential Treatment of ReEnergy Sterling CT Limited Partnership.
Filed Date: 12/29/15.
Accession Number: 20151229–5335.
Comments Due: 5 p.m. ET 1/19/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–2568–001.
Applicants: Duke Energy Progress, LLC.
Description: Compliance filing: Name Change Progress Rate Schedules to be effective 11/1/2015.
Filed Date: 12/30/15.
Accession Number: 20151230–5088.
Comments Due: 5 p.m. ET 1/20/16.

Docket Numbers: ER15–2568–002.
Applicants: Duke Energy Progress, LLC.
Description: Compliance filing: Name Change Progress SA to be effective 11/1/2015.
Filed Date: 12/30/15.
Accession Number: 20151230–5090.
Comments Due: 5 p.m. ET 1/20/16.

Docket Numbers: ER15–2569–001.
Applicants: Duke Energy Florida, LLC.
Description: Compliance filing: Name Change Rate Schedule Filing to be effective 11/1/2015.
Filed Date: 12/30/15.
Accession Number: 20151230–5044.
Comments Due: 5 p.m. ET 1/20/16.

Docket Numbers: ER15–2569–002.
Applicants: Duke Energy Florida, LLC.
Description: Compliance filing: Name Change Service Agreement Filing to be effective 11/1/2015.
Filed Date: 12/30/15.
Accession Number: 20151230–5080.
Comments Due: 5 p.m. ET 1/20/16.

Docket Numbers: ER16–212–001.
Applicants: Black Hills/Colorado Electric Utility Company, LP.
Description: Tariff Amendment: Response Filing to be effective 1/1/2016.
Filed Date: 12/29/15.
Accession Number: 20151229–5287.
Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: ER16–217–001.
Applicants: Black Hills/Colorado Electric Utility Co.
Description: Tariff Amendment: Response Filing to be effective 1/1/2016.
Filed Date: 12/29/15.
Accession Number: 20151229–5288.
Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: ER16–652–000.
Applicants: Roosevelt Wind Project, LLC.

Description: Market-Based Triennial Review Filing: Roosevelt Wind Project Triennial Filing to be effective 2/28/2016.

Filed Date: 12/29/15.

Accession Number: 20151229–5285.

Comments Due: 5 p.m. ET 2/29/16.

Docket Numbers: ER16–653–000.

Applicants: Slate Creek Wind Project, LLC.

Description: Market-Based Triennial Review Filing: Slate Creek Wind Triennial Filing to be effective 2/28/2016.

Filed Date: 12/29/15.

Accession Number: 20151229–5286.

Comments Due: 5 p.m. ET 2/29/16.

Docket Numbers: ER16–654–000.

Applicants: Spearville 3, LLC.

Description: Market-Based Triennial Review Filing: Spearville 3 Triennial Filing to be effective 2/28/2016.

Filed Date: 12/29/15.

Accession Number: 20151229–5289.

Comments Due: 5 p.m. ET 2/29/16.

Docket Numbers: ER16–655–000.

Applicants: Spinning Spur Wind LLC.

Description: Market-Based Triennial Review Filing: Spinning Spur Wind Triennial Filing to be effective 2/28/2016.

Filed Date: 12/29/15.

Accession Number: 20151229–5290.

Comments Due: 5 p.m. ET 2/29/16.

Docket Numbers: ER16–656–000.

Applicants: Oasis Power Partners, LLC.

Description: Market-Based Triennial Review Filing: Oasis Power Partners Triennial Update to be effective 2/28/2016.

Filed Date: 12/29/15.

Accession Number: 20151229–5291.

Comments Due: 5 p.m. ET 2/29/16.

Docket Numbers: ER16–657–000.

Applicants: Pacific Wind Lessee, LLC.

Description: Market-Based Triennial Review Filing: Pacific Wind Lessee Triennial Filing to be effective 2/28/2016.

Filed Date: 12/29/15.

Accession Number: 20151229–5292.

Comments Due: 5 p.m. ET 2/29/16.

Docket Numbers: ER16–658–000.

Applicants: Shiloh Wind Project 2, LLC.

Description: Market-Based Triennial Review Filing: Shiloh Wind Project 2 Triennial Filing to be effective 2/28/2016.

Filed Date: 12/29/15.

Accession Number: 20151229–5293.

Comments Due: 5 p.m. ET 2/29/16.

Docket Numbers: ER16–659–000.

Applicants: Shiloh III Lessee, LLC.

Description: Market-Based Triennial Review Filing: Shiloh III Lessee Triennial Filing to be effective 2/28/2016.

Filed Date: 12/29/15.

Accession Number: 20151229–5294.

Comments Due: 5 p.m. ET 2/29/16.

Docket Numbers: ER16–660–000.

Applicants: Shiloh IV Lessee, LLC.

Description: Market-Based Triennial Review Filing: Shiloh IV Lessee Triennial Filing to be effective 2/28/2016.

Filed Date: 12/29/15.

Accession Number: 20151229–5295.

Comments Due: 5 p.m. ET 2/29/16.

Docket Numbers: ER16–661–000.

Applicants: Appalachian Power Company.

Description: Section 205(d) Rate Filing: OATT—Revise Attachment K, TCC and TNC Rate Update to be effective 12/31/9998.

Filed Date: 12/29/15.

Accession Number: 20151229–5304.

Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: ER16–662–000.

Applicants: Duke Energy Progress, LLC.

Description: Tariff Cancellation: DEP Cancellation Filing to be effective 2/28/2016.

Filed Date: 12/30/15.

Accession Number: 20151230–5017.

Comments Due: 5 p.m. ET 1/20/16.

Docket Numbers: ER16–663–000.

Applicants: Duke Energy Florida, LLC.

Description: Tariff Cancellation: DEF Cancellation Filing to be effective 2/28/2016.

Filed Date: 12/30/15.

Accession Number: 20151230–5018.

Comments Due: 5 p.m. ET 1/20/16.

Docket Numbers: ER16–664–000.

Applicants: Midcontinent Independent System Operator, Inc., Entergy Services, Inc.

Description: Section 205(d) Rate Filing: 2015–12–30_RS 40 Revised EMI–SMEPA JPZ to be effective 1/1/2016.

Filed Date: 12/30/15.

Accession Number: 20151230–5108

Comments Due: 5 p.m. ET 1/20/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33223 Filed 1–5–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0794; FRL–9940–41]

Registration Review; Draft Human Health and Ecological Risk Assessments; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft human health and ecological risk assessments for the registration review of a group of pesticides identified individually in this document in the table in Unit III, and opens a public comment period. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed a comprehensive draft human health and ecological risk assessment for the identified pesticides. After reviewing comments received during the public comment period on each assessment, EPA may issue revised risk assessments and explain any changes to the draft risk assessments, and respond to substantive comments on the risk assessments. EPA may also request public input on risk mitigation before completing a proposed registration review decision for the identified pesticides. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before March 7, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0794, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online

instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

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

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

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information contact:* The Chemical Review Manager (CRM) identified in the table in Unit III.

For general questions on the registration review program contact: Richard Dumas, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8015; email address: *dumas.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager listed in the table in Unit III.

B. What should I consider as I prepare my comments for EPA?

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

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/commenting-epa-dockets#tips.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document compared to the general population.

II. Authority

EPA is conducting its registration review of these pesticides pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations for the pesticides listed in the table to ensure that they continue to satisfy the FIFRA standard for registration—that is, that these pesticides can still be used without unreasonable adverse effects on human health or the environment.

TABLE—DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Azoxystrobin, 7020	EPA–HQ–OPP–2009–0835	Veronica Dutch, *dutch.veronica@epa.gov*, (703) 308–8585.
Bensulfuron-methyl, 7216	EPA–HQ–OPP–2011–0663	Moana Appleyard, *appleyard.moana@epa.gov*, (703) 308–8175.
Bifenazate, 7609	EPA–HQ–OPP–2012–0633	Garland Waleko, *waleko.garland@epa.gov*, (703) 308–8049.
Boric Acid and Sodium Borate Salts, 0024.	EPA–HQ–OPP–2009–0306	Moana Appleyard, *appleyard.moana@epa.gov*, (703) 308–8175.
Ethephon, 0382	EPA–HQ–OPP–2010–0098	Marquea D. King, *king.marquea@epa.gov*, (703) 305–7432.
Hymexazol, 7016	EPA–HQ–OPP–2010–0127	Caitlin Newcamp, *newcamp.caitlin@epa.gov*, (703) 347–0325.
Lithium hypochlorite, 3084	EPA–HQ–OPP–2013–0606	Donna Kamarei, *kamarei.donna@epa.gov*, (703) 347–0443.
Pronamide, 0082	EPA–HQ–OPP–2009–0326	Wilhelmena Livingston, *livingston.wilhelmena@epa.gov*, (703) 308–8025.

Azoxystrobin. Draft Human Health and Ecological Risk Assessments (EPA–HQ–OPP–2009–0835). Azoxystrobin is a systemic fungicide and antimicrobial registered for use on a variety of terrestrial food and feed crops, including vegetables, fruits and nuts; terrestrial non-food crops, including turf and ornamentals; and non-crop sites including additives for the manufacture of paint, rubber, paper products, textiles, and adhesives. The Agency has conducted draft human health and ecological risk assessments for the conventional and antimicrobial uses of azoxystrobin. A full endangered species assessment has not been completed for azoxystrobin at this time. For foliar

applications, the ecological risk assessment identifies risks of concern for aquatic plants, freshwater fish, aquatic invertebrates, and mammals. For seed treatments, risks of concern are identified for birds and mammals. The conventional uses of azoxystrobin are associated with inhalation risks of concern for residential handlers and some occupational post-application scenarios even with maximum personal protective equipment (PPE). The antimicrobial uses of azoxystrobin are not associated with ecological risks of concern, but the human health risk assessment identifies potential risks of concern for residential and occupational handlers. Azoxystrobin has not been assessed under the endocrine disruptor screening program (EDSP) or for risks to pollinators.

Bensulfuron-methyl. Draft Human Health Risk Assessment (EPA–HQ–OPP–2011–0663). Bensulfuron-methyl is a sulfonylurea herbicide that acts by inhibiting acetolactate synthase. Bensulfuron-methyl is registered for use to control broadleaf weeds and sedges in aquatic rice production. Tolerances have been established for crayfish, rice, and rice straw. There are no registered residential uses of bensulfuron-methyl. Bensulfuron- methyl was first registered in 1989, and a Final Work Plan was published in February 2012. The ecological risks of bensulfuron-methyl were assessed together with all other sulfonylureas in the Preliminary Ecological Risk Assessment for Registration Review of 22 Sulfonylurea Herbicides, published in September 2015. EPA conducted a human health risk assessment and did not identify any risks of concern for dietary, residential, occupational, or aggregate exposure. Bensulfuron-methyl was not on either initial list of chemicals to be screened under the EDSP, nor has an endangered species or pollinator assessment been conducted at this time.

Bifenazate. Draft Human Health and Ecological Risk Assessments (EPA–HQ–OPP–2012–0633). Bifenazate is a selective carbazate miticide/insecticide that is registered for use to control the motile stage of mites in agricultural and non-agricultural sites including on bearing and non-bearing fruit and vegetable crops, cotton, conifer plantations, ornamentals, and in greenhouses, as well as indoor and outdoor residential, commercial, institutional, and recreational areas. The human health non-occupational drift assessment was updated in registration review for bifenazate and found no risks of concern. In the recent June 2014, new use assessment, all dietary, residential, occupational, and aggregate risks were not of concern. In the ecological assessment, chronic risks of concern were identified for mammals and birds. There are acute risks identified for listed birds, freshwater fish, freshwater invertebrates, and estuarine and marine invertebrates. There is also potential acute and chronic risk to terrestrial invertebrates. Bifenazate was not on either initial list of chemicals to be screened under the EDSP, nor has an endangered species or pollinator assessment been conducted at this time.

Boric Acid and Sodium Borate Salts. Draft Human Health and Ecological Risk Assessments (EPA–HQ–OPP–2009–0306). Boric acid and its sodium salts are inorganic compounds with registrations for use as active ingredients in insecticides, acaricides, herbicides, algaecides, fungicides, and wood and material preservatives. In small quantities, boron is an essential nutrient for aquatic vertebrates and invertebrates and plants. There is also evidence that boron is essential or, if not essential, beneficial in birds and mammals, in small quantities. Boric acid and its sodium salts are also present as inert ingredients in pesticide products and as ingredients in non-pesticide consumer products. The Agency issued a Final Work Plan for boric acid in October 2009. The ecological risk assessment identifies potential risks to terrestrial invertebrates, birds, mammals, reptiles, terrestrial-phase amphibians, aquatic organisms, and terrestrial plants. For birds and mammals, risk is primarily associated with the granular formulations and bait uses. For aquatic organisms, risk is primarily associated with discharge of swimming pool, hot tub, and spa effluent directly to surface waters, to storm drains, roadways, and potentially from storage of treated wood. For terrestrial plants, risk is primarily associated with discharge of effluent from swimming pools, hot tubs, and spas. The human health risk assessment did not identify risks of concern. Boric acid was not on either initial list of chemicals to be screened under the EDSP, nor has an endangered species or pollinator assessment been conducted at this time.

Ethephon. Draft Human Health and Ecological Risk Assessments (EPA–HQ–OPP–2010–0098). Ethephon, 2-chloroethylphosphonic acid, is an organophosphonate plant growth regulator intended to promote fruit ripening, abscission, flower induction, breaking of apical dominance (inhibition of the growth of lateral buds by the terminal bud of a shoot), and other plant responses through the release of ethylene gas, a natural plant hormone. EPA conducted a human health risk assessment and identified aggregate risks of concern for children ages 1–2 years old. EPA also conducted an ecological risk assessment and identified potential risks to birds, mammals, and non-target plants. A full endangered species assessment has not been completed for ethephon at this time. At this time, ethephon has not been evaluated for its potential to affect endocrine systems in mammals and wildlife, nor has an assessment of risks to pollinators been conducted.

Hymexazol. Draft Human Health and Ecological Risk Assessments (EPA–HQ–OPP–2010–0127). Hymexazol is a systemic fungicide for control of foliar and soil-borne plant diseases. There is only one existing registration as a commercial seed treatment for sugar beets. Hymexazol may be applied only using commercial seed treatment equipment. A Final Work Plan for hymexazol was published by the Agency in September 2010, and data were then required in a generic data call-in, dated October 2011. The reviews of the required data have been incorporated into the draft risk assessments. The Draft Human Health Risk Assessment identified no dietary risks of concern but identified potential risk to occupational workers (individuals treating/mixing seed and individuals doing multiple activities). The Draft Ecological Risk Assessment identified potential risks to mammals and birds. Hymexazol was not on either initial list of chemicals to be screened under the EDSP, and a complete endangered species assessment has not been conducted at this time.

Lithium hypochlorite. Draft Ecological Risk Assessment (EPA–HQ–OPP–2013–0606). Lithium hypochlorite is an algicide, disinfectant, and fungicide. Its primary pesticidal use is to control algae, bacteria, and mildew in swimming pool water systems, hot tubs, and spas. EPA conducted a qualitative ecological risk assessment on the swimming pool uses of lithium hypochlorite as part of registration review. EPA previously conducted human health and ecological risk assessments at the time of the Reregistration Eligibility Decision (RED) for lithium hypochlorite in 1993. Lithium hypochlorite was not on either initial list of chemicals to be screened under the EDSP, and an endangered species assessment has not been conducted at this time.

Pronamide. Draft Human Health and Ecological Risk Assessments (EPA–HQ–OPP–2009–0326). Pronamide, also called propyzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)benzamide, is

a selective, systemic, pre-and post-emergence herbicide registered for the control of grasses and broadleaf weeds in several food and feed crops as well as woody ornamentals, Christmas trees, grasses grown for seed or turf (sod), golf course turf, recreational area turf, and fallow land. EPA conducted a human health risk assessment and did not identify any risks of concern for dietary, residential, occupational, or aggregate exposure. EPA also conducted an ecological risk assessment and identified potential risks to birds, mammals, and plants. An endangered species and pollinator assessment has not been completed for pronamide at this time. Pronamide was evaluated for its potential to affect endocrine systems in mammals and wildlife and the results of the Agency's review are found in the weight of evidence review in this registration review docket.

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft human health and ecological risk assessments for the pesticides identified in this document. Such comments and input could address, among other things, the Agency's risk assessment methodologies and assumptions, as applied to this draft risk assessment. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to the draft human health and ecological risk assessments. EPA may then issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments. In the **Federal Register** notice announcing the availability of the revised risk assessment, if the revised risk assessment indicates risks of concern, the Agency may provide a comment period for the public to submit suggestions for mitigating the risk identified in the revised risk assessment before developing a proposed registration review decision on the pesticides identified in this document.

1. *Other related information.* Additional information on pesticides identified in this document is available on the Pesticide Registration Review Status Web page. Information on the Agency's registration review program and its implementing regulation is available at *http://www.epa.gov/pesticide-reevaluation/registration-review-process.*

2. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 24, 2015.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2015–33298 Filed 1–5–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0393; FRL–9939–58]

Registration Review Interim Decisions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's interim registration review decision for the pesticides listed in Unit II of this notice. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without causing unreasonable adverse effects to human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information, contact* the Chemical Review Manager identified in the table in Unit II for the pesticide of interest.

For general information on the registration review program, contact: Richard Dumas, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8015; email address: *dumas.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the pesticide specific contact person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0393, 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.*

II. What action is the Agency taking?

Pursuant to 40 CFR 155.58(c), this notice announces the availability of EPA's interim registration review decisions for the pesticides in the following table:

TABLE—REGISTRATION REVIEW INTERIM DECISIONS

Registration review case name and No.	Docket ID No.	Contact and contact information
2-Propen-1-aminium, N,Ndimethyl-N–2-propenyl-, chloride, Homopolymer (Case 5024).	EPA–HQ–OPP–2015–0255	Donna Kamarei, (703) 347–0443, *kamarei.donna@epa.gov*.
Daminozide (Case 0032)	EPA–HQ–OPP–2009–0242	Margaret Hathaway, (703) 305–5076, *hathaway.margaret@epa.gov*.
Dipropyl isocinchomeronate (Case 2215)	EPA–HQ–OPP–2014–0578	Marianne Mannix, (703) 347–0275, *mannix.marianne@epa.gov*.
Fenoxaprop-p-ethyl (Case 7209)	EPA–HQ–OPP–2007–0437	Miguel Zavala, (703) 347–0504, *zavala.miguel@epa.gov*.
Imazapyr (Case 3078)	EPA–HQ–OPP–2014–0200	Matthew Manupella, (703) 347–0411, *manupella.matthew@epa.gov*.
Isoxaben (Case 7219)	EPA–HQ–OPP–2007–1038	Nathan Sell, (703) 347–8020, *sell.nathan@epa.gov*.
Paclobutrazol (Case 7002)	EPA–HQ–OPP–2006–0109	Khue Nguyen, (703) 347–0248, *nguyen.khue@epa.gov*.
Silica and Silcates (Case 4081)	EPA–HQ–OPP–2007–1140	James Parker, (703) 306–0469, *parker.james@epa.gov*.
Sulfentrazone (Case 7231)	EPA–HQ–OPP–2009–0624	Christina Scheltema, (703) 308–2201, *scheltema.christina@epa.gov*.
Tributyltin Oxide (Case 2620)	EPA–HQ–OPP–2014–0801	Sandra O'Neill, (703) 347–0141, *oneill.sandra@epa.gov*.

The registration review final decisions for several of these cases are dependent on the assessment of listed species and designated critical habitats under the Endangered Species Act (ESA), determinations on the potential for endocrine disruption, and/or evaluation of risks to pollinators.

2-Propen-1-aminium, N, N-dimethyl-N-2-propenyl-, chloride, homopolymer (Interim Decision). The registration review docket for 2-propen-1-aminium, N, N-dimethyl-N-2-propenyl-, chloride, homopolymer opened in August 2015. The Agency did not receive any comments. There is one product containing this active ingredient; which is registered to control mollusks in potable water supplies. The Agency did not call-in any data in support of this registration review case. Additionally, the Agency did not conduct a human health or an environmental risk assessment since label instructions minimize exposure from the product's registered use. Based on the lack of potential exposure, the Agency is making a ''no effect'' determination for listed species. The final decision on the registration review for this case will occur after an Endocrine Disruption Screen Program (EDSP) Federal Food Drug and Cosmetic Act (FFDCA) section 408(p) determination is made.

Daminozide (Interim Decision). EPA is announcing the availability of the daminozide interim registration review decision. Daminozide is a plant growth regulator (PGR) used to control the development of commercially grown container plants. It is used in nurseries, shade houses, and greenhouses and is applied as a foliage spray that is systemically distributed throughout the plant, a use pattern resulting in little or no potential for off-site drift. Daminozide has no registered food uses and no registered residential uses. EPA conducted both an ecological risk assessment and human health risk assessment for daminozide, and there were no human health risks of concern with registered daminozide uses. The Agency is not calling for mitigation for either ecological or human health risks from daminozide at this time. Except for ongoing ESA consultation, a pollinator risk assessment, and EDSP component of this registration review case, the Agency is proposing that no additional data and no further risk mitigation is needed for daminozide. The Agency's final registration review decision is dependent upon the assessment of risks to threatened and endangered species, pollinators, and an EDSP determination.

Dipropyl isocinchomeronate (Interim Decision). This notice announces the publication of the registration review interim decision for dipropyl isocinchomeronate. Dipropyl isocinchomeronate is registered for use as an insect repellent for use on humans and companion animals to repel flies, gnats, and other flying and biting insects. It is never the sole active ingredient; it is always co-formulated with other insecticides/repellents to broaden their spectrum of repellency. The Agency has concluded that there are no human health risk concerns associated with the use of dipropyl isocinchomeronate. Based on the limited usage, diffusion over a large treatment area, and the low probability of non-target organism exposure, the Agency has not found any ecological risks of concern associated with dipropyl isocinchomeronate and is making a ''no effect'' determination for all federally listed species and a ''no habitat modification'' determination for all designated critical habitat for listed species. The Agency concludes that no risk reduction measures or additional data are needed at this time. Dipropyl isocinchomeronate has not been evaluated under the EDSP. The Agency's final registration review decision is dependent upon the result of the evaluation of potential endocrine effects.

Fenoxaprop-p-ethyl (Interim Decision). Fenoxaprop-p-ethyl (FPE) is a selective aryloxy phenoxy-propionate herbicide registered for use on barley, cotton, rice, soybeans, and wheat for post-emergence control of grassy weeds. Additional non-agricultural use sites include conservation reserves, ornamentals, rights-of-way, and turf. In this interim registration review decision for fenoxaprop-p-ethyl, EPA has determined that no additional data are required at this time; however, certain risk reduction measures are necessary at this time. To address potential risk to non-target terrestrial monocots, spray drift management language is required for all fenoxaprop-p-ethyl product registrations used on agricultural, wide area, or rights-of-way use sites. The Agency also is requiring the implementation of label language clarifying use rates, to which the registrants have already agreed. In addition, EPA is requiring label language to include recommended herbicide-resistance management measures. The final registration review decision for fenoxaprop-p-ethyl is dependent upon an assessment of listed

species and designated critical habitats under the ESA, a determination of the potential for endocrine disruption, and a pollinator risk assessment.

Imazapyr (Interim Decision). The registration review docket for imazapyr opened in June 2014. Imazapyr is a non-selective systemic herbicide registered for use as pre- and post-emergent treatments to control broad spectrum terrestrial and aquatic weeds including terrestrial annual and perennial grasses, broadleaf weeds, herbs, woody species, and riparian and emergent aquatic weed species. EPA published draft human health and ecological risk assessments at the time of the docket opening for a 60-day public comment period. In this imazapyr interim decision, the Agency has determined that no additional data are required and no changes to the affected registrations or their labeling are needed at this time. In this interim registration review decision, EPA is making no human health or environmental safety findings associated with the EDSP screening of imazapyr, nor is it making an endangered species finding. EPA's registration review decision for imazapyr will depend upon the result of an EDSP FFDCA section 408(p) determination, complete pollinator determination, and ESA determination.

Isoxaben (Interim Decision). Isoxaben is a pre-emergent benzamide herbicide registered for use to control broadleaf weeds. It is classified as a Group 21 herbicide that inhibits cell wall biosynthesis. It is registered for non-agricultural uses such as turf grass, ornamentals, and landscape mulch. It is also registered for agricultural use on bearing fruit and nut trees and vineyards. There are no human health risk concerns for isoxaben. However, there are potential ecological risks to aquatic and terrestrial plants and potential chronic risk to mammals. In this interim registration review decision for isoxaben, EPA has determined that no additional data are required at this time and that certain risk reduction measures are necessary, including uniform spray drift management and herbicide resistance management label language. The final registration review decision for isoxaben is dependent upon an assessment of listed species and designated critical habitats under the ESA, a determination of the potential for endocrine disruption, and a pollinator risk assessment.

Paclobutrazol (Interim Decision). Paclobutrazol is a systemic PGR that slows vegetative growth by inhibiting cell elongation. Paclobutrazol is currently registered for use on turf grass (including in parks, athletic fields, golf courses, and rights-of-ways), on ornamentals, as a tree injection, as a soil injection/basal tree drench, and as a seed treatment for various vegetables. There are no registered residential uses of paclobutrazol. EPA conducted a risk assessment for both human health and ecological risk. No human health risks were identified. The ecological risk assessment indicated potential risks to birds, reptiles, and terrestrial-phase amphibians, mammals, terrestrial and aquatic plants, and other aquatic organisms. In the paclobutrazol interim decision, the Agency has determined that certain additional data are required and certain changes to product labeling to address risk from runoff are needed at this time. EPA is making no human health or environmental safety findings associated with the EDSP screening of paclobutrazol, nor is it making an endangered species finding. EPA's registration review decision for paclobutrazol will depend upon the result of an EDSP FFDCA section 408(p) determination, complete pollinator determination, and ESA determination.

The silicates (*silica gel* and *silicon dioxide*) (Interim Decision). Silica gel and silicon dioxide are commonly referred to as the silicates, silica silicates or diatomaceous earth (DE) and are found in most soils. Silica gel and silicon dioxide are registered for use as insecticides on a variety of indoor and outdoor areas including crop and residential use sites to treat pests (including ants, boxelder bugs, cockroaches, crickets, slugs, flies, fleas, millipedes, silver-fish, sowbugs and ticks). EPA conducted an ecological risk assessment, including an endangered species assessment. EPA reached a ''no effect'' determination for all listed species, excluding 57 listed terrestrial invertebrate species, for which a ''not likely to adversely affect'' determination was made. EPA also concluded that there would be no modification of designated critical habitat. EPA engaged in informal consultation with the U.S. Fish and Wildlife Service (FWS) seeking concurrence on the ''not likely to adversely affect'' findings. FWS concurred with EPA's ''not likely to adversely affect'' determination, thus completing consultation. No human health risk assessment was conducted for silica gel and silicon dioxide because no toxicological endpoints were identified to conduct a human health risk assessment. No risk mitigation measures for human health or ecological effects are included in the silica gel and silicon dioxide registration review interim decision. This interim decision does not include the EDSP component of this registration review case. The Agency's final registration review decision will depend upon the result of an EDSP FFDCA section 408(p) determination.

Sulfentrazone (Interim Decision). Sulfentrazone is a broad spectrum, pre-emergence, soil-directed proto porphyrinogen herbicide used to control a variety of weeds. It is registered for use on field crops, specialty vegetable crops, fruit trees, ornamentals, and turf grass. EPA completed quantitative human health and ecological risk assessments for sulfentrazone in 2014, and amended the ecological risk assessment in 2015. The Agency has risk concerns for pesticide handlers that can be adequately mitigated by requiring use of chemical-resistant gloves. In addition, there are potential risk concerns for terrestrial plants. In this interim registration review decision for sulfentrazone, EPA has determined that no additional data are required at this time and that certain risk reduction measures are necessary. These measures include uniform spray drift management language on sulfentrazone labels for products applied by spraying and herbicide resistance management language on all product labels. The Agency's final registration review decision is dependent upon an assessment of listed species and designated critical habitats under the ESA, a determination of the potential for endocrine disruption, and a pollinator risk assessment.

Tributyltin oxide (Interim Decision). There are four EPA registrations for tributyltin oxide for rubber coatings on the sonar domes of nuclear submarines and for oceanographic conductivity sensors. Based on the lack of potential for dietary exposure and no residential uses, the Agency did not conduct a human health risk assessment. Exposure to aquatic organisms would occur only from the small amount of tributyltin oxide potentially leaching from sonar domes, and the Agency believes that risks to non-target, non-listed species are minimal. Tributyltin oxide use as an antifoulant on sonar domes is undergoing ESA consultation with the Department of Defense, EPA, and the Services for compounds covered under EPA's Uniform National Discharge Standards. No EDSP determination has been made at this time. Except for the EDSP component of the tributyltin oxide registration review case, the Agency is not requiring additional data and is not proposing any risk reduction measures for this case. The final decision on the registration review for tributyltin oxide will occur after the ESA consultation and the EDSP FFDCA

section 408(p) determination have been made.

Pursuant to 40 CFR 155.57, a registration review decision is the Agency's determination whether a pesticide meets, or does not meet, the standard for registration in FIFRA. EPA has considered the pesticides listed in light of the FIFRA standard for registration. The interim decision documents in the docket describe the Agency's rationale for issuing registration review interim decisions for these pesticides.

In addition to the interim registration review decision document, the registration review docket for these pesticides also includes other relevant documents related to the registration review of these cases. The proposed interim registration review decisions were posted to the docket and the public was invited to submit any comments or new information. EPA has addressed the substantive comments or information received during the 60-day comment period in the interim decision document for each pesticide listed in this document.

Pursuant to 40 CFR 155.58(c), the registration review case docket for each pesticide discussed in this notice will remain open until all actions required in the interim decision have been completed.

Background on the registration review program is provided at: *http://www2.epa.gov/pesticide-reevaluation.* Links to earlier documents related to the registration review of this pesticide are provided in the Pesticide Chemical Search data base accessible at: *http://iaspub.epa.gov/apex/pesticides/f?p=chemicalsearch.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 23, 2015.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2015–33300 Filed 1–5–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2015–0613; FRL–9940–96–OW]

Proposed Information Collection Request; Comment Request; Title I of the Marine Protection, Research, and Sanctuaries Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Title I of the Marine Protection, Research, and Sanctuaries Act'' (EPA ICR No. 0824.06, OMB Control No. 2040–0008) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed renewal of the ICR (formerly known as ''Ocean Dumping Regulations—reports and record keeping to obtain a permit, request designation, and report on permitted dumping activities''), which is currently expired. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before March 7, 2016.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2015–0613, online using *www.regulations.gov* (our preferred method), by email to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: David Redford, Oceans and Coastal Protection Division, Environmental Protection Agency, 4504T 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone 202–566–1288; fax number: 202–566–1546; email address: *redford.david@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Ocean dumping—the transportation of any material for the purpose of dumping in ocean waters—cannot occur unless a permit is issued under the Marine Protection, Research, and Sanctuaries Act (MPRSA). EPA is responsible for issuing ocean dumping permits for all materials except dredged material. The U.S. Army Corps of Engineers (USACE) is responsible for issuing ocean dumping permits for dredged material using EPA's environmental criteria. Ocean dumping permits for dredged material are subject to EPA review and concurrence. EPA is also responsible for designating and managing ocean sites for the disposal of wastes and other materials, and establishing Site Management and Monitoring Plans for ocean disposal sites. EPA collects or sponsors the collection of information for the purposes of permit issuance, reporting of emergency dumping to safety of life at sea, compliance with permit requirements, including specifically general permits for burial at sea and for transportation and disposal of vessels.

EPA collects this information to ensure that ocean dumping is appropriately regulated and will not harm human health and the marine environment, based on applying the Ocean Dumping Criteria. The Ocean Dumping Criteria consider, among other things: The environmental impact of the dumping; the need for the dumping; the effect of the dumping on esthetic, recreational, or economic values; land-

based alternatives to ocean dumping; and the adverse effects of the dumping on other uses of the ocean. The Ocean Dumping Criteria are codified in 40 CFR parts 227–228. To meet U.S. reporting obligation under the London Convention, EPA also reports some of this information in the annual United States Ocean Dumping Report.

EPA uses ocean dumping information to make decisions regarding whether to issue or deny a permit. This information is also used to develop the conditions in ocean dumping permits issued by EPA in order to ensure consistency with the Ocean Dumping Criteria. EPA uses monitoring and reporting data from permittees to assess compliance with ocean dumping permits, including associated monitoring activities.

Form numbers: None.

Respondents/affected entities: Respondents/affected entities may include any private person or entity, or State, local or foreign governments.

Respondent's obligation to respond: Required to obtain or retain a benefit, specifically permit authorization and/or compliance with permits required under MPRSA sections 102 and 104, 33 U.S.C. 1402 & 1404, and implementing regulations at 40 CFR parts 220–229.

Estimated number of respondents: 2,767 respondents per year.

Frequency of response: The frequency of response varies for application and reporting requirements for different permits. Other than the general permit for transportation and disposal of vessels, response is required once for each permit application, whether a single notification to EPA or a permit application. Depending on the type of MPRSA permit, a permit application would be required prior to expiration if the permittee seeks re-issuance: General permit (once every seven years); special permit (once every three years), and research permit (once every 18 months).

Total estimated burden: The public reporting and recordkeeping burdens for this collection of information are estimated to be 3,207 hours per year. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: Annual labor costs are estimated to be $153,300 and $195,857 for capital or operation & maintenance costs.

Changes in estimates: EPA estimates an increase in the number of respondents from 21 to 2,767 with a corresponding decrease in total estimated burden from 27,004 to 3,207 hours as compared to the most recently approved ICR, which expired January 31, 1992. The estimated increase in the number of respondents is due to the significant increase in the number of entities using the burial at sea and vessel general permits, which were not widely used at the time of the earlier ICR. The estimated decrease in the total estimated burden is due to the implementation of the Ocean Dumping Ban Act of 1988, which led to the cessation of the dumping of sewage sludge and industrial wastes. The respondent burden for these special permits was high due the potentially significant impacts from dumping these wastes, and the data required from the respondents to ensure permit compliance.

Benita Best-Wong,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 2015–33295 Filed 1–5–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1127]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before March 7, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1127.

Title: First Responder Identification Information in the Uniform Licensing System (ULS).

Form No.: FCC Form 601.

Type of Review: Extension of a previously approved collection.

Respondents: Business or other-for-profit; Not-for-profit institutions; State, local, or Tribal Government.

Number of Respondents and Responses: 133,095 respondents; 13,310 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. 4(i), 154(i) and 0.191.

Total Annual Burden: 3,327 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: To protect the identities and locations of key first responder communications personnel, the Commission will treat emergency contact information submitted into ULS pursuant to the Public Notice, DA–09–243, as confidential and will not make such information publicly available.[1] The contact information submitted into ULS by public safety licensees and non-public safety licensees designated as emergency first responders will be available only to Commission staff. Interested licensees should file their operational point of contact information in ULS in the form of a confidential pleading.

Also, to protect the confidentiality, integrity and availability of the emergency contact information submitted pursuant to this collection, the Commission will ensure that the sensitive information is encrypted and properly stored.

[1] 47 CFR 0.457.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: As part of its Universal Licensing System (ULS), the Commission seeks additional information from licensees. Specifically, the Commission seeks to request the following information from licensees:

(1) Whether the Public Safety or Commercial Licensee is identified by a state, county, and/or local emergency authority to provide ''first responder'' emergency services;

(2) What type of first responder the Public Safety or Commercial Licensee is identified as;

(3) The identity, by name and contact information, of the Public Safety or Commercial Licensee's designated point-of-contact; and

(4) The identity, by name and contact information, of the relevant state, county, and/or local emergency authority that designated the Public Safety or Commercial Licensee as a ''first responder.''

This information will assist the Commission in providing quality assistance to first responders in the event of an emergency. With this information, the Commission will be able to enhance its targeted assistance to first responders in the affected areas.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary. Office of the Secretary.

[FR Doc. 2015–33238 Filed 1–5–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0741]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before February 5, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the ''Supplementary Information'' section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0741.

Title: Technology Transitions, GN Docket No. 13–5, et al.

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,357 respondents; 573,767 responses.

Estimated Time per Response: 0.5–8 hours.

Frequency of Response: On occasion reporting requirements; recordkeeping; third party disclosure.

Total Annual Burden: 575,840 hours.

Total Annual Cost: No cost.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority is contained in 47 U.S.C. 222 and 251.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Privacy Impact Assessment: No impact(s).

Needs and Uses: *Section 251* of the Communications Act of 1934, as amended, *47 U.S.C. 251,* is designed to accelerate private sector development and deployment of telecommunications technologies and services by spurring competition. Section 222(e) is also designed to spur competition by prescribing requirements for the sharing of subscriber list information. These OMB collections are designed to help implement certain provisions of *sections 222(e) and 251,* and to eliminate operational barriers to competition in the telecommunications services market. Specifically, these OMB collections will be used to implement (1) local exchange carriers' (''LECs'') obligations to provide their competitors with dialing parity and non-discriminatory access to certain services and functionalities; (2) incumbent local exchange carriers' (''ILECs'') duty to make network information disclosures; and (3) numbering administration. The Commission estimates that the total annual burden of the entire collection, as revised, is 575,840 hours. This revision relates to a change in one of many components of the currently approved collection—specifically, certain reporting, recordkeeping and/or third party disclosure requirements under section 251(c)(5). In August 2015, the Commission adopted new rules concerning certain information collection requirements implemented under section 251(c)(5) of the Act, pertaining to network change disclosures. The changes to those rules apply specifically to a certain subset of network change disclosures, namely

notices of planned copper retirements. The changes are designed to provide interconnecting entities adequate time to prepare their networks for the planned copper retirements and to ensure that consumers are able to make informed choices. There is also a change in the number of potential respondents to the rules promulgated under that section. The number of respondents as to the information collection requirements implemented under section 251(c)(5) of the Act, has changed from 1,300 to 750, a decrease of 550 respondents from the previous submission. Under section 251(f)(1) of the Act, rural telephone companies are exempt from the requirements of section 251(c) ''until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines . . . that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254. . . .'' The Commission has determined that the number of potential respondents set forth in the previous submission inadvertently failed to take this exemption into account. There are 1,429 ILECs nationwide. Of those, 87 are non-rural ILECs and 1,342 are rural ILECs. The Commission estimates that of the 1,342 rural ILECs, 679 are entitled to the exemption and 663 are not entitled to the exemption and thus must comply with rules promulgated under section 251(c) of the Act, including the rules that are the subject of this information collection. Thus, the Commission estimates that there are 87 (non-rural) + 663 (rural) = 750 potential respondents. The Commission estimates that the revision does not result in any additional outlays of funds for hiring outside contractors or procuring equipment.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary, Office of the Secretary.

[FR Doc. 2015–33239 Filed 1–5–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 15–1343]

Order Declares Wypoint Telecom, Inc.'s International Section 214 Authorization Terminated

AGENCY: Federal Communications Commission

ACTION: Notice.

SUMMARY: In this document, we declare the international section 214 authorization granted to Wypoint Telecom, Inc. (''Wypoint'' and formerly known as Sage VOIP Solutions, Inc.) terminated given Wypoint's inability to comply with an express condition for holding the authorization. We also conclude that Wypoint failed to comply with those requirements of the Communications Act of 1934 (the Act) and the Commission's rules that ensure that the Commission can contact and communicate with the authorization holder, which failures have prevented any way of addressing Wypoint's inability to comply with the condition of its authorization.

DATES: November 20, 2015.

FOR FURTHER INFORMATION CONTACT: Cara Grayer, Telecommunications and Analysis Division, International Bureau, at (202) 418–2960 or *Cara.Grayer@fcc.gov.*

SUPPLEMENTARY INFORMATION: On July 27, 2007, the International Bureau granted Wypoint an international section 214 authorization to provide global or limited global facilities-based service and global or limited global resale service in accordance with sections 63.18(e)(1) and 63.18(e)(2) of the Commission's rules. The International Bureau granted the application on the express condition that Wypoint abide by the commitments and undertakings contained in its Letter of Assurance (LOA) to the U.S. Department of Justice, U.S. Department of Homeland Security, and Federal Bureau of Investigation (collectively, the Agencies) dated July 11, 2007. We determine that Wypoint's section 214 authorization to provide international services issued under File No. ITC–214–20070601–00211 has terminated for Wypoint's inability to comply with an express condition for holding the section 214 international authorization. The International Bureau has afforded Wypoint with notice and opportunity to respond to the allegations in the Executive Branch May 9, 2014 Letter concerning Wypoint's non-compliance with the condition of its grant. Wypoint has not responded to any of our requests or requests from the Agencies. We find that Wypoint's failure to respond to our multiple requests demonstrates that it is unable to satisfy the LOA conditions concerning the availability of U.S. customer records, upon which the Agencies gave their non-objection to the grant of the authorization to Wypoint, and which were a condition of its section 214 authorization.

Furthermore, after having received an international 214 authorization, a carrier ''is responsible for the continuing accuracy of the certifications made in its application'' and must promptly correct information no longer accurate, ''and in any event, within thirty (30) days.'' Wypoint's address is no longer valid and thus Wypoint has failed to inform the Commission of any changes in the continuing accuracy of its prior certifications, referencing the FCC file number of the original certification. Nor is there any record of Wypoint's having complied with section 413 of the Act and the Commission's rules requiring it to designate an agent for service after receiving its authorization on July 27, 2007. Finally, as part of its authorization, Wypoint ''must file annual international telecommunications traffic and revenue as required by § 43.62.'' Section 43.62(b) states that ''[n]ot later than July 31 of each year, each person or entity that holds an authorization pursuant to section 214 to provide international telecommunications service shall report whether it provided international telecommunications services during the preceding calendar year.'' Our records indicate that Wypoint failed to file an annual international telecommunications traffic and revenue report indicating whether or not Wypoint provided services in 2014, as required by section 43.62(b) of the Commission's rules. In these circumstances, and in light of Wypoint's failure to respond to the Commission's repeated inquiries, we conclude that this failure to comply with the basic requirements of the Commission's rules designed to ensure its ability to communicate with the holder of the authorization also warrants termination, wholly apart from demonstrating Wypoint's inability to satisfy the LOA conditions of its authorization.

By this Order, we grant the Executive Branch agencies' request to the extent set forth in this Order. A copy of this Order was sent by return receipt requested, to Wypoint at its last known addresses.

Further requests should be sent to Denise Coca, Chief, Telecommunications and Analysis Division, International Bureau via email at *Denise.Coca@fcc.gov* and file it in File No. ITC–214–20121210–00323 via IBFS at *http://licensing.fcc.gov/myibfs/pleading.do.*

Federal Communications Commission.

Francis Gutierrez,

Deputy Chief, Telecommunications and Analysis Division, International Bureau.

[FR Doc. 2015–33271 Filed 1–5–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0392]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before March 7, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0392.

Title: 47 CFR 1 Subpart J—Pole Attachment Complaint Procedures.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit, and State, local or tribal government.

Number of Respondents and Responses: 1,772 respondents; 1,772 responses.

Estimated Time per Response: 0.5 to 100 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 224.

Total Annual Burden: 2,629 hours.

Total Annual Cost: $450,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of FCC rules.

Needs and Uses: The rules and regulations contained in 47 CFR part 1 Subpart J provide complaint and enforcement procedures to ensure that telecommunications carriers and cable system operators have nondiscriminatory access to utility poles, ducts, conduits, and rights-of-way on rates, terms and conditions that are just and reasonable. They also provide complaint and enforcement procedures for incumbent local exchange carriers (as defined in 47 U.S.C. 251(h)) to ensure that the rates, terms, and conditions of their access to pole attachments are just and reasonable. The FCC will use the information collected under these rules to hear and resolve petitions for stay and complaints as mandated by Section 224 of the Communications Act of 1934, as amended. The information that is also filed is used to determine the merits of the petitions and complaints. Additionally, state certifications are used to make public notice of the states' authority to regulate rates, terms and conditions for pole attachments, and to determine the scope of the FCC's jurisdiction.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary. Office of the Secretary.

[FR Doc. 2015–33240 Filed 1–5–16; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–CSE–2016–01; Docket No. 2016–0002; Sequence No. 1]

Notice of the General Services Administration's Labor-Management Relations Council Meeting

AGENCY: Office of Human Resources Management (OHRM), General Services Administration (GSA).

ACTION: Notice of meeting.

SUMMARY: The General Services Administration's Labor-Management Relations Council (GLMRC), a Federal Advisory Committee established in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C., App., and Executive Order 13522, plans to hold one meeting that is open to the public.

DATES: The meeting will be held on Tuesday, January 26, 2016 from 9:30 a.m. to 4:30 p.m. and Wednesday, January 27, 2016 from 9:30 a.m. to 12:00 noon, Eastern Standard Time.

ADDRESSES: The meeting will be held in Room 6044 of the General Services Administration's Headquarters Building, 1800 F Street NW., Washington, DC 20405. This site is accessible to individuals with disabilities.

FOR FURTHER INFORMATION CONTACT: Ms. Paula D. Lucak, GLMRC Designated Federal Officer (DFO), OHRM, General Services Administration, at telephone 202–969–7110, or email at *gmlrc@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The GLMRC is a forum for managers and the exclusive representatives of the U.S. General Services Administration (GSA) employees, which are the two national labor unions. In this forum, managers and the Unions discuss Government operations to promote satisfactory labor relations and improve the productivity and effectiveness of GSA. The GLMRC serves as a complement to the existing collective bargaining process and allows managers and the Unions to collaborate in continuing to deliver the highest quality services to the public. The Council discusses workplace challenges and problems and recommends solutions that foster a more productive and cost-effective service to the taxpayer, through improving job satisfaction and employees' working conditions.

Agenda

The purpose of the meeting is for the GLMRC to discuss the Council's focus for the upcoming year and consider Agency initiatives. The topics to be discussed include Council metrics & GSA EVS results, GSA EEO program, and Council subcommittee updates.

Meeting Access

The meeting is open to the public. The meeting will be held in Room 6044 of the General Services Administration's Headquarters Building, 1800 F Street NW., Washington, DC 20405. This site is accessible to individuals with disabilities. In order to gain entry into the Federal building where the meeting is being held, public attendees who are Federal employees should bring their Federal employee identification cards, and members of the general public should bring their driver's license or other government-issued identification.

Availability of Materials for the Meeting

Please see the GLRMC Web site: *http://www.gsa.gov/portal/content/225831* for any materials available in advance of the meeting and for meeting minutes that will be made available after the meeting. Detailed meeting minutes will be posted within 90 days of the meeting.

Procedures for Providing Public Comments

The public is invited to submit written comments for the meeting until 5:00 p.m. Eastern Time on the Monday prior to the meeting, by either of the following methods:

Electronic or Paper Statements: Submit electronic statements to Ms. Paula Lucak, Designated Federal Officer, at *paula.lucak@gsa.gov;* or send paper statements in triplicate to Ms. Lucak at 1800 F Street NW., Suite 7003A, Washington, DC 20405. In general, public comments will be posted on the GLMRC Web site. All comments, including attachments and other supporting materials received, are part of the public record and subject to public disclosure.

Any comments submitted in connection with the GLMRC meeting will be made available to the public under the provisions of the Federal Advisory Committee Act.

Dated: December 30, 2015.

Wade Hannum,

Office of Human Resources Management, OHRM Director, Office of HR Strategy and Services, Center for Talent Engagement (COE4), General Services Administration.

[FR Doc. 2015–33302 Filed 1–5–16; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee. This meeting was announced in the **Federal Register** of November 23, 2015. The amendment is being made to reflect a change in the *Agenda* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Sara Anderson, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm. 1643, 10903 New Hampshire Ave., Silver Spring, MD 20993, *Sara.Anderson@fda.hhs.gov,* 301–796–7047, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 23, 2015, 80 FR 72971, FDA announced that a meeting of the Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee would be held on February 19, 2016. On page 72972, in the first column, the *Agenda* portion of the document is changed to read as follows:

The Committee will discuss, make recommendations, and vote on information regarding the premarket application (PMA) for the DIAM Spinal Stabilization System, sponsored by Medtronic Sofamor Danek USA. The DIAM Spinal Stabilization System is indicated for skeletally mature patients that have moderate low back pain (with or without radicular pain) with current episode lasting less than 1 year in duration secondary to lumbar degenerative disc disease (DDD) at a single symptomatic level from L2–L5. DDD is confirmed radiologically with one or more of the following factors: (1) Patients must have greater than 2 mm of decreased disc height compared to the adjacent level; (2) scarring/thickening of the ligamentum flavum, annulus fibrosis, or facet joint capsule; or (3) herniated nucleus pulposus. The DIAM device is implanted via a minimally invasive posterior approach.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: December 30, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–33262 Filed 1–5–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–4952]

Food and Drug Administration Safety and Innovation Act 907 Public Meeting: Progress on Enhancing the Collection, Analysis, and Availability of Demographic Subgroup Data; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration's (FDA or Agency) Office of Minority Health (OMH), Office of Women's Health (OWH), the Center for Biologics Evaluation and Research (CBER), the Center for Drug Evaluation and Research (CDER), and the Center for Devices and Radiological Health (CDRH)

are announcing a public meeting seeking feedback and recommendations from patient groups, consumer groups, regulated industry, academia, and other interested parties on FDA's progress in implementing the ''Action Plan to Enhance the Collection and Availability of Demographic Subgroup Data,'' required under the Food and Drug Administration Safety and Innovation Act (FDASIA).

DATES: The public meeting will be held on February 29, 2016, from 9 a.m. to 4 p.m. The deadline for submitting comments regarding this meeting is April 29, 2016.

ADDRESSES: The public meeting will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (B & C), Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to: *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

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–N–4952 for ''FDASIA 907 Public Meeting: Progress on Enhancing the Collection, Analysis, and Availability of Demographic Subgroup Data; Request for Comments.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential. Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FDA will post the full agenda approximately 5 days before the meeting at: *http://www.fda.gov/ForHealthProfessionals/LearningActivities/ucm470074.htm.*

FOR FURTHER INFORMATION CONTACT: Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, email: *FDASIA907@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 9, 2012, the President signed FDASIA (Pub. L. 112–144) into law. Section 907 of FDASIA directed FDA to publish and provide to Congress a report ''addressing the extent to which clinical trial participation and the inclusion of safety and effectiveness data by demographic subgroups, including sex, age, race, and ethnicity, is included in applications submitted to the Food and Drug Administration.'' Section 907 of FDASIA also directed that 1 year after the publication of the report FDA publish and provide to Congress an action plan outlining ''recommendations for improving the completeness and quality of analyses of data on demographic subgroups in summaries of product safety and effectiveness data and in labeling; on the inclusion of such data, or the lack of availability of such data, in labeling; and on improving the public availability of such data to patients, healthcare providers, and researchers'' and to indicate the applicability of these recommendations to the types of medical products addressed in section 907. To fulfill these directives, an FDA-wide steering committee with representatives from CBER, CDER, CDRH, and the Office of the Commissioner (OC) conducted a detailed assessment of the 72 new drug, biologic, and medical device applications the Agency approved in 2011. In August 2013, FDA issued a report on the group's findings entitled ''Collection, Analysis, and Availability of Demographic Subgroup Data for FDA-Approved Medical Products.'' In August 2014, FDA followed up with a report entitled ''FDA Action Plan to Enhance the Collection and Availability of Demographic Subgroup Data,'' which contained 27 action items divided up into three overriding priorities: Data quality, subgroup participation, and data transparency.

The purpose of the public meeting is to report on FDA's progress implementing the Action Plan, to discuss how stakeholders have been affected by these changes, and to solicit feedback and recommendations for further implementation from interested parties and stakeholders.

Some questions we would like the public to comment on during the meeting include:

1. What approaches have been successful in addressing key barriers to recruiting diverse clinical trial populations?
2. What are your key limitations to conducting meaningful data analysis of underrepresented groups?
3. What have you learned about best practices for recruiting a broad representation of subjects for clinical trials? Which practices have been successful and why? Which have not and why?
4. What communication strategies have you successfully used that were also sensitive to the needs of underrepresented populations?
5. What are potential methods FDA should consider using to effectively communicate meaningful information on demographic analyses to a diverse public?
6. What are some of the actual or potential unintended consequences of data transparency you have encountered related to reporting demographic subgroup analysis?

Stakeholders are invited to provide brief comments on these topics during the public comment portion of the meeting, but are not limited to discussing only the previous topics. Since the day-long meeting may not provide enough time to fully address all of these issues, we encourage interested groups to submit longer explanations and comments to the docket.

II. Registration and Request for Oral Presentations

FDA will try to accommodate all participant requests to speak; however, the duration of comments may be limited by time constraints. Those wishing to make oral presentations will be asked to send a brief summary of their comments and registration information (including name, title, firm name, address, telephone, email address, and fax number), and should register by February 1, 2016, by emailing *FDASIA907@fda.hhs.gov.*

All other participants are asked to register online at: *http://www.fda.gov/ForHealthProfessionals/LearningActivities/ucm470074.htm* by February 13, 2016, whether they plan to attend in person or listen to the meeting on a live Webcast. Registration is free and will be on a first-come, first-served basis. Onsite registration on the day of the meeting will be based on space availability. Information on how to access the Webcast will be posted approximately 5 days before the meeting at: *http://www.fda.gov/ForHealthProfessionals/LearningActivities/ucm470074.htm.*

If you need special accommodations due to a disability, please contact *FDASIA907@fda.hhs.gov* at least 7 days in advance. Persons attending the public meeting are advised that FDA is not responsible for providing access to electrical outlets.

Dated: December 30, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–33261 Filed 1–5–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 4, 2016, from 8:30 a.m. to 3 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. For those unable to attend in person, the meeting will also be Web cast and will be available at the following link *https://collaboration.fda.gov/vrbpac030416/.* Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

Contact Person: Sujata Vijh or Denise Royster, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6128, Silver Spring, MD 20993–0002, 240–402–7107 or 240–402–8158, email: *Sujata.vijh@fda.hhs.gov* or *denise.royster@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.

Agenda: On March 4, 2016, the committee will meet in open session to discuss and make recommendations on the selection of strains to be included in the influenza virus vaccines for the 2016–2017 influenza season.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 19, 2016. Oral presentations from the public will be scheduled between approximately 12:40 p.m. and 1:40 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 10, 2016. Time allotted for each presentation may be

limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 11, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Sujata Vijh at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 31, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–33263 Filed 1–5–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; X01's BRAC Review.

Date: January 14, 2016.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Joel A. Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3205, MSC 9529, Bethesda, MD 20892–9529, 301–435–9223, *joel.saydoff@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 31, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–33256 Filed 1–5–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Development of Primer and Reference Tool to Assess Neonatal Abstinence Syndrome (1210).

Date: January 15, 2016.

Time: 11:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 31, 2015.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–33252 Filed 1–5–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Confirmatory Efficacy Clinical Trials of Non-Pharmacological Interventions for Mental Disorders.

Date: January 21, 2016.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marcy Ellen Burstein, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606, 301–443–9699, *bursteinme@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Interventions.

Date: January 28, 2016.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NAPLS Continuation.

Date: January 29, 2016.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: December 31, 2015.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–33254 Filed 1–5–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cell Biology Integrated Review Group; Development—2 Study Section.

Date: February 1–2, 2016.

Time: 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites DC Convention Center, 900 10th Street NW., Washington, DC 20001.

Contact Person: Rass M. Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Motivated Behavior Study Section.

Date: February 4–5, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Nicholas Gaiano, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892–7844, 301–435–1033, *gaianonr@csr.nih.gov.*

Name of Community: Immunology Integrated Review Group; Cellular and Molecular Immunology—B Study Section.

Date: February 4–5, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Betty Hayden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301–435–1223, *haydenb@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Development, Risk and Prevention Study Section.

Date: February 4–5, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Anna L. Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, (301) 435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Membrane Biology and Protein Processing Study Section.

Date: February 4–5, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

Contact Person: Janet M. Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Tissue Engineering Study Section.

Date: February 4–5, 2016.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Baljit S. Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *moongabs@mail.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics B Study Section.

Date: February 4–5, 2016.

Time: 10:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Richard A. Currie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 31, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–33255 Filed 1–5–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF MENTAL HEALTH, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: February 3, 2016.

Time: 8:45 a.m. to 5:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Porter Neuroscience Research Center, GE620/630, Building 35A Convent Drive, Bethesda, MD 20892.

Contact Person: Jennifer E. Mehren, Ph.D., Scientific Advisor, Division of Intramural Research Programs, National Institute of Mental Health, NIH, 35A Convent Drive, Room GE 412, Bethesda, MD 20892–3747, 301–496–3501, *mehrenj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: December 31, 2015.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–33253 Filed 1–5–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.samhsa.gov/workplace.*

FOR FURTHER INFORMATION CONTACT: Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 7–1051, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities:

Dynacare, 6628 50th Street NW., Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories:

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400 (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc., Aegis Analytical Laboratories)

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare*, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Fortes Laboratories, Inc., 25749 SW Canyon Creek Road, Suite 600, Wilsonville, OR 97070, 503–486–1023

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for

Laboratory Services, a Division of LabOne, Inc.)
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515
One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7
Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840
Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370 (Formerly: SmithKline Beecham Clinical Laboratories)
Redwood Toxicology Laboratory, 3700650 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159
Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027
STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Summer King,

Statistician.

[FR Doc. 2015–33222 Filed 1–5–16; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Services Grant Program for Residential Treatment for Pregnant and Postpartum Women (PPW) Quarterly Progress Reports—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment, has developed a set of infrastructure development measures in which recipients of cooperative agreements will report on various benchmarks on a quarterly-annual basis. The infrastructure development measures are designed to collect information at the grantee-level and program-level.

The draft infrastructure measures are based on the programmatic requirements conveyed in TI–14–005, Services Grant Program for Residential Treatment for Pregnant and Postpartum Women.

The purpose of this program is to provide funding to improve treatment for low-income (according to federal poverty guidelines) women, age 18 and over, who are pregnant, postpartum (the period after childbirth up to 12 months), and their minor children, age 17 and under, who have limited access to quality health services.

The pregnant and postpartum women program will implement parenting and treatment evidence-based practice models and a feedback loop developed to enable the grantee and the programs to identify barriers and test solutions through direct services. The expected outcomes of these grants will include decreases in the use and/or abuse of prescription drugs, alcohol, tobacco, illicit and other harmful drugs (*e.g.*, inhalants) among pregnant and postpartum women; increases in safe and healthy pregnancies; improved birth outcomes; reduced perinatal and environmentally-related effects of maternal and/or paternal drug abuse on infants and children; improved mental and physical health of women and children; prevention of mental,

emotional, and behavioral disorders among the children; improved parenting skills, family functioning, economic stability, and quality of life; decreased involvement in and exposure to crime, violence, and neglect; and decreased physical, emotional, and sexual abuse for all family members. Women, their adolescents/children (up to age 17), fathers, and other family members who are provided services through grant funds will inform the process to improve systems issues.

ANNUAL DATA COLLECTION BURDEN DATA COLLECTION BURDEN

Instrument/activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Progress Report	25	4	100	8	800

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, One Choke Cherry Road, Rockville, MD 20857 or email her a copy at *summer.king@samhsa.hhs.gov*. Written comments should be received by March 7, 2016.

Summer King,

Statistician.

[FR Doc. 2015–33221 Filed 1–5–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Multifunction Printer Products

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of certain multifunction printer products known as bizhub C3850FS multifunction digital printers (''bizhub MFP''). Based upon the facts presented, CBP has concluded that the country of origin of the bizhub MFP is Japan for purposes of U.S. Government procurement.

DATES: The final determination was issued on December 23, 2015. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within February 5, 2016.

FOR FURTHER INFORMATION CONTACT: Antonio J. Rivera, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202) 325–0226.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on December 23, 2015, pursuant to subpart B of part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin certain multifunction printer products known as bizhub C3850FS multifunction digital printers, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ 263561, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that the processing in Japan resulted in a substantial transformation. Therefore, the country of origin of the bizhub MFP is Japan for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: December 23, 2015.

Myles B. Harmon,

Acting Executive Director, Regulations and Rulings, Office of International Trade.

Attachment

HQ H263561

December 23, 2015

OT:RR:CTF:VS H263561 AJR

CATEGORY: Origin

Daniel E. Waltz, Esq., Squire Patton Boggs (US) LLP, 2550 M Street, NW., Washington, DC 20037

RE: U.S. Government Procurement; Country of Origin of Multifunction Printers; Substantial Transformation

Dear Mr. Waltz: This is in response to your letter, dated March 23, 2015, requesting a final determination on behalf of Konica Minolta (''K/M''), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (''CBP'') Regulations (19 CFR part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (''TAA''), as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of K/M's bizhub C3850FS multifunction digital printers (''bizhub MFP(s)''). We note that K/M is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

FACTS:

K/M plans to sell its bizhub MFPs to the U.S. government. The bizhub MFPs are multifunction color machines that perform printing, copying, scanning, and faxing functions. According to K/M's counsel, the bizhub MFP was designed and developed in Japan, and its most important and complex components will be manufactured in Japan. The assembly process for the bizhub MFPs will start in Thailand and finish in Japan, assembling a total of 11 subassemblies into the final bizhub MFP product.

Assembly Processes in Thailand:

In Thailand, the following four subassemblies (collectively, ''Subassemblies 1–4'') will be assembled into their final form within the bizhub MFP's frame:

1. The **Print Head** will be produced in Thailand from five sub-components:

- a G1 lens manufactured in Japan;
- a G2 lens manufactured in Japan;
- a polygonal motor manufactured in China;
- a housing case manufactured in China; and,
- a laser diode manufactured in Taiwan.

According to K/M's counsel, while the quantity at which the G1 and G2 lenses are produced lowers their relative cost, the lenses are more complex than the other sub-components of the Print Head as noted by the higher skill and technology levels needed to produce them. The Print Head operates by reflecting a laser beam off of the lenses and onto the rotating polygonal mirrors in order to produce a copied image in the Latent Image Unit's photoconductor (''OPC''). The Print Head will be assembled into, and

permanently integrated within, each bizhub MFP in Thailand.

2. The **Optical Lens** will be manufactured in China from Chinese-origin materials. It operates by accurately collecting the light reflected from external documents onto its lens. It will be assembled into, and permanently integrated within, each bizhub MFP in Thailand.

3. The **Charge Coupled Device (''CCD'') Board** will be manufactured in China. It separates the colors collected by the Optical Lens, and converts them into independent colors. It will be assembled into, and permanently integrated within, each bizhub MFP in Thailand.

4. The **Mechanical Control Board** will be manufactured in Thailand. It controls the bizhub MFP's input and output process through an engine that feeds the paper. It will be assembled into, and permanently integrated within, each bizhub MFP in Thailand.

Additionally, six subassemblies (collectively, ''tested subassemblies'') will be assembled into the bizhub MFP for testing purposes, but then removed after testing, as follows:

5. The **Latent Image Unit** will be produced in Thailand from three sub-components:

- OPC drums manufactured in Japan;
- a developer, with toner and carrier developing materials, manufactured in Japan; and,
- an electrostatic charging roller manufactured in Japan.

The OPC drums receive the laser beam. Then, the developing materials and electrostatic charging roller sense the image being transmitted by the laser, regulate its thickness and precision, and transfer it to the Image Transfer Belt. The Latent Image Unit will be installed within a bizhub MFP for testing purposes, and then removed, while in Thailand.

6. The **Image Transfer Belt Unit** will be manufactured in China from three sub-components:

- an image transfer belt manufactured in China;
- a 1st image transfer roller manufactured in China; and,
- a cleaning blade manufactured in China.

It receives the single-color image from the Latent Image Unit and creates a multi-color image to transfer onto paper. The Image Transfer Belt Unit will be shipped to Thailand, where it will be installed within a bizhub MFP for testing purposes, and then removed.

7. The **2nd Image Transfer Roller Unit** will be manufactured in China. It supports the Image Transfer Belt Unit. The 2nd Image Transfer Roller Unit will be shipped to Thailand, where it will be installed within a bizhub MFP for testing purposes, and then removed.

8. The **Fusing Unit** will be produced in Thailand from three sub-components:

- a fusing belt manufactured in Japan;
- a fusing roller manufactured in China; and,
- a pressure sub-component manufactured in China.

According to K/M's counsel, the fusing belt accounts for a significant percentage of the Fusing Unit's cost and is a key sub-component. The Fusing Unit will be installed within a bizhub MFP for testing purposes, and then removed, while in Thailand.

9. The **Hard Disk Drive (''HDD'')** will be manufactured in China or Thailand. It will be installed within a bizhub MFP for testing purposes, and then removed, while in Thailand.

10. The **Power Supply Unit** will be manufactured in China. It will be shipped to Thailand, where it will be installed within a bizhub MFP for testing purposes, and then removed.

Assembly Process in Japan:

Once the tested subassemblies are removed, the bizhub MFPs as assembled with Subassemblies 1–4 will be shipped to Japan without the tested subassemblies. Instead of shipping the tested subassemblies, six separate but identical subassemblies (collectively, ''Subassemblies 5–10,'' as described above) will be shipped to Japan for final assembly. In Japan, these integrated and unintegrated subassemblies will be assembled to completion with the following subassembly:

11. The **MFP Board** will be manufactured from Japanese materials, and installed with Japanese-developed software, in Japan. According to K/M''s counsel, it constitutes the machine's ''brain'', integrating the printer and copier functions, and converting electric signals to digital signals, which are sent to the Print Head to create the image. It will be assembled into, and permanently integrated within, each bizhub MFP in Japan.

The finished bizhub MFP will be tested, adjusted, and calibrated in Japan before shipment to the U.S. The testing conducted in Japan includes electronically adjusting the laser position and intensity of the laser diode's beam in the Print Head, and electronically and physically adjusting the Latent Image Unit to calibrate the unit's position and imaging accuracy. According to K/M's counsel, the testing conducted in Japan requires skilled workmanship, involving more complex and precise tests than the initial testing and adjustments conducted in Thailand.

ISSUE:

What is the country of origin of the bizhub MFP for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR 177.21 *et seq.,* which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR 177.22(a).

To determine whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens* v. *United States,* 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd,* 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. CBP will make these decisions on a case-by-case basis, considering the totality of the circumstances. The country of origin of the article's components, the extent of the processing that occurs within a given country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, facts such as resources expended on product design and development, extent and nature of post-assembly inspection procedures, and worker skill required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no one such factor is determinative.

In various cases concerning similar merchandise, CBP has held that complex and meaningful assembly operations involving a large number of components will generally result in a substantial transformation. In Headquarters Ruling Letter (''HQ'') 562936, dated March 17, 2004, CBP addressed the country of origin of certain MFPs assembled in Japan of various Japanese- and Chinese-origin parts. CBP determined that the MFP was a product of Japan based on the fact that a ''substantial portion of the printer's individual components and subassemblies [were] of Japanese origin.'' Furthermore, CBP noted that some of the Japanese components and subassemblies were essential parts of the finished article, and other Japanese parts, including the reader scanner unit and the control panel unit, were critical to the production of the printer. Finally, CBP noted that the Japanese processing operations were complex and meaningful, that required ''the assembly of a large number of components, and render[ed] a new and distinct article of commerce that possesse[d] a new name, character, and use.''

In HQ H025106, dated June 11, 2008, CBP addressed the country of origin of certain photocopying machines, which had photocopying, printing, faxing, and scanning functions. The machines were comprised of a scanning unit, controller unit subassembly, laser scanning unit, photoconductor unit, developer unit, transfer unit, and fusing unit. Three of these components were assembled into the machine's frame in China, and the rest were assembled into the frame in Japan,

where the machines were completed. CBP noted that though the developer unit and transfer unit were assembled in China, enough of the subassemblies and individual components (*e.g.* the transfer belt and photoconductor unit, among others) were from Japan, with the photoconductor being made of entirely Japanese parts. It also noted that though the developer unit would be assembled in China, two of the unit's key components were from Japan; and while the transfer unit would be partially assembled in China, the transfer belt was from Japan. CBP also noted that there were a large variety of adjustments that were made to the subassemblies in Japan, using advanced equipment and firmware. As a result, CBP held that the country of origin of the machines was Japan because the Japanese and foreign origin parts were substantially transformed into the machines through the product assembly that took place in Japan. *See also* HQ H020516, dated November 7, 2008 (holding that the country of origin of certain MFPs was Japan, using the same reasoning as HQ 562936 and HQ H025106, and also noting that the MFPs were designed and developed in Japan).

Based on the facts presented, we note that though the assembly of the bizhub MFP will take place in Japan and Thailand, there are also operations that contribute to this assembly which will take place in China. In situations like these, no one country imparts the dominant portion of the work conducted. Nonetheless, based upon the applicable legal standard, we determine that, the frame and subassemblies of the bizhub MFP that will be imported into Japan will be substantially transformed in Japan such that Japan will be the country of origin for purposes of U.S. Government procurement. In making this determination, we note that only four of the bizhub MFP's subassemblies (*i.e.* Subassemblies 1–4) will be assembled into the bizhub MFP's frame in Thailand, while the remaining seven subassemblies (*i.e.* Subassemblies 5–10, plus the MFP Board) will be assembled into, and permanently integrated within, the bizhub MFP in Japan. Further, we note that the MFP Board (the ''brain'' of the bizhub MFP) will be manufactured from all Japanese parts, will be integrated into the bizhub MFP in Japan, and accounts for a significant percentage of total subassemblies cost. Although many of the individual subassemblies will be assembled outside of Japan, we note sufficient use of Japanese sub-components in producing these subassemblies, such as the fusing belt that will be used to make the Fusing Unit, and the OPC drums, developer, and electrostatic roller that will be used to make the Latent Image Unit. As a result, the Japanese subassemblies and sub-components collectively attribute a significant percentage of the total subassemblies cost. Moreover, though we note the importance of the subassemblies and sub-components from Thailand and China, these subassemblies and sub-components will be integrated into a product that was designed and developed in Japan, and will be operated by Japanese-developed software that will also be installed onto the bizhub MFP in Japan. *See* HQ H198875, dated June 5, 2012 (noting that a foreign HDD that was integrated into an MFP in Singapore and installed with Japanese software in Singapore contributed to the reason that the HDD was substantially transformed into the MFP in Singapore). In this case, K/M incurred significant resources in Japan by developing and designing the MFP product, and its proprietary software, in Japan. Finally, the assembly operations that occur in Japan will be sufficiently complex and meaningful. Through the product assembly, as well as the testing and adjustment operations, the individual subassemblies and sub-components of Japanese and foreign-origin will be subsumed into a new and distinct article of commerce that has a new name, character, and use. Therefore, under the totality of the circumstances, we find that the country of origin of the bizhub MFP will be Japan for purposes of U.S. Government procurement.

HOLDING:

Based on the facts provided, the country where the last substantial transformation will take places is Japan. As such, the bizhub MFPs will be considered products of Japan for purposes of U.S. Government procurement.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Myles B. Harmon,

Acting Executive Director
Regulations and Rulings
Office of International Trade

[FR Doc. 2015–33245 Filed 1–5–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Revocation of Customs Brokers' Licenses

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Revocation of customs brokers' licenses.

SUMMARY: This document provides notice of the revocation of customs brokers' licenses by operation of law.

FOR FURTHER INFORMATION CONTACT: Julia D. Peterson, Branch Chief, Broker Management, Office of International Trade, (202) 863–6601, *julia.peterson@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: This document provides notice that, pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and section 111.30(d) of title 19 of the Code of Federal Regulations (19 CFR 111.30(d)), the following customs brokers' licenses were revoked by operation of law, without prejudice, for failure to file a triennial status report. A list of revoked customs brokers' licenses appears, below, in alphabetical order by name, and the names are grouped according to the ports of issuance.

Last/Company name	First name	License	Port of issuance
Harris	Lisa	17048	Anchorage.
Sherman	Cynthia	12763	Anchorage.
Canty	Jeremain	21800	Atlanta.
Crist	Diane	23021	Atlanta.
Davis	Lisa	20146	Atlanta.
Dean	Sandra	23851	Atlanta.
Duru	Chioma	28256	Atlanta.
Godfrey	Kimberly	12089	Atlanta.
Hodgkins	Kristen	23043	Atlanta.
Johnson	Stephen	16226	Atlanta.
Kelly	Merrill Elizabeth	24351	Atlanta.
Leverett	Wesley	27943	Atlanta.
Nicholson	Caroline	24052	Atlanta.
Spencer Schulz	Elizabeth M	09658	Atlanta.
Wahl	Mark	28257	Atlanta.
Wang	Yueh	28079	Atlanta.
Willeby	Natalie Renee	15042	Atlanta.
Williams	Aria	29979	Atlanta.
Williamson	Heather	16752	Atlanta.

Last/Company name	First name	License	Port of issuance
Bratt	Thomas	04409	Baltimore.
Brennan	Frank	10364	Baltimore.
Campion Samueleis	Jennifer	22259	Baltimore.
Connolly	Henry	09745	Baltimore.
Dash	Joseph	03433	Baltimore.
DiCarlo	Susan	11689	Baltimore.
Duckett	Dina	13012	Baltimore.
Gilmer	Jimmie	10299	Baltimore.
H.C. Bennett Company		14423	Baltimore.
Ian International, Inc		11886	Baltimore.
Kraus International Shipping Co		22112	Baltimore.
Leslie	Robert	05236	Baltimore.
Morgan	James	12466	Baltimore.
Stitt	Marsha	09739	Baltimore.
Blaisdell	Philip G	20063	Boston.
Ciampa	Rosemary	16662	Boston.
Doucette	Lawrence B	09020	Boston.
Gamblin	Glenn George	12091	Boston.
Gomez	Roger	04073	Boston.
Hellenbeck	Margaret M	16661	Boston.
Hooks	John H	06162	Boston.
Houston	Paul	06400	Boston.
Import Export Compliance, Inc		28217	Boston.
LaRoque	Paul Kevin	03189	Boston.
Lasko	Dennis M	17501	Boston.
MacKenzie	Kathleen Irene	16553	Boston.
Murphy	Barry	10543	Boston.
Nickole	Kellie Rose	10451	Boston.
Powell	Paul Atkin	03687	Boston.
Votze	Janet C	11236	Boston.
Walsh	Pamela	16919	Boston.
World Express Inc.		09651	Boston.
Barrette	Robert	24206	Buffalo.
Behr	Donald	09125	Buffalo.
Bondi	Victor	04929	Buffalo.
Brocato	Joyce	09093	Buffalo.
Burke	Michele	16850	Buffalo.
Cain	Timothy	21447	Buffalo.
Deane (Bishop)	Jennifer	23291	Buffalo.
Ferrell	Martha	14676	Buffalo.
Fremont, Lancaster, LLC		28977	Buffalo.
Fyke Logistics (USA), Inc		28352	Buffalo.
Giumentaro	Joseph	16516	Buffalo.
Great Lakes Customs Brokerage, Inc		14150	Buffalo.
Hemstock	Kathleen	17193	Buffalo.
Hormell	Deborah	14768	Buffalo.
King	Deborah	13218	Buffalo.
Levitt	Glenn	09337	Buffalo.
MacGillivray	Karen	20554	Buffalo.
Mccaw	Rita	09154	Buffalo.
McLeod	Joan	09048	Buffalo.
Osborne	Andrew	28962	Buffalo.
Perrelli	John	15585	Buffalo.
Roulley	Douglas	09324	Buffalo.
Stroupe	Charles	09685	Buffalo.
Szewczyk	Pearl	20851	Buffalo.
Wald	Franklin	06653	Buffalo.
Westmoreland	Patricia	21083	Buffalo.
Brunell	Gary	06822	Champlain.
Burl	Wayne R	04338	Champlain.
Casey	William	02863	Champlain.
Columbe	Gloria	07639	Champlain.
Deloria	Dawn	20859	Champlain.
Perkins	Mary C	15335	Champlain.
Saunders	Ralph	05392	Champlain.
Willette	Randall	06796	Champlain.
Blitch	Keri	15292	Charleston.
Enfinger	Katrina	11677	Charleston.
Fain	Angelic	15295	Charleston.
Fitzpatrick	Amy	12760	Charleston.
Inman	Jessica	21030	Charleston.
Sadler-Magliacane	Debbie	11477	Charleston.
Thompson	Theresa	14147	Charleston.
Walters	Willis	11393	Charleston.
West	Glennis	14474	Charleston.
Barlas	Georgia	17055	Charlotte.
Flock	Deborah	13907	Charlotte.
Nelson	John R.	21288	Charlotte.
Stults	Pamela N	15175	Charlotte.
Stutts, III	Kenneth	29379	Charlotte.
Arthur	Essie N	14007	Chicago.
Benson	Allison V	11591	Chicago.
Blaha	Jane E	15460	Chicago.

Last/Company name	First name	License	Port of issuance
Cahill	Raymond	16066	Chicago.
Chew	Ken H	16052	Chicago.
Cieslak	Dennis D	28858	Chicago.
Denehy	Robert K	14909	Chicago.
Dompke	Leroy J	05562	Chicago.
Fluger	Carol A	11256	Chicago.
Frye	Jeffrey	11879	Chicago.
Garcia	Joe T	05420	Chicago.
Gosling	Sandra M	23429	Chicago.
Heinke	Lynn M	14621	Chicago.
Henneghan-Bernet	Annare	15505	Chicago.
Koelling	Bruce G	10825	Chicago.
Lentz	Arthur F	07708	Chicago.
Leviton	Fred G	16431	Chicago.
McGrath	James P	05968	Chicago.
Neary	James A	17172	Chicago.
Silberman	Gail E	15263	Chicago.
Stradley	Janis L	14317	Chicago.
Bennett	Diana Kay	16580	Cleveland.
Freese	Thomas	28740	Cleveland.
Groh	Peter	09797	Cleveland.
Hagarman	Connie	09880	Cleveland.
Haury	Joshua	23797	Cleveland.
Hoppes	Laura	13877	Cleveland.
International Compliance Experts, LLC		27461	Cleveland.
McKeever	Kenneth Duane	27503	Cleveland.
Milklosovic	Bradley John	30029	Cleveland.
Neal	Todd	20176	Cleveland.
Ortiz	Henry	10402	Cleveland.
Peters	Kathy	13372	Cleveland.
Radomirov	Bridgette	23682	Cleveland.
Segovia	Amanda	23583	Cleveland.
Sireci	Joan	15649	Cleveland.
Sorenson	Robert	13514	Cleveland.
Chester	Jimmy	20567	Dallas.
Ellershaw	Sharon	10305	Dallas.
Lauritzen	Michael	17115	Dallas.
McElvany	Douglas Keith	10046	Dallas.
Reed	Douglas	21284	Dallas.
Renner	Carl	21342	Dallas.
Speegle	Joseph M	13038	Dallas.
Trojacek	Connie Dolores	22501	Dallas.
Acosta	Juan J	15089	El Paso.
Delgado	Jeanette Victoria	15614	El Paso.
Dotson	Lorna Yvonne	15777	El Paso.
Guzman	Gerardo	21814	El Paso.
Ogaz	Juan Antonio	14799	El Paso.
Ralin	Peter Leonard	07137	El Paso.
Suarez	Arturo	12152	El Paso.
Bell	Cynthia	11339	Great Falls.
Brett	Howard	17097	Great Falls.
Calhoun	Stephen	17444	Great Falls.
Chester	Shans	12276	Great Falls.
Crellin	Stephanie	12550	Great Falls.
Palmer	Michael	04901	Great Falls.
Parker	Irina	23180	Great Falls.
Rasmussen	Jeannine	12009	Great Falls.
Rode	Marie	12790	Great Falls.
Rotter	Kurt	16766	Great Falls.
Smedley	Marsha	15986	Great Falls.
Wasden	Benjamin	22206	Great Falls.
Aucoin	Samuel	22019	Honolulu.
Fujimori	Bert	04766	Honolulu.
BuitronEl	Ricardo A	14409	Houston.
Carranza	Elvia Irene	24300	Houston.
Edward	Berlin E	07817	Houston.
Gastler	Jacklyn	11013	Houston.
K2 Customs Brokers, LLC		30009	Houston.
Leidy	Susan L	14713	Houston.
Marinis	Steven J	05577	Houston.
McClellan	Lavone W	07787	Houston.
Nygard	Karen Elaine	07524	Houston.
Pohutsky	Lori J	09580	Houston.
Stewart	Harold Wade	04313	Houston.
Thompson, Jr.	Eugene E	10979	Houston.
Travis	Cynthia B	11562	Houston.
Warner	Robert Bruce	05531	Houston.
Carrasco	Gonzalo	16478	Laredo.
Del Rio	Rafael Beltran	28908	Laredo.
Gonzalo Carrasco C.H.B., Inc		20897	Laredo.
International Express Brokers, Inc		21640	Laredo.
Munoz	Esteban	05243	Laredo.
Pohler	Randy	14458	Laredo.

Last/Company name	First name	License	Port of issuance
Ronald E. Guerra, Inc		05526	Laredo.
Sumner	Gregory Joe	13935	Laredo.
Abramovic	Felice	17443	Los Angeles.
Abella	Joel	22608	Los Angeles.
Adams	Lorraine	07380	Los Angeles.
Allen	Thomas	10660	Los Angeles.
Beteta	Martin E. Berrera	16102	Los Angeles.
Brownfield	Jon	05981	Los Angeles.
Burns	Karen M	11353	Los Angeles.
Byler	Timothy	13929	Los Angeles.
Carandang-Webster	Mila	07016	Los Angeles.
Cawiezel	Sharon	07151	Los Angeles.
Chang	Goang Yih	13617	Los Angeles.
Choi	David	24195	Los Angeles.
Chung	Jin	29679	Los Angeles.
Cook	Calvin M	06979	Los Angeles.
Crow	Maria	21383	Los Angeles.
Danache	Charles	04183	Los Angeles.
Dependable Global Express, Inc		23369	Los Angeles.
Dew	Michael	15068	Los Angeles.
Ficklin	Terrence	27409	Los Angeles.
Fischer	Lewis Leland	14505	Los Angeles.
Hagedorn	Linda M.	05523	Los Angeles.
Hampton	Madrienne	22905	Los Angeles.
Han	Qi	27433	Los Angeles.
Heck	Dennis	01042	Los Angeles.
Henry	Hiram	12779	Los Angeles.
Hofer	Marion	14056	Los Angeles.
Hu	Edith	13202	Los Angeles.
Huynh	Phuong	09389	Los Angeles.
Imbrogulio	John	14144	Los Angeles.
Krieger	Ian H	07232	Los Angeles.
Law	Kyran	22480	Los Angeles.
Lee	Jeffrey	23311	Los Angeles.
Lee	Linda	11143	Los Angeles.
Lee	Soo	07095	Los Angeles.
Li	Christopher	11323	Los Angeles.
Li	Valerie	11709	Los Angeles.
Liang	Philip	13628	Los Angeles.
Loza	Sally	05963	Los Angeles.
McGaughey	Deborah	10924	Los Angeles.
Michaels	Douglas	14482	Los Angeles.
Milne	Mark	05671	Los Angeles.
Min	Robert	11948	Los Angeles.
Montgomery	Randall	09926	Los Angeles.
Monto	Joseph	04792	Los Angeles.
Neal	Scott	22424	Los Angeles.
Nee	Howard	28518	Los Angeles.
Pirgyi	Diana	22906	Los Angeles.
Plumtree	Angelina	21491	Los Angeles.
Rae	Alan	04239	Los Angeles.
Reep	Denise	20645	Los Angeles.
Schafer Customs Brokerage, Inc		27648	Los Angeles.
Shay	Shane	15196	Los Angeles.
Sieren-Smith	Bridget	23312	Los Angeles.
Snitwongse	Chanpen	06669	Los Angeles.
Song	Deok	24184	Los Angeles.
Taslitt	Victory	16023	Los Angeles.
Tirsch	Wendy	22056	Los Angeles.
Tomlin	Robert	13995	Los Angeles.
VAB Services, Inc		28853	Los Angeles.
Valente	Giovanni	21221	Los Angeles.
Walden	Michael	16717	Los Angeles.
Walters	Michele	14044	Los Angeles.
Wismann	Enrique M	06707	Los Angeles.
Yetter	Jesse	29429	Los Angeles.
Ziegler	Natalie	13179	Los Angeles.
Ziskrout	Philip	04171	Los Angeles.
Crowley Logistics, Inc		27721	Miami.
Espinet	Gilbert	16810	Miami.
Garcia	Jan	27681	Miami.
Gelbert	Norman E	09505	Miami.
Lopez	Eva M	22551	Miami.
Mearsheimer	Mark	14217	Miami.
Roque	Cynthia	28543	Miami.
Saltalamacchia	Felix	15967	Miami.
Stair	Peter J	22720	Miami.
Turner	David L	14884	Miami.
Vinals	Mercedes	22150	Miami.
Woolf	Eric F	16242	Miami.
Blachowski	Mark	13694	Milwaukee.
Chou	Hung-Liang	11936	Milwaukee.
Johnston	Donna	21327	Milwaukee.

Last/Company name	First name	License	Port of issuance
Konruff	Dustin	29975	Milwaukee.
Morris	Freddie	06858	Milwaukee.
Pinter	Mark	12587	Milwaukee.
Rutland	Robert	12223	Milwaukee.
Schwalbe	Vincent	28705	Milwaukee.
Becnel	David Martin	17553	New Orleans.
Bourque	Michael	29150	New Orleans.
Dunbar	John Scott	21770	New Orleans.
Krupp	David	16970	New Orleans.
Noto-Diaz	Donna	17408	New Orleans.
Wegener	Paul F	03476	New Orleans.
Aguirre	Ricardo	09544	New York.
Alpi USA, Inc		15052	New York.
Bayer	Charles	23910	New York.
Bernstein	Steven	03765	New York.
Brandvold	Kirstin	13480	New York.
Braun	Linda	23184	New York.
C.W. Logistics Corp		23699	New York.
Castilla	Judith	06912	New York.
Castro	Salvatore	12659	New York.
Chakedis	James	05191	New York.
Chen	Zhen	28625	New York.
Chiaramonte	Charles	11868	New York.
Chiu	Christina	21475	New York.
Cruz	Fidel	14678	New York.
Cunningham	Nancy	05895	New York.
David Vincent Associates, Inc		15541	New York.
Deresh	Steven	07097	New York.
Dobson	Marla	10038	New York.
Dockery	Maureen	10887	New York.
Encarnacion	Aurelio	05720	New York.
Espinal	Yanilcia	23319	New York.
Evans	William	05325	New York.
Fanok	Jeffrey	10611	New York.
Firpo	Laura	10015	New York.
Galvin	John	09320	New York.
Gavin Sambrook	Terry	10581	New York.
Geary	Chad	22487	New York.
Guengue	Nancy	20576	New York.
Gyomory	Barbara	10016	New York.
Hagedorn	William	07305	New York.
Highgrace International Corp		13612	New York.
Hodges	Mary	08069	New York.
Horsky	Tereza	22971	New York.
Imperiale	Lisa Ann	20313	New York.
Jackson	Tracey	22297	New York.
Joh	Justin	28317	New York.
La Russo	Patrick	04548	New York.
Lee	Diana	27777	New York.
Lee	John	13727	New York.
Li	Venching	28398	New York.
Liebgott	Charles	05771	New York.
Luzzo	Robert	20084	New York.
McCooey	Patrick	10420	New York.
Myers	James	03848	New York.
Palazzolo	Florence	06934	New York.
Poli	Gregory	10980	New York.
Rodriguez	Dominic	10705	New York.
Rose	Alan	05736	New York.
Saunders	Fred	11471	New York.
Scibelli	Gennaro	02583	New York.
Seltzer	Irwin	13301	New York.
Semins	John	07830	New York.
Shin	So	29272	New York.
Silvey	Alvin	02561	New York.
Singh	Inderjeet	07855	New York.
Skrzypinski	Thomas	15022	New York.
Smith	Joseph	06928	New York.
So	Chun	29168	New York.
Sommella	Vincent	09249	New York.
Stebich	Oliver	16130	New York.
Sullivan	Maryellen	12657	New York.
Tao	Guoging	22646	New York.
Teabo	Scott	24069	New York.
Titone	Michael	06189	New York.
Trehan	Lalit	04851	New York.
Unsworth	Paul	11142	New York.
Van Deventer	Robert	10642	New York.
Vargas	Sonia	15938	New York.
Volz, Jr.	George	16292	New York.
Wallace	Robert	12110	New York.
Wang	Nengjia	28593	New York.
Weiss	Ted	07061	New York.

Last/Company name	First name	License	Port of issuance
Wiedenhaft	Randall	16587	New York.
Zhu	Cheng	29169	New York.
Cramer	Earlyn	10186	Nogales.
Karfield	Marvin	15166	Nogales.
Van Nice	Nick	15918	Nogales.
Welsh	Warren	07459	Nogales.
Belangia	Richard T	05013	Norfolk.
Collins	Sarah R	12063	Norfolk.
Fischer	George	04023	Norfolk.
Grego	Cari	21612	Norfolk.
Jordan	Bonnie M	07725	Norfolk.
Leonard	Mary Susan	10880	Norfolk.
Lewis	Terry Lee	05275	Norfolk.
Lotz	Sandra C	07241	Norfolk.
O'Neal	Linda L	29988	Norfolk.
Shipp	Helen W	12020	Norfolk.
Coltharp	Jon	27683	Otay Mesa.
Coulford	Mildred	17123	Otay Mesa.
Hostetler	Sylvia	07679	Otay Mesa.
Jenkins	Presley	04452	Otay Mesa.
Jones	Nick	27958	Otay Mesa.
Morrell	Tammy	30409	Otay Mesa.
Porter	Stephen	06556	Otay Mesa.
Rocco	Valerie	15993	Otay Mesa.
Rocha	Claudia	28524	Otay Mesa.
Villegas	Dolores	07096	Otay Mesa.
Kihle	Karen	16123	Pembina.
Margerum	Paul	11491	Pembina.
Bresani	Amelia	29621	Philadelphia.
Bunch	Lyn Foster	12498	Philadelphia.
Casciato	Patricia	17330	Philadelphia.
Coxson	Charles	15760	Philadelphia.
Edwards	Theresa	30498	Philadelphia.
Galik	Jane	10357	Philadelphia.
Given	Christina M	16456	Philadelphia.
Jones	Debra	12460	Philadelphia.
Kilpatrick	Amy	22108	Philadelphia.
Pinhak	Joseph	16394	Philadelphia.
Stevenson	William A	06516	Philadelphia.
Valkenburg	Per F	10292	Philadelphia.
Vielle	Bernard E	17065	Philadelphia.
ITCI, Inc.		21944	Portland, ME.
Hatton	James L	06269	Portland, OR.
Jones	Timothy P	14729	Portland, OR.
King	William Thomas	12652	Portland, OR.
Lords	Jolynn	09583	Portland, OR.
Takasumi	Richard C	07439	Portland, OR.
Thain	Betty	05942	Portland, OR.
Beliveau	Nicole	28663	Providence.
Santamaria	Richard	08017	Providence.
Alioto	Joseph	14755	San Francisco.
Ansel	Aaron	29724	San Francisco.
Berger	Jorg	04864	San Francisco.
Brun	John	04346	San Francisco.
Burns	Judith	07193	San Francisco.
C&F Drawback Consultants		21071	San Francisco.
Capil	Carina	16676	San Francisco.
Carpenter	Edmoundo	23428	San Francisco.
Ceccacci	Jeffrey	23165	San Francisco.
Celli	Machiko	10470	San Francisco.
Clark	Virgil	16356	San Francisco.
Conner	Gerald	14865	San Francisco.
Corr	Michael	06194	San Francisco.
Davis	Robert	14068	San Francisco.
Fleischman	Gary	17073	San Francisco.
Gattso	Rocco	13342	San Francisco.
Grey	Sara	29702	San Francisco.
Iyer	Dharam	29405	San Francisco.
Jamin	Natanael	15844	San Francisco.
Jenkins	Presly	03640	San Francisco.
Lancellotti	Margot	14237	San Francisco.
Lee	Chansoo	23773	San Francisco.
McCaffrey	Michael	07334	San Francisco.
Parker	Dylan	28212	San Francisco.
Prince	Margaret	11636	San Francisco.
Raggio	Stanley	10250	San Francisco.
Scovell	Nancy	07086	San Francisco.
See	Donald	05220	San Francisco.
Sikka	Anil	12061	San Francisco.
Ting	Peter	10321	San Francisco.
Yang	Diana	24152	San Francisco.
Cameron	Jacob Leonard	24018	San Juan.
Ashley	Scott	15375	Savannah.

Last/Company name	First name	License	Port of issuance
Chandler	Elaine	05028	Savannah.
Faircloth	Gloria	06412	Savannah.
Hodges	Lynette	06873	Savannah.
Johnston	Mary	14803	Savannah.
Parham	Thomas	07437	Savannah.
Russell	Ray	14292	Savannah.
Slayton	Julia Suber	18001	Savannah.
Stewart	Janice	18030	Savannah.
Tolbert	Shawn	12568	Savannah.
Usher	Clyde	10907	Savannah.
Bagnall	Richard	22255	Seattle.
Barnes	Sara	21271	Seattle.
Bartlett	Kathy	15128	Seattle.
Bogenshutz	Allan	06766	Seattle.
Bonney	Robert	04813	Seattle.
Carter	Alan	07833	Seattle.
Hall	Peter	28300	Seattle.
Hansen	Ronald	21870	Seattle.
Holmstrom	Roger	06423	Seattle.
Kincaid	Alan	13971	Seattle.
King	Jeffery	14974	Seattle.
Linehan	Larry	04415	Seattle.
Mullene	Daniel	06774	Seattle.
Pool	David	15235	Seattle.
Rasmussen	Kristie	12059	Seattle.
Sanders	George	03442	Seattle.
Schrank	Dennis	07943	Seattle.
Shiner	Mark	05660	Seattle.
Shumate	Devin	24144	Seattle.
Stendal	Wendy	10237	Seattle.
Stevenson	Aimee	16688	Seattle.
Stoeser	Kathleen	11448	Seattle.
Stoeser	Stephen	11671	Seattle.
Sundaram	Anila	21391	Seattle.
VanWieringen	Debra	12311	Seattle.
Whitlock	Laura	17218	Seattle.
Doig	William	06696	St. Albans.
McKenny	Ronald	03736	St. Albans.
Middlemiss	Donald	10951	St. Albans.
Ferrell	Douglas	24359	St. Louis.
Lichtas	Tami	21233	St. Louis.
McMillan	Erin	23406	St. Louis.
Mudgett	Sandra K	20372	St. Louis.
Tasker	Robert	21654	St. Louis.
Trost	Thomas F	14753	St. Louis.
Waltos-Drake	Shirley	07375	St. Louis.
Armburst	Frederick C	11693	Tampa.
Coffey-Ramirez	Anna M.	14050	Tampa.
Joseph	Jean Claude	21405	Tampa.
Kiang-Wu	Maylene	14222	Tampa.
Leverette	Lucius	24318	Tampa.
Marshall	Robert	06390	Tampa.
Oswald, Jr.	Lowell	14137	Tampa.
Sailor	Stephen	21161	Tampa.
Saunders	Nydia	15232	Tampa.
Streker	John	21158	Tampa.
Arevalo	Cynthia	13681	Washington, DC.
Guntapalli	Mayuri	28832	Washington, DC.
Hill	John	22612	Washington, DC.
Lewis	Michael	12389	Washington, DC.
Martin	Jeffrey	29274	Washington, DC.
Moritsugu	Erika	23065	Washington, DC.
Wallace	Laura	20785	Washington, DC.

Dated: December 30, 2015.

Brenda B. Smith,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2015–33246 Filed 1–5–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Ideation and Prototype Multi-Phase Prize Competition

AGENCY: Science and Technology Directorate, DHS.

ACTION: Notice.

Authority: 15 U.S.C. 3719.

SUMMARY: The Department of Homeland Security (DHS) gives notice of the availability of the ''Environmentally Friendly Replacement for Buoy Mooring Systems'' ideation and prototype multi-phase prize competition and rules. The DHS Science and Technology Directorate (DHS S&T) Borders and Maritime Division in conjunction with the United States Coast Guard's Research and Development Center (USCG RDC) is seeking innovative technology from individuals and entities for ''fixing'' a navigational buoy in a waterway. The current method for

mooring buoys—the use of a concrete anchor and a heavy chain—has not changed substantially in decades. The goal is to develop a buoy mooring system that would have minimal impacts on the ocean floor, especially in environmentally sensitive areas.

This prize competition consists of up to three phases, two of which are optional. Phase I: Ideation; Phase II (optional): Pilot Approach Plan and Presentation; and Phase III (optional): Pilot Phase. The total cash prize payout for all three phases of this competition is up to $290,000 (USD). Phase I (Ideation) consists of a cash purse of up to $40,000 (USD) with at least one cash prize of $10,000 (USD) and no award will be less than $10,000 (USD). Phase I awards and amounts will be paid to the best submission(s) as solely determined by the Seeker. Contestants invited to participate in Phase II will be awarded $5,000 (USD) each to assist in preparing and presenting their Phase II competition package. The Phase II prize competition winner will receive up to $175,000 (USD) in milestone award payments for successful participation in Phase III as agreed to between the USCG RDC and the Phase II prize competition winner. An initial milestone payment will be determined to assist with the startup costs of the Phase III pilot. The USCG RDC reserves the right to award up to a $50,000 (USD) award bonus for successful demonstration and completion of the Phase III Pilot Phase.

This prize competition consists of the following unique features:

- Terminology
  - Seeker: DHS S&T Borders and Maritime Division and the United States Coast Guard Research and Development Center
  - Solvers: Ideation Prize competition submitters
- The Solvers are not required to transfer exclusive intellectual property rights to the Seeker. (See Additional Information-Intellectual Property below)

DATES: Submission Period Beginning Date: January 6, 2016

Submission Period Ending Date: All submissions must be received electronically as indicated in this announcement by 11:59 p.m. Eastern Standard Time on Friday, February 12, 2016. Late submissions will not be considered. All dates are subject to change. For more details please visit *http://www.challenge.gov.*

ADDRESSES: Questions about this prize competition may be emailed to *innohelp@innocentive.com*.

FOR FURTHER INFORMATION CONTACT: Prize Competition Manager: Dr. Charlotte Sullivan, Phone: 202–617–5115, Email: *charlotte.sullivan@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: The America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Reauthorization Act of 2010 (The America COMPETES Act), Public Law 111–358, enacted January 4, 2011, authorizes Federal agencies to award prizes competitively to stimulate innovations that could advance their missions. Interested persons can find full details about the competition rules and register to participate online at *http://www.challenge.gov.* Contest rules are subject to change.

Subject of the Prize Competition: Ideas and concepts that lead to innovative technologies for ''fixing'' a navigational buoy in a waterway. The goal is to develop a buoy mooring system that would have minimal impacts on the ocean floor, especially in environmentally sensitive areas.

Eligibility Rules: To be eligible to win a prize under this competition, an individual or entity-

(1) Shall have registered to participate in the competition under the rules promulgated by the Department of Homeland Security, Science and Technology Directorate and in accordance with the description provided, below, under ''Registration Information;''

(2) Shall have complied with all of the requirements under this section;

(3) Pursuant to the America COMPETES Act of 2010, awards for this prize competition may only be given to an individual that is a citizen or legal permanent resident of the United States, or an entity that is incorporated in and whose primary place of business is in the United States, subject to verification by the Seeker before prizes are awarded. An individual or private entity must be the registered entrant to be eligible to win a prize. Further restrictions apply—see the Ideation Challenge-Specific Agreement found at the competition registration Web site and this **Federal Register** Notice for full details.

(4) Contestants to this prize competition must: agree to be bound by the rules of the prize competition; agree that the decision of the judges for this prize competition are final and binding; and acknowledge that their submission may be the subject of a Freedom of Information Act (FOIA) request and that they are responsible for identifying and marking all business confidential and proprietary information in their submission.

(5) Entities selected as a prize competition winner must register or be previously registered in the System for Awards Management (*http://www.sam.gov*) in order to receive a cash prize. Registration in the System for Awards Management is not a prerequisite for submitting an entry to this prize competition. Failure to register in the System for Awards Management within 30 days of notification by InnoCentive, Inc. (the government's contracted prize competition administrator) will result in a disqualification of the winning entry.

(6) Individuals selected as a prize competition winner must submit all required taxpayer identification and bank account information required to complete an electronic payment of the cash prize. Failure to provide the government required documents for electronic payment within 30 days of notification by InnoCentive, Inc. (the government's contracted prize competition administrator) will result in a disqualification of the winning entry.

(7) Contestants to this prize competition agree, as a condition for participating in Phase III, to complete a Memorandum of Agreement or other agreement as mutually agreed to and collaborate with the Department of Homeland Security, Science and Technology Directorate and the United States Coast Guard, Research and Development Center to build and pilot their proposed solution.

(8) Contestants to this prize competition agree, as a condition for winning a cash prize, to complete and submit all required winner verification documents to InnoCentive, Inc. (the government's contracted prize competition administrator) within 30 days of notification. Failure to return all required verification documents by the date specified in the notification may be a basis for disqualification of the winning entry.

(9) Contestants participating in Phase III of this competition shall be required to obtain liability insurance or demonstrate financial responsibility in the amount of $1,000,000 (USD) for claims by a third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with their participation in this prize competition, with the Department of Homeland Security and the United States Coast Guard named as additional insured under the registered participant's insurance policy. The registered participant must also agree to indemnify the Federal Government against third party claims for damages arising or related to competition activities and the Federal Government for damage or loss to government property resulting from such activity.

(10) Contestants to this prize competition must agree and consent, as a condition for receiving a cash prize, to the use of their name, entity, city and state, likeness or image, comments, and a short synopsis of their winning solution as a part of the Department of Homeland Security's promotion of this prize competition.

(11) Contestants must own or have access at their own expense to a computer, an Internet connection, and any other electronic devices, documentation, software, or other items that contestants may deem necessary to create and enter a submission;

(12) The following individuals (including any individuals participating as part of an entity) are not eligible regardless of whether they meet the criteria set forth above:

(i) Any individual under the age of 18;

(ii) any individual who employs an evaluator on the Judging Panel (hereafter, referenced simply as a ''Judge'') or otherwise has a material business relationship or affiliation with any Judge;

(iii) any individual who is a member of any Judge's immediate family or household;

(iv) any individual who has been convicted of a felony;

(v) the Seeker, Participating Organizations, and any advertising agency, contractor or other individual or organization involved with the design, production, promotion, execution, or distribution of the Contest; all employees, representatives and agents thereof; and all members of the immediate family or household of any such individual, employee, representative, or agent;

(vi) any Federal entity or Federal employee acting within the scope of his or her employment, or as may otherwise be prohibited by Federal law (employees should consult their agency ethics officials) Note: Federal ethical conduct rules may restrict or prohibit federal employees from engaging in certain outside activities, so any federal employee not excluded under the prior paragraph seeking to participate in this competition outside the scope of employment should consult his/her agency's ethics official prior to developing a submission;

(vii) any individual or entity that used Federal facilities or relied upon significant consultation with Federal employees to develop a submission, unless the facilities and employees were made available to all Contestants participating in the Contest on an equal basis;

(viii) any individual or entity that used Federal funds to develop a submission, unless such use is consistent with the grant award, or other applicable Federal funds awarding document. If a grantee using Federal funds enters and wins this prize competition, the prize monies will need to be treated as program income for purposes of the original grant in accordance with applicable Office of Management and Budget Circulars. Federal contractors may not use Federal funds from a contract to develop a submission for this competition; and

(ix) Employees and contractors of the Department of Homeland Security, Science and Technology Directorate and the United States Coast Guard, Research and Development Center are ineligible to compete in this competition. Likewise, members of their immediate family (spouses, children and step-children, siblings and step-siblings, parents and step-parents), and persons living in the same household as such persons, whether or not related, are not eligible to participate in any portion of this competition. Note: The members of an individual's household include any other person who shares the same residence as such individual for at least three (3) months out of the year.

(13) Per 15 U.S.C. 3719(h), an individual or entity shall not be deemed ineligible under these eligibility rules because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis; and

(14) Use of Marks: Except as expressly set forth in the Participant Agreement or the competition rules, participants shall not use the names, trademarks, service marks, logos, insignias, trade dress, or any other designation of source or origin subject to legal protection, copyrighted material or similar intellectual property (''Marks'') of the organizers or other prize competition partners, sponsors, or collaborators in any way without such party's prior written permission in each instance, which such party may grant or withhold in its sole and absolute discretion.

(15) An individual or entity that is determined to be on the Excluded Parties List is ineligible to receive a prize award and will not be selected as a prize competition winner.

Registration Information: To be eligible to win a prize under this competition, the Solver shall have registered to participate in the contest under the process identified on the central Federal Web site where government competitions are advertised (Challenge.gov). Access the *http://www.challenge.gov* Web site and sort by: Department of Homeland Security and then select the ''Environmentally Friendly Replacement for Buoy Mooring Systems'' contest. Solvers will be directed to an external Web site created specifically for the competition to obtain contest information, register for the contest including signing the Ideation Challenge-Specific Agreement and submit their entry. After the competition deadline, the Seeker will complete the review process for Phase I and make a decision with regards to the winning solution(s) and invitation(s) to participate in subsequent phases. All Solvers that submitted an entry for Phase I will be notified on the status of their submission; however, no evaluation of an individual submission will be provided.

Phase I Submission Requirements: This competition requires a written solution that describes a novel approach to moor buoys in environmentally sensitive ecosystems.

Background information to assist in the completion of a submission: Aspects of the mooring system which need to be considered are listed below.

(1) The method to ''fix'' or ''anchor'' a buoy marker to a precise location on the seafloor or bottom that minimizes environmental damage.

(2) The method that physically connects the surface marker to a precisely located ''anchor'' that allows for motion in a seaway due to winds, waves, tides, or other forces, while minimizing or eliminating any contact with the seafloor or adjacent vegetation.

(3) A technique to install, inspect, remove or replace any parts of the system. Ideally, the installation should be as simple as possible, and only use a ship with a boom. (For example, methods requiring the use of drills, barges, or divers might be scored lower than other proposed solutions.)

(4) These mooring systems may be fixed or moveable, passive or active, etc., with the goal of deployment in the following operating conditions:

(i) Hull Type: 6×16 or 8×22 LFR (foam buoy);

(ii) Water Depth: 30 ft.–50 ft.;

(iii) Bottom Type: Sand or Mud;

(iv) Current: 2 kts.–4 kts.;

(v) Wind/Seas: 0 kts./0 ft.–70 kts./14 ft.; and

(vi) Tide: <5 ft.

(5) Additionally, proposed mooring systems should have the following properties:

(i) Ability to withstand occasional allisions by vessels and not sustain damage; and

(ii) Ability to be deployed and retrieved using existing USCG

resources, specifically: 175 foot Coastal Buoy Tender (WLM; Beam: 36 ft.; Buoy Deck Area: 1335 sq. ft.; Crane: 10 ton hydraulic with a 42 ft. reach; Dynamic Positioning System; or a 225 foot Seagoing Buoy Tender (WLB; Beam: 46 ft.; Buoy Deck Area: 2875 sq. ft.; Crane: 20 ton hydraulic with a 60 ft. reach; Dynamic Positioning System.

(6) Installation areas of particular interest include the St. John River outside of Jacksonville, FL and the area around Guayanilla, Puerto Rico.

(7) Alternate mooring systems exist but each has potential drawbacks that may make them unsatisfactory as solutions to this competition. Alternatives tried by the USCG include:

(i) Articulated Beacon (a.k.a. Buoyant Beacons): The systems are expensive and cannot be deployed by USCG vessels. The massive sinker weight required to counteract the huge upward buoyant force that keeps them standing upright is heavier than the buoy tender cranes can lift. A commercial crane and barge are required to put the system in the water; and

(ii) DOR–MOR Anchor: Can only be used in areas with mud or sand bottoms. Large anchors are significantly more expensive than the equivalent concrete sinkers.

(8) Alternatives not tried by USCG include:

(i) Subsurface Float (mid-line buoy): A subsurface float is used to raise the excess chain in order to eliminate scouring the ocean bottom, but the excess chain on the bottom provides damping/anchoring forces for the buoy. Without the bottom chain, when the water rises such as during a wave surge, the buoy would tug directly against the concrete sinker and either ''walk itself'' off the station, or become submerged under water;

(ii) Synthetic Line: There are many types of synthetic lines, including those with elastomeric properties. Complications possibly include more maintenance because of plant growth, as well as natural and polypropylene lines deteriorate quickly; and

(iii) Embedment Anchors: There are many different types with the most popular the screw pile (a.k.a. Helical) anchor. Although these have a smaller footprint than the traditional concrete sinker, because they are embedded their depth of disruption is a concern.

(9) Solutions proposing variants of these systems must address and overcome the stated drawbacks.

Submissions to Phase I of this prize competition shall include:

(1) Cover Page(format may be found on the competition Web site)

(2) Executive Summary that provides a brief summary of the response and indicating if supporting documentation is included.

(3) Clear discussion and description of the proposed solution, including:

(i) Equipment Specifications (height, weight, length, fixed or movable, power requirements, etc., for both the anchoring method and attachment method);

(ii) Environmental Impact (How does the proposed solution avoid directly damaging plants and corals?) Information should be provided on the mooring-seafloor contact area if any exists, including expected quantity (in cubic feet) of submerged marine life directly impacted by the anchor alone and by any connection between the anchor and the buoy; and

(iii) Graphical depictions, engineering drawings and detailed diagrams.

(4) Implementation Plan (Method and Feasibility Criterion)

(i) Deployment, Retrieval, and Transportation requirements. (Submissions should indicate if the use of divers is necessary or other specialized equipment is required. Can USCG platforms be utilized?)

(ii) Operational Limitations. (*e.g.,* maximum sea state, minimum or maximum depth, required bottom type, etc.)

(iii) Interest and ability to participate in USCG RDC demonstrations or their equivalents. (Submissions should include any special requirements needed to facilitate demonstration of the technology.)

(5) Cost Analysis (Cost Criterion)

(i) Acquisition Cost (Rough Order of Magnitude (ROM) and Procurement Lead Time);

(ii) Service Life and Maintenance Cycle;

(iii) Life Cycle Cost Parameters (Development, Testing, Acquisition, Operations, Planned Maintenance/Inspection, Integrated Logistics Support, training and disposal); and

(iv) Developmental Cost (if required to transition existing technology to meet USCG mission requirements).

(6) Statement on capability to participate in future prototype build phases of this prize competition. This factor will not be used in evaluating entries and will only be used to determine if the Solver has the ability to participate in the subsequent (optional) phases of the competition.

Liability and Indemnification Information: By participating in this competition, each Solver agrees to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this competition, whether the injury, death, damage, or loss arises through negligence or otherwise. Likewise, each Solver agrees to indemnify the Federal Government against third party claims for damages arising from or related to competition activities. In order to receive a prize, a Solver will be required to complete, sign and return to the Seeker affidavit(s) of eligibility and liability release, or a similar verification document.

Payment of the Prize: Prizes awarded under this competition will be paid by the United States Coast Guard and must be received by the Solver(s) via electronic funds transfer. All Federal, state and local taxes are the sole responsibility of the winner(s). DHS and the USCG will comply with the Internal Review Service withholding and reporting requirements, where applicable. All prize payments made under this contest (Phases I–III) are the sole responsibility of the United States Coast Guard. The Department of Homeland Security, Science and Technology Directorate assumes no responsibility for prize award payments under this prize competition.

Judging Criteria: Solutions for Phase I of this prize competition will be evaluated by a judging panel using the criteria and rating scale described below. A total of 100 points is possible for each proposed solution. Judges will individually score proposed solutions that meet the eligibility and submission criteria described in this notice. Up to 15 of the highest scored proposed solutions for Phase I will advance to consensus judging for a final score and a decision on award amount, if any.

Proposed Solution Rating System (1–10 points for each criterion):

(1) Excellent: Solver fully addressed all elements of this criterion. (10 points)

(2) Very Good: Solver addressed most significant elements of this criterion. (8–9 points)

(3) Good: Solver adequately addressed some important elements of this criterion. (6–7 points)

(4) Fair: Solver failed to address one or more critical aspects of this criterion. (4–5 Points)

(5) Poor: The solver's approach has serious deficiencies. (1–3 points)

Scoring: Criterion Score × Weighted Importance = Total

Judging Criteria:

(1) Criterion 1: Ability to deploy, retrieve using existing CG resources (225′ Seagoing Buoy Tender, 175′ Coastal Buoy Tender). (Weight—1.1)

(2) Criterion 2: Ability to deploy or retrieve without divers. (Weight—1.4)

(3) Criterion 3: Whether deployment or retrieval requires any additional equipment, not normally carried by existing CG buoy tenders. (Weight—0.7)

(4) Criterion 4: Expected quantity (in cubic feet) of submerged marine life and vegetation impacted by the mooring (anchor), alone. (Weight—1.3)

(5) Criterion 5: Expected quantity (in cubic feet) of submerged marine life and vegetation impacted by the attachment system, alone. (Weight—1.4)

(6) Criterion 6: Suitability to the task. (*i.e.,* How well the system keeps the floating buoy within the watch circle radius ([attachment length2-water depth2]1/2) of its charted position in the conditions described above (2–4 kt current, 0–70 kt winds, 0–14 ft. seas) (Weight—1.5)

(7) Criterion 7: How well the mooring/anchor remains on the assigned position as deployed. (Weight—1.4)

(8) Criterion 8: Cost Analysis. (Weight—0.8)

(9) Criterion 9: Whether anchor and attachment system is integral, modular, or multi-component. (Weight—0.4)

(10) Criterion 10: Non-Scored Element. The ability of the submitter to produce a prototype system.

Additional Information

Prize Competition Optional Phases II and III

(1) Based on the submissions received and the solver's stated capability to build a pilot solution, DHS S&T and the USCG reserve the right to invite one or more winners to participate in optional prize competitions Phase II and III with a prize pool of up to $250,000.

(2) Phase II contestant(s) will be awarded $5,000 each to assist in preparing and presenting their Phase II competition package.

(3) A contestant invited to participate in Phase II will present a prototype design to the judges through ''in-person'' oral presentations which may include graphics, displays, models, and PowerPoint presentations. Oral presentations must be accompanied by a written summary of the design, materials, and techniques to implement the solution, a specification sheet and detailed design illustration, and preliminary implementation costs. The oral presentation shall not last longer than 40 minutes, allowing 20 minutes for follow-up questions and answers. It will be up to the participant(s) to determine which aspect and method of delivery will best encompass the concept of their proposed working prototype pilot. Invited Phase II contestants will present their solutions at the United States Coast Guard, Research and Development Center located in New London, CT.

(4) Judging for Phase II will be evaluated based on the following criteria.

(i) Overall effectiveness of the proposed working prototype design: This factor examines the quality of the design and proposed materials, quantification of how well the design and materials minimize disruption of the marine environment, and quantification of design's ability to keep the floating buoy and the mooring/anchor at assigned position.

(ii) Feasibility of Implementation: This factor examines whether the relative cost of implementation is reasonable and commensurate with the costs associated with existing aid to navigation installation, servicing and maintenance, and replenishment over a 10 year life cycle.

(iii) Quality of Presentation: This factor examines whether the information that the invited contestant presents orally is consistent with the written information the contestant provides in support of their presentation, and whether the invited contestant is actually familiar with the design, theory, and analysis they provide in the supporting, written information.

(5) Phase III. The Phase II prize competition winner will be eligible to receive up to $175,000 in milestone award payments and will have 12 months to develop and implement their design. During this development period the prize competition winner will have access to the USCG Research and Development Center and federal scientists and engineers as agreed to in a Memorandum of Agreement or other agreement. Milestone award payments will be made based upon mutually agreed upon deliverable milestones throughout the pilot based on the USCG accepted design. An initial milestone payment will be determined to assist with the startup costs of the pilot.

(6) The Phase III contestant will be eligible to receive up to a $50,000 prize payment for a successful pilot demonstration of their solution. With the approval and under the direction of the USCG RDC, deploy (or provide written deployment guidance to the Coast Guard for deployment) the prototype assembly at the location of the Coast Guard's choosing. After a series of three physical inspections, over a period of 12 months, if the system is successful in meeting the criteria for overall effectiveness (remaining at assigned position with the minimized disruption of the marine environment).

Intellectual Property

(1) A Solver retains all ownership in intellectual property rights, if any, in the ideas, concepts, inventions, data, and other materials submitted in the prize competition. By entering the prize competition, each Solver agrees to grant to the United States Government, a Limited Purpose Research and Development License that is royalty free and non-exclusive for a period of four years from the date of submission. The Limited Purpose Research and Development License authorizes the United States Government to conduct research and development, or authorize others to do so on behalf of the United States Government. The Limited Purpose License does not include rights to commercialize the intellectual property in the Proposed Solution.

(2) Each Solver warrants that he or she is the sole author and owner of any copyrightable works that the Submission comprises, that the works are wholly original with the Solver (or is an improved version of an existing work that the Solver has sufficient rights to use and improve), and that the Submission does not infringe any copyright or any other rights of any third party of which Solver is aware.

Privacy: Personal information provided by entrants (Solvers) on the nomination form through the prize competition Web site will be used to contact selected finalists. Information is not collected for commercial marketing. Winners are permitted to cite that they won this competition. The names, cities, and states of selected winner or entity will be made available in promotional materials and at recognition events.

Judges and their Organization

(1) Danielle Elam, U.S. Coast Guard

(2) Marion Lewandowski, U.S. Coast Guard

(3) Alexander Balsley, U.S. Coast Guard

(4) Wayne Danzik, U.S. Coast Guard

(5) Robert Trainor, U.S. Coast Guard

(6) David Merrill, U.S. Coast Guard

(7) Gail Roderick, U.S. Coast Guard

Dr. Charlotte Sullivan of DHS Science & Technology will act as a Technical Advisor to the judging panel.

Dated: December 22, 2015.

Reginald Brothers,

Under Secretary, DHS Science and Technology Directorate.

[FR Doc. 2015–32744 Filed 1–5–16; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5838–N–13]

60-Day Notice of Proposed Information Collection: Public Housing Operating Fund Program: Operating Budget and Related Form

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: Comments Due Date: March 7, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Public Housing Operating Fund Program: Operating Budget and Related Form.

OMB Approval Number: 2577–0026.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–52574.

Description of the need for the information and proposed use: The operating budget and related form are submitted by PHAs for the low-income housing program. The operating budget provides a summary of proposed budget receipts and expenditures by major category, as well as blocks for indicating approval of budget receipts and expenditures by the PHA and HUD. The related form provides a record of PHA Board approval of how the amount shown on the operating budget were arrived at, as well as justification of certain specified amounts. The information is reviewed by HUD to determine if the plan of operation adopted by the PHA and amounts included therein are reasonable for the efficient and economical operation of the development(s), and the PHA is in compliance with HUD procedures to assure that sound management practices will be followed in the operation of the development. PHAs are still required to prepare their operating budgets and submit them to their Board for approval prior to their operating subsidy being approved by HUD. The operating budgets must be kept on file for review, if requested.

Respondents (*i.e.* affected public): State, Local or Tribal Government.

Estimated Number of Respondents: 3,141.

Estimated Number of Responses: 3,141.

Frequency of Response: 1.

Average Hours per Response: .17.

Total Estimated Burdens: 24,034.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 as amended.

Dated: December 30, 2015.

Danielle Bastarache,

Deputy Assistant Secretary Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2015–33185 Filed 1–5–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5838–N–11]

60-Day Notice of Proposed Information Collection: Indian Housing Block Grant (IHBG) Program Reporting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 7, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives,

PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in section A.

A. Overview of Information Collection

Title of Information Collection: Indian Housing Block Grant Information Collection, Word, Excel and EPIC Versions of the Indian Housing Plan/Annual Performance Report.

OMB Approval Number: 2577–0218.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–52737, HUD–4117, HUD–4119.

Description of the need for the information and proposed use: Indian tribes, Alaska Natives, Native Hawaiians, or tribally designated housing entities that receive IHBG funds are required annually to submit HUD–52737 that consists of two components: The Indian Housing Plan (IHP) component and the Annual Performance Report (APR) component.

The IHP is required by section 102 of the Native American Housing Assistance and Self-Determination Act (NAHASDA) and describes the eligible IHBG-funded, affordable housing activities the recipient plans to conduct for the benefit of low and moderate income tribal members and identifies the intended outcomes and outputs for the upcoming 12-month year. The recipient submits the IHP at least 75 days prior to the beginning of its 12-month program year. HUD conducts a limited review of the IHP to determine that the planned activities are in compliance with NAHASDA requirements, as defined at 24 CFR part 1000.

At the end of the 12-month period, the recipient submits the APR that is required by section 404 of NAHASDA and describes (1) the use of grant funds during the prior 12-month period; (2) the actual outcomes and outputs achieved; (3) program accomplishments; and (4) jobs supported by IHBG-funded activities. HUD uses the information in the APR to review the recipient's progress in implementing the IHP, verify whether the activities are eligible and to determine if the recipient has the capacity to continue implementing the activities described in the IHP in a timely manner. The information in the APR also will be used to provide Congress, stakeholders, and other interested parties with information on how the IHBG funds are being used to meet affordable housing needs within Native American communities.

The IHP/APR is currently available in a Word version, an Excel version, and a version on HUD's Energy and Performance Information Center (EPIC) Web site. All three versions of the IHP/APR request the same information and a recipient may elect to submit to HUD either the Word, Excel, or EPIC versions; however, the Excel and EPIC versions are preferred because of their automated capabilities and reduced burden.

Participants in the IHBG program are responsible for notifying HUD of changes to the Formula Current Assisted Stock (FCAS) component of the IHBG formula. HUD is notified of changes in the FCAS through a *Formula Response Form* (HUD–4117), as defined at 24 CFR 1000.302. A tribe, TDHE, or HUD may challenge the data from the U.S. Decennial Census or provide an alternative source of data by submitting the *Guidelines for Challenging U.S. Decennial Census Data Document* (HUD–4119). Census challenges are due March 30th of each fiscal year, as defined at 24 CFR 1000.336. This information collection is required of participants in the IHBG program to demonstrate compliance with eligibility and other requirements of NAHASDA; provision of correction or challenge documentation of the formula calculation; and provision of data for HUD's annual report to Congress. The information gathered will be used to allocate funds under the IHBG program. The quality assurance of data reported is a very important issue in maintaining HUD's databases used to monitor participant's proposed plans, accomplishments, determine program compliance, and to ensure fair and equitable allocations. In some cases, the FCAS information addressing the conveyances and conversions of units has resulted in the recouping of funds. The information collected will allow HUD to accurately audit the program.

Respondents (*i.e.* affected public): Native American Tribes and Tribally Designated Housing Entities, Alaska Natives and Corporations, and Native Hawaiians.

Estimated Number of Respondents: 366.

Estimated Number of Responses: 1,047.

Frequency of Response: The IHP/APR is submitted twice a year and the Formula Correction and Formula Challenge forms are submitted once per year.

Average Hours per Response: 60.

Total Estimated Burdens: 48,028 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35 as amended.

Dated: December 30, 2015.

Danielle Bastarache,

Deputy Assistant Secretary, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2015–33187 Filed 1–5–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5838–N–12]

60-Day Notice of Proposed Information Collection: Public Housing Operating Subsidy—Appeals

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of

information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 7, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in section A.

A. Overview of Information Collection

Title of Information Collection: Public Housing Operating Subsidy—Appeals.

OMB Approval Number: 2577–0246.

Type of Request: Extension of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: Under the operating fund rule, PHAs that elect to file an appeal of their subsidy amounts are required to meet the appeal requirements set forth in subpart G of the rule. There are four grounds of appeal in 24 CFR 990.245 under which PHAs may appeal the amount of their subsidy. They are: A streamlined appeal; an appeal for specific local conditions; an appeal for changing market conditions; and an appeal to substitute actual project cost data. To appeal the amount of subsidy on any one of these permitted bases of appeal, PHAs submit a written appeal request to HUD.

Respondents (*i.e.* affected public): State, Local or Tribal Government.

Estimated Number of Respondents: 127.

Estimated Number of Responses: 127.

Frequency of Response: 1.

Average Hours per Response: 20.

Total Estimated Burdens: 2,489.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35 as amended.

Dated: December 30, 2015.

Danielle Bastarache,

Deputy Assistant Secretary, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2015–33186 Filed 1–5–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/A0A501010.999900]

Notice of Intent To Prepare an Environmental Impact Statement for the Prairie Band Potawatomi Nation's Proposed Trust Acquisition and Gaming Facility Project, DeKalb County, Illinois

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, and the Prairie Band Potawatomi Nation (Nation) as cooperating agency, intend to gather information necessary to prepare an Environmental Impact Statement (EIS) in connection with the Nation's application for the proposed acquisition in trust by the United States of approximately 129 acres for construction and operation of a gaming facility in DeKalb County, Illinois. This notice also opens public scoping to identify potential issues, concerns and alternatives to be considered in the EIS.

DATES: The date and location of the public meeting will be announced at least 15 days in advance through a notice in the Daily Chronicle and the Midweek and on the following Web site: *www.prairiebandeis.com.* Written comments on the DEIS must arrive within 45 days after EPA publishes its Notice of Availability.

ADDRESSES: You may mail or hand-deliver written comments to Diane Rosen, Regional Director, Bureau of Indian Affairs, Midwest Region, Norman Pointe II Building, 5600 W. American Blvd., Suite 500, Bloomington, Minnesota 55437. Please include your name, return address, and ''NOI Comments, Prairie Band Project'' on the first page of your written comments.

FOR FURTHER INFORMATION CONTACT: Scott Doig, Acting Regional Environmental Scientist, at the address above, or at telephone (612) 725–4514, email *scott.doig@bia.gov.*

SUPPLEMENTARY INFORMATION: The Nation submitted a request to the Department of the Interior for the placement of approximately 129 acres of fee land in trust by the United States upon which the Nation would construct a class II gaming facility. The property is located in DeKalb County just southeast of the town of Shabbona, IL. The gaming facility would consist of a class II gaming area, restaurants and lounges, a multi-purpose room that could be used for entertainment, meetings, and other purposes, and surface parking for cars and buses. The property is comprised of two parcels: an approximately 128-acre parcel currently used for farming (Parcel ID Index 13–23–200–001), on which the gaming facility would be built, and a 30,020 square foot parcel on which a house sits (Parcel ID Index 13–23–128–002). The purpose of the proposed action is to acquire land in trust that was historically reserved for Chief Shab-eh-nay and his Band of Potawatomis by treaty, and to facilitate economic development so that the Tribal government can better provide housing, health care, education, cultural

programs, and other services to its members.

The proposed action encompasses the various Federal approvals which may be required to implement the Tribe's proposed economic development project, including approval of the Nation's fee-to-trust application. The EIS will identify and evaluate issues related to these approvals, and will also evaluate a range of reasonable alternatives, including a no action alternative. Other possible alternatives currently under consideration are a reduced-intensity gaming facility alternative, an alternate-use (non-gaming) alternative and an off-site alternative. The range of issues and alternatives may be revised based on comments received during the scoping process.

Areas of environmental concern preliminarily identified for analysis in the EIS include land resources; water resources; air quality; noise; biological resources; cultural/historical/archaeological resources; resource use patterns; traffic and transportation; public health and safety; hazardous materials and hazardous wastes; public services and utilities; socioeconomics; environmental justice; visual resources/aesthetics; and cumulative, indirect, and growth-inducing effects. Additional information, including a map of the project site, is available by contacting the person listed in the **FOR FURTHER INFORMATION** section of this notice.

Public Comment Availability: Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone 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 in your comment that your personal identifying information be withheld from public review, the BIA cannot guarantee that this will occur.

Authority: This notice is published in accordance with sections 1503.1 and 1506.6 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4345 *et seq.*), and the Department of the Interior National Environmental Policy Act Regulations (43 CFR part 46), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: December 21, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–33247 Filed 1–5–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTB07900 15XL1109AF L10100000 PH0000 LXSIANMS0000 MO# 4500089261]

Notice of Public Meeting; Western Montana Resource Advisory Council

AGENCY: Bureau of Land Management, 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) Western Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Western Montana Resource Advisory Council meeting will be held January 27, 2016 in Butte, Montana. The meeting will begin at 9:00 a.m. in the Butte Field Office conference room, with a 30-minute public comment period starting at 11:30 a.m., and will adjourn at 3:00 p.m.

ADDRESSES: BLM's Butte Field Office, 106 N. Parkmont, Butte, MT.

FOR FURTHER INFORMATION CONTACT: David Abrams, Western Montana Resource Advisory Council Coordinator, Butte Field Office, 106 North Parkmont, Butte, MT 59701, 406–533–7617, *dabrams@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior through the BLM on a variety of management issues associated with public land management in Montana. During this meeting the council will discuss several topics, including a briefing on weed treatments in the BLM's Western Montana District, and updates from the BLM's Butte, Missoula and Dillon field offices. All RAC meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated 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.

Authority: 43 CFR 1784.4–2.

Richard M. Hotaling,

District Manager, Western Montana District.

[FR Doc. 2015–33270 Filed 1–5–16; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in Eagle Ford Formation and Equivalent Boquillas Formation, South-Central and West Texas (Eagle Ford II)

Notice is hereby given that, on December 7, 2015, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in Eagle Ford Formation and Equivalent Boquillas Formation, South-Central and West Texas (''Eagle Ford II'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BHP Billiton Petroleum (Americas) Inc., has changed its name to BHP Billiton Petroleum (Deepwater) Inc., Houston, TX.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Eagle Ford II intends to file additional written notifications disclosing all changes in membership.

On July 1, 2015, Eagle Ford II filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal**

Register pursuant to section 6(b) of the Act on July 29, 2015 (90 FR 45234).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–33267 Filed 1–5–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Chemical & Biological Defense Consortium

Notice is hereby given that, on November 13, 2015, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Chemical & Biological Defense Consortium (''NCBDC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: AbViro LLC, Bethesda, MD; Advanced Nuclear Devices Corporation, Hilton Head Island, SC; Aequor, Inc., Oceanside, CA; Aeterna Zentaris, Québec, CANADA; AIBiotech, Richmond, VA; Allied Technologies & Consulting, LLC, Frederick, MD; AMH Consulting, Potomac, MD; AntibioTx ApS, Hørsholm, DENMARK; Approach Robotics, Ridgecrest, CA; Aradigm Corporation, Hayward, CA; Artificial Cell Technologies, Inc., New Haven, CT; BalinBac Therapeutics, Inc., Princeton, NJ; Battelle Memorial Institute, Columbus, OH; BioFactura, Inc., Frederick, MD; BioStat Solutions, Inc., Frederick, MD; Burrell International Group, LLC, Frederick, MD; CACI, Arlington, VA; CFD Research Corporation, Huntsville, AL; CONTINUUS Pharmaceuticals, Inc., Woburn, MA; Creare LLC, Hanover, NH; CSC Government Solutions LLC, Falls Church, VA; CUBRC, Inc., Buffalo, NY; DALI Medical Devices Ltd., Yavne, ISRAEL; Design West Technologies Inc., Tustin, CA; Draper Laboratory, Cambridge, MA; Eagle Applied Science, San Antonio, TX; Emergent, Inc., North Charleston, SC; Equivital Inc., New York, NY; EZ–A Consulting, LLC, Bel Air, MD; First Line Technology, Chantilly, VA; General Dynamics Information Technology, San Diego, CA; GeoVax Labs, Inc., Smyrna, GA; Ginkgo BioWorks, Boston, MA; Goldbelt Raven, LLC, Herndon, VA; Hackensack University Medical Center, Hackensack, NJ; iBio, Inc., New York, NY; IIT Research Institute, Chicago, IL; Immune Biosolutions, Inc., Québec, CANADA; Inficon, East Syracuse, NY; Integrated BioTherapeutics, Inc., Gaithersburg, MD; InvivoSciences Inc., Madison, WI; Jade Therapeutics, Inc., Salt Lake City, UT; JRAD, Stafford, VA; KD Analytical, Harrisburg, PA; Kestrel Corporation, Albuquerque, NM; Kinnear Pharmaceuticals, LLC, Columbus, OH; Kiyatec, Greenville, SC; L–3 Communications, New York, NY; Latham BioPharm Group, Inc., Maynard, MA; Luminex Corporation, Austin, TX; MainStream Global Solutions, Robins, IA; Mapp Biopharmaceutical, Inc., San Diego, CA; MaxCyte, Inc., Gaithersburg, MD; Med-Ally, Canton, CT; MedPro Technologies, LLC, San Antonio, TX; Mesa Science Associates Inc., Frederick, MD; Michael T. Brown Consulting, LLC, Austin, TX; Microbial Robotics, LLC, Covington, KY; Mike Sellers & Associates, Beavercreek, OH; MLT Systems, Stafford, VA; MRI Global, Kansas City, MO; Nanotherapeutics, Inc., Alachua, FL; New York Blood Center Inc., New York, NY; Novici Biotech LLC, Vacaville, CA; Novozymes, Inc., Franklinton, NC; OrPro Therapeutics, Inc., San Diego, CA; Parsons, Washington, DC; Pertexa, Ridgecrest, CA; Philips, Foster City, CA; PrEP Biopharm, Rumson, NJ; Purdue University, West Lafayette, IN; QuickSilver Analytics, Belcamp, MD; Quintiles, Durham, NC; Rapid Pathogen Screening, Inc. (RPS), Sarasota, FL; Recursion Pharmaceuticals, Salt Lake City, UT; RTI International, Coraopolis, PA; San Diego State University, San Diego, CA; Science Applications International Corporation, McLean, VA; SciTech Services Inc., Havre De Grace, MD; Shield Analysis Technology, LLC, Manassas, VA; SIGA Technologies, Inc., New York, NY; Signature Science, Austin, TX; Smart Consulting Group, LLC, West Chester, PA; Southern Research Institute, Birmingham, AL; Southwest Research Institute, San Antonio, TX; Spero Therapeutics, Cambridge, MA; SRI International, Princeton, NJ; Strategic Solutions Integrated, Arlington, VA; TDA Research, Inc., Wheat Ridge, CO; Tetracore, Inc., Rockville, MD; Texas A&M, Bryan, TX; TheraSource LLC, Roslyn, NY; Trideum, Huntsville, AL; TriLink BioTechnologies, San Diego, CA; Ubiquitome Limited, Auckland, NEW ZEALAND; University of Florida Institute for Therapeutic Innovation, Gainesville, FL; University of Nebraska Medical Center—Department of Pathology and Microbiology, Omaha, NE; University of North Texas Health Sciences Center, Fort Worth, TX; University of Pittsburgh—Center for Military Medicine Research, Pittsburgh, PA; and Vaxess Technologies, Inc., Cambridge, MA. The general area of NCBDC's planned activity is advanced development efforts to support the Department of Defense's medical pharmaceutical and diagnostic requirements as related to enhancing the mission effectiveness of military personnel through (i) detection—systems and devices to identify CBRN (Chemical Biological Radiological and Nuclear) agents and assist in making medical decisions; (ii) prevention—prophylaxis, pretreatment, and post-exposure prophylaxis; (iii) treatment—therapeutics (post-exposure, post-symptomatic); and (iv) chemical—medical protection against use of chemical agents.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–33266 Filed 1–5–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International Standards

Notice is hereby given that, on December 11, 2015, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between September 2015 and December 2015 designated as Work Items. A complete listing of ASTM Work Items along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on September 14, 2015. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 9, 2015 (80 FR 61236).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–33268 Filed 1–5–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'')

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: On December 29, 2015, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Central District of California, Western Division, in the lawsuit entitled *United States and State of California Department of Toxic Substances Control* v. *AC Products, Inc., et al.* Civil Action No. 2:15–cv–09931.

The United States and the State of California filed this lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'') against the following Defendants for recovery of response costs which each incurred to address environmental contamination at the Cooper Drum Company Superfund Site located in Los Angeles County, California (''the Site''): AC Products, Inc.; A. G. Layne, Inc.; Alpha Corporation of Tennessee Inc.; Ashland Inc.; Atlantic Richfield Company; Baker Petrolite LLC; Cargill, Incorporated; Castrol Industrial North America Inc.; Chemcentral Corp.; Chemical Waste Management, Inc.; Chevron U.S.A. Inc.; Coral Chemical Company; D.A. Stuart Company; Dunn-Edwards Corporation; Engineered Polymer Solutions, Inc.; ExxonMobil Oil Corporation; Gallade Chemical, Inc.; Hasco Oil Company, Inc.; Houghton International, Inc.; J.H. Mitchell & Sons Distributors, Inc.; Lockheed-Martin Corporation; Lonza Inc.; Lubricating Specialties Company; Mathisen Oil Co., Inc.; Pennzoil-Quaker State Company; Penreco; PolyOne Corporation; PPG Industries, Inc.; PTM&W Industries Inc.; Quaker Chemical Corporation; Rathon Corp.; Shell Chemical LP; Shell Oil Company; SOCO West, Inc.; Southern California Edison; Southern Counties Oil Co.; Sta-Lube LLC f/k/a Sta-Lube, Inc.; Stuarts' Petroleum; Texaco Downstream Properties Inc.; The Boeing Company; The Valspar Corporation; Union Oil Company of California; and Univar USA Inc.

The complaint names the above-listed companies as Defendants based on their business relationship with the Cooper Drum Company which operated a drum reconditioning business at the Site and which accepted drums from each Defendant that contained residues of hazardous substances. The Complaint also seeks declaratory relief for all future costs to be incurred. The Consent Decree resolves these claims through the payment of $5,539,266 to the United States and $53,599 to the State of California in partial recovery of response costs. In addition, the Defendants are obligated under the Consent Decree to reimburse the United States and the State of California for all future response costs and to perform the remedial action that EPA selected for the Site. In return, the United States and the State of California agree not to sue the Defendants under sections 106 and 107 of CERCLA.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of California Department of Toxic Substances Control* v. *AC Products, Inc., et al.* D.J. Ref. No. 90–11–2–09084. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $145.50 (25 cents per page reproduction cost × 582 pages) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $24.00 (25 cents per page reproduction cost × 96 pages)

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–33194 Filed 1–5–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements; Notice of Open Meeting

AGENCY: Bureau of International Labor Affairs, U.S. Department of Labor.

ACTION: Notice of open meeting, February 2, 2016.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2, the Office of Trade and Labor Affairs (OTLA) gives notice of a meeting of the National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements (''Committee'' or ''NAC''), which was established by the Secretary of Labor. The purpose of the meeting is to discuss the implementation of the labor provisions of free trade agreements and to identify the Committee's priority countries and issues for 2016.

DATES: The Committee will meet on Tuesday, February 2, 2016, from 9:30 a.m. to 4:30 p.m.

ADDRESSES: The Committee will meet at the U.S. Department of Labor, 200 Constitution Avenue NW., Deputy Undersecretary's Conference Room, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Donna Chung, Designated Federal Official, Office of Trade and Labor Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–5004, Washington, DC 20210; phone (202) 693–4861 (not a toll free number); fax (202) 693–4784 (not a toll free number).

Individuals with disabilities wishing to attend the meeting should contact Ms. Chung no later than January 25, 2016, to obtain appropriate accommodations.

SUPPLEMENTARY INFORMATION: NAC meetings are open to the public on a first-come, first-served basis, as seating is limited. Attendees must present valid identification and will be subject to security screening to access the Department of Labor for the meeting.

Agenda: Agenda items will include an update and discussion on the implementation of the labor provisions of free trade agreements and a discussion of the Committee's views of priority countries and issues for 2016.

Public Participation: Written data, views, or comments for consideration by the NAC on the agenda listed above should be submitted to Donna Chung at the address listed above. Submissions received by January 25, 2016, will be provided to Committee members and will be included in the record of the meeting. The Committee may take comments or questions from members of the public that were not submitted in writing by January 25 if time permits.

Signed in Washington, DC, on December 30, 2015.

Carol Pier,

Deputy Undersecretary for International Affairs.

[FR Doc. 2015–33248 Filed 1–5–16; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Executive Committee, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE AND TIME: Friday, January 8, 2016 from 3:00–4:00 p.m. EST.

SUBJECT MATTER: (1) Chair's opening remarks; and (2) Discussion of agenda for the February 2016 meeting of the National Science Board.

STATUS: Open

LOCATION: This meeting will be held by teleconference at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. A public listening line will be available. Members of the public must contact the Board Office [call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*] at least 24 hours prior to the teleconference for the public listening number.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.* Point of contact for this meeting is: James Hamos, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8000.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2016–00027 Filed 1–4–16; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Request To Amend a License To Import Radioactive Waste

Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 110.70(b) ''Public Notice of Receipt of an Application,'' please take notice that the U.S. Nuclear Regulatory Commission (NRC) has received the following requests for import and export license amendments. Copies of the requests are available electronically through the Agencywide Documents Access and Management System (ADAMS) and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 Fed. Reg 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this import license amendment application follows.

NRC IMPORT LICENSE AMENDMENT APPLICATION

Name of applicant Date of application Date received Application No. Docket No.	Description of material		End use	Country from
	Material type	Total quantity		
Energy*Solutions,* November 2, 2015, November 6, 2015, IW017/03, 11005621.	Class A radioactive waste. All materials subject to this authorization are materials imported under Energy*Solutions* Import license IW017/03.	Increase (up from 5,500 tons to a new maximum total of 10,000 tons of low-level waste).	Amend to add three domestic suppliers located in Tennessee, and to extend the expiration date from December 31, 2017 to December 31, 2020. Amend to remove the restriction that the imported radioactive material cannot exceed the Class A definition as defined in 10 CFR 61.55. The attributed Canadian waste will be returned under XW010 (and subsequent amendments).	Canada.

For the Nuclear Regulatory Commission.

Dated this 28th day of December 2015 at Rockville, Maryland.

Elizabeth Smiroldo,

Acting Director, Office of International Programs.

[FR Doc. 2015–33282 Filed 1–5–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request To Amend License To Import Radioactive Waste

Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 110.70 (b) ''Public Notice of Receipt of an Application,'' please take notice that the U.S. Nuclear Regulatory Commission (NRC) has received the following request for an import license amendment. A copy of the request is available electronically through the Agencywide Documents Access and Management System and can be accessed through the Public Electronic Reading Room link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 Fed. Reg 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this import license amendment application follows.

NRC IMPORT LICENSE AMENDMENT APPLICATION

Name of applicant Date of application Date received Application No. Docket No.	Description of material		End use	Country from
	Material type	Total quantity		
Eastern Technologies, Inc., November 9, 2015, December 10, 2015, IW016/03, 11005602.	No change in materials (Class A radioactive waste).	No increase (up to a maximum total of (5) curies over the duration of the license).	Amend to extend the date of expiration from December 31, 2015 to December 31, 2020.	Mexico.

For the Nuclear Regulatory Commission.

Dated this 29th day of December 2015 at Rockville, Maryland.

Elizabeth Smiroldo,

Acting Director, Office of International Programs.

[FR Doc. 2015–33286 Filed 1–5–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request To Amend License To Export Radioactive Waste

Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 110.70 (b) ''Public Notice of Receipt of an Application,'' please take notice that the U.S. Nuclear Regulatory Commission (NRC) has received the following request for an export license amendment. A copy of the request is available electronically through the Agencywide Documents Access and Management System and can be accessed through the Public Electronic Reading Room link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 Fed. Reg 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this import license amendment application follows.

NRC EXPORT LICENSE AMENDMENT APPLICATION

Name of applicant Date of application Date received Application No. Docket No.	Description of material		End use	Country to
	Material type	Total quantity		
Eastern Technologies, Inc., November 9, 2015, December 10, 2015, XW016/02, 11005825.	No change in material (secondary Class A radioactive waste).	No change (not to exceed quantity authorized under NRC license IW016/03).	Amend to extend the date of expiration from December 31, 2015 to December 31, 2020.	Mexico.

For the Nuclear Regulatory Commission.

Dated this 29th day of December 2015 at Rockville, Maryland.

Elizabeth Smiroldo,

Acting Director, Office of International Programs.

[FR Doc. 2015–33284 Filed 1–5–16; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act of 1974; Systems of Records

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of revision of the Categories of Individuals Covered by the System, revision of the Categories of Records in the System, revision of routine uses, revision of the Safeguards, and revision of the Record Source Categories.

SUMMARY: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the Pension Benefit Guaranty Corporation (PBGC) is proposing to make the following changes to PBGC–6, an existing system of records: (1) Revise the Categories of Individuals Covered by the System, (2) revise the Categories of Records in the System, (3) revise an existing routine use, (4) add two new routine uses, (5) revise the Safeguards, and (6) revise the Record Source Categories. PBGC is also proposing to make the following changes to PBGC–9, an existing system of records: (1) Revise the Categories of Records in the System, (2) revise an existing routine use, (3) add a new routine use, and (4) revise the Safeguards.

DATES: Comments must be received on or before February 5, 2016. The revised systems of records described herein will become effective February 22, 2016, without further notice, unless comments result in a contrary determination and a notice is published to that effect.

ADDRESSES: You may submit written comments to PBGC by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Email: reg.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005.

Comments received, including personal information provided, will be posted to *http://www.pbgc.gov.* Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Elizabeth Logan, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street NW., Washington, DC 20005, 202–326–4400, extension 3004, or Sarah Smith, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street NW., Washington, DC 20005, 202–326–4400, extension 3171. For access to any of the PBGC's systems of records, contact Camilla Perry, Disclosure Officer, Office of the General Counsel, Disclosure Division, at the above address, 202–326–4040.

SUPPLEMENTARY INFORMATION:

(1) PBGC Is Proposing To Revise the Categories of Individuals Covered by the System for PBGC–6

PBGC is proposing to revise the Categories of Individuals Covered by the System for PBGC–6, Plan Participant and Beneficiary Data—PBGC (last revised at 79 FR 53572 (September 9, 2014)). The section titled Categories of Individuals Covered by the System currently reads, ''Participants, alternate payees, and beneficiaries in terminating and terminated pension plans covered ERISA.''

Sometimes individuals who believe that they may be owed benefits from PBGC contact PBGC to inquire about these benefits, and sometimes it is determined that such an individual is not owed any benefit (for reasons such as the individual already received a lump-sum payment or was not a participant in any terminated pension plans for which PBGC is the trustee). Because these individuals are not participants, alternate payees, or beneficiaries, they are not covered by PBGC–6 as it is currently written. This limits PBGC's recordkeeping abilities.

As such, PBGC is proposing to add, ''and other individuals who contact PBGC regarding benefits they may be owed from PBGC,'' to the end of the current language in the Categories of Individuals Covered by the System. The amended language clarifies that PBGC may also collect information about individuals who are not participants or beneficiaries in a PBGC-trusteed plan for the purpose of determining whether they are owed a benefit from PBGC.

(2) PBGC Is Proposing To Revise the Categories of Records in the System for PBGC–6.

PBGC is proposing to revise the Categories of Records in the System for PBGC–6, Plan Participant and Beneficiary Data—PBGC (last revised at 79 FR 53572 (September 9, 2014)).

Categories of Records in the System currently reads, ''Names; addresses; telephone numbers; sex; social security numbers and other Social Security Administration information; dates of birth; dates of hire; salary; marital status; domestic relations orders; time of plan participation; eligibility status; pay status; benefit data, including records of benefit payments made to participants, alternate payees, and beneficiaries in terminating and terminated pension plans covered by ERISA; health-related information; powers of attorney; insurance information where plan benefits are provided by private insurers; pension plan names and numbers; initial and final PBGC determinations (see 29 CFR 4003.21 and

4003.59); and other records relating to debts owed to PBGC.''

To clarify and more accurately describe the records in PBGC–6, PBGC is proposing to add the following additional record categories: Email addresses, dates of death, and employment history.

(3) PBGC Is Proposing To Revise Routine Use 14 for PBGC–6

PBGC is proposing to modify Routine Use 14 for PBGC–6, Plan Participant and Beneficiary Data—PBGC (last revised at 79 FR 53572 (September 9, 2014)).

Currently, Routine Use 14 allows PBGC to provide the names and social security numbers of participants and beneficiaries to the Department of the Treasury, the Department of the Treasury's financial agent, and the Federal Reserve Bank for the purpose of learning which of PBGC's check payees have established electronic debit card accounts used for the electronic deposit of federal benefit payments. PBGC implemented this routine use for a pilot program which PBGC now intends to implement permanently.

PBGC is proposing that Routine Use 14 be modified to read, ''Names and social security numbers of participants and beneficiaries may be provided to the Department of the Treasury, the Department of the Treasury's financial agent, and the Federal Reserve Bank for the purpose of learning which of PBGC's check payees have electronic debit card accounts used for the electronic deposit of federal benefit payments, and for establishing electronic debit card accounts for eligible participants and beneficiaries, and for administering payments to participants and beneficiaries who have selected this method of payment.''

The amended routine use will allow PBGC to share information with the Department of the Treasury, its financial agent, and the Federal Reserve Bank, both for the purpose of learning which of PBGC's check payees have electronic debit card accounts, as well as for the purpose of establishing new electronic debit card accounts for eligible participants and beneficiaries.

(4) PBGC Is Proposing To Add Two Routine Uses to PBGC–6

PBGC is proposing to add two new routine uses to PBGC–6, Plan Participant and Beneficiary Data—PBGC (last revised at 79 FR 53572 (September 9, 2014)).

a. Routine Use 17

PBGC seeks to establish a pilot program with the Department of Labor, Employee Benefits Security Administration (EBSA), in which PBGC will share information about missing participants and beneficiaries with EBSA, and EBSA will search for those missing individuals. PBGC is proposing to add a routine use to PBGC–6 to allow PBGC to provide this information to EBSA, and possibly to other private firms and agencies that provide locator services to locate participants and beneficiaries in the future.

PBGC proposes that the new routine use read, ''Names, social security numbers, last known addresses, dates of birth and death, amount of benefit, pension plan name, plan EIN/PIN number, name of plan sponsor, and the city and state of the plan sponsor of plan participants and beneficiaries may be disclosed to private firms and agencies that provide locator services (including credit reporting agencies and debt collection firms or agencies), to locate participants and beneficiaries. Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable. Disclosure shall be made only under a contract that subjects the firm or agency providing the service and its employees to the criminal penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned or destroyed at the conclusion of the locating effort.''

The new routine use will allow PBGC to share additional information with EBSA to facilitate its efforts to find missing participants and beneficiaries for PBGC, and will give PBGC flexibility to enter into other similar agreements in the future. Notably, this routine use mirrors existing Routine Use 4 (with proposed revisions incorporated) of PBGC–9. In short, this change enhances PBGC's ability to locate missing participants and beneficiaries that are owed a benefit from PBGC.

b. Routine Use 18

On occasion, PBGC may enter into legal settlement agreements with third parties. As a result of these agreements, PBGC may be required, or choose, to share information from PBGC–6 with third parties covered by or created under these agreements.

To facilitate full performance of such agreements, PBGC is proposing to add a new routine use that reads, ''Names, social security numbers, last known addresses, dates of birth and death, employment history, and pay status of individuals covered by legal settlement agreements involving PBGC may be disclosed to entities covered by or created under those agreements.''

The new routine use will allow PBGC to share information with third parties covered by or created under settlement agreements that PBGC has entered into and will enter into in the future.

(5) PBGC Is Proposing To Revise the Safeguards for PBGC–6

PBGC is proposing to revise the Safeguards for PBGC–6, Plan Participant and Beneficiary Data—PBGC (last revised at 79 FR 53572 (September 9, 2014)). The relevant portion of the Safeguards section currently reads, ''Paper and electronic records that contain federal tax information are stored separately and are kept in locked file cabinets in areas of restricted access under procedures that meet IRS safeguarding standards.'' (The other portions of the Safeguards section are accurate as currently written.)

To clarify and more accurately describe PBGC's safeguards for federal tax information, PBGC is proposing to revise the current language to read, ''Paper and electronic records that contain federal tax information are stored under procedures that meet IRS safeguarding standards.''

(6) PBGC Is Proposing To Revise the Record Source Categories for PBGC–6

PBGC is proposing to revise the Record Source Categories for PBGC–6, Plan Participant and Beneficiary Data—PBGC (last revised at 79 FR 53572 (September 9, 2014)). Record Source Categories currently reads, ''Plan Administrators; participants, alternate payees, beneficiaries; agents listed on power of attorneys; field benefit administrator offices; the SSA; the FAA; and the IRS.''

Sometimes individuals who believe that they may be owed benefits from PBGC contact PBGC to inquire about these benefits, and sometimes it is determined that such an individual is not owed any benefit (for reasons such as the individual already received a lump-sum payment or was not a participant in any terminated pension plans for which PBGC is the trustee). Because these individuals are not participants, alternate payees, or beneficiaries, they are not covered by PBGC–6 as it is currently written. This limits PBGC's recordkeeping abilities.

As such, PBGC is proposing that Record Source Categories be amended to include, ''and other individuals who contact PBGC regarding benefits they may be owed from PBGC.'' The amended language clarifies that PBGC

may also collect information about individuals who are not participants or beneficiaries in a PBGC-trusteed plan for the purpose of determining whether they are owed a benefit from PBGC.

(7) PBGC Is Proposing To Revise the Categories of Records in the System for PBGC–9

PBGC is proposing to revise the Categories of Records in the System for PBGC–9, Unclaimed Pensions—PBGC (last revised at 79 FR 53572 (September 9, 2014)).

Categories of Records in the System currently reads, ''Names; social security numbers; addresses; email addresses; telephone numbers; pension plans names; and pension plan numbers.''

To clarify and more accurately describe the records in PBGC–9, PBGC is proposing to add the following additional record categories: Dates of birth and death, employment history, and pay status.

(8) PBGC Is Proposing To Revise Routine Use 4 for PBGC–9

PBGC is proposing to modify Routine Use 4 for PBGC–9, Unclaimed Pensions—PBGC (last revised at 79 FR 53572 (September 9, 2014)).

Currently, Routine Use 4 allows PBGC to provide names, social security numbers, last known addresses, and dates of birth and death to private firms and agencies that provide locator services, including credit reporting agencies and debt collection firms or agencies, to locate participants and beneficiaries. The routine use allows this information to be disclosed when PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable.

As discussed above, PBGC seeks to establish a pilot program with the Department of Labor, Employee Benefits Security Administration (EBSA), in which PBGC will share information about missing participants and beneficiaries with EBSA, and EBSA will search for those missing individuals.

To maximize the effectiveness of the EBSA program, and other similar programs that PBGC may engage in at some later date, PBGC is proposing to modify Routine Use 4 to allow PBGC to provide additional information to private firms and agencies that provide locator services to locate participants and beneficiaries. Specifically, PBGC proposes to add, ''amount of benefit, pension plan name, plan EIN/PIN number, name of plan sponsor, and the city and state of the plan sponsor of plan participants and beneficiaries,'' to the routine use. The amended routine use will allow PBGC to share additional information with EBSA in order to facilitate its efforts to find missing participants and beneficiaries, and will give PBGC flexibility to enter into other similar agreements in the future. In short, this change enhances PBGC's ability to locate missing participants and beneficiaries that are owed a benefit from PBGC.

(9) PBGC Is Proposing To Add a Routine Use to PBGC–9

PBGC is proposing to add a routine use to PBGC–9, Unclaimed Pensions—PBGC (last revised at 79 FR 53572 (September 9, 2014)).

On occasion, PBGC may enter into legal settlement agreements with third parties. As a result of these agreements, PBGC may be required, or choose, to share information from PBGC–9 with third parties covered by or created under these agreements.

To facilitate full performance of such agreements, PBGC is proposing to add a new routine use that reads, ''Names, social security numbers, last known addresses, dates of birth and death, employment history, and pay status of individuals covered by legal settlement agreements involving PBGC may be disclosed to entities covered by or created under those agreements.''

Like proposed Routine Use 18 for PBGC–6, this new routine use will allow PBGC to share information with third parties covered by or created under settlement agreements that PBGC has entered into and will enter into in the future.

(10) PBGC Is Proposing To Revise the Safeguards for PBGC–9

PBGC is proposing to revise the Safeguards for PBGC–9, Unclaimed Pensions—PBGC (last revised at 79 FR 53572 (September 9, 2014)).The relevant portion of the Safeguards section currently reads, ''Paper and electronic records that contain federal tax information are stored separately and are kept in locked file cabinets in areas of restricted access under procedures that meet IRS safeguarding standards.'' (The other portions of the Safeguards section are accurate as currently written.)

To clarify and more accurately describe PBGC's safeguards for federal tax information, PBGC is proposing to revise the current language to read, ''Paper and electronic records that contain federal tax information are stored under procedures that meet IRS safeguarding standards.''

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written comments on the proposed updates to PBGC's systems of records. A report on the proposed systems has been sent to Congress and the Office of Management and Budget for their evaluation.

For the convenience of the public, PBGC–6 and PBGC–9 are published in full below with changes italicized.

Issued in Washington, DC this 28 day of December, 2015.

W. Thomas Reeder,

Director, Pension Benefit Guaranty Corporation.

PBGC–6: Plan Participant and Beneficiary Data

SYSTEM NAME:

Plan Participant and Beneficiary Data—PBGC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005, and/or field benefit administrator, plan administrator, and paying agent worksites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants, alternate payees, beneficiaries in terminating and terminated pension plans covered *by* ERISA*, and other individuals who contact PBGC regarding benefits they may be owed from PBGC.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Names; addresses; telephone numbers; *email addresses;* sex; social security numbers and other Social Security Administration information; dates of birth *and death;* dates of hire; salary; *employment history;* marital status; domestic relations orders; time of plan participation; eligibility status; pay status; benefit data, including records of benefit payments made to participants, alternate payees, and beneficiaries in terminating and terminated pension plans covered by ERISA; health-related information; powers of attorney; insurance information where plan benefits are provided by private insurers; pension plan names and numbers; initial and final PBGC determinations (see 29 CFR 4003.21 and 4003.59); and other records relating to debts owed to PBGC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1055, 1056(d)(3), 1302, 1321, 1322, 1322a, 1341, 1342, and 1350; 26 U.S.C. 6103; 29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301.

PURPOSE(S):

This system of records is maintained for use in determining whether participants, alternate payees, and beneficiaries are eligible for benefits under plans covered by ERISA, determining supplemental payments to be paid to those persons by a party other than PBGC, determining the amounts of benefits to be paid, making benefit payments, collecting benefit overpayments, and complying with statutory and regulatory mandates.

Names, addresses, and telephone numbers are used to survey customers to measure their satisfaction with PBGC's benefit payment services and to track (for follow-up) those who do not respond to surveys.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1, G2, G4 through G7, and G9 through G12 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system of records may be disclosed to third parties, such as banks, insurance companies, or trustees:

a. To enable these third parties to make or determine benefit payments, or

b. To report to the IRS the amounts of benefits paid (or required to be paid) and taxes withheld.

3. A record from this system of records may be disclosed, in furtherance of proceedings under Title IV of ERISA, to a contributing sponsor (or other employer who maintained the plan), including any predecessor or successor, and any member of the same controlled group.

4. A record from this system of records may be disclosed, upon request for a purpose authorized under Title IV of ERISA, to an official of a labor organization recognized as the current or former collective bargaining representative of the individual about whom a request is made.

5. Payees' names, addresses, telephone numbers, and information related to how PBGC determined that a debt was owed by such payees to the PBGC may be disclosed to the Department of the Treasury or a debt collection agency or firm to collect a claim. Disclosure to a debt collection agency or firm shall be made only under a contract issued by the federal government that binds any such contractor or employee of such contractor to the penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned at the conclusion of the debt collection effort.

6. The name and social security number of a participant employed or formerly employed as a pilot by a commercial airline may be disclosed to the Federal Aviation Administration (FAA) to obtain information relevant to the participant's eligibility or continued eligibility for disability benefits.

7. The name of a participant's pension plan, the actual or estimated amount of a participant's benefit under Title IV of ERISA, the form(s) in which the benefit is payable, and whether the participant is currently receiving benefit payments under the plan or (if not) the earliest date(s) such payments could commence may be disclosed to the participant's spouse, former spouse, child, or other dependent solely to obtain a qualified domestic relations order under 29 U.S.C. 1056(d) and 26 U.S.C. 414(p). The PBGC will disclose the information only upon the receipt of a written request by a prospective alternate payee, or the payee's representative, that describes the requester's relationship to the participant and states that the information will be used solely to obtain a qualified domestic relations order under state domestic relations law. The PBGC will notify the participant of any information disclosed to a prospective alternate payee or their representative under this routine use.

8. Information from a participant's initial determination under 29 CFR 4003.1(b) (excluding the participant's address, telephone number, social security number, and any sensitive medical information) may be disclosed to an alternate payee, or their representative, under a qualified domestic relations order issued pursuant to 29 U.S.C. 1056(d) and 26 U.S.C. 414(p) to explain how the PBGC determined the benefit due the alternate payee so that the alternate payee can pursue an administrative appeal of the benefit determination under 29 CFR 4003.51. The PBGC may notify the participant of the information disclosed to an alternate payee or their representative under this routine use.

9. Information from an alternate payee's initial determination under 29 CFR 4003.1(b) (excluding the alternate payee's address, telephone number, social security number, and any sensitive medical information) may be disclosed to a participant, or their representative, under a qualified domestic relations order issued pursuant to 29 U.S.C. 1056(d) and 26 U.S.C. 414(p) to explain how the PBGC determined the benefit due the participant so that the participant can pursue an administrative appeal of the benefit determination under 29 CFR 4003.51. The PBGC may notify the alternate payee of the information disclosed to a participant or their representative under this routine use.

10. Information used in calculating the benefit, or share of the benefit, of a participant or alternate payee (excluding the participant's or alternate payee's address, telephone number, social security number, and any sensitive medical information) may be disclosed to a participant or an alternate payee, or their representative, when (a) a qualified domestic relations order issued pursuant to 29 U.S.C. 1056(d) and 26 U.S.C. 414(p) affects the calculation of the benefit, or share of the benefit, of the participant or alternate payee; and (b) the information is needed to explain to the participant or alternate payee how the PBGC calculated the benefit, or share of the benefit, of the participant or alternate payee. The PBGC may notify the participant or the alternate payee, or their representative, as appropriate, of the information disclosed to the participant or the alternate payee, or their representative, under this routine use.

11. The names, addresses, social security numbers, dates of birth, and the pension plan name and number of eligible PBGC pension recipients may be disclosed to the Department of the Treasury and the Department of Labor to implement the income tax credit for health insurance costs under 26 U.S.C. 35 and the program for advance payment of the tax credit under 26 U.S.C. 7527.

12. Names, addresses, social security numbers, and dates of birth of eligible PBGC pension recipients residing in a particular state may be disclosed to the state's workforce agency if the agency received a National Emergency Grant from the Department of Labor under the Workforce Investment Act of 1988 to provide health insurance coverage assistance and support services for state residents under 29 U.S.C. 2918(a) and (f).

13. Payees' names, social security numbers, and dates of birth may be provided to the Department of the Treasury's Bureau of the Public Debt, the Social Security Administration, and the Internal Revenue Service to verify payees' eligibility to receive payments.

14. Names and social security numbers of participants and

beneficiaries may be provided to the Department of the Treasury, the Department of the Treasury's financial agent, and the Federal Reserve Bank for the purpose of learning which of PBGC's check payees have electronic debit card accounts used for the electronic deposit of federal benefit payments*, and for establishing electronic debit card accounts for eligible participants and beneficiaries, and for administering payments to participants and beneficiaries who have selected this method of payment.*

15. Information relating to revocation of a power of attorney may be disclosed to the former agent that was named in the revoked power of attorney.

16. The name and date of birth of a participant's beneficiary may be provided to that participant upon request by that participant.

17. *Names, social security numbers, last known addresses, dates of birth and death, amount of benefit, pension plan name, plan EIN/PIN number, name of plan sponsor, and the city and state of the plan sponsor of plan participants and beneficiaries may be disclosed to private firms and agencies that provide locator services (including credit reporting agencies and debt collection firms or agencies) to locate participants and beneficiaries. Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable. Disclosure shall be made only under a contract that subjects the firm or agency providing the service and its employees to the criminal penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned or destroyed at the conclusion of the locating effort.*

18. *Names, social security numbers, last known addresses, dates of birth and death, employment history, and pay status of individuals covered by legal settlement agreements involving PBGC may be disclosed to entities covered by or created under those agreements.*

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and/or electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.

RETRIEVABILITY:

Records are retrieved by any one or more of the following: name; social security number; customer identification number; date of birth; or date of death.

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper and electronic records that contain federal tax information are stored *under procedures that meet IRS safeguarding standards.*

Other paper and microfiche records that do not contain federal tax information are kept in file folders in areas of restricted access that are locked after office hours. Electronic records that do not contain federal tax information are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on other media and computer storage media are destroyed according to the applicable PBGC Information Assurance Handbook guidance on media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Benefits Administration and Payment Department, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Plan administrators; participants, alternate payees, beneficiaries*, and*

other individuals who contact PBGC regarding benefits they may be owed from PBGC; agents listed on power of attorneys; field benefit administrator offices; the SSA; the FAA; and the IRS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

PBGC–9: Unclaimed Pensions

SYSTEM NAME:

Unclaimed Pensions—PBGC.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005 and/or field benefit administrator, plan administrator, and paying agent worksites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants, alternate payees, and beneficiaries in terminating and terminated pension plans covered by ERISA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names; *dates of birth and death;* social security numbers; addresses; email addresses; telephone numbers; pension plans names; pension plan numbers*; employment history; and pay status.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1055, 1056(d)(3), 1302, 1321, 1322, 1322a, 1341, 1342, and 1350; 29 U.S.C. 1203; 44 U.S.C. 3101; 5 U.S.C. 310.

PURPOSE(S):

This system of records is maintained to locate participants, alternate payees, and beneficiaries of pension plans covered by ERISA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 and G4 through G7, G9 through G11 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. Names and social security numbers of plan participants and beneficiaries may be disclosed to the Internal Revenue Service to obtain current addresses from tax return information and to the Social Security Administration to obtain current addresses. Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable.

3. Names and last known addresses may be disclosed to an official of a labor organization recognized as the collective bargaining representative of participants for posting in union halls or for other means of publication to obtain current addresses of participants and beneficiaries. Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable.

4. Names, social security numbers, last known addresses, dates of birth and death, *amount of benefit, pension plan name, plan EIN/PIN number, name of plan sponsor, and the city and state of the plan sponsor of plan participants and beneficiaries* may be disclosed to private firms and agencies that provide locator services, including credit reporting agencies and debt collection firms or agencies, to locate participants and beneficiaries. Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable. Disclosure shall be made only under a contract that subjects the firm or agency providing the service and its employees to the criminal penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned *or destroyed* at the conclusion of the locating effort.

5. Names and addresses may be disclosed to licensees of the United States Postal Service (''USPS'') to obtain current addresses under the USPS's National Change of Address Linkage System (NCOA). Disclosure shall be made only under a contract that binds the licensee of the Postal Service and its employees to the criminal penalties of the Privacy Act. The contract shall provide that the records disclosed by PBGC shall be used exclusively for updating addresses under NCOA and must be returned to PBGC or destroyed when the process is completed. The records will be exchanged electronically in an encrypted format.

6. Names and last known addresses may be disclosed to other participants in, and beneficiaries under, a pension plan to obtain the current addresses of individuals. Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable.

7. Names and last known addresses of participants and beneficiaries, and the names and addresses of participants' former employers, may be disclosed to the public to obtain current addresses of the individuals. Such information will be disclosed to the public only if the PBGC is unable to make benefit payments to the participants and beneficiaries because the address it has does not appear to be current or correct.

8. *Names, social security numbers, last known addresses, dates of birth and death, employment history, and pay status of individuals covered by legal settlement agreements involving PBGC may be disclosed to entities covered by or created under those agreements.*

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and/or in electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.

RETRIEVABILITY:

Records are retrieved by any one or more of the following: Name; social security number; customer identification number; date of birth; or date of death.

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to unauthorized individuals.

Paper and electronic records that contain federal tax information are stored *under procedures that meet IRS safeguarding standards.*

Other paper and microfiche records that do not contain federal tax information are kept in file folders in areas of restricted access that are locked after office hours. Electronic records that do not contain federal tax information are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention

Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Benefits Administration and Payments Department, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

PBGC–6; the SSA; the IRS; labor organization officials; firms or agencies providing locator services; USPS licensees; field benefit administrator offices; and any other individual that provides PBGC with information regarding a missing participant, beneficiary, or alternate payee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2015–33294 Filed 1–5–16; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. ACR2015; Order No. 2968]

FY 2015 Annual Compliance Report

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Postal Service has filed an Annual Compliance Report on the costs, revenues, rates, and quality of service associated with its products in fiscal year 2015. Within 90 days, the Commission must evaluate that information and issue its determination as to whether rates were in compliance with title 39, chapter 36, and whether service standards in effect were met. To assist in this, the Commission seeks public comments on the Postal Service's Annual Compliance Report.

DATES: *Comments are due:* February 2, 2016. *Reply Comments are due:* February 12, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On December 29, 2015, the United States Postal Service (Postal Service) filed with the Commission, pursuant to 39 U.S.C. 3652, its Annual Compliance Report (ACR) for fiscal year (FY) 2015.[1] Section 3652 requires submission of data and information on the costs, revenues, rates, and quality of service associated with postal products within 90 days of the closing of each fiscal year. In conformance with other statutory provisions and Commission rules, the ACR includes the Postal Service's FY 2015 Comprehensive Statement, its FY 2015 annual report to the Secretary of the Treasury on the Competitive Products Fund, and certain related Competitive Products Fund material. *See respectively,* 39 U.S.C. 3652(g), 39 U.S.C. 2011(i), and 39 CFR 3060.20–23. In line with past practice, some of the material in the FY 2015 ACR appears in non-public annexes.

The filing begins a review process that results in an Annual Compliance Determination (ACD) issued by the Commission to determine whether Postal Service products offered during FY 2015 were in compliance with applicable title 39 requirements.

II. Overview of the Postal Service's FY 2015 ACR

Contents of the filing. The Postal Service's FY 2015 ACR consists of a 73-page narrative; extensive additional material appended as separate folders and identified in Attachment One; and an application for non-public treatment of certain materials, along with supporting rationale, filed as Attachment Two. The filing also includes the Comprehensive Statement,[2] Report to the Secretary of the Treasury, and information on the Competitive Products Fund filed in response to Commission rules. This

[1] United States Postal Service FY 2015 Annual Compliance Report, December 29, 2015 (FY 2015 ACR). Public portions of the Postal Service's filing are available on the Commission's Web site at *http://www.prc.gov.*

[2] In years prior to 2013, the Commission reviewed the Postal Service's reports prepared pursuant to 39 U.S.C. 2803 and 39 U.S.C. 2804 (filed as the Comprehensive Statement by the Postal Service) in its Annual Compliance Determination. However, as it did last year, the Commission intends to issue a separate notice soliciting comments on the comprehensive statement and provide its related analysis in a separate report from the ACD.

material has been filed electronically with the Commission, and some also has been filed in hard-copy form.

Scope of filing. The material appended to the narrative consists of: (1) Domestic product costing material filed on an annual basis summarized in the Cost and Revenue Analysis (CRA); (2) comparable international costing material summarized in the International Cost and Revenue Analysis (ICRA); (3) worksharing-related cost studies; and (4) billing determinant information for both domestic and international mail. FY 2015 ACR at 2. Inclusion of these four data sets is consistent with the Postal Service's past ACR practices. As with past ACRs, the Postal Service has split certain materials into public and non-public versions. *Id.* at 2–3.

''Roadmap'' document. A roadmap to the FY 2015 ACR can be found in Library Reference USPS–FY15–9. This document provides brief descriptions of the materials submitted, as well as the flow of inputs and outputs among them; a discussion of differences in methodology relative to Commission methodologies in last year's ACD; and a list of special studies and a discussion of obsolescence, as required by Commission rule 3050.12. *Id.* at 3.

Methodology. The Postal Service states that it has adhered to the methodologies historically used by the Commission subject to changes identified and discussed in Library Reference USPS–FY15–9 and in prefaces accompanying the appended folders. *Id.* at 4. Changes in analytical principles proposed by the Postal Service for use in the FY 2015 ACR are identified and summarized in a table. *Id.* at 4–6.

Market dominant product-by-product costs, revenues, and volumes. Comprehensive cost, revenue, and volume data for all market dominant products of general applicability are shown directly in the FY 2015 CRA or ICRA. *Id.* at 7.

The FY 2015 ACR includes a discussion by class of each market dominant product, including costs, revenues, and volumes, workshare discounts and passthroughs responsive to 39 U.S.C. 3652(b), and FY 2015 incentive programs. *Id.* at 7–55.[3]

In response to the Commission's FY 2010 ACD directives, the Postal Service states that it is providing information regarding: (a) All operational changes designed to reduce flats costs and the estimated financial effects of such changes, *id.* at 18–28; (b) all costing methodology improvements made in FY 2014 and the estimated financial effects of such changes, *id.* at 28–31; and (c) a statement summarizing the historical and current year subsidy of the flats product, *id.* In addition, in response to Order No. 1427,[4] the Postal Service states that in the next general market-dominant price change, it plans to increase the price of Standard Mail Flats by at least CPI times 1.05. FY 2015 ACR at 30. Also, in response to the FY 2014 ACD, the Postal Service states that it provides an analysis of progress being made in the improvement of Periodicals cost coverage. *Id.* at 44–46.

Market dominant negotiated service agreements. The FY 2015 ACR presents information on market dominant negotiated service agreements (NSAs). *Id.* at 53–55.

Service performance. The Postal Service notes that the Commission issued rules on periodic reporting of service performance measurement and customer satisfaction in FY 2010. Responsive information appears in Library Reference USPS–FY15–29. *Id.* at 56–57.

Customer satisfaction. The FY 2015 ACR discusses the Postal Service's approach for measuring customer experience and satisfaction; describes the methodology; presents a table with survey results; compares the results from FY 2014 to FY 2015; and provides information regarding customer access to postal services. *Id.* at 56–60. The Postal Service also states that it responds to the Commission's directive in the July 7, 2015, ''Analysis of the Postal Service's FY 2014 Program Performance Report and FY 2015 Performance Plan'' that the Postal Service provide comparable results for each performance indicator over Fiscal Years 2012, 2013, 2014, and 2015, by using the same measurement methodology or by explaining how the results under different methodologies can be compared. *Id.* at 60–62.

Competitive products. The FY 2015 ACR provides costs, revenues, and volumes for competitive products of general applicability in the FY 2015 CRA or ICRA. For competitive products not of general applicability, data is provided in non-public Library References USPS–FY15–NP2 and USPS–FY15–NP27. *Id.* at 63. The FY 2015 ACR also addresses the competitive product pricing standards of 39 U.S.C. 3633. *Id.* at 63–69.

Market tests; nonpostal services. The Postal Service discusses the three competitive market tests conducted during FY 2015, and nonpostal services. *Id.* at 70.

III. Procedural Steps

Statutory requirements. Section 3653 of title 39 requires the Commission to provide interested persons with an opportunity to comment on the ACR and to appoint an officer of the Commission (Public Representative) to represent the interests of the general public. The Commission hereby solicits public comment on the Postal Service's FY 2015 ACR and on whether any rates or fees in effect during FY 2015 (for products individually or collectively) were not in compliance with applicable provisions of chapter 36 of title 39 (or regulations promulgated thereunder). Commenters addressing market dominant products are referred in particular to the applicable requirements (39 U.S.C. 3622(d) and (e) and 3626); objectives (39 U.S.C. 3622(b)); and factors (39 U.S.C. 3622(c)). Commenters addressing competitive products are referred to 39 U.S.C. 3633.

The Commission also invites public comment on the cost coverage matters the Postal Service addresses in its filing; service performance results; levels of customer satisfaction achieved; and such other matters that may be relevant to the Commission's review.

Access to filing. The Commission has posted the publicly available portions of the FY 2015 ACR on its Web site at *http://www.prc.gov.*

Comment deadlines. Comments by interested persons are due on or before February 2, 2016. Reply comments are due on or before February 12, 2016. The Commission, upon completion of its review of the FY 2015 ACR, public comments, and other data and information submitted in this proceeding, will issue its ACD.

Public Representative. James Waclawski is designated to serve as the Public Representative to represent the interests of the general public in this proceeding. Neither the Public Representative nor any additional persons assigned to assist him shall participate in or advise as to any Commission decision in this proceeding other than in their designated capacity.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. ACR2015 to consider matters raised by the United States Postal Service's FY 2015 Annual Compliance Report.

2. Pursuant to 39 U.S.C. 505, the Commission appoints James Waclawski

[3] The Postal Service states that it ''would be inefficient and unduly disruptive . . . to immediately adjust prices to correct passthroughs that exceed 100 percent.'' *Id.* It further states its intent to address such passthroughs in its next general price adjustment. *Id.*

[4] Docket No. ACR2010–R, Order on Remand, August 9, 2012 (Order No. 1427).

as an officer of the Commission (Public Representative) in this proceeding to represent the interests of the general public.

3. Comments on the United States Postal Service's FY 2015 Annual Compliance Report to the Commission are due on or before February 2, 2016.

4. Reply comments are due on or before February 12, 2016.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015–33192 Filed 1–5–16; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–441, OMB Control No. 3235–0497]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:
Rule 15c3–4.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 15c3–4 (17 CFR 240.15c3–4) (the ''Rule'') under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15c3–4 requires certain broker-dealers that are registered with the Commission as OTC derivatives dealers, or who compute their net capital charges under Appendix E to Rule 15c3–1 (17 CFR 240.15c3–1) (''ANC firms''), to establish, document, and maintain a system of internal risk management controls. The Rule sets forth the basic elements for an OTC derivatives dealer or an ANC firm to consider and include when establishing, documenting, and reviewing its internal risk management control system, which are designed to, among other things, ensure the integrity of an OTC derivatives dealer's or an ANC firm's risk measurement, monitoring, and management process, to clarify accountability at the appropriate organizational level, and to define the permitted scope of the dealer's activities and level of risk. The Rule also requires that management of an OTC derivatives dealer or an ANC firm must periodically review, in accordance with written procedures, the firm's business activities for consistency with its risk management guidelines.

The staff estimates that the average amount of time a new OTC derivatives dealer will spend establishing and documenting its risk management control system is 2,000 hours and that, on average, a registered OTC derivatives dealer will spend approximately 200 hours each year to maintain (*e.g.,* reviewing and updating) its risk management control system.[1] Currently, four firms are registered with the Commission as OTC derivatives dealers. The staff estimates that approximately two additional entities may become registered as OTC derivatives dealers within the next three years. Thus, the estimated annualized burden would be 800 hours for the four OTC derivatives dealers currently registered with the Commission to maintain their risk management control systems,[2] 1,334 hours for the two new OTC derivatives dealers to establish and document their risk management control systems,[3] and 400 hours for the two new OTC derivatives dealers to maintain their risk management control systems.[4] Accordingly, the staff estimates the total annualized burden associated with Rule 15c3–4 for the six OTC derivatives dealers will be approximately 2,534 hours annually.

The staff believes that the internal cost of complying with Rule 15c3–4 will be approximately $283 per hour.[5] This per hour cost is based upon an annual average hourly salary for a compliance manager who would be responsible for ensuring compliance with the requirements of Rule 15c3–4. Accordingly, the total annualized internal cost of compliance for all affected OTC derivatives dealers is estimated to be $717,122.[6]

The records required to be made by OTC derivatives dealers pursuant to the Rule and the results of the periodic reviews conducted under paragraph (d) of Rule 15c3–4 must be preserved under Rule 17a–4 of the Exchange Act (17 CFR 240.17a–4) for a period of not less than three years, the first two years in an easily accessible place. The Commission will not generally publish or make available to any person notice or reports received pursuant to the Rule. The statutory basis for the Commission's refusal to disclose such information to the public is the exemption contained in section (b)(4) of the Freedom of Information Act (5 U.S.C. 552), which essentially provides that the requirement of public dissemination does not apply to commercial or financial information which is privileged or confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: (i) *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@SEC.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 30, 2015.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–33214 Filed 1–5–16; 8:45 am]

BILLING CODE 8011–01–P

[1] This notice does not cover the hour burden associated with ANC firms, because the hour burden for ANC firms is included in the Paperwork Reduction Act collection for Rule 15c3–1, which requires ANC firms to comply with specific provisions of Rule 15c3–4 in Appendix E to Rule 15c3–1. *See* 17 CFR 240.15c3–1(a)(7)(iii), 17 CFR 240.15c3–1e(a)(1)(ii), and 17 CFR 240.15c3–1e(a)(1)(viii)(C).

[2] (200 hours × 4 firms) = 800.

[3] ((2,000 hours/3 years) × 2 firms) = 1,334.

[4] (200 hours × 2 firms) = 400.

[5] The $283 per hour salary figure for a compliance manager is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[6] 2,534 hours × $283 per hour = $717,122.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76798; File No. SR–NYSEArca–2015–125]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of RiverFront Dynamic Unconstrained Income ETF and RiverFront Dynamic Core Income ETF Under NYSE Arca Equities Rule 8.600

December 30, 2015.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 15, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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 list and trade shares of the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): RiverFront Dynamic Unconstrained Income ETF and RiverFront Dynamic Core Income ETF. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600,[4] which governs the listing and trading of Managed Fund Shares: [5] RiverFront Dynamic Unconstrained Income ETF and RiverFront Dynamic Core Income ETF, each referred to as a ''Fund'' and collectively as the ''Funds.'' The Funds are each a series of ALPS ETF Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[6] The Funds will be managed by ALPS Advisors, Inc. (''ALPS Advisors'' or the ''Adviser''). RiverFront Investment Group, LLC (''RiverFront'') is the investment sub-adviser for the Funds (the ''Sub-Adviser'').

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Each of ALPS Advisors and RiverFront is not registered as a broker-dealer but is affiliated with a broker-dealer. Each of ALPS Advisors and RiverFront has implemented and will maintain a fire wall with respect to its affiliated broker-dealer(s) regarding access to information concerning the composition and/or changes to a Fund portfolio. In the event (a) the Adviser or Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[4] The Commission has previously approved listing and trading on the Exchange of actively managed funds under Rule 8.600. *See, e.g.*, Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (order approving listing and trading of PIMCO Total Return Exchange Traded Fund); 66670 (March 28, 2012), 77 FR 20087 (April 3, 2012) (SR–NYSEArca–2012–09) (order approving listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, Fixed Income Securities index or combination thereof.

[6] The Trust is registered under the 1940 Act. On September 1, 2015, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act'') and the 1940 Act relating to the Funds (File Nos. 333–148826 and 811–22175) (the ''Registration Statement''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust and the Adviser (as defined below) under the 1940 Act. See Investment Company Act Release No. 30553 (June 11, 2013) (File No. 812–13884) (''Exemptive Order''). The Funds will be offered in reliance upon the Exemptive Order issued to the Trust and the Adviser.

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. The Exchange represents that the Adviser and Sub-Adviser, and their respective related personnel, are subject to Investment Advisers Act Rule 204A–1. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

RiverFront Dynamic Unconstrained Income ETF

Principal Investment Strategies

According to the Registration Statement, the investment objective of the Fund will be to seek total return with an emphasis on income as the source of that total return. Under normal circumstances, the Fund will principally invest its assets in the securities and financial instruments described below.[8]

The Fund's portfolio is constructed through a two-step process, with the first step setting the allocation among different fixed income asset classes and the second step determining security selection within those asset classes. The allocation across long-term, medium-term and short-term investment grade securities, long-term and short-term high yield securities and emerging market debt is determined by a quantitative methodology. The methodology models historical returns as a function of initial valuation conditions and creates estimates of potential returns and downside risks consistent with historical market behavior. These capital market assumptions are incorporated into a patent-pending Mean Reversion Optimization (MRO) process to produce the index weighting within each of the major fixed income asset classes. The objective of this optimization is to construct a combination of fixed income asset classes that are expected to have a high probability of generating a positive potential total return over a five-year investment horizon.

The Fund will seek to achieve its investment objective by investing in a global portfolio of ''Fixed Income Securities'' (as described below) of various maturities, ratings and currency denominations. The Fund intends to utilize various investment strategies in a broad array of fixed income sectors. The Fund will allocate its investments based upon the analysis of the Sub-Adviser of the pertinent economic and market conditions, as well as yield, maturity, credit and currency considerations.

For purposes of this filing, Fixed Income Securities include the following (as described further below): Bonds, including corporate bonds; securities issued by the U.S. government or its agencies, instrumentalities or sponsored corporations (including those not backed by the full faith and credit of the U.S. government); agency and non-agency mortgage-backed securities (''MBS'', which may include commercial MBS (''CMBS'')) and asset-backed securities (''ABS''); municipal securities; U.S. agency mortgage pass-through securities; convertible securities; preferred stocks; commercial instruments; variable or floating rate instruments and variable rate demand instruments;[9] zero-coupon and pay-in-kind securities;[10] bank instruments, including certificates of deposit (''CDs''), time deposits and bankers' acceptances from U.S. banks; and participations in and assignments of bank loans or corporate loans,[11] which loans include senior loans, syndicated bank loans, junior loans, bridge loans, unfunded commitments, revolving credit facilities, and participation interests.[12]

The Fund may purchase Fixed Income Securities issued by U.S. or foreign corporations[13] or financial institutions.

The Fund may purchase securities issued or guaranteed by the U.S. Government or foreign governments (including foreign states, provinces and municipalities) or their agencies and instrumentalities or issued or guaranteed by international organizations designated or supported by multiple government entities to promote economic reconstruction or development.

The Fund may invest in MBS issued or guaranteed by federal agencies and/or U.S. government sponsored instrumentalities, such as the Government National Mortgage Administration (''Ginnie Mae''), the Federal Housing Administration (''FHA''), the Federal National Mortgage Association (''Fannie Mae'') and the Federal Home Loan Mortgage Corporation (''Freddie Mac''). The MBS in which the Fund may invest will be either pass-through securities or collateralized mortgage obligations (''CMOs''), and may use to-be-announced (''TBA'') transactions.[14]

The Fund may purchase or sell securities on a when-issued,[15] delayed delivery or forward commitment basis,

[8] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the securities markets or the financial markets generally; circumstances under which a Fund's investments are made for temporary defensive purposes; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[9] Variable or floating interest rates are readjusted on set dates (such as the last day of the month or calendar quarter) in the case of variable rates or whenever a specified interest rate change occurs in the case of a floating rate instrument. The terms of such demand instruments require payment of principal and accrued interest by the issuer, a guarantor and/or a liquidity provider. The Sub-Adviser will monitor the pricing, quality and liquidity of the variable or floating rate securities held by the Fund.

[10] Zero-coupon or pay-in-kind securities are debt securities that do not make regular cash interest payments. Zero-coupon securities are sold at a deep discount to their face value. Pay-in-kind securities pay interest through the issuance of additional securities.

[11] The Adviser expects that under normal market conditions, the Fund generally will seek to invest at least 80% of its corporate loan assets in issuances that have at least $100,000,000 par amount outstanding (if tied to developed countries) and at least $200,000,000 par amount outstanding (if tied to emerging market countries).

[12] Participation interests generally will be acquired from a commercial bank or other financial institution (a ''Lender'') or from other holders of a participation interest (a ''Participant''). The purchase of a participation interest either from a Lender or a Participant will not result in any direct contractual relationship with the borrowing company (the ''Borrower''). The Fund generally will have no right directly to enforce compliance by the Borrower with the terms of the credit agreement. Instead, the Fund will be required to rely on the Lender or the Participant that sold the participation interest, both for the enforcement of the Fund's rights against the Borrower and for the receipt and processing of payments due to the Fund under the loans. Under the terms of a participation interest, the Fund may be regarded as a member of the Participant, and thus the Fund is subject to the credit risk of both the Borrower and a Participant. Participation interests are generally subject to restrictions on resale.

[13] The Fund will invest only in securities that the Adviser or Sub-Adviser deems to be sufficiently liquid. While foreign corporate debt securities generally must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment, at least 80% of issues of foreign corporate debt held by the Fund will have $200 million or more par amount outstanding.

[14] Pass-through securities represent a right to receive principal and interest payments collected on a pool of mortgages, which are passed through to security holders. CMOs are created by dividing the principal and interest payments collected on a pool of mortgages into several revenue streams (tranches) with different priority rights to portions of the underlying mortgage payments. The Fund will not invest in CMO tranches which represent a right to receive interest only (''IOs''), principal only (''POs'') or an amount that remains after other floating-rate tranches are paid (an inverse floater).

[15] Purchasing securities on a ''when-issued'' basis means that the date for delivery of and payment for the securities is not fixed at the date of purchase, but is set after the securities are issued. The payment obligation and, if applicable, the interest rate that will be received on the securities are fixed at the time the buyer enters into the commitment. The Fund will only make commitments to purchase such securities with the intention of actually acquiring such securities, but the Fund may sell these securities before the settlement date if it is deemed advisable.

and may enter into repurchase [16] and reverse repurchase agreements.[17]

The Fund may invest in exchange-traded funds (''ETFs'') [18] and/or exchange-traded closed-end funds that invest in Fixed Income Securities.

The Fund may invest without limitation in U.S. dollar-denominated securities of foreign issuers and up to 50% of its total assets in securities denominated in foreign currencies, and in securities of issuers located in emerging markets. The Sub-Adviser may attempt to reduce currency risk by entering into contracts with banks, brokers or dealers to purchase or sell securities or foreign currencies at a future date (''forward contracts'').[19]

The Fund may enter into cleared and over-the-counter (''OTC'') swap agreements that effectively bundle the purchase of foreign bonds and the hedging of foreign currency into a single transaction.[20]

The Fund may invest in securities that are offered pursuant to Rule 144A under the Securities Act.

The average maturity or duration of the Fund's portfolio of Fixed Income Securities will vary based on the Sub-Adviser's assessment of economic and market conditions; however, the Sub-Adviser intends to manage the Fund's portfolio so that it has an average duration of between two and ten years, under normal circumstances.

Other Investments

While the Fund will, under normal circumstances, principally invest its assets in the securities and financial instruments described above, the Fund may invest its remaining assets in the securities and financial instruments described below.

According to the Registration Statement, the Fund may invest in money market instruments, including other funds which invest exclusively in money market instruments. The Fund may invest up to 20% of its total assets in structured notes (notes on which the amount of principal repayment and interest payments are based on the movement of one or more specified factors, such as the movement of a particular bond or bond index). In addition to the types of forward contracts and swaps discussed above, the Fund may invest in other types of forward contracts and swaps, as well as options and futures contracts (as discussed below), each based on fixed-income securities, currencies, or indexes of fixed-income securities or currencies.

The Fund may invest up to 5% of its assets in U.S. exchange-traded equity securities (excluding ETFs and closed-end funds).

RiverFront Dynamic Core Income ETF

Principal Investment Strategies

According to the Registration Statement, the investment objective of the Fund will be to seek total return with an emphasis on income as the source of that total return. Under normal circumstances, the Fund will principally invest its assets in the securities and financial instruments described below.[21]

The Fund's portfolio is constructed through a two-step process, with the first step setting the allocation among different fixed income asset classes and the second step determining security selection within those asset classes. The allocation across long-term, medium-term and short-term investment grade securities, long-term and short-term high yield securities and emerging market debt is determined by a quantitative methodology. The methodology models historical returns as a function of initial valuation conditions and creates estimates of potential returns and downside risks consistent with historical market behavior. These capital market assumptions are incorporated into a patent-pending Mean Reversion Optimization (MRO) process to produce the index weighting within each of the major fixed income asset classes. The objective of this optimization is to construct a combination of fixed income asset classes that are expected to have a high probability of generating a positive potential total return over a five-year investment horizon.

The Fund will seek to achieve its investment objective by investing in a global portfolio of Fixed Income Securities (as described above) of various maturities, ratings and currency denominations. The Fund intends to utilize various investment strategies in a broad array of fixed income sectors. The Fund will allocate its investments based upon the analysis of the Sub-Adviser of the pertinent economic and market conditions, as well as yield, maturity, credit and currency considerations.

The Fund may purchase Fixed Income Securities issued by U.S. or foreign corporations [22] or financial institutions.

The Fund may purchase securities issued or guaranteed by the U.S. Government or foreign governments (including foreign states, provinces and municipalities) or their agencies and instrumentalities or issued or guaranteed by international organizations designated or supported by multiple government entities to promote economic reconstruction or development.

The Fund may invest in MBS issued or guaranteed by federal agencies and/or U.S. government sponsored instrumentalities, such as Ginnie Mae, the FHA, Fannie Mae and Freddie Mac. The MBS in which the Fund may invest will be either pass-through securities or CMOs and may use TBA transactions.[23]

The Fund may purchase or sell securities on a when-issued, delayed delivery or forward commitment basis, and may enter into repurchase and reverse repurchase agreements.

The Fund may invest in ETFs[24] and/or exchange-traded closed-end funds which invest in Fixed Income Securities.

The Fund may invest without limitation in U.S. dollar-denominated securities of foreign issuers and up to 10% of its total assets in securities denominated in foreign currencies, and in securities of issuers located in emerging markets. The Sub-Adviser may attempt to reduce currency risk by entering into forward contracts.

The Fund may enter into cleared and OTC swap agreements that effectively bundle the purchase of foreign bonds and the hedging of foreign currency into a single transaction.[25]

[16] Repurchase agreements are agreements pursuant to which securities are acquired by the Fund from a third party with the understanding that they will be repurchased by the seller at a fixed price on an agreed date. These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest. Repurchase agreements may be characterized as loans secured by the underlying securities.

[17] Reverse repurchase agreements involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date.

[18] For purposes of this filing, ETFs consist of Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100), and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). All ETFs will be listed and traded in the U.S. on a national securities exchange. The Funds will not invest in leveraged or leveraged inverse ETFs.

[19] A foreign currency forward contract is a negotiated agreement between the contracting parties to exchange a specified amount of currency at a specified future time at a specified rate. The rate can be higher or lower than the spot rate between the currencies that are the subject of the contract.

[20] *See* ''The Funds' Use of Derivatives'', *infra.*

[21] *See* note 8, *supra.*

[22] *See* note 11, *supra.*

[23] *See* note 14, *supra.*

[24] *See* note 18, *supra.*

[25] *See* ''The Funds' Use of Derivatives'', *infra.*

The Fund may invest in securities that are offered pursuant to Rule 144A under the Securities Act.

The average maturity or duration of the Fund's portfolio of Fixed Income Securities will vary based on the Sub-Adviser's assessment of economic and market conditions; however, the Sub-Adviser intends to manage the Fund's portfolio so that it has an average duration of between two and eight years, under normal circumstances.

Other Investments

While the Fund will, under normal circumstances, principally invest its assets in the securities and financial instruments described above, the Fund may invest its remaining assets in the securities and financial instruments described below.

According to the Registration Statement, the Fund may also invest in money market instruments, including other funds which invest exclusively in money market instruments. The Fund may invest up to 20% of its total assets in structured notes. In addition to the types of forward contracts and swaps discussed above, the Fund may invest in other types of forward contracts and swaps, as well as options and futures contracts (as described below), each based on fixed-income securities, currencies, or indexes of fixed-income securities or currencies.

The Fund may invest up to 5% of its assets in U.S. exchange-traded equity securities (excluding ETFs and closed-end funds).

Investment Restrictions

Each Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities that are offered pursuant to Rule 144A under the Securities Act deemed illiquid by the Sub-Adviser.[26] A Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[27]

The Funds intend to qualify for and to elect to be treated as separate regulated investment companies (''RICs'') under Subchapter M of the Internal Revenue Code.[28]

A Fund may invest up to 20% of its total assets in MBS (which may include CMBS) or ABS issued or guaranteed by private entities.

A Fund may invest up to 20% of its total assets in junior loans.

The RiverFront Dynamic Unconstrained Income ETF may invest entirely in high yield securities (''junk bonds''). Junk bonds are Fixed Income Securities that are rated below investment grade by nationally recognized statistical rating organizations (''NRSROs''), or are unrated securities that the Sub-Adviser believes are of comparable quality. The Sub-Adviser considers the credit ratings assigned by NRSROs as one of several factors in its independent credit analysis of issuers.

The RiverFront Dynamic Core Income ETF may invest up to 15% of its total assets in Fixed Income Securities that are rated below investment grade by NRSROs, or unrated securities that the Sub-Adviser believes are of comparable quality. The Sub-Adviser considers the credit ratings assigned by NRSROs as one of several factors in its independent credit analysis of issuers.

The Funds will not invest in non-U.S. equity securities.

A Fund's investments will be consistent with a Fund's investment objective and will not be used to enhance leverage. That is, while a Fund will be permitted to borrow as permitted under the 1940 Act, a Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.*, 2Xs and 3Xs) of a Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[29]

The Funds' Use of Derivatives

Each Fund proposes to seek certain exposures through derivative transactions as described below. With respect to a Fund, derivative instruments may include foreign exchange forward contracts; exchange-traded futures on securities, indices, currencies and other investments; exchange-traded and OTC options; exchange-traded and OTC options on futures contracts; exchange-traded and OTC interest rate swaps, cross-currency swaps, total return swaps, inflation swaps and credit default swaps; and options on such swaps (''swaptions'').[30] Generally, derivatives are financial contracts whose value depends upon, or is derived from, the value of an underlying asset, reference rate or index, and may relate to stocks, bonds, interest rates, currencies or currency exchange rates, commodities, and related indexes. A Fund may, but is not required to, use derivative instruments for risk management purposes or as part of its investment strategies.[31] A Fund may also engage in derivative transactions for speculative purposes to enhance total return, to seek to hedge against fluctuations in securities prices, interest rates or currency rates, to change the effective duration of its portfolio, to manage certain investment risks and/or as a substitute for the purchase or sale of securities or currencies.

Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with a Fund's investment objective and policies. As described further below, a Fund will typically use derivative instruments as a

[26] Rule 144A securities are securities which, while privately placed, are eligible for purchase and resale pursuant to Rule 144A. According to the Registration Statement, Rule 144A permits certain qualified institutional buyers, such as a Fund, to trade in privately placed securities even though such securities are not registered under the Securities Act.

[27] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

[28] 26 U.S.C. 851.

[29] A Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following a Fund's first full calendar year of performance.

[30] Options on swaps are traded OTC. In the future, in the event that there are exchange-traded options on swaps, a Fund may invest in these instruments.

[31] A Fund will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Sub-Adviser will monitor the financial standing of counterparties on an ongoing basis. This monitoring may include information provided by credit agencies, as well as the Sub-Adviser's credit analysts and other team members who evaluate approved counterparties using various methods of analysis, including but not limited to earnings updates, the counterparty's reputation, the Sub-Adviser's past experience with the broker-dealer, market levels for the counterparty's debt and equity, the counterparty's liquidity and its share of market participation.

substitute for taking a position in the underlying asset and/or as part of a strategy designed to reduce exposure to other risks, such as currency risk. A Fund may also use derivative instruments to enhance returns. To limit the potential risk associated with such transactions, a Fund will segregate or ''earmark'' assets determined to be liquid by the Sub-Adviser in accordance with procedures established by a Fund's Board of Trustees (the ''Board'') and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with section 18 of the 1940 Act and related Commission guidance. In addition, a Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of a Fund, including a Fund's use of derivatives, may give rise to leverage, causing a Fund to be more volatile than if it had not been leveraged.[32] Because the markets for certain securities, or the securities themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for a Fund to obtain the desired asset exposure.

The Sub-Adviser believes that derivatives can be an economically attractive substitute for an underlying physical security that a Fund would otherwise purchase. For example, as part of a Fund's non-principal investment strategies, a Fund could purchase Treasury futures contracts instead of physical Treasuries or could sell credit default protection on a corporate bond instead of buying a physical bond. Economic benefits include potentially lower transaction costs or attractive relative valuation of a derivative versus a physical bond (*e.g.*, differences in yields).

The Sub-Adviser further believes that derivatives can be used as a more liquid means of adjusting portfolio duration as well as targeting specific areas of yield curve exposure, with potentially lower transaction costs than the underlying securities (*e.g.*, interest rate swaps may have lower transaction costs than physical bonds). Similarly, money market futures can be used, as part of a Fund's non-principal investment strategies, to gain exposure to short-term interest rates in order to express views on anticipated changes in central bank policy rates. In addition, derivatives can be used to protect client assets through selectively hedging downside (or ''tail risks'') in a Fund.

A Fund also can use derivatives to increase or decrease credit exposure. Index credit default swaps (CDX) can be used, as part of a Fund's non-principal investment strategies, to gain exposure to a basket of credit risk by ''selling protection'' against default or other credit events, or to hedge broad market credit risk by ''buying protection''. Single name credit default swaps (CDS) can be used, as part of a Fund's non-principal investment strategies, to allow a Fund to increase or decrease exposure to specific issuers, saving investor capital through lower trading costs. A Fund can use total return swap contracts to obtain the total return of a reference asset or index in exchange for paying a financing cost. A total return swap may be more efficient than buying underlying securities of an index, potentially lowering transaction costs.

A Fund may attempt to reduce foreign currency exchange rate risk by entering into contracts with banks, brokers or dealers to purchase or sell foreign currencies at a future date (''forward contracts'').

The Sub-Adviser believes that the use of derivatives will allow a Fund to selectively add, as part of a Fund's non-principal investment strategies, diversifying sources of return from selling options. Option purchases and sales can also be used, as part of a Fund's non-principal investment strategies, to hedge specific exposures in the portfolio, and can provide access to return streams available to long-term investors such as the persistent difference between implied and realized volatility. Option strategies can, as part of a Fund's non-principal investment strategies, generate income or improve execution prices (*i.e.*, covered calls).

Valuation Methodology for Purposes of Determining Net Asset Value

According to the Registration Statement, the NAV per Share of each Fund will be computed by dividing the value of the net assets of each Fund (*i.e.*, the value of its total assets less total liabilities) by the total number of Shares of the Fund outstanding, rounded to the nearest cent. Expenses and fees, including without limitation, the management fees, will be accrued daily and taken into account for purposes of determining NAV. The NAV per Share will be calculated by each Fund's custodian and determined as of the close of the regular trading session on the New York Stock Exchange (''NYSE'') (ordinarily 4:00 p.m., Eastern Time) on each day that such exchange is open. Information that becomes known to a Fund or its agents after the NAV has been calculated on a particular day will not generally be used to retroactively adjust the price of a portfolio asset or the NAV determined earlier that day. Each Fund reserves the right to change the time its NAV is calculated if the Fund closes earlier, or as permitted by the Commission.

In computing each Fund's NAV, each Fund's Fixed Income Securities will be valued at market value. Market value generally means a valuation (i) obtained from an exchange, a pricing service or a major market maker (or dealer), (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service or a major market maker (or dealer) or (iii) based on amortized cost. Each Fund's Fixed Income Securities are thus valued by reference to a combination of transactions and quotations for the same or other securities believed to be comparable in quality, coupon, maturity, type of issue, call provisions, trading characteristics and other features deemed to be relevant. To the extent each Fund's Fixed Income Securities, including some or all of the MBS in which a Fund invests, will be valued based on price quotations or other equivalent indications of value provided by a third-party pricing service, any such third-party pricing service may use a variety of methodologies to value some or all of a Fund's Fixed Income Securities to determine the market price. For example, the prices of securities with characteristics similar to those held by a Fund may be used to assist with the pricing process. In addition, the pricing service may use proprietary pricing models. Each Fund's securities holdings that are traded on a national securities exchange will be valued based on their last sale price. Price information on listed securities will be taken from the exchange where the security is primarily traded. Other portfolio securities and assets for which market quotations are not readily available will be valued based on fair value as determined in good faith in accordance with procedures adopted by the Board.

A third-party pricing service will be used to value some or all of a Fund's MBS. Derivatives for which market quotes are readily available will be valued at market value. Local closing prices will be used for all instrument valuation purposes. Futures will be valued at the last reported sale or settlement price on the day of valuation. Swaps traded on exchanges such as the

[32] To mitigate leveraging risk, the Sub-Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk.

Chicago Mercantile Exchange (''CME'') or the Intercontinental Exchange (''ICE–US'') will use the applicable exchange closing price where available. Foreign currency-denominated derivatives will generally be valued as of the respective local region's market close.

With respect to specific derivatives:

• Currency spot and forward rates from major market data vendors [33] will generally be determined as of the NYSE Close.

• Exchange-traded futures will generally be valued at the settlement price of the relevant exchange.

• A total return swap on an index will be valued at the publicly available index price. The index price, in turn, is determined by the applicable index calculation agent, which generally values the securities underlying the index at the last reported sale price.

• Bank loan total return swaps will generally be valued using the evaluated underlying bank loan price minus the strike price of the loan.

• Exchange-traded non-equity options, (for example, options on bonds, Eurodollar options and U.S. Treasury options), index options, and options on futures will generally be valued at the official settlement price determined by the relevant exchange, if available.

• OTC foreign currency (FX) options will generally be valued by pricing vendors.

• All other swaps such as interest rate swaps, inflation swaps, swaptions, credit default swaps, and CDX/CDS will generally be valued by pricing services.

Derivatives Valuation Methodology for Purposes of Determining Intra-Day Indicative Value

On each business day, before commencement of trading in Fund Shares on NYSE Arca, a Fund will disclose on its Web site the identities and quantities of the portfolio instruments and other assets held by a Fund that will form the basis for a Fund's calculation of NAV at the end of the business day.

In order to provide additional information regarding the intra-day value of Shares of a Fund, the NYSE Arca or a market data vendor will disseminate every 15 seconds through the facilities of the Consolidated Tape Association or other widely disseminated means an updated Intra-day Indicative Value (''IIV'') for a Fund as calculated by a third party market data provider.

A third party market data provider will calculate the IIV for each Fund. For the purposes of determining the IIV, the third party market data provider's valuation of derivatives is expected to be similar to their valuation of all securities. The third party market data provider may use market quotes if available or may fair value securities against proxies (such as swap or yield curves).

With respect to specific derivatives:

• Foreign currency derivatives may be valued intraday using market quotes, or another proxy as determined to be appropriate by the third party market data provider.

• Futures may be valued intraday using the relevant futures exchange data, or another proxy as determined to be appropriate by the third party market data provider.

• Interest rate swaps and cross-currency swaps may be mapped to a swap curve and valued intraday based on changes of the swap curve, or another proxy as determined to be appropriate by the third party market data provider.

• Index credit default swaps (such as, CDX/CDS) may be valued using intraday data from market vendors, or based on underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.

• Total return swaps may be valued intraday using the underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.

• Exchange listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.

• OTC options and swaptions may be valued intraday through option valuation models (*e.g.*, Black-Scholes) or using exchange traded options as a proxy, or another proxy as determined to be appropriate by the third party market data provider.

Disclosed Portfolio

The Funds' disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Adviser or Sub-Adviser will disclose on the Funds' Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in each Fund's portfolio. The Web site information will be publicly available at no charge.

Impact on Arbitrage Mechanism

The Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of a Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will typically be substituted with a ''cash in lieu'' amount when a Fund processes purchases or redemptions of creation units in-kind.

Creation and Redemption of Shares

Shares may be created and redeemed in ''Creation Unit'' size aggregations of 50,000 or multiples thereof. The size of a Creation Unit is subject to change. In order to purchase Creation Units of a Fund, an investor must generally deposit a designated portfolio of securities (the ''Deposit Securities'') (and/or an amount in cash in lieu of some or all of the Deposit Securities) and generally make a cash payment referred to as the ''Cash Component.'' The list of the names and the amounts of the Deposit Securities is made available by the Funds' custodian through the facilities of the National Securities Clearing Corporation (''NSCC'') immediately prior to the opening of business each day of the NYSE Arca. The Cash Component represents the difference between the NAV of a Creation Unit and the market value of the Deposit Securities. Creations and redemptions of Shares may only be made through an Authorized Participant, as described in the Registration Statement.

[33] Major market data vendors may include, but are not limited to: Thomson Reuters, JPMorgan Chase PricingDirect Inc., Markit Group Limited, Bloomberg, Interactive Data Corporation or other major data vendors.

Shares may be redeemed only in Creation Units at their NAV and only on a day the NYSE Arca is open for business. The Funds' custodian will make available immediately prior to the opening of business each day of the NYSE Arca, through the facilities of the NSCC, the list of the names and the amounts of each Fund's portfolio securities that will be applicable that day to redemption requests in proper form (''Fund Securities''). Fund Securities received on redemption may not be identical to Deposit Securities, which are applicable to purchases of Creation Units.

Unless cash redemptions or partial cash redemptions are available or specified for a Fund, the redemption proceeds will consist of the Fund Securities, plus cash in an amount equal to the difference between the NAV of Shares being redeemed as next determined after receipt by the transfer agent of a redemption request in proper form, and the value of the Fund Securities (the ''Cash Redemption Amount''), less the applicable redemption fee and, if applicable, any transfer taxes.[34]

Availability of Information

The Funds' Web site (*www.alpsetfs.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for each Fund that may be downloaded. The Funds' Web site will include additional quantitative information updated on a daily basis, including, for each Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[35] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, each Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[36]

In addition, a basket composition file, which will include the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via NSCC. The basket represents one Creation Unit of the applicable Fund.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Funds' Shareholder Reports, and Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov*. Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares, U.S. exchange-traded common stocks, ETFs and closed-end funds will be available via the Consolidated Tape Association (''CTA'') high-speed line. Price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. Price information for forwards, swaps, money market instruments, repurchase agreements, reverse repurchase agreements, OTC options, structured notes, and OTC derivative instruments will be available from major market data vendors. Intra-day and closing price information for exchange-traded options and futures will be available from the applicable exchange and from major market data vendors. In addition, price information for U.S. exchange-traded options is available from the Options Price Reporting Authority. Quotation information from brokers and dealers or independent pricing services will be available for Fixed Income Securities. In addition, the IIV, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[37] The dissemination of the IIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of each Fund on a daily basis and provide a close estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund.[38] Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading

[34] Each Fund may, in certain circumstances, allow cash creations or partial cash creations but not redemptions (or vice versa) if the Sub-Adviser believes it will allow the Fund to adjust its portfolio in a manner which is more efficient for shareholders. Each Fund may allow creations or redemptions to be conducted partially in cash only where certain instruments are (i) in the case of the purchase of a Creation Unit, not available in sufficient quantity for delivery; (ii) not eligible for transfer through either the NSCC or DTC; or (iii) not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances. To the extent each Fund allows creations or redemptions to be conducted wholly or partially in cash, such transactions will be effected in the same manner for all Authorized Participants on a given day except where: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available to a particular Authorized Participant in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind. According to the Registration Statement, an additional variable charge for cash or partial cash creations, and cash or partial cash redemptions, may also be imposed to compensate a Fund for the costs associated with buying the applicable securities.

[35] The Bid/Ask Price of each Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of a Fund's NAV. The records relating to Bid/Ask Prices will be retained by a Fund and its service providers.

[36] Under accounting procedures to be followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, each Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[37] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from CTA or other data feeds.

[38] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A–3 [39] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio of each Fund will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, or regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[40]

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities with other markets or other entities that are members of the Intermarket Surveillance Group (''ISG''),[41] and FINRA or regulatory staff of the Exchange may obtain trading information regarding trading in the Shares, certain exchange-traded options and futures, and certain exchange-traded equities from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, certain exchange-traded options and futures, and certain exchange-traded equities from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[42] FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain Fixed Income Securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

Not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV and the Disclosed Portfolio is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that each Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) [43] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Sub-Adviser is affiliated with a broker-dealer and has represented that it has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed

[39] 17 CFR 240.10A–3.

[40] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[41] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[42] Certain of the exchange-traded equity instruments in which a Fund may invest may trade in markets that are not members of ISG.

[43] 15 U.S.C. 78f(b)(5).

Portfolio will be made available to all market participants at the same time. FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities with other markets or other entities that are members of the ISG, and FINRA or regulatory staff of the Exchange may obtain trading information regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain Fixed Income Securities held by a Fund reported to FINRA's TRACE.

Each Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Funds will disclose on the Funds' Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in each Fund's portfolio. Price information for the debt and equity securities held by a Fund will be available through major market data vendors and on the applicable securities exchanges on which such securities are listed and traded. In addition, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, each Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Funds will include a form of the prospectus for each Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that primarily holds Fixed Income Securities, which may be represented by certain derivative instruments as discussed above, which will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2015–125 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–NYSEArca–2015–125. 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 Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2015–125 and should be submitted on or before January 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–33207 Filed 1–5–16; 8:45 am]

BILLING CODE 8011–01–P

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76802; File No. SR–DTC–2015–012]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add a Fee To Be Charged To Transfer Agents of DTC-Eligible Issues Subject to a Corporate Action

December 30, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 24, 2015, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by DTC. DTC filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder.[4] The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a change to DTC's Fee Schedule (''Fee Schedule'')[5] to add a new fee that would be charged to the transfer agent of any DTC-eligible issue when the transfer agent notifies DTC of a corporate action event (''Corporate Action'') that requires a new CUSIP to be made DTC-eligible,[6] as more fully described below.[7]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would add a fee to the Fee Schedule that would be charged to the transfer agent of a DTC-eligible security when DTC is notified by the transfer agent to process a Corporate Action with respect to the security that requires DTC to make a new CUSIP eligible for DTC services.

Background

Securities may become eligible for deposit at DTC through initial offerings,[8] the Older Issue Eligibility Request process,[9] and Corporate Actions processing.[10] Through ongoing efforts to evaluate its fees and align them with operating costs, DTC has identified that it is not recovering costs that it incurs in connection with making securities eligible for DTC services through its Corporate Actions process.[11]

Proposal

Pursuant to the proposed rule change, in order to align DTC's fees with the costs it incurs in making securities eligible for DTC services through its processing of Corporate Actions, DTC would implement a new fee, to be known as the Corporate Actions Eligibility Fee (''New Fee''), which would be charged to the transfer agent of any DTC-eligible security when the transfer agent notifies DTC of a Corporate Action that requires DTC to make a new CUSIP eligible for DTC services. The amount of the New Fee would be $1,000 per new CUSIP for any security that is made eligible at DTC in connection with a Corporate Action.[12]

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/fee-guides/dtcfeeguide.pdf?la=en.*

[6] Corporate Actions processed by DTC include but are not limited to the restructuring of DTC-eligible securities resulting from mergers, acquisitions, and reverse splits. DTC performs Corporate Actions processing primarily through its Mandatory and Voluntary Reorganization Services by the DTC Reorganization Department (''Reorganization''). Additionally, with respect to any Corporate Action that requires DTC to make a new CUSIP(s) DTC-eligible DTC's Underwriting Department (''Underwriting'') must also process the eligibility component of the Corporate Action. DTC processes the new CUSIP(s) for eligibility pursuant to the transfer agent's notification to DTC of the Corporate Action and related instructions and information detailing the issuance of the new CUSIP(s) provided by the transfer agent. *See generally,* the DTC Operational Arrangements (''OA''), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf.*

[7] Each term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of DTC (the ''Rules''), *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[8] An initial offering is made eligible for deposit at DTC pursuant to an eligibility request to Underwriting from a sponsoring Participant. *See* OA, *supra* note 6, pp. 1–2 (Submission of an Eligibility Request to DTC).

[9] Older issues (*i.e.,* issues on the secondary market) may be made eligible for deposit pursuant to an Older Issue Eligibility Request of a DTC Participant to Underwriting. *See id* [sic] at p. 2.

[10] *See supra* text accompanying note 6.

[11] Eligibility fees for initial offerings and older issues are charged to the Participants that sponsor the issues for DTC eligibility. DTC does not currently charge an eligibility fee with respect to CUSIPS [sic] made eligible in connection with a Corporate Action. *See* Fee Schedule, *supra* note 5, at pp. 25–26.

[12] For example, in the case of an issue of DTC-eligible common stock under CUSIP W which undergoes a reverse split, with the newly-denominated common stock issued under CUSIP X, the transfer agent for that security would incur a charge of $1,000 for the processing of the reverse split. If the same issuer subsequently undergoes a

Continued

The New Fee takes into account the allocation of resources required and more manually intensive processing performed by Reorganization and Underwriting in order for DTC to provide the services necessary to make new CUSIPs DTC-eligible when they are issued as a result of Corporate Actions.

Implementation Date

The implementation date of the proposed rule change would be January 1, 2016.

2. Statutory Basis

Section 17A(b)(3)(F) [13] of the Act requires that the rules of the clearing agency be designed, *inter alia,* to promote the prompt and accurate clearance and settlement of securities transactions. DTC believes that the proposed rule change is consistent with this provision because the New Fee would offset costs incurred by DTC in its allocation of resources necessary for making CUSIPs eligible in connection with Corporate Actions. The New Fee is designed to facilitate allocation of resources necessary for the continued offering of this service, thus the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact or impose any burden on competition because the proposed rule change equally applies (on a per CUSIP basis) to all issues made eligible for DTC services as the result of a Corporate Action.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC. DTC management has discussed its intent to implement the New Fee with members of the Securities Transfer Association at industry meetings.

reorganization involving the exchange of the common stock under CUSIP X for common and preferred stock under CUSIPs Y and Z, respectively, the transfer agent would be charged $2,000 in connection with the exchange reflecting the sum of a $1,000 fee relating to the issuance of CUSIP Y and a $1,000 fee relating to the issuance of CUSIP Z).

[13] 15 U.S.C. 78q–1(b)(3)(F).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [14] and paragraph (f) of Rule 19b–4 thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2015–012 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–DTC–2015–012. 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 DTC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2015–012 and should be submitted on or before January 27, 2016.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–33218 Filed 1–5–16; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76803; File No. SR–NYSE–2015–67]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting New Rules To Reflect the Implementation of Pillar, the Exchange's New Trading Technology Platform

December 30, 2015.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 18, 2015, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new rules to reflect the implementation of Pillar, the Exchange's new trading technology platform. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

On January 29, 2015, the Exchange announced the implementation of Pillar, which is an integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by the Exchange and its affiliates, NYSE Arca, Inc. (''NYSE Arca'') and NYSE MKT LLC (''NYSE MKT'').[4] NYSE Arca Equities, Inc. (''NYSE Arca Equities), which operates the equities trading platform for NYSE Arca, will be the first trading system to migrate to Pillar.[5] In connection with this implementation schedule, NYSE Arca filed four rule proposals relating to Pillar, three of which have been approved.[6]

Following the implementation of Pillar on NYSE Arca Equities, the Exchange will be the next trading platform to migrate to Pillar. On Pillar, the Exchange will retain its current trading model, which uses a parity and priority model for allocating trades, as set forth in Rule 72. To streamline and simplify trading across the Exchange, NYSE Arca, and NYSE MKT, other facets of trading on the Pillar platform on the Exchange will be based on the NYSE Arca Equities Pillar rules, including for example, rules governing order types and modifiers, order display, execution, or routing, and order processing during a Limit Up-Limit Down scenario or when a Short Sale Period is triggered.

In addition, in connection with its migration to Pillar, the Exchange proposes the rule numbering framework of the NYSE Arca Equities rules. The Exchange believes that if it and its affiliates are operating on the same trading platform, using the same rule numbering scheme across all markets will make it easier for members, the public and the Commission to navigate the rules of each market. The Exchange therefore proposes to adopt a framework of rule numbering that is based on the current NYSE Arca Equities rules. The Exchange proposes to place this framework of rules following current Rule 0. As proposed, this framework would use the current rule numbering scheme of NYSE Arca Equities, and would consist of proposed Rules 1P–13P. Accordingly, the Exchange proposes to add a new heading following Rule 0 that would provide ''Pillar Platform Rules (Rules 1P–Rule 13P).''

To explain that the proposed rules would only be applicable to trading in a security once that security is trading on the Pillar platform, the Exchange proposes to state that Rules 1P–13P would be operative for securities that are trading on the Pillar trading platform. Similar to the text following NYSE Arca Equities Rule 7, the Exchange would further provide that the Exchange would announce by Trader Update when securities are trading on the Pillar trading platform. Because there will be a period when specified securities that trade on the Exchange would continue to trade on the current trading platform, while other securities would be trading on the Pillar platform, the Exchange would not delete current Exchange rules when it adopts Pillar rules that cover the same topic as a current Exchange rule. Unless specified in this list of rules, current Exchange rules would continue to be applicable to trading in a security on the Pillar platform.

As with the NYSE Arca Equities rules, the Exchange proposes to denote the Pillar rules with the letter ''P'' to distinguish such rules from current Exchange rules with the same numbering. And as with the NYSE Arca Equities rules, each top-level ''P''-designated rule would include a number of individual sections or rules, *e.g.,* Rule 1.1, or Rule 7.1–Rule 7.44. However, because none of the current Exchange rules use this sub-numbering format and therefore these is no risk of confusing rules with these numbers with current Exchange rules, the Exchange would not include a ''P'' designation when adopting these individual rules. Except as described below, at this time, the Exchange would be adopting the framework for only these rule numbers and would designate the proposed rules as ''Reserved.'' Through a series of subsequent rule filings, the Exchange will propose to populate the individual rules with the rule text to operate the Exchange on the Pillar platform.

In addition to adopting a framework of rule numbering, the Exchange also proposes to adopt specified rules that would be operative to trading on Pillar. The proposed rules would be based on NYSE Arca Equities rules, but with non-substantive differences to use the term ''Exchange'' instead of the terms ''NYSE Arca Marketplace'' or ''Corporation,'' and to use the terms ''mean'' or ''have the meaning'' instead of the terms ''shall mean'' or ''shall have the meaning.'' The Exchange has selected these rules because they are either definitional or the same substantively across all markets today and would not change when the Exchange migrates to Pillar.

First, the Exchange proposes certain definitions in Rule 1.1. The terms defined in these proposed rules, unless the context requires otherwise, would have the meaning specified.

- Proposed Rule 1.1(h) would define the term ''BBO'' as the best bid or offer on the Exchange and the term ''BB'' to mean the best bid on the Exchange and the term ''BO'' to mean the best offer on the Exchange. This proposed rule text is based on NYSE Arca Equities Rule 1.1(h) and current Exchange Rule 7, which defines the term ''Exchange BBO'' as the best bid or offer disseminated to the Consolidated Quotation System (''CQS'') by the Exchange.
- Proposed Rule 1.1(l) would define the term ''Eligible Security'' as any equity security (i) either listed on the Exchange or traded on the Exchange pursuant to a grant of unlisted trading privileges under section 12(f) of the Exchange Act and (ii) specified by the Exchange to be traded on the Exchange

[4] *See* Trader Update dated January 29, 2015, available here: *http://www1.nyse.com/pdfs/Pillar_Trader_Update_Jan_2015.pdf.*

[5] NYSE Arca Equities is a wholly-owned corporation of NYSE Arca and operates as a facility of NYSE Arca.

[6] *See* Securities Exchange Act Release Nos. 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) (Notice) and 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (SR–NYSEArca–2015–38) (Approval Order of NYSE Arca Pillar I Filing, adopting rules for Trading Sessions, Order Ranking and Display, and Order Execution); Securities Exchange Act Release Nos. 75497 (July 21, 2015), 80 FR 45022 (July 28, 2015) (Notice) and 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (SR–NYSEArca–2015–56) (Approval Order of NYSE Arca Pillar II Filing, adopting rules for Orders and Modifiers and the Retail Liquidity Program); Securities Exchange Act Release Nos. 75467 (July 16, 2015), 80 FR 43515 (July 22, 2015) (Notice) and 76198 (October 20, 2015), 80 FR 65274 (October 26, 2015) (SR–NYSE–2015–58) (Approval Order of NYSE Arca Pillar III Filing, adopting rules for Trading Halts, Short Sales, Limit Up-Limit Down, and Odd Lots and Mixed Lots); and Securities Exchange Act Release No. 76085 (October 6, 2015), 80 FR 61513 (October 13, 2015) (Notice of NYSE Arca Pillar IV Filing, proposing rules for Auctions).

or other facility, as the case may be. This proposed rule text is based on NYSE Arca Equities Rule 1.1(l). The term Eligible Security is not currently used in Exchange rules.

• Proposed Rule 1.1(o) would define the term ''FINRA'' as the Financial Industry Regulatory Authority, Inc. This proposed rule text is based on NYSE Arca Equities Rule 1.1(o). The term ''FINRA'' is used in current Exchange rules, but is not defined separately.

• Proposed Rule 1.1(dd) would define the term ''NBBO'' as the national best bid or offer, the term ''NBB'' as the national best bid, the term ''NBO'' as the national best offer, the terms ''Best Protected Bid'' or ''PBB'' as the highest Protected Bid, the terms ''Best Protected Offer'' or ''PBO'' as the lowest Protected Offer, and the term ''Protected Best Bid and Offer'' (''PBBO'') as the Best Protected Bid and Best Protected Offer. This proposed rule text is based on NYSE Arca Equities Rule 1.1(dd). These terms are used in current Exchange rules, but are not defined separately.

• Proposed Rule 1.1(ff) would define the term ''Away Market'' as any exchange, alternative trading system (''ATS'') or other broker-dealer (1) with which the Exchange maintains an electronic linkage and (2) that provides instantaneous responses to orders routed from the Exchange. As further proposed, the Exchange would designate from time to time those ATSs or other broker-dealers that qualify as Away Markets. This proposed rule text is based on NYSE Arca Equities Rule 1.1(ff). This term is not currently defined in Exchange rules because, on the current trading platform, the Exchange only maintains electronic linkage with those markets that display protected quotations.

• Proposed Rule 1.1(ii) would define the term ''UTP Security'' as a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges. This proposed rule text is based on NYSE Arca Equities Rule 1.1(ii). This term is not currently defined in Exchange rules because the Exchange does not currently trade any securities pursuant to unlisted trading privileges. Similar to NYSE Arca Equities, the Exchange plans to trade securities on Pillar that are listed on markets other than the Exchange.

• Proposed Rule 1.1(jj) would define the term ''UTP Listing Market'' as the primary listing market for a UTP Security. This proposed rule text is based on NYSE Arca Equities Rule 1.1(jj). This term is not currently defined in Exchange rules because the Exchange does not currently trade any securities pursuant to unlisted trading privileges,

• Proposed Rule 1.1(ddd) would define the term ''NMS Stock'' as any security, other than an option, for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan. This proposed rule text is based on NYSE Arca Equities Rule 1.1(ddd). This term is not currently defined in Exchange rules.

• Proposed Rule 1.1(eee) would define the terms ''Protected Bid'' or ''Protected Offer'' as a quotation in an NMS stock that is (i) displayed by an Automated Trading Center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an Automated Quotation that is the best bid or best offer of a national securities exchange or the best bid or best offer of a national securities association. The proposed rule would further define the term ''Protected Quotation'' as a quotation that is a Protected Bid or Protected Offer and would provide that, for purposes of the foregoing definitions, the terms ''Automated Trading Center,'' ''Automated Quotation,'' ''Manual Quotation,'' ''Best Bid,'' and ''Best Offer,'' would have the meanings ascribed to them in Rule 600(b) of Regulation NMS under the Securities Exchange Act. This proposed rule text is based on NYSE Arca Equities Rule 1.1(eee). These terms are used in current Exchange rules, but not separately defined.

• Proposed Rule 1.1(fff) would define the term ''trade-through'' as the purchase or sale of an NMS stock during regular trading hours, either as principal or agent, at a price that is lower than a Protected Bid or higher than a Protected Offer. This proposed rule text is based on NYSE Arca Equities Rule 1.1(fff). This term is not currently defined in Exchange rules.

• Proposed Rule 1.1(hhh) would define the terms ''effective national market system plan'' and ''regular trading hours'' as having the meanings set forth in Rule 600(b) of Regulation NMS under the Securities Exchange Act of 1934. This proposed rule text is based on NYSE Arca Equities Rule 1.1(hhh). These terms are not currently defined in Exchange rules.

The Exchange proposes the remaining rule numbers that correspond to the sub-numbering of NYSE Arca Equities Rule 1.1 on a ''reserved'' basis.

Next, the Exchange proposes rules that would be grouped under proposed Rule 7P relating to equities trading. With the exception of Rules 7.5 and 7.6, the Exchange proposes Rules 7.1–Rule 7.44 on a ''Reserved'' basis.

• Proposed Rule 7.5 would be entitled ''Trading Units'' and would specify that the unit of trading in stocks is 1 share. The rule would further provide that a ''round lot'' is 100 shares, unless specified by the primary listing market to be fewer than 100 shares. The rule would also provide that any amount less than a round lot would constitute an ''odd lot'' and any amount greater than a round lot that is not a multiple of a round lot would constitute a ''mixed lot.'' This proposed rule text is based on NYSE Arca Equities Rule 7.5 without any differences. The substance of this proposed rule is currently set forth in Rules 55 and 56. The Exchange proposes a non-substantive difference to use the term ''mixed lot'' instead of ''partial round lot'' or ''PRL.''

• Proposed Rule 7.6 would be entitled ''Trading Differentials'' and would provide that the minimum price variation (''MPV'') for quoting and entry of securities traded on the Exchange would be $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for quoting and entry of orders would be $0.0001. This proposed rule text is based on NYSE Arca Equities Rule 7.6 without any differences. The substance of this proposed rule is currently set forth in Rule 62.

Because trading on Pillar would be under the above-described rules, the Exchange proposes to specify that Rules 7, 55, 56, and 62 would not be applicable to trading on the Pillar trading platform.

* * * * *

As discussed above, because of the technology changes associated with the migration to the Pillar trading platform, the Exchange will announce by Trader Update when rules with a ''P'' modifier will become operative and for which symbols. Accordingly, the Exchange is not proposing to delete rules applicable to trading on the current platform until all securities are trading on Pillar.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[7] in general, and furthers the objectives of section 6(b)(5),[8] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules to support Pillar on the Exchange would remove impediments to and perfect the mechanism of a free and open market because the proposed rule set would promote transparency in Exchange rules by using consistent rule numbers with NYSE Arca Equities, which is the first market to migrate to the Pillar trading platform. The Exchange believes that using a common framework of rule numbers for the markets that operate on the Pillar trading platform will better allow members, regulators, and the public to navigate the Exchange's rulebook and better understand how equity trading is conducted on the Exchange. Adding new rules with the modifier ''P'' to denote those rules that would be operative for the Pillar trading platform would remove impediments to and perfect the mechanism of a free and open market by providing transparency of which rules govern trading once a symbol has been migrated to the Pillar platform.

The Exchange further believes that adopting specified definitions in proposed Rule 1P and proposed Rules 7.5 and 7.6 under proposed Rule 7P would remove impediments to and perfect the mechanism of a free and open market and national market system because the proposed rules are definitional and are based on approved rules of NYSE Arca Equities without any substantive differences and would be operative once the Exchange migrates to Pillar.

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 to adopt new rules to support the Exchange's new Pillar trading platform. As discussed in detail above, with this rule filing, the Exchange is not proposing to change its core functionality but rather to adopt a rule numbering framework based on the rules of NYSE Arca Equities. The Exchange believes that the proposed rule change would promote consistent use of terminology to support the Pillar trading platform on both the Exchange and its affiliate NYSE Arca Equities, thus making the Exchange's rules easier to 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 Act [9] and Rule 19b–4(f)(6) thereunder.[10] 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 Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that it believes the proposed rule change will not significantly affect the protection of investors or the public interest or impose any significant burden on competition because the proposed rule change is not designed to make any substantive changes to how the Exchange operates. Rather, the Exchange believes that the proposed rule change would promote transparency in Exchange rules by adopting a rule-numbering framework based on the rules of NYSE Arca Equities, which will be the first market to migrate to the Pillar trading platform, so that when the Exchange migrates to the Pillar trading platform, its rules will follow the same numbering scheme of NYSE Arca Equities. Because the proposed rule change makes no substantive changes to how the Exchange operates, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the 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–2015–67 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–2015–67. 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

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6)(iii). 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.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2015–67 and should be submitted on or before January 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–33217 Filed 1–5–16; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension: Rule 206(4)–2.
OMB Control No. 3235–0241, SEC File No. 270–217.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension and revision of the previously approved collection of information discussed below.

The title for the collection of information is ''Rule 206(4)–2 under the Investment Advisers Act of 1940—Custody of Funds or Securities of Clients by Investment Advisers.'' Rule 206(4)–2 (17 CFR 275.206(4)–2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) governs the custody of funds or securities of clients by Commission-registered investment advisers. Rule 206(4)–2 requires each registered investment adviser that has custody of client funds or securities to maintain those client funds or securities with a broker-dealer, bank or other ''qualified custodian.'' [1] The rule requires the adviser to promptly notify clients as to the place and manner of custody, after opening an account for the client and following any changes.[2] If an adviser sends account statements to its clients, it must insert a legend in the notice and in subsequent account statements sent to those clients urging them to compare the account statements from the custodian with those from the adviser.[3] The adviser also must have a reasonable basis, after due inquiry, for believing that the qualified custodian maintaining client funds and securities sends account statements directly to the advisory clients, and undergo an annual surprise examination by an independent public accountant to verify client assets pursuant to a written agreement with the accountant that specifies certain duties.[4] Unless client assets are maintained by an independent custodian (*i.e.,* a custodian that is not the adviser itself or a related person), the adviser also is required to obtain or receive a report of the internal controls relating to the custody of those assets from an independent public accountant that is registered with and subject to regular inspection by the Public Company Accounting Oversight Board (''PCAOB'').[5]

The rule exempts advisers from the rule with respect to clients that are registered investment companies. Advisers to limited partnerships, limited liability companies and other pooled investment vehicles are excepted from the account statement delivery and deemed to comply with the annual surprise examination requirement if the limited partnerships, limited liability companies or pooled investment vehicles are subject to annual audit by an independent public accountant registered with, and subject to regular inspection by the PCAOB, and the audited financial statements are distributed to investors in the pools.[6] The rule also provides an exception to the surprise examination requirement for advisers that have custody because they have authority to deduct advisory fees from client accounts and advisers that have custody solely because a related person holds the adviser's client assets and the related person is operationally independent of the adviser.[7]

Advisory clients use this information to confirm proper handling of their accounts. The Commission's staff uses the information obtained through these collections in its enforcement, regulatory and examination programs. Without the information collected under the rule, the Commission would be less efficient and effective in its programs and clients would not have information valuable for monitoring an adviser's handling of their accounts.

The respondents to this information collection are investment advisers registered with the Commission and have custody of clients' funds or securities. We estimate that 5,228 advisers would be subject to the information collection burden under the rule 206(4)–2. The number of responses under rule 206(4)–2 will vary considerably depending on the number of clients for which an adviser has custody of funds or securities, and the number of investors in pooled investment vehicles that the adviser manages. It is estimated that the average number of responses annually for each respondent would be 6,830, and an average time of 0.02286 hour per response. The annual aggregate burden for all respondents to the requirements of rule 206(4)–2 is estimated to be 816,285 hours.

This collection of information is found at 17 CFR 275.206(4)–2 and is mandatory. Responses to the collection of information are not kept confidential. Commission-registered investment advisers are required to maintain and preserve certain information required under rule 206(4)–2 for five years. The long-term retention of these records is necessary for the Commission's examination program to ascertain compliance with the Investment Advisers Act.

The estimated average burden hours are made solely for the purposes of Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. 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 control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the

[1] Rule 206(4)–2(a)(1).
[2] Rule 206(4)–2(a)(2).
[3] Rule 206(4)–2(a)(2).
[4] Rule 206(4)–2(a)(3), (4).
[5] Rule 206(4)–2(a)(6).
[6] Rule 206(4)–2(b)(4).
[7] Rule 206(4)–2(b)(3), (b)(6).

Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 30, 2015.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–33211 Filed 1–5–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0585, SEC File No. 270–523]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension: Rule 206(4)–7.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is ''Investment Advisers Act rule 206(4)–7 (17 CFR 275.206(4)–7), Compliance procedures and practices.'' Rule 206(4)–7 requires each investment adviser registered with the Commission to (i) adopt and implement internal compliance policies and procedures, (ii) review those policies and procedures annually, (iii) designate a chief compliance officer, and (iv) maintain certain compliance records. The rule is designed to protect investors by fostering better compliance with the securities laws. The collection of information under rule 206(4)–7 is necessary to assure that investment advisers maintain comprehensive internal programs that promote the advisers' compliance with the Investment Advisers Act of 1940. The information collected under this rule may also assist Commission staff in assessing investment advisers' compliance programs.

This collection of information is mandatory. The information collected pursuant to the rule 206(4)–7 is reviewed by the Commission's examination staff; it will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program.

The respondents to this information collection are investment advisers registered with the Commission. Our latest data indicate that there were 12,026 advisers registered with the Commission as of November 1, 2015. The Commission has estimated that compliance with rule 206(4)–7 imposes an annual burden of approximately 87 hours per respondent. Based on this figure, the Commission estimates a total annual burden of 1,046,262 hours for this collection of information.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 30, 2015.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–33210 Filed 1–5–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76801; File No. SR–Phlx–2015–99]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Order Exposure

December 30, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 15, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1080, entitled ''Phlx XL and Phlx XL II,'' to account for potential internal conflicts with other Exchange Rules, which are exceptions to the order exposure rule regarding principle orders the Order Entry Firm represents as agent from being exposed.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Phlx Rule 1080(c)(ii)(C) to provide that other Exchange Rules are exceptions to rules requiring Order Entry Firms to expose orders and to name those rules. Today, Phlx Rule 1080(c)(ii)(C)(1) provides that,

> Principal Transactions: Order Entry Firms may not execute as principal against orders on the limit order book they represent as agent unless: (a) Agency orders are first exposed on the limit order book for at least one (1) second, (b) the Order Entry Firm has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such order, or (c) the Order Entry Firm proceeds in accordance with the crossing rules contained in Rule 1064.

Further, Phlx Rule 1080(c)(ii)(C)(2) and (3) provide,

> Solicitation Orders. Order Entry Firms must expose orders they represent as agent for at least one (1) second before such orders may be automatically executed, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders.
>
> It shall be a violation of Rule 1080(c)(ii)(C) for any Exchange member or member organization to be a party to any arrangement designed to circumvent Rule 1080(c)(ii)(C) by providing an opportunity for a customer, member, member organization, or non-member broker-dealer to execute immediately against agency orders delivered to the Exchange, whether such orders are delivered via AUTOM or represented in the trading crowd by a member or a member organization.

The Exchange notes that there are other exceptions to the general rule regarding the exposure of principal orders represented as agent by the Order Entry Firm. Also, other options exchanges have similar order exposure exceptions.[3]

The first proposed additional exception to the order exposure rule is Price Improvement XL or ''PIXL.''[4] PIXL is a component of the Exchange's fully automated options trading system, PHLX XL that allows a member or member organization to electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (''PIXL Order'') against principal interest or against any other order it represents as agent (an ''Initiating Order'') provided it submits the PIXL Order for electronic execution into the PIXL Auction (''Auction''). This mechanism is an exception to the general rule in [sic], which requires Phlx members and member organizations to expose principal orders they represent as agent for at least one (1) second prior to receiving an agency order that is executable against such bid or offer. With PIXL, paired orders are submitted simultaneously and would not violate Phlx Rule 1080(c)(ii)(C).

The second proposed additional exception to the order exposure rule is the Complex Order Live Auction or ''COLA.''[5] COLA is the automated Complex Order Live Auction process. A COLA may take place upon identification of the existence of a COLA-eligible order either: (1) Following a COOP, or (2) during normal trading if the Phlx XL system receives a Complex Order that improves the cPBBO. Phlx XL participants may bid and/or offer on either or both side(s) of the market during the COLA Timer by submitting one or more bids or offers that improve the cPBBO, known as a ''COLA Sweep.''[6] COLA does not abide by the one second order exposure requirement.

The third proposed additional exception to the order exposure rule is the Qualified Contingent Cross or ''QCC'' mechanism.[7] A QCC Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 contracts in the case of Mini Options, which is identified as being part of a qualified contingent trade that is coupled with a contra-side order or orders totaling an equal number of contracts.[8] With QCC, coupled orders are submitted simultaneously and would not violate Phlx Rule 1080(c)(ii)(C).[9] A QCC transaction consists of two or more component orders, executed as agent or principal, where: (a) At least one component is an NMS Stock, as defined in Rule 600 of Regulation NMS under the Exchange Act; (b) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (c) the execution of one component is contingent upon the execution of all other components at or near the same time; (d) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined by the time the contingent order is placed; (e) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (f) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade.[10]

The Exchange believes that amending Phlx Rule 1080(c)(ii)(C) to add rule text to include these additional exceptions to this general rule regarding order exposure will conform the rule text.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act[11] in general, and furthers the objectives of section 6(b)(5) of the Act[12] 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 explicitly delineating all exceptions to the general rule regarding the requirements to expose certain principal orders which the Order Entry firm represents as agent. Specifically, the Exchange's proposal amends the order exposure rule to list PIXL, COLA and QCC as exceptions to the wait time to expose such principal orders the Order Entry Firm represents as agent for at least one (1) second prior to receiving an agency order that is executable against such bid or offer.

The Exchange's proposal will make clear that PIXL is an exception to the

[3] *See* International Securities Exchange LLC (''ISE'') Rule 717(d) and BOX Options Exchange LLC (''BOX'') Rule 7140.

[4] *See* Phlx Rule 1080(n). Complex Orders may also be placed into PIXL.

[5] *See* Phlx Rule 1080, Commentary .02(c)(ii)(e) [sic].

[6] A single Phlx XL participant may submit multiple COLA Sweeps at different prices (but not multiple COLA Sweeps at the same price, except as provided in sub-paragraph (B) below) in increments of $0.01 in response to a COLA broadcast, regardless of the minimum trading increment applicable to the specific series. Phlx XL participants may change the size of a previously submitted COLA Sweep at the previously submitted COLA price during the COLA Timer. The system will use the Phlx XL participant's most recently submitted COLA Sweep at each price level as that participant's response at that price level, unless the COLA Sweep has a size of zero. A COLA Sweep with a size of zero will remove a Phlx XL participant's COLA Sweep from the COLA at that price level. COLA Sweeps will not be visible to any participant and will not be disseminated by the Exchange. *See* Phlx Rule 1080, Commentary .02(c)(ii)(e)(iv)(A)–(C) [sic].

[7] *See* Phlx Rules 1080(o).

[8] *See* Phlx Rule 1080(o).

[9] Complex Orders may also be placed into PIXL. *See* Phlx Rule 1080(n).

[10] *See* Phlx Rule 1080(o)(3).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

general rule, which requires Phlx members and member organizations to expose principal orders they represent as agent for at least one (1) second prior to receiving an agency order that is executable against such bid or offer. PIXL permits Participants to enter paired orders without first exposing those orders for one second. The Exchange believes that providing an exception to the order exposure rule for orders entered into PIXL is consistent with the Act, because while PIXL's auction will last for one second, the orders may be entered as paired orders.[13] A Phlx member or member organization, known as the Initiating Participant, must enter an order into the PIXL Mechanism as specified by Phlx Rule 1080(n).[14] Complex Orders may also be entered into PIXL and such prices must be at the cPBBO or better.[15] Initiating Participants entering orders into PIXL are required to guarantee an execution at the NBBO (cPBBO for Complex Orders) or at a better price, and are subject to market risk while their PIXL Order is exposed to other market participants in this competitive auction.

The Exchange's proposal will make clear that COLA is an exception to the general order exposure rule. A ''COLA-eligible order'' means a Complex Order (a) identified by way of a COOP, or (b) that, upon receipt, improves the cPBBO respecting the specific Complex Order Strategy that is the subject of the Complex Order and is not for a market maker, as specified in Phlx Rule 1080.07 (b)(ii).[16] COLA-eligible orders are executed without consideration of any prices that might be available on other exchanges trading the same options contracts. The COLA will begin with a timing mechanism (a ''COLA Timer''), which is a counting period not to exceed five (5) seconds during which Phlx XL participants may submit bids or offers that improve the cPBBO. Phlx XL participants may bid and/or offer on either or both side(s) of the market during the COLA Timer by submitting one or more bids or offers that improve the cPBBO, known as a ''COLA Sweep.'' COLA Sweeps will not be visible to any participant and will not be disseminated by the Exchange. Upon the expiration of the COLA Timer, COLA Sweeps and/or any Complex Orders received during the COLA Timer that improve the cPBBO may be executed against the COLA-eligible order.[17] The Exchange believes that providing an exception to the order exposure rule for orders entered into COLA is consistent with the Act, because while COLA auction may exceed one second, the COLA-eligible order will receive the best price or prices available for the Complex Order Strategy represented by the COLA-eligible order, and are subject to market risk while their Complex Order is exposed to other market participants in this competitive auction.

The Exchange's proposal will make clear that QCC is an exception to the general order exposure rule. QCC Orders are immediately executed upon entry into the System by an Order Entry Firm provided that (i) no Customer Orders are at the same price on the Exchange's limit order book and (ii) the price is at or between the NBBO. The Exchange believes that providing an exception to the order exposure rule for orders entered into QCC is consistent with the Act, because when entered into the System QCC Orders are coupled with a contra-side order or orders totaling an equal number of contracts. These orders must be executed at a price that is at or between the NBBO, and are subject to market risk while the QCC Order is exposed to other market participants in this competitive auction.

The proposed amendments provide additional exceptions to the current order exposure rule and will serve to protect investors and the public interest by providing additional information in the Rules concerning exceptions.

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 proposed changes do not impose any burden on competition, rather, the amendment provides an exception to the order exposure rule for orders entered into PIXL, COLA and QCC for all Phlx members and member organizations. The Exchange believes that this exception will further inform Phlx members and member organizations of their obligations with respect to order exposure. Phlx members and member organizations entering orders into PILX [sic], COLA or QCC are subject to market risk while their order is exposed to other market participants and member organizations in these competitive auctions.

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 Act[18] and

[13] *See* Phlx Rule 1080(o).

[14] To initiate the Auction (except if it is a Complex Order), the Initiating Member must mark the PIXL Order for Auction processing, and specify either: (a) A single price at which it seeks to execute the PIXL Order (a ''stop price''); (b) that it is willing to automatically match as principal or as agent on behalf of an Initiating Order the price and size of all PAN responses, and trading interest (''auto-match'') in which case the PIXL Order will be stopped at the NBBO on the Initiating Order side; or (c) that it is willing to either: (i) Stop the entire order at a single stop price and auto-match PAN responses and trading interest at a price or prices that improve the stop price to a specified price (a ''Not Worse Than'' or ''NWT'' price); (ii) stop the entire order at a single stop price and auto-match all PAN responses and trading interest at or better than the stop price; or (iii) stop the entire order at the NBBO on the Initiating Order side, and auto-match PAN responses and trading interest at a price or prices that improve the stop price up to the NWT price. In all cases, if the PBBO on the same side of the market as the PIXL Order represents a limit order on the book, the stop price must be at least one minimum price improvement increment better than the booked limit order's limit price. Once the Initiating Member has submitted a PIXL Order for processing pursuant to this subparagraph, such PIXL Order may not be modified or cancelled. The stop price or NWT price may be improved to the benefit of the PIXL Order during the Auction, but may not be cancelled. *See* Phlx Rule 1080(n)(ii)(A)(1).

[15] To initiate the PIXL Complex Order Auction, the Initiating Member must mark the PIXL Order for Auction processing, and specify either: (a) A single price at which it seeks to execute the PIXL Order (a ''stop price''); or (b) that it is willing to either: (i) Stop the entire order at a single stop price and auto-match PAN responses and trading interest at a price or prices that improve the stop price to a specified price (a ''Not Worse Than'' or ''NWT'' price); or (ii) stop the entire order at a single stop price and auto-match all PAN responses and trading interest at or better than the stop price. Once the Initiating Member has submitted a PIXL Complex Order for processing pursuant to this subparagraph, such PIXL Order may not be modified or cancelled. Under any of the circumstances described in sub-paragraphs (a)–(b) in note 14, the stop price or NWT price may be improved to the benefit of the PIXL Order during the Auction, but may not be cancelled. *See* Phlx Rule 1080(n)(ii)(A)(2).

[16] If the Phlx XL system identifies the existence of a COLA-eligible order following a COOP or by way of receipt during normal trading of a Complex Order that improves the cPBBO, such COLA-eligible order will initiate a COLA, during which Phlx XL participants may bid and offer against the COLA-eligible order pursuant to this rule.

[17] *See* Phlx Rule 1080, Commentary .02(c)(ii)(e) [sic].

[18] 15 U.S.C. 78s(b)(3)(a)(iii).

subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

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–2015–99 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–Phlx–2015–99. 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–2015–99 and should be submitted on or before January 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–33219 Filed 1–5–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76797; File No. SR–NASDAQ–2015–158]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Fees for Managed Data Solutions

December 30, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2015, The NASDAQ Stock Market LLC (''NASDAQ'') 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 NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify the charges to be paid for Managed Data Solutions (''MDS''). While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on January 1, 2016.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are bracketed.

NASDAQ Stock Market Rules

Equity Rules

* * * * *

7026. Distribution Models

(a) No change.

(b) Managed Data Solutions

The charges to be paid by Distributors and Subscribers of Managed Data Solutions products containing Nasdaq Depth data (non-display use only) shall be:

Fee schedule for managed data solutions	Price
Managed Data Solution Administration Fee (for the right to offer Managed Data Solutions to client organizations).	$[1]2,500/mo Per Distributor.
Nasdaq Depth Data Professional Subscriber Fee (Internal Use Only and includes TotalView, Level 2, OpenView).	3[00]75/mo Per Subscriber.
Nasdaq Depth Data Non-Professional Subscriber (Internal Use Only and includes TotalView, Level 2, OpenView).	60/mo Per Subscriber.

(c) Hardware-Based Delivery of Nasdaq Depth data

(1) The charges to be paid by Distributors for processing Nasdaq Depth data sourced from a Nasdaq hardware-based market data format shall be:

[19] 7 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.

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Hardware-Based delivery of Nasdaq depth data	Monthly fee
Internal Only Distributor	$25,000 Per Distributor.
External Only Distributor	2,500 Per Distributor.
Internal and External Distributor	27,500 Per Distributor.
Managed Data Solution Administration Fee	[3,000 = 1 Subscriber. 3,500 = 2 Subscribers. 4,000 = 3 Subscribers]. *5,000 for the first Subscriber.* 750[0] for each additional Subscriber.

(2) No change.
(3) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ 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. NASDAQ 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 increase the charges to be paid by distributors and subscribers of Managed Data Solutions products containing Nasdaq Depth-of-Book data. Nasdaq Depth-of-Book data is defined in Nasdaq Rule 7023 to include TotalView, OpenView, and NASDAQ Level 2 (collectively, ''Nasdaq Depth data''). Specifically, the Exchange proposes to increase the fee charged to distributors for the right to offer Managed Data Solutions to client organizations to $2,500 per month per distributor (''MDS Administration Fee''), and the fee charged to professional subscribers to $375 per month per subscriber (''MDS Subscriber Fee''). This proposed rule change will not affect the pricing for non-professional subscribers.

The Exchange also proposes to increase the administration fee charged to distributors for processing Nasdaq Depth data sourced from a Nasdaq hardware-based delivery option. This option uses field-programmable gate array (''FPGA'') technology, and serves those customers requiring a predictable latency profile throughout the trading day. By taking advantage of hardware parallelism, FPGA technology is capable of processing more data packets during peak market conditions without the introduction of variable queuing latency. Specifically, the Exchange proposes to increase the tiered fee charged to distributors, which is based on the number of subscribers, to $5,000 per month for the first subscriber, and then $750 per month for each additional subscriber (''FPGA Distributor Fee'').

MDS is a data delivery option available to distributors of Nasdaq Depth data information. Under the MDS fee structure, distributors may provide data feeds, Application Programming Interfaces (APIs) or similar automated delivery solutions to client organizations with only limited entitlement controls. Through this program, NASDAQ offers a much simpler administration process for MDS distributors and subscribers, reducing the burden and cost of administration.

Subscribers of MDS may use the information for internal purposes only and may not distribute the information outside of their organization. MDS presents opportunities for small and mid-size firms to achieve significant cost savings over the cost of data feeds.

While both the MDS Administration Fee and MDS Subscriber Fee have not changed since their introduction in 2010, NASDAQ is changing these fees now to remain consistent with the revised direct access non-display fee to maintain price uniformity between these two methods of accessing non-display depth information.[3] Similarly, the Exchange has not increased the FPGA Distributor Fee since its introduction in 2012. Nevertheless, both distributors and subscribers reap the benefits of NASDAQ's constant focus on the performance and enhancements to these offerings. As such, NASDAQ recently completed a technology refresh to ensure that its data feeds continue to achieve a high level of performance and resiliency. The Exchange has also upgraded and refreshed its disaster recovery capabilities, adding to the increased focus on redundancy and resiliency.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides an equitable allocation of reasonable fees among Subscribers and recipients of NASDAQ data and is not designed to permit unfair discrimination between them. NASDAQ's proposal to increase the MDS Administration Fee, MDS Subscriber Fee and FPGA Distributor Fee is also consistent with the Act in that it reflects an equitable allocation of reasonable fees. The Commission has long recognized the fair and equitable and not unreasonably discriminatory nature of assessing different fees for distributors and professional and non-professional users of the same data. NASDAQ also believes it is equitable to assess a higher fee per professional user than to an ordinary non-professional user due to the enhanced flexibility, lower overall costs and value that it offers distributors.

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.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[6]

[3] *See* SR–NASDAQ–2015–157 (filed December 18, 2015).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well. Level 2, NASDAQ TotalView and NASDAQ OpenView are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC*, 615 F.3d 525 (D.C. Cir. 2010) (''*NetCoalition I*''), upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoalition I*, at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.'' '' [7]

The Court in *NetCoalition I*, while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record *in that case* did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSE Arca's data product at issue in that case. As explained below in NASDAQ's Statement on Burden on Competition, however, NASDAQ believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition I* case, and that the Commission is entitled to rely upon such evidence in concluding fees are the product of competition, and therefore in accordance with the relevant statutory standards.[8]

Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

NASDAQ believes that the allocation of the proposed 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 is based on pricing conventions and distinctions that exist in NASDAQ's current fee schedule. These distinctions are each based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably discriminatory fees, and that apply with equal or greater force to the current proposal.

As described in greater detail below, if NASDAQ has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can discontinue the use of their data because the proposed product is entirely optional to all parties. Firms are not required to purchase data and NASDAQ is not required to make data available or to offer specific pricing alternatives for potential purchases. NASDAQ can discontinue offering a pricing alternative (as it has in the past) and firms can discontinue their use at any time and for any reason (as they often do), including due to their assessment of the reasonableness of fees charged. NASDAQ continues to establish and revise pricing policies aimed at increasing fairness and equitable allocation of fees among Subscribers.

NASDAQ believes that periodically it must adjust the Subscriber fees to reflect market forces. NASDAQ believes it is an appropriate time to adjust this fee to more accurately reflect the investments made to enhance this product through capacity upgrades. This also reflects that the market for this information is highly competitive and continually evolves as products develop and change.

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. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. NASDAQ believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. Data products are valuable to many end Subscribers only insofar as they provide information that end Subscribers expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer (''BD'') will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue

[7] *NetCoalition I*, at 535.

[8] It should also be noted that Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. *See also NetCoalition* v. *SEC*, 715 F.3d 342 (D.C. Cir. 2013) (''*NetCoalition II*'') (finding no jurisdiction to review Commission's non-suspension of immediately effective fee changes).

to which the BD is directing orders will become correspondingly more valuable.

Thus, an increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. NASDAQ pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE MKT, NYSE Arca, and BATS/Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless. Notably, the potential sources of data include the BDs that submit trade reports to TRFs and that have the ability to consolidate and distribute their data without the involvement of FINRA or an exchange-operated TRF.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and NYSE Arca did before registering as exchanges by publishing proprietary book data on the internet. Second, because a single order or transaction report can appear in a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with 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 ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters. In Europe, Cinnober aggregates and disseminates data from over 40 brokers and multilateral trading facilities.[9]

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition I* at 539. The existence of fierce competition for order flow implies a high degree of price sensitivity

[9] *See http://www.cinnober.com/boat-trade-reporting.*

on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2015–158 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2015–158. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–158, and should be submitted onor before January 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–33208 Filed 1–5–16; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(a)(ii).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–149, OMB Control No. 3235–0130]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension: Rule 17Ad–2(c), (d), and (h).

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17Ad–2(c), (d), and (h), (17 CFR 240.17Ad–2(c), (d), and (h)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ad–2(c),(d) and (h) enumerates the requirements with which registered transfer agents must comply to inform the Commission or the appropriate regulator of a transfer agent's failure to meet the minimum performance standards set by the Commission rule by filing a notice.

The Commission receives approximately 3 notices a year pursuant to Rule 17Ad–2(c), (d), and (h). The estimated annual time burden of these filings on respondents is minimal in view of: (a) The readily available nature of most of the information required to be included in the notice (since that information must be compiled and retained pursuant to other Commission rules); and (b) the summary fashion in which such information must be presented in the notice (most notices are one page or less in length). In light of the above, and based on the experience of the staff regarding the notices, the Commission staff estimates that, on average, most notices require approximately one-half hour to prepare. Thus, the Commission staff estimates that the industry-wide total time burden is approximately 1.5 hours.

The retention period for the recordkeeping requirement under Rule 17Ad–2(c), (d), and (h) is not less than two years following the date the notice is submitted. The recordkeeping requirement under this rule is mandatory to assist the Commission in monitoring transfer agents who fail to meet the minimum performance standards set by the Commission rule. This rule does not involve the collection of confidential information. A transfer agent is not required to file under the rule unless it does not meet the minimum performance standards for turnaround, processing or forwarding items received for transfer during a month.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 30, 2015.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–33213 Filed 1–5–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76800; File No. SR–Phlx–2015–114]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1060

December 30, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, 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 update Phlx Rule 1060, as described further below. The text of the proposed rule change is below; proposed deletions are in brackets.

* * * * *

Rule 1060. Floor Broker Defined

An Options Floor Broker is an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders [received from members and member organizations. An Options Floor Broker shall not accept an order from any other source unless he is the nominee of a member organization qualified to transact business with the public in which event he may accept orders from public customers of the organization].

* * * * *

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 update Phlx Rule 1060, Floor Broker Defined, which is incorrect in a number of ways. Other than the implementation of the Exchange's Options Floor Broker Management System,[3] the rule has not been updated since its adoption in 1984.

Currently, the rule provides that Floor Brokers are registered as such for the purpose of accepting and handling options orders received from members and member organizations.[4] In actuality, Floor Brokers have long been accepting orders from non-members/member organizations. Specifically, Floor Brokers accept orders from broker-dealers who are not Phlx members or member organizations; they have long done so.[5] No additional rules apply as a result of accepting orders from non-member broker-dealers.

In addition, Floor Brokers accept orders from non-broker-dealer customers (meaning, the public). In order to do so, Floor Brokers must be properly qualified to do business with the public.[6] These qualification requirements apply to all members and member organizations that do business with the public, including Floor Brokers, and will continue to do so under the amended rule. In addition, in order to do business with the public, Floor Brokers must abide by the Phlx rules pertaining to handling of customer orders, including fidelity bond coverage,[7] annual audits,[8] approval of the opening of accounts,[9] supervision of accounts [10] and communications to customers.[11]

The Exchange does not believe it is necessary to list in Rule 1060 from what type of market participant a Floor Broker may receive orders, because a Floor Broker can accept orders from any type of market participant. It would be superfluous to add such a list. The rules applicable to doing business with the public apply to Floor Brokers and their member organization regardless of whether such rules are specifically listed in Rule 1060.

Rule 1060 also provides that an Options Floor Broker shall not accept an order from any other source unless the Floor Broker is the nominee of a member organization qualified to transact business with the public in which event the Floor Broker may accept orders from public customers of the organization. The Exchange believes that this provision is incorrect in a number of respects. The term ''nominee'' is no longer used, except with reference to inactive nominees, which is a separate status, unrelated to defining a Floor Broker.[12] Prior to 2004, the Exchange had a different ownership and membership structure, such that the term ''nominee'' was sometimes used. Specifically, a nominee of a member organization was, in essence, a member.

Furthermore, the Floor Broker, not just his member organization, must be qualified to accept orders from the public.[13] In addition, a Floor Broker's ability to accept orders from the public is not limited to accepting orders from public customers of the Floor Broker's member organization. As explained above, a Floor Broker may accept orders from the public provided the Floor Broker is properly qualified to do so and abides by the rules pertaining to handling of such orders.[14]

Accordingly, the Exchange is deleting the last sentence of Rule 1060.

In sum, the updated rule will continue to state that an Options Floor

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69471 (April 29, 2013), 78 FR 26096 (May 3, 2013) (SR–Phlx–2013–09).

[4] *See* Rules 1(n) and (o).

[5] CBOE Floor Brokers are similarly permitted to accept orders from non-member broker-dealers. *See* CBOE Rule 6.70.

[6] *See e.g.,* Rules 613, 620 and 1024(a).

[7] *See* Rule 705.

[8] *See* Rule 712.

[9] *See* Rule 1024(b).

[10] *See* Rule 1025.

[11] *See* Rule 1049.

[12] *See* Rules 1(l) and 925.

[13] *See* Rule 613.

[14] *See supra* notes 5–10.

Broker is an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders. Overall, the Exchange notes that the current language in Rule 1060 was adopted at a time when the options market structure and trading floor community were very different than today. Long ago, there were only a handful of options exchanges, all of which operated trading floors. With the advent of additional exchanges and electronic trading, membership in every options exchange was no longer critical or practical. Many large firms maintained a floor presence in the form of their own ''house'' Floor Brokers. This has changed dramatically, in that most Floor Brokers now work for member organizations that are solely in the floor brokerage business and not affiliated with large firms that operate trading desks or receive order flow. Because the dynamics have changed so much and the floor brokerage business has evolved accordingly, the Exchange believes that the limitations contained in Rule 1060 no longer make sense.

2. Statutory Basis

The Exchange believes that its proposal 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, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, by correctly identifying what functions a Floor Broker can perform in terms of order acceptance. In its current form, Rule 1060 can be read too narrowly, which would result in a Floor Broker not being permitted to accept orders other than from members and member organizations. Other Phlx members and member organizations are not limited with respect to the participants from whom orders can be accepted, and, thus, the proposal levels the playing field for options Floor Brokers. Persons submitting orders for execution by a Floor Broker on the Exchange would not expect that Exchange membership would be required to do so. Thus, the Exchange believes that updating the rule will help prevent confusion and help ensure that floor brokerage services are widely available to various types of market participants, which should, in turn, promote just and equitable principles of trade.

[15] 15 U.S.C. 78f(b).

[16] 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. With respect to inter-market competition, the Exchange does not believe that the proposed revisions will impose any burden on competition, because at least one other Exchange has a similar rule governing the types of orders a floor broker can submit.[17] With respect to intra-market competition, the proposal applies to all Phlx Floor Brokers.

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 Act [18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

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.

[17] CBOE Rule 6.70.

[18] 15 U.S.C. 78s(b)(3)(a)(iii).

[19] 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.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2015–114 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–Phlx–2015–114. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2015–114, and should be submitted on or before January 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–33220 Filed 1–5–16; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76799; File No. SR–Phlx–2015–112]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Fees for Managed Data Solutions

December 30, 2105.

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 18, 2015, The NASDAQ OMX PHLX LLC (''Phlx'') 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 Phlx. 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

Phlx proposes to modify the charges to be paid for Managed Data Solutions (''MDS''). While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on January 1, 2016.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are bracketed.

NASDAQ OMX PHLX Rules

NASDAQ OMX PHLX LLC Pricing Schedule

VIII. NASDAQ OMX PSX Fees

* * * * *

PSX Managed Data Solutions Fees.

(a) Distributors and Subscribers of Managed Data Solutions products containing PSX TotalView data (non-display use only) shall pay the following fees:

Fee schedule for managed data Solutions	Price
Managed Data Solutions Administration Fee (for the right to offer Managed Data Solutions to client organizations).	$[750]*1,500*/mo Per Distributor.
PSX Depth Data Professional Managed Data Solutions Subscriber Fee (Internal Use Only and includes PSX TotalView)	$1[0]*5*0/mo Per Subscriber.
PSX Depth Data Managed Data Solutions Non-Professional Subscriber Fee. (Internal Use Only and includes PSX TotalView)	$20/mo Per Subscriber.
	Fees are per month for all or any portion of the month in which the MDS products are accessed.

(b) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx 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. Phlx 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 increase the charges to be paid by distributors and subscribers of Managed Data Solutions products containing PSX TotalView data (non-display use only). Specifically, the Exchange proposes to increase the fee charged to distributors for the right to offer Managed Data Solutions to client organizations to $1,500 per month per distributor (''MDS Administration Fee''), and the fee charged to professional subscribers to $150 per month per subscriber (''MDS Subscriber Fee''). This proposed rule change will not affect the pricing for non-professional subscribers.

MDS is a data delivery option available to distributors of PSX TotalView. Under the MDS fee structure, distributors may provide data feeds, Application Programming Interfaces (APIs) or similar automated delivery solutions to client organizations with only limited entitlement controls. Through this program, Phlx offers a much simpler administration process for MDS distributors and subscribers, reducing the burden and cost of administration.

Subscribers of MDS may use the information for internal purposes only and may not distribute the information outside of their organization. MDS presents opportunities for small and mid-size firms to achieve significant cost savings over the cost of data feeds.

Both the MDS Administration Fee and MDS Subscriber Fee have not changed since their introduction in 2013. Nevertheless, both distributors and subscribers reap the benefits of Phlx's constant focus on the performance and enhancements to these offerings. As such, Phlx recently completed a technology refresh to ensure that its data feeds continue to achieve a high level of performance and resiliency. The Exchange has also upgraded and refreshed its disaster recovery capabilities, adding to the increased focus on redundancy and resiliency.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[4] in particular, in that it provides an equitable allocation of reasonable fees among Subscribers and recipients of Phlx data and is not designed to permit unfair discrimination between them. Phlx's proposal to increase the MDS Administration Fee and MDS Subscriber Fee is also consistent with the Act in that it reflects an equitable allocation of reasonable fees. The Commission has long recognized the fair and equitable and not unreasonably discriminatory nature of assessing different fees for distributors and professional and non-professional users of the same data. Phlx also believes it is equitable to assess a higher fee per professional user than to an ordinary non-professional user due to the enhanced flexibility, lower

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4) and (5).

overall costs and value that it offers distributors.

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.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[5]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well. PSX TotalView is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010) (''*NetCoalition I*''), upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoalition I,* at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' ''[6]

The Court in *NetCoalition I,* while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record *in that case* did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSE Arca's data product at issue in that case. As explained below in Phlx's Statement on Burden on Competition, however, Phlx believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition I* case, and that the Commission is entitled to rely upon such evidence in concluding fees are the product of competition, and therefore in accordance with the relevant statutory standards.[7] Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

Phlx believes that the allocation of the proposed 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 is based on pricing conventions and distinctions that exist in Phlx's current fee schedule. These distinctions are each based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably discriminatory fees, and that apply with equal or greater force to the current proposal.

As described in greater detail below, if Phlx has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can discontinue the use of their data because the proposed product is entirely optional to all parties. Firms are not required to purchase data and Phlx is not required to make data available or to offer specific pricing alternatives for potential purchases. Phlx can discontinue offering a pricing alternative (as it has in the past) and firms can discontinue their use at any time and for any reason (as they often do), including due to their assessment of the reasonableness of fees charged. Phlx continues to establish and revise pricing policies aimed at increasing fairness and equitable allocation of fees among Subscribers.

Phlx believes that periodically it must adjust the Subscriber fees to reflect market forces. Phlx believes it is an appropriate time to adjust this fee to more accurately reflect the investments made to enhance this product through capacity upgrades. This also reflects that the market for this information is highly competitive and continually evolves as products develop and change.

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. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. Phlx believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. Data products are valuable to many end Subscribers only insofar as they provide information that end Subscribers expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer (''BD'') will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[6] *NetCoalition I,* at 535.

[7] It should also be noted that Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. *See also NetCoalition* v. *SEC,* 715 F.3d 342 (D.C. Cir. 2013) (''*NetCoalition II*'') (finding no jurisdiction to review Commission's non-suspension of immediately effective fee changes).

cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Thus, an increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. Phlx pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including Phlx, NYSE, NYSE MKT, NYSE Arca, and BATS/Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless. Notably, the potential sources of data include the BDs that submit trade reports to TRFs and that have the ability to consolidate and distribute their data without the involvement of FINRA or an exchange-operated TRF.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and NYSE Arca did before registering as exchanges by publishing proprietary book data on the internet. Second, because a single order or transaction report can appear in a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with 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 ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products

cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters. In Europe, Cinnober aggregates and disseminates data from over 40 brokers and multilateral trading facilities.[8]

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition I* at 539. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2015–112 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–Phlx–2015–112. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2015–112, and should be submitted on or before January 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–33206 Filed 1–5–16; 8:45 am]

BILLING CODE 8011–01–P

[8] *See http://www.cinnober.com/boat-trade-reporting.*

[9] 15 U.S.C. 78s(b)(3)(a)(ii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension: Rule 3a–4
OMB Control No. 3235–0459, SEC File No. 270–401.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 3a–4 (17 CFR 270.3a–4) under the Investment Company Act of 1940 (15 U.S.C. 80a) (''Investment Company Act'' or ''Act'') provides a nonexclusive safe harbor from the definition of investment company under the Act for certain investment advisory programs. These programs, which include ''wrap fee'' programs, generally are designed to provide professional portfolio management services on a discretionary basis to clients who are investing less than the minimum investments for individual accounts usually required by the investment adviser but more than the minimum account size of most mutual funds. Under wrap fee and similar programs, a client's account is typically managed on a discretionary basis according to pre-selected investment objectives. Clients with similar investment objectives often receive the same investment advice and may hold the same or substantially similar securities in their accounts. Because of this similarity of management, some of these investment advisory programs may meet the definition of investment company under the Act.

In 1997, the Commission adopted rule 3a–4, which clarifies that programs organized and operated in accordance with the rule are not required to register under the Investment Company Act or

comply with the Act's requirements. These programs differ from investment companies because, among other things, they provide individualized investment advice to the client. The rule's provisions have the effect of ensuring that clients in a program relying on the rule receive advice tailored to the client's needs.

For a program to be eligible for the rule's safe harbor, each client's account must be managed on the basis of the client's financial situation and investment objectives and in accordance with any reasonable restrictions the client imposes on managing the account. When an account is opened, the sponsor (or its designee) must obtain information from each client regarding the client's financial situation and investment objectives, and must allow the client an opportunity to impose reasonable restrictions on managing the account. In addition, the sponsor (or its designee) must contact the client annually to determine whether the client's financial situation or investment objectives have changed and whether the client wishes to impose any reasonable restrictions on the management of the account or reasonably modify existing restrictions. The sponsor (or its designee) must also notify the client quarterly, in writing, to contact the sponsor (or its designee) regarding changes to the client's financial situation, investment objectives, or restrictions on the account's management.

Additionally, the sponsor (or its designee) must provide each client with a quarterly statement describing all activity in the client's account during the previous quarter. The sponsor and personnel of the client's account manager who know about the client's account and its management must be reasonably available to consult with the client. Each client also must retain certain indicia of ownership of all securities and funds in the account.

The Commission staff estimates that 16,537,781 clients participate each year in investment advisory programs relying on rule 3a–4. Of that number, the staff estimates that 4,918,064 are new clients and 11,619,717 are continuing clients. The staff estimates that each year the investment advisory program sponsors' staff engage in 1.5 hours per new client and 1 hour per continuing client to prepare, conduct and/or review interviews regarding the client's financial situation and investment objectives as required by the rule. Furthermore, the staff estimates that each year the investment advisory program sponsors' staff spends 1 hour per client to prepare and mail quarterly client account statements, including notices to update information. Based on the estimates above, the Commission estimates that the total annual burden of the rule's paperwork requirements is 35,534,594 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. 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 public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 30, 2015.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–33212 Filed 1–5–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76796; File No. SR–BX–2015–084)]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Fees for Managed Data Solutions

December 30, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2015, The NASDAQ OMX BX, Inc (''BX'') 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 BX. 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

BX proposes to modify the charges to be paid for Managed Data Solutions (''MDS''). While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on January 1, 2016.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are bracketed.

Rules of NASDAQ OMX BX

Equity Rules

* * * * *

7026. Distribution Models

(a) Managed Data Solutions.

Distributors and Subscribers of Managed Data Solutions products containing BX TotalView data (non-display use only) shall pay the following fees:

FEE SCHEDULE FOR MANAGED DATA

Solutions	Price
Managed Data Solutions Administration Fee (for the right to offer Managed Data Solutions to client organizations).	$[750]*1,500*/mo Per Distributor.
BX Depth Data Professional Managed Data Solutions Subscriber Fee (Internal Use Only and includes BX TotalView).	$1[0]*5*0/mo Per Subscriber.
BX Depth Data Managed Data Solutions Non-Professional Subscriber Fee (Internal Use Only and includes BX TotalView).	$20/mo Per Subscriber.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(b) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX 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. BX 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 increase the charges to be paid by distributors and subscribers of Managed Data Solutions products containing BX TotalView data (non-display use only). Specifically, the Exchange proposes to increase the fee charged to distributors for the right to offer Managed Data Solutions to client organizations to $1,500 per month per distributor (''MDS Administration Fee''), and the fee charged to professional subscribers to $150 per month per subscriber (''MDS Subscriber Fee''). This proposed rule change will not affect the pricing for non-professional subscribers.

MDS is a data delivery option available to distributors of BX TotalView. Under the MDS fee structure, distributors may provide data feeds, Application Programming Interfaces (APIs) or similar automated delivery solutions to client organizations with only limited entitlement controls. Through this program, BX offers a much simpler administration process for MDS distributors and subscribers, reducing the burden and cost of administration.

Subscribers of MDS may use the information for internal purposes only and may not distribute the information outside of their organization. MDS presents opportunities for small and mid-size firms to achieve significant cost savings over the cost of data feeds.

Both the MDS Administration Fee and MDS Subscriber Fee have not changed since their introduction in 2013. Nevertheless, both distributors and subscribers reap the benefits of BX's constant focus on the performance and enhancements to these offerings. As such, BX recently completed a technology refresh to ensure that its data feeds continue to achieve a high level of performance and resiliency. The Exchange has also upgraded and refreshed its disaster recovery capabilities, adding to the increased focus on redundancy and resiliency.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[3] in general, and with sections 6(b)(4) and 6(b)(5) of the Act,[4] in particular, in that it provides an equitable allocation of reasonable fees among Subscribers and recipients of BX data and is not designed to permit unfair discrimination between them. BX's proposal to increase the MDS Administration Fee and MDS Subscriber Fee is also consistent with the Act in that it reflects an equitable allocation of reasonable fees. The Commission has long recognized the fair and equitable and not unreasonably discriminatory nature of assessing different fees for distributors and professional and non-professional users of the same data. BX also believes it is equitable to assess a higher fee per professional user than to an ordinary non-professional user due to the enhanced flexibility, lower overall costs and value that it offers distributors.

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.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[5]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well. BX TotalView is precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010) (''*NetCoalition I*''), upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoalition I*, at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' ''[6]

The Court in *NetCoalition I,* while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record *in that case* did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSE Arca's data product at issue in that case. As explained below in BX's Statement on Burden on Competition, however, BX believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition I* case, and that the Commission is entitled to rely upon such evidence in concluding fees are the product of competition, and therefore in accordance with the relevant statutory standards.[7] Accordingly, any findings of the court with respect to that product may not be

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4) and (5).

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[6] *NetCoalition I*, at 535.

[7] It should also be noted that section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') has amended paragraph (A) of section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. *See also NetCoalition* v. *SEC,* 715 F.3d 342 (D.C. Cir. 2013) (''*NetCoalition II*'') (finding no jurisdiction to review Commission's non-suspension of immediately effective fee changes).

relevant to the product at issue in this filing.

BX believes that the allocation of the proposed 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 is based on pricing conventions and distinctions that exist in BX's current fee schedule. These distinctions are each based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably discriminatory fees, and that apply with equal or greater force to the current proposal.

As described in greater detail below, if BX has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can discontinue the use of their data because the proposed product is entirely optional to all parties. Firms are not required to purchase data and BX is not required to make data available or to offer specific pricing alternatives for potential purchases. BX can discontinue offering a pricing alternative (as it has in the past) and firms can discontinue their use at any time and for any reason (as they often do), including due to their assessment of the reasonableness of fees charged. BX continues to establish and revise pricing policies aimed at increasing fairness and equitable allocation of fees among Subscribers.

BX believes that periodically it must adjust the Subscriber fees to reflect market forces. BX believes it is an appropriate time to adjust this fee to more accurately reflect the investments made to enhance this product through capacity upgrades. This also reflects that the market for this information is highly competitive and continually evolves as products develop and change.

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. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. BX believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. Data products are valuable to many end Subscribers only insofar as they provide information that end Subscribers expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer (''BD'') will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Thus, an increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. BX pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an

industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including BX, NYSE, NYSE MKT, NYSE Arca, and BATS/Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless. Notably, the potential sources of data include the BDs that submit trade reports to TRFs and that have the ability to consolidate and distribute their data without the involvement of FINRA or an exchange-operated TRF.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and NYSE Arca did before registering as exchanges by publishing proprietary book data on the internet. Second, because a single order or transaction report can appear in a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with 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 ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters. In Europe, Cinnober aggregates and disseminates data from over 40 brokers and multilateral trading facilities.[8]

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition I* at 539. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2015–084 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–BX–2015–084. 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

[8] *See http://www.cinnober.com/boat-trade-reporting.*

[9] 15 U.S.C. 78s(b)(3)(a)(ii).

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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2015–084, and should be submitted on or before January 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–33209 Filed 1–5–16; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 9397]

Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates indicated on the attachments pursuant to sections 36(c) and 36(d), and in compliance with section 36(f), of the Arms Export Control Act.

DATES: *Effective Date:* As shown on each of the 48 letters.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa V. Aguirre, Directorate of Defense Trade Controls, Department of State, telephone (202) 663–2830; email *DDTCResponseTeam@state.gov.* ATTN: Congressional Notification of Licenses.

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act (22 U.S.C. 2778) mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Following are such notifications to the Congress:

March 11, 2015 (Transmittal No. DDTC 14–143)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearm parts and components abroad controlled under Category I of the United States Munitions List in amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of Sig Sauer rifles model Sig 516 full-auto rifles and accessories, model 516G2 full-auto rifles and accessories, and SD rifle silencers to the Indonesian Defence Force in Indonesia.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary Legislative Affairs

March 16, 2015 (Transmittal No. DDTC 14–110)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, to include technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the Republic of Korea to support the Patriot Guidance Enhances Missile-Tactical (GEM–T) upgrade program and the Missile Assembly/Disassembly Facility (MADF).

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs

March 17, 2015 (Transmittal No. DDTC 14–141)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of technical data and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of technical data and defense services to support the Falcon 9 integration and launch of the JCSAT–14 Commercial Communication Satellite from Cape Canaveral.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs

March 18, 2015 (Transmittal No. DDTC 14–151)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms and components abroad controlled under Category I of the United States Munitions List in amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of various rifles, pistols, and revolvers with spare parts and accessories to Smith & Wesson Distributing, Inc. in Belgium.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary Legislative Affairs

March 20, 2015 (Transmittal No. DDTC 14–153)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of technical data and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification proposes to transfer technical data and defense services to support upgrades to the NATO E–3 AWACS aircraft cockpit as part of the Communication Navigation Surveillance/Air Traffic Management (CNC/ATM) Cockpit Modernization Program for end use by the NATO AEW&C Program Management Organization.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary Legislative Affairs

March 25, 2015 (Transmittal No. DDTC 14–121)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearm parts and components abroad controlled under Category I of the United States Munitions List in amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export and assembly of firearm kits of Sig Sauer rifles and pistols which will be for use by the Mexican Navy, Ministries of National Defence, and Interior and Federal and State Police Forces of Mexico.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary Legislative Affairs

March 25, 2015 (Transmittal No. DDTC 14–147)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Argentina in support of the upgrade of both avionics and mission system equipment on five (5) C–130 aircraft, for end use by the Argentine Air Force.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary Legislative Affairs

March 25, 2015 (Transmittal No. DDTC 14–140)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of technical data and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Oman, Pakistan, and the United Kingdom in support of the Falcon Eye Project for end use by the Sultan's Special Forces of Oman.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Acting Assistant Secretary Legislative Affairs

March 30, 2015 (Transmittal No. DDTC 15–010)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearm parts and components abroad controlled under Category I of the United States Munitions List in amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of M4 Carbines and Holographic Weapon Sights and components for the Chilean Police.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary Legislative Affairs

April 15, 2015 (Transmittal No. DDTC 14–126)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed transfer of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Italy, Czech Republic, Switzerland, and the United Kingdom for the support of mechanical avionics, environmental, and lighting systems for the Joint Cargo Aircraft C–27J and industrial baseline variants for end-use by the Governments of Australia, Bulgaria, Canada, Chad, Greece, India, Italy, Lithuania, Mexico, Morocco, Peru, Romania, United Arab Emirates, and the United States.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

April 15, 2015 (Transmittal No. DDTC 14–134)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to support the manufacture

of ground equipment, components, and assemblies for the Patriot Air Defense System.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

April 15, 2015 (Transmittal No. DDTC 14–136)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Afghanistan, Algeria, Azerbaijan, Canada, Denmark, India, Italy, Japan, Nigeria, Portugal, the Republic of Korea, Saudi Arabia, Turkey, Turkmenistan, and the United Kingdom for the support of helicopter seating systems, restraint systems, cockpit airbag systems, floor armor and associated components provided by BAE Systems to various end users.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

April 15, 2015 (Transmittal No. DDTC 15–002)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of five (5) Helicopters manufactured for Combat Utility to the Philippine Air Force.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

April 15, 2015 (Transmittal No. DDTC 15–009)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting certification of a proposed license for export for the manufacture of significant equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for continued support for manufacture of F110–GE–129 engines for the Japanese Ministry of Defense's F–2 aircraft.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

April 15, 2015 (Transmittal No. DDTC 14–108)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearm parts and components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of Law Enforcement Carbines, caliber 5.56x45 NATO, semi-automatic, for use by various Mexican State Governments under the Secretariat of National Defense for Mexico.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

April 21, 2015 (Transmittal No. DDTC 14–148)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license amendment for the export of defense articles, including technical data, and defense services and in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the United Arab Emirates to support the procurement, maintenance, and training of the C–17A Globemaster III transport aircraft.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

April 22, 2015 (Transmittal No. DDTC 14–142)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Sections 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the procurement of Mine Resistant Ambush Protected All-Terrain Vehicles (MRAP–ATVs) including associated spare parts, equipment, and support services for end-use by the Ministry of Defense of the Kingdom of Saudi Arabia.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information

submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

April 22, 2015 (Transmittal No. DDTC 14–129)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) and 36(d) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, including technical data, and defense services to Australia, Belgium, Canada, Demark, Germany, Greece, The Netherlands, Norway, Portugal, Spain, and Turkey to support the design, development, production, assembly, manufacture, and testing of Evolved SeaSparrow Missile (ESSM) Block 2 as part of the NATO SeaSparrow program.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

May 01, 2015 (Transmittal No. DDTC 15–029)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearm parts, and components abroad controlled under Category I of the United States Munitions List in amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of LaRue semi-automatic rifles, various calibers, and components to Heron Security and Sport PTY Ltd. in Australia for commercial resale. The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

May 01, 2015 (Transmittal No. DDTC 15–008)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearm parts and components abroad controlled under Category I of the United States Munitions List in amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of sub-.50 caliber to .50 caliber inclusive non-automatic, semi-automatic, and fully automatic firearms and components for the Brazilian Ministry of Defense and the Brazilian Federal Police.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

May 01, 2015 (Transmittal No. DDTC 15–011)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, defense services, and manufacture know-how for the design and manufacture of the Air-to-Ground Pylons for the F–35 Lightning II aircraft in Turkey.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

May 06, 2015 (Transmittal No. DDTC 15–019)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Sections 36(c) and (d) of the Arms Export Control Act, I am transmitting certification of a proposed license for export for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the manufacture of T–16B Inertial Sensor Assemblies (ISAs), Accelerometer with Higher Level Triad Assembly, and associated Circuit Card Assemblies.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

May 07, 2015 (Transmittal No. DDTC 14–139)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license amendment for the export of technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Israel for the development and delivery of the Highly Available Aerostat System for end use by the Israel Ministry of Defense.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

May 07, 2015 (Transmittal No. DDTC 15–021)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and

defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the acquisition of eleven (11) T–6C aircraft along with maintenance, training, and logistics support for end use by the Mexican Secretaria De Marina Armada, also known as the Mexican Navy.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

May 07, 2015 (Transmittal No. DDTC 14–103)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Italy and Saudi Arabia to support the delivery, installation, integration, operation, training, testing, maintenance, and repair of the AN/TPS–72 radar system replacement program AN/TPS–78.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

May 11, 2015 (Transmittal No. DDTC 15–031)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearm parts and components abroad controlled under Category I of the United States Munitions List in amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 4x32 ACOG Riflescopes to the Australian Army.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

May 12, 2015 (Transmittal No. DDTC 14–144)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearm parts and components abroad controlled under Category I of the United States Munitions List in amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of M60E4/Mk43 MOD1, M60D, and M2HB machine guns, accessories, and operator basic training to the Ministry of Defense in Tunisia.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

May 12, 2015 (Transmittal No. DDTC 15–003)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Norway, Oman, Spain, and United Kingdom to support the manufacture, integration, installation, operation, training, testing, and maintenance of the Project BARQ Ground Based Air Defense System.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

May 12, 2015 (Transmittal No. DDTC 15–020)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the acquisition of twenty-four (24) T–6C aircraft along with maintenance, training, and logistics support for end use by the Mexican Secretaria De La Defensa Nacional.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

May 12, 2015 (Transmittal No. DDTC 15–007)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Australia to support the installation, checkout, test, retrofit, requirements verification, acceptance, operation, maintenance, and logistical support of MESA Radar/IFF subsystems and Follow-On Sustainment Support Services (FOSSS) for the Royal Australian Air Force 737 Airborne Early Warning and Control Aircraft.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information

submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

May 12, 2015 (Transmittal No. DDTC 14–145)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearm parts and components abroad controlled under Category I of the United States Munitions List in amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of M4 Commandos, Model R0933, 5.56mm and Armorer's and Operator's Training of the M4s for the Royal Oman Police.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

May 15, 2015 (Transmittal No. DDTC 15–036)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of technical data and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of technical data and defense services to support the Falcon 9 integration and launch of the JCSAT–16 Commercial Communication Satellite from Cape Canaveral.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

May 15, 2015 (Transmittal No. DDTC 15–004)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 3(d) of the Arms Export Control Act, I am transmitting certification of a proposed retransfer of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the retransfer of defense articles, including technical data, and defense services to the Government of Brazil for the acquisition of thirty-six Gripen NG Fighter Aircraft with spares parts and ground equipment for maintenance, training, and logistics support for the aircraft.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

May 28, 2015 (Transmittal No. DDTC 15–014)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearm parts and components abroad controlled under Category I of the United States Munitions List in amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of Sig Sauer P226 Pistol TACOPS with Sound Suppressors and DBAL–PL Laser/illuminators for the Saudi Arabian Ministry of Defense.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

June 04, 2015 (Transmittal No. DDTC 15–033)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearm parts and components abroad controlled under Category I of the United States Munitions List in amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of Bolt and Bolt Carrier Assemblies for Colt M4/M16 and One-Piece Upper Receiver, and 14.5'' Heavy Barrel Assemblies for the M4/M16 with spare parts and training for the Ministry of Home Affairs, Singapore Police Logistics Department.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

June 04, 2015 (Transmittal No. DDTC 15–016)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Japan to support the operation, installation, maintenance, and repair of the Mk15 Phalanx Close-In Weapons System (CIWS) Block 0 through Block 1B Baseline 2.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

June 11, 2015 (Transmittal No. DDTC 15–056)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles in the amount of $25,000,000 or more.

The transaction contained in the attached certification involves the export of MK80 Series/BLU–109 weapons to Israel.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

June 11, 2015 (Transmittal No. DDTC 15–001)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting certification of a proposed license amendment for export for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of 100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Japan for the production of the Evolved SeaSparrow Missile (ESSM).

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

June 12, 2015 (Transmittal No. DDTC 15–026)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, including technical data, and defense services to Japan and Israel to support the manufacture and assembly of Helmet Mounted Display Systems on fixed wing fighter aircraft for end-use by Armed Forces of Japan.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

June 12, 2015 (Transmittal No. DDTC 15–017)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the intermediate and depot level maintenance support of F110–GE–132 engines installed in F–16 Block 60 aircraft for end-use by the United Arab Emirates Armed Forces.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

June 15, 2015 (Transmittal No. DDTC 15–047)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) and 36 (d) of the Arms Export Control Act, I am transmitting certification of a proposed license for export for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Germany to support the manufacture and assembly of MCX 5.56mm Rifles in Germany for end-use by the French Ministry of Defense.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

June 16, 2015 (Transmittal No. DDTC 15–038)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms, parts and components abroad controlled under Category I of the United States Munitions List in amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of various semi-automatic rifles, bolt action rifles, rifle barrels, and accessories to Delta Tactical to be used in target shooting, competition shooting, and custom rifle builds in Australia.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

June 16, 2015 (Transmittal No. DDTC 15–042)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Canada for the development, testing, and manufacturing of the Improvised Drive System (IDS) transmission system, and parts thereof, for the AH–64D Apache helicopter Block III upgrade for end-use by the U.S. Army.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though

unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

June 16, 2015 (Transmittal No. DDTC 15–030)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to support the manufacture, assembly, training, testing, maintenance, and repair of the NL914A and NL914B night vision monoculars, the NL963A night vision goggle, and the NL949A aviator's night vision goggle in the Philippines.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

June 22, 2015 (Transmittal No. DDTC 14–050)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Turkey, Canada, and the United Kingdom to support the engineering, installation, operation, maintenance, and training for the establishment of a multifaceted Turkish Electronic Warfare Program to include airborne electronic warfare assets.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

June 25, 2015 (Transmittal No. DDTC 14–114)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Iraq to support the operational use of the AGM–65G2 Tactical Missile and TGM–65G Training Missile systems.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

July 15, 2015 (Transmittal No. DDTC 14–133)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting certification of a proposed license for export for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to support the production of Turkish Utility (T–70) Helicopters, which are based on the S–70i international version of the Sikorsky Black Hawk, for end use by Turkish Ministry of Defense.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

July 15, 2015 (Transmittal No. DDTC 14–135)

Honorable John A. Boehner, *Speaker of the House of Representatives*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to support the development of Avionics Systems for Turkish Utility (T–70) Helicopters which are based on the S–70i international version of the Black Hawk for end use by Turkish Ministry of Defense.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield

Assistant Secretary, Legislative Affairs

Dated: December 20, 2015.

Lisa V. Aguirre,

Director of Management, Directorate of Defense Trade Controls, U.S. Department of State.

[FR Doc. 2015–33297 Filed 1–5–16; 8:45 am]

BILLING CODE 4710–25–P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on February 4, 2016, in Grantville, Pennsylvania. At this public hearing, the Commission will hear testimony on the projects listed in the Supplementary Information section of this notice. Such projects are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for March 10, 2016, which will be noticed separately. The public should take note that this public hearing will be the only opportunity to offer oral

comment to the Commission for the listed projects. The deadline for the submission of written comments is February 15, 2016.

DATES: The public hearing will convene on February 4, 2016, at 7:00 p.m. The public hearing will end at 9:00 p.m. or at the conclusion of public testimony, whichever is sooner. The deadline for the submission of written comments is February 15, 2016.

ADDRESSES: The public hearing will be conducted at the East Hanover Township Municipal Building, Main Hall, 8848 Jonestown Road, Grantville, PA 17028 (parking lot entry off of Manada Gap Road; see *http://easthanovertwpdcpa.org/index.php/about-contact*).

FOR FURTHER INFORMATION CONTACT: Jason Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436.

Information concerning the applications for these projects is available at the SRBC Water Resource Portal at *www.srbc.net/wrp.* Additional supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at *www.srbc.net/pubinfo/docs/2009-02_Access_to_Records_Policy_20140115.pdf.*

SUPPLEMENTARY INFORMATION: The public hearing will cover the following projects:

Projects Scheduled for Action

1. Project Sponsor and Facility: Anadarko E&P Onshore LLC (Lycoming Creek), Lewis Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 1.340 mgd (peak day) (Docket No. 20120301).
2. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Midway Manor System, Kingston Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.115 mgd (30-day average) from Dug Road Well.
3. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Midway Manor System, Kingston Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.038 mgd (30-day average) from Hilltop Well.
4. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Midway Manor System, Kingston Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.216 mgd (30-day average) from Midway Well 1.
5. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Midway Manor System, Kingston Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.110 mgd (30-day average) from Midway Well 2.
6. Project Sponsor and Facility: Black Bear Waters, LLC (Lycoming Creek), Lewis Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 0.900 mgd (peak day) (Docket No. 20120303).
7. Project Sponsor and Facility: East Berlin Area Joint Authority, Reading Township, Adams County, Pa. Application for groundwater withdrawal of up to 0.072 mgd (30-day average) from Well 1.
8. Project Sponsor and Facility: East Berlin Area Joint Authority, Reading Township, Adams County, Pa. Application for groundwater withdrawal of up to 0.108 mgd (30-day average) from Well 2.
9. Project Sponsor and Facility: East Berlin Area Joint Authority, East Berlin Borough, Adams County, Pa. Application for groundwater withdrawal of up to 0.058 mgd (30-day average) from Well 4.
10. Project Sponsor and Facility: East Berlin Area Joint Authority, East Berlin Borough, Adams County, Pa. Application for renewal with modification to increase groundwater withdrawal limit by an additional 0.048 mgd (30-day average), for a total of up to 0.072 mgd (30-day average) from Well 5 (Docket No. 19860601).
11. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.059 mgd (30-day average) from Well 3A.
12. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.028 mgd (30-day average) from Well 4.
13. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.056 mgd (30-day average) from Well 5.
14. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.022 mgd (30-day average) from Well 6.
15. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.046 mgd (30-day average) from Well 7.
16. Project Sponsor and Facility: EQT Production Company (Wilson Creek), Duncan Township, Tioga County, Pa. Application for renewal of surface water withdrawal of up to 0.740 mgd (peak day) (Docket No. 20120307).
17. Project Sponsor and Facility: Furman Foods, Inc., Point Township, Northumberland County, Pa. Application for renewal of groundwater withdrawal of up to 0.320 mgd (30-day average) from Well 1 (Docket No. 19850901).
18. Project Sponsor and Facility: Furman Foods, Inc., Point Township, Northumberland County, Pa. Application for renewal of groundwater withdrawal of up to 0.190 mgd (30-day average) from Well 4 (Docket No. 19850901).
19. Project Sponsor and Facility: Furman Foods, Inc., Point Township, Northumberland County, Pa. Application for renewal of groundwater withdrawal of up to 0.090 mgd (30-day average) from Well 7 (Docket No. 19850901).
20. Project Sponsor and Facility: Mount Joy Borough Authority, Mount Joy Borough, Lancaster County, Pa. Modification to increase withdrawal limit from Well 2 by 0.105 mgd (30-day average), for a total Well 2 withdrawal limit of 1.270 mgd (30-day average), and to increase the combined withdrawal limit by an additional 0.199 mgd (30-day average), for a total combined withdrawal limit of 1.799 mgd (30-day average) from Wells 1 and 2 (Docket No. 20110617).
21. Project Sponsor and Facility: Muncy Borough Municipal Authority, Muncy Creek Township, Lycoming County, Pa. Application for groundwater withdrawal of up to 0.324 mgd (30-day average) from Well 5.
22. Project Sponsor and Facility: Muncy Borough Municipal Authority, Muncy Creek Township, Lycoming County, Pa. Application for groundwater withdrawal of up to 0.324 mgd (30-day average) from Well 6.
23. Project Sponsor and Facility: Muncy Borough Municipal Authority, Muncy Creek Township, Lycoming County, Pa. Application for groundwater withdrawal of up to

0.126 mgd (30-day average) from Well 7.

24. Project Sponsor and Facility: Muncy Borough Municipal Authority, Muncy Creek Township, Lycoming County, Pa. Application for groundwater withdrawal of up to 0.276 mgd (30-day average) from Well 8.
25. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Conservation and Restoration. Project Facility: Cresson Mine Drainage Treatment Plant, Cresson Borough, Cambria County, Pa. Application for groundwater withdrawal from the Argyle Stone Bridge Well as part of a four-well system drawing up to 6.300 mgd (30-day average) from the Gallitzin Shaft and Cresson Mine Pools.
26. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Conservation and Restoration. Project Facility: Cresson Mine Drainage Treatment Plant, Cresson Township, Cambria County, Pa. Application for groundwater withdrawal from the Cresson No. 9 Well as part of a four-well system drawing up to 6.300 mgd (30-day average) from the Gallitzin Shaft and Cresson Mine Pools.
27. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Conservation and Restoration. Project Facility: Cresson Mine Drainage Treatment Plant, Gallitzin Township, Cambria County, Pa. Application for groundwater withdrawal from the Gallitzin Shaft Well 2A (Gallitzin Shaft #2) as part of a four-well system drawing up to 6.300 mgd (30-day average) from the Gallitzin Shaft and Cresson Mine Pools.
28. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Conservation and Restoration. Project Facility: Cresson Mine Drainage Treatment Plant, Gallitzin Township, Cambria County, Pa. Application for groundwater withdrawal from the Gallitzin Shaft Well 2B (Gallitzin Shaft #1) as part of a four-well system drawing up to 6.300 mgd (30-day average) from the Gallitzin Shaft and Cresson Mine Pools.
29. Project Sponsor and Facility: SWN Production Company, LLC (Susquehanna River), Mehoopany Township, Wyoming County, Pa. Application for surface water withdrawal of up to 2.000 mgd (peak day).
30. Project Sponsor and Facility: SWN Production Company, LLC (Susquehanna River), Oakland Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 3.000 mgd (peak day) (Docket No. 20120311).
31. Project Sponsor and Facility: SWN Production Company, LLC (Tunkhannock Creek), Lenox Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 1.218 mgd (peak day) (Docket No. 20120312).

Project Scheduled for Action Involving a Diversion

1. Project Sponsor: Gas Field Specialists, Inc. Project Facility: Wayne Gravel Products Quarry, Ceres Township, McKean County, Pa. Application for into-basin diversion from the Ohio River Basin of up to 1.170 mgd (peak day).

Opportunity To Appear and Comment

Interested parties may appear at the hearing to offer comments to the Commission on any project listed above. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Rules of conduct will be posted on the Commission's Web site, *www.srbc.net*, prior to the hearing for review. The presiding officer reserves the right to modify or supplement such rules at the hearing. Written comments on any project listed above may also be mailed to Mr. Jason Oyler, General Counsel, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110–1788, or submitted electronically through *www.srbc.net/pubinfo/publicparticipation.htm.* Comments mailed or electronically submitted must be received by the Commission on or before February 15, 2016, to be considered.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: December 30, 2015.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2015–33193 Filed 1–5–16; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–15–71]

Petition for Exemption; Summary of Petition Received; Daedalus Drone Services, LLC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before January 26, 2016.

ADDRESSES: Send comments identified by docket number FAA–2015–3273 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the

West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joseph Hexter (202) 267–4606, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 30, 2015.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–3273.

Petitioner: Daedalus Drone Services, LLC.

Section(s) of 14 CFR Affected: 21 subpart H, 45.23(b), 61.113(a), 91.103, 91.109(a), 91.119(b), 91.119(c), 91.121, 91.151(a), 91.203(a) & (b), 91.405(a), 91.409(a)(2), 91.417(a)&(b), 91.7(a) & (b), and 91.9(b)(2).

Description of Relief Sought: Requesting to allow Daedalus Drone Services, LLC to operate small unmanned aircraft systems (sUAS) commercially in airspace regulated by the Federal Aviation Administration (FAA) for the purposes of; aerial photography/videography/surveying, structural/utility inspections/patrolling, real estate marketing/surveying, remote sensing, precision agriculture, public entity support operations, construction site inspection and monitoring, wildlife and forestry monitoring, education and research operations, flare stack inspections, and other flight operations that could be performed safely and more cost effectively with the use of sUAS, at low altitude, with the United States national airspace system as compared to a manned aircraft.

Petitioner requests no restrictions with regard to minimum distances from structures, vessels, and vehicles, and a 200-foot minimum distance from persons not associated with the sUAS operation be granted. Additionally, the petitioner requests no minimum distance with regard to crew for the operation, and operations from a moving platform.

[FR Doc. 2015–33259 Filed 1–5–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Funding Availability for Small Shipyard Grant Program; Application Deadline

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of funding availability.

SUMMARY: Under the Small Shipyard Grant Program, there is currently $4,900,000 available for grants for capital and related improvements to qualified shipyard facilities that will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration. This notice announces the intention of the Maritime Administration to provide grants to small shipyards. Catalog of Federal Domestic Assistance Number: 20.814. Potential applicants are advised that it is expected, based on past experience, that the number of applications will far exceed the funds available and that only a small percentage of applications will be funded. It is anticipated that about 5–10 applications will be selected for funding with an average grant amount of about $1 million.

DATES: The period for submitting grant applications commenced with the enactment of the Consolidated Appropriations Act, 2016, on December 18, 2015. Applications must be received by the Maritime Administration by 5 p.m. EST on February 16, 2016. Applications received later than this time will not be considered. The Maritime Administration intends to award grants no later than April 18, 2016.

ADDRESSES: Grant Applications should be sent to the Associate Administrator for Business and Finance Development, Room W21–318, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Only applicants who comply with all submission requirements described in this Notice will be eligible for award.

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, please contact David M. Heller, Director, Office of Shipyards and Marine Engineering, Maritime Administration, Room W21–318,1200 New Jersey Ave. SE., Washington, DC 20590; phone: (202) 366–5737; or fax: (202) 366–6988.

SUPPLEMENTARY INFORMATION: Grants under the Maritime Administration's Small Shipyard Grant Program may not be used to construct buildings or other physical facilities or to acquire land unless such use is specifically approved by the Maritime Administration as being consistent with, and supplemental to, capital and related infrastructure improvements. Grant funds may also be used for maritime training programs to foster technical skills and operational productivity in communities, the economies of which are related to or dependent upon the maritime industry. Grants for such training programs may only be awarded to ''Eligible Applicants'' as described below, but training programs can be established through vendors to such applicants.

Table of Contents

A. Program Description

The Small Shipyard Grant program was established under Section 3508(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417), codified at 46 U.S.C. 54101. The statute authorizes the Maritime Administrator to provide assistance in the form of grants to make capital and related improvements in small shipyards located in or near maritime communities and to provide training for workers in communities whose economies are related to the maritime industry. The Consolidated Appropriations Act, 2016, appropriated $5,000,000 to the Small Shipyard Grant program to include administrative expenses. The purpose of the program is to foster efficiency, competitive operations, and quality ship construction, repair, and reconfiguration in small shipyards across the United States. The program also seeks to foster projects that would be effective in fostering employee skills and enhancing productivity in communities whose economies are related to or dependent upon the maritime industry.

B. Federal Award Information

Under the Small Shipyard Grant program, there is currently $4,900,000 available for grants for capital and related improvements to qualified shipyard facilities that will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration and for training projects that would be effective in fostering employee skills and enhancing productivity. The Maritime Administration intends to award the full amount of the available

funding through grants to the extent that there are worthy applications. No more than 25 percent of the funds available will be awarded to shipyard facilities in one geographic location that have more than 600 production employees. The Maritime Administration will seek to obtain the maximum benefit from the available funding by awarding grants to as many of the most worthy projects as possible. The Maritime Administration may partially fund applications by selecting parts of the total project. The start date and period of performance for each award will depend on the specific project and must be agreed to by the Maritime Administration.

C. Eligibility Information

To be selected for a Small Shipyard Grant, an applicant must be an Eligible Applicant and the project must be an Eligible Project.

1. Eligible Applicants

Section 54101, Title 46, United States Code, provides that shipyards can apply for grants. The shipyard facility for which a grant is sought must be in a single geographical location, located in or near a maritime community, and may not have more than 1200 production employees. The applicant must be the operating company of the shipyard facility. The shipyard facility must construct, repair, or reconfigure vessels 40 feet in length or greater for commercial or government use, or construct, repair, or reconfigure vessels 100 feet in length or greater for non-commercial vessels.

2. Cost Sharing or Matching

The Federal funds for any eligible project will not exceed 75 percent of the total cost of such project. The remaining portion of the cost shall be paid in funds from or on behalf of the recipient. The applicant is required to submit detailed financial statements and supporting documentation demonstrating how and when such matching requirement is proposed to be funded as described below. The recipient's entire matching requirement must be paid prior to payment of any Federal funds for the project. However, for good cause shown, the Maritime Administrator may waive the matching requirement in whole or in part, if the Administrator determines that a proposed project merits support and cannot be undertaken without a higher percentage of Federal financial assistance.

3. Eligible Projects

Eligible projects include: (1) Capital and related improvement projects that will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration; and (2) training projects that will be effective in fostering employee skills and enhancing productivity. For capital improvement projects, all items proposed for funding must be new and to be owned by the applicant. For both capital improvement and training projects, all project costs, including the recipient's share, must be incurred after the date of the grant agreement.

D. Application and Submission Information

1. Address for Application

Applications must be filed on standard form SF–424, which is available on the Maritime Administration's Web site at *www.marad.dot.gov.*

2. Content and Form of Application Submission

Although the form is available electronically, the application must be filed in hard copy as indicated below due to the amount of information requested. Applicants must submit an original paper copy of the application, one additional paper copy of the application, and two CDs each containing a complete electronic version of the application in PDF format to: Associate Administrator for Business and Finance Development, Room W21–318, Maritime Administration, 1200 New Jersey Ave. SE., Washington, DC 20590. A shipyard facility in a single geographic location applying for multiple projects must do so in a single application. The application for a grant must include all of the following information as an addendum to form SF–424. The information should be organized in sections as described below:

Section 1: A description of the shipyard including (a) Location of the shipyard; (b) a description of the shipyard facilities; (c) years in operation; (d) ownership; (e) customer base; (f) current order book including type of work; (g) vessels delivered (or major projects) over last 5 years; and (h) Web site address, if any.

Section 2: For each project proposed for funding the following must be included:

(a) A comprehensive detailed description of the project, including a statement of whether the project will replace existing equipment, and if so, the disposition of the replaced equipment.

(b) A description of the need for the project in relation to shipyard operations and business plan and an explanation of how the project will fulfill this need.

(c) A quantitative analysis demonstrating how the project will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, or reconfiguration (for capital improvement projects) or how the project will be effective in fostering employee skills and enhancing productivity (for training projects). The analysis should quantify the benefits of the projects in terms of man-hours saved, dollars saved, percentages, or other meaningful metrics. The methodology of the analysis should be explained with assumptions used identified and justified.

(d) A detailed methodology and timeline for implementing the project.

(e) A detailed itemization of the cost of the project together with supporting documentation, including current vendor quotes and estimates of installation costs.

(f) A statement explaining if any elements of the project require action under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) or require any licenses or permits.

(g) A statement describing whether the project will be located in, or will affect, a floodplain. If so, the statement should explain whether a practicable alternate siting location exists which would not be located in, or affect, the floodplain. If alternate siting locations for the project are not practicable, the statement should describe the factors that prevent alternate siting and identify, as appropriate, ways in which the project may be modified to mitigate the long- and short-term adverse impacts associated with the occupancy and modification of a floodplain or the direct or indirect support of floodplain development.

Items 2(a) thru 2(g) should be repeated, in order, for each separate project included in the application.

Section 3: A table with a prioritized list of projects and total cost and Government portion (in dollars) for each.

Section 4: A description of any existing programs or arrangements, if any, which will be used to supplement or leverage the federal grant assistance.

Section 5: Special economic circumstances and conditions, if any, of the maritime community in which the shipyard is located (beyond that which is reflected in the unemployment rate of the county in which the shipyard is located and whether that county is in an economically distressed area, as defined by 42 U.S.C. 3161).

Section 6: Shipyard company officer's certification of each of the following requirements:

(a) That the shipyard facility for which a grant is sought is located in a single geographical location in or near a maritime community and (i) the shipyard facility has no more than 600 production employees, or (ii) the shipyard facility has more than 600 production employees, but less than 1200 production employees (the shipyard officer must certify to one or the other of (i) or (ii));

(b) That the applicant has the authority to carry out the proposed project; and

(c) In accordance with the Department of Transportation's regulation restricting lobbying, 49 CFR part 20, that the applicant has not, and will not, make any prohibited payments out of the requested grant. Certifications are not required to be notarized.

Section 7: Unique identifier of shipyard's parent company (when applicable): Data Universal Numbering System (DUNS + 4 number) (when applicable).

Section 8: The most recent year-end audited, reviewed or compiled financial statements, prepared by a certified public accountant (CPA), according to U.S. generally accepted accounting principles (not tax-based accounting financial statements). If CPA prepared financial statements are not available, provide the most recent financial statement for the entity. Do not provide tax returns.

Section 9: Statement regarding the relationship between applicants and any parents, subsidiaries or affiliates, if any such entity is going to provide a portion of the match.

Section 10: Evidence documenting applicant's ability to make proposed matching requirement (loan agreement, commitment from investors, cash on balance sheet, etc.) and in the times outlined in 2(d) above.

Section 11: Pro-forma financial statements reflecting (a) financial condition period; (b) effect on balance sheet of grant and matching funds (*i.e.* a decrease in cash or increase in debt, additional equity and an increase in fixed assets); and (c) impact on company's projected financial condition (balance sheet) of completion of project, showing that company will have sufficient financial resources to remain in business.

Section 12: Statement whether during the past five years, the applicant or any predecessor or related company has been in bankruptcy or in reorganization under Chapter 11 of the Bankruptcy Code, or in any insolvency or reorganization proceedings, and whether any substantial property of the applicant or any predecessor or related company has been acquired in any such proceeding or has been subject to foreclosure or receivership during such period. If so, give details.

Additional information may be requested as deemed necessary by the Maritime Administration in order to facilitate and complete its review of the application. If such information is not provided, the Maritime Administration may deem the application incomplete and cease processing it.

3. Unique Entity Identifier and System for Award Management (SAM)

The Maritime Administration may not make a Small Shipyard Grant Award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements. Each applicant must be registered in SAM before submitting its application, provide a valid unique entity identifier number in its application, and maintain an active SAM registration with current information throughout the period of the award. Applicants may register with the SAM at *www.SAM.gov.* If an applicant has not fully complied with the requirements by the submission deadline, the application will not be considered.

4. Submission Dates and Times

The period for submitting grant applications commenced with the enactment of the Consolidated Appropriations Act, 2016, on December 18, 2015. Applications must be received by the Maritime Administration by 5 p.m. EST on February 16, 2016. Applications received later than this time will not be considered. The Maritime Administration encourages applicants to submit applications using a carrier and method that will provide proof and time of delivery. The Maritime Administration intends to award grants no later than April 18, 2016.

5. Funding Restrictions

Grants under the Maritime Administration's Small Shipyard Grants Program may not be used to construct buildings or other physical facilities or to acquire land unless such use is specifically approved by the Maritime Administration as being consistent with, and supplemental to, capital and related infrastructure improvements.

6. Other Submission Requirements

Applicants must submit an original paper copy of the application, one additional paper copy of the application, and two compact discs (CDs) each containing a complete electronic version of the application in PDF format to: Associate Administrator for Business and Finance Development, Room W21–318, Maritime Administration, 1200 New Jersey Ave. SE., Washington, DC 20590.

E. Application Review

1. Selection Criteria

This section specifies the criteria that Maritime Administration will use to evaluate and award applications for Small Shipyard grants. The criteria incorporate the statutory eligibility requirements for this program, which are specified in this notice as relevant. There are two categories of selection criteria, ''Primary Selection Criteria'' and ''Secondary Selection Criteria.'' Within each relevant selection criteria, applicants are encouraged to present in measurable terms how the Small Shipyard Grant will lead to transformative change(s) in their maritime community.

i. Primary Selection Criteria—Consistent with the requirements of 46 U.S.C. 54101(b)(1), the Maritime Administration will evaluate the applications on the basis of how effective the project will be in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration (for capital improvement projects) or how effective the project will be in fostering employee skills and enhancing productivity (for training projects).

ii. Secondary Selection Criteria:

(a) Project Need: The overall need for the project in relation to shipyard operations and business plans, with emphasis on projects that impact existing operations and/or product lines rather than expanding the capabilities of the applicant into new capabilities or product lines.

(b) Timing: Project commencement timing and the amount of time required for completion.

(c) Environmental Impact: Whether any project elements require action under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*), including those requiring waterside improvements.

(d) Cost Sharing: State, local, or private fiscal contribution toward the project as compared to the overall Federal share of project costs and the existence of any existing programs or arrangements that may be available to leverage the Federal share.

(e) Demonstrated Financial Capability: Evidence of the applicant's economic ability to meet its stated share of project costs.

(f) County Economics: The unemployment rate of the county in which the applicant is located, and whether that county is an economically-distressed area.

(g) Special Economic Circumstances: Special economic circumstances and conditions of the maritime community in which the shipyard is located.

(h) Geography: The desire for geographic diversity in grant recipients.

2. Review and Selection Process

The Maritime Administration reviews all eligible applications received before the deadline. The Small Shipyard Grant review and selection process consists of three phases: Technical Review, Senior Review, and Final Selection. In the technical review phase, a Review Panel made up of technical experts, including naval architects and engineers from the Maritime Administration's Office of Shipyards and Marine Engineering will review all timely applications. Additional input may be provided to the Review Panel on economic issues by the Office of Financial Approvals, on environmental issues by the Office of Environment, and on legal issues by the Office of Chief Counsel. The Review Panel will assign a rating of ''Highly Recommended,'' ''Recommended,'' or ''Not Recommended'' based on how well the applications align with the selection criteria.

In the second review phase, the Senior Review Team, which is led by the Maritime Administrator, will consider all applications that were rated as Recommended or Highly Recommended, based upon the input of the Review Panel. The Senior Review Team will determine which projects to advance to Secretary as Highly Rated. In the third phase, the Secretary selects from the Highly Rated projects for final award.

F. Federal Award Administration

1. Federal Award Notices

Following the evaluation outlined in Section E, the Maritime Administration will announce awarded projects by posting a list of selected projects at *www.marad.dot.gov/ships-and-shipping/small-shipyard-grants.* Following the announcement, the Maritime Administration will contact the point of contact listed in the SF–424 to initiate development of the grant agreement.

2. Administrative and National Policy Requirements

All awards must be administered pursuant to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards found in 2 CFR part 200, as adopted by the Department of Transportation at 2 CFR part 1201. Additionally, applicable Federal laws, rules, and regulations of the Maritime Administration will apply to the projects that receive Small Shipyard Grant Awards.

Federal wage rate requirements included in Subchapter IV of Chapter 31 of Title 40, United States Code, apply to all projects receiving funds under this program, and apply to all parts of the project, whether funded with Small Shipyard Grant funds, other Federal funds, or non-Federal funds.

3. Reporting

Each applicant selected for a Small Shipyard capital or training grant will be required to work with the Maritime Administration on the development and implementation of a plan to collect information and report on the project's performance with respect to the relevant long-term outcomes that are expected to be achieved through the capital project or training. Performance indicators will not include formal goals or targets, but will require analysis of post-project outcomes, which will inform the Small Shipyard Grant program in working towards best practices, programmatic performance measures, and future decision-making guidelines.

G. Federal Awarding Agency Contacts

For further information concerning this notice please contact David M. Heller, Director, Office of Shipyards and Marine Engineering, Maritime Administration, Room W21–318,1200 New Jersey Ave. SE., Washington, DC 20590; phone: (202) 366–5737; or fax: (202) 366–6988. To ensure applicants receive accurate information about eligibility or the program, you are encouraged to contact the Maritime Administration directly, rather than through intermediaries or third parties, with questions.

H. Other Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information you consider to be a trade secret or confidential commercial or financial information, you should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI);'' (2) mark each affected page ''CBI;'' and (3) highlight or otherwise denote the CBI portions. The Maritime Administration protects such information from disclosure to the extent allowed under applicable law. In the event the Maritime Administration receives a Freedom of Information Act (FOIA) request for the information, the Maritime Administration will follow the procedures described in the Department of Transportation FOIA regulations at 49 CFR 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

Authority: 46 U.S.C. 54101 and the Consolidated Appropriations Act, 2016, Public Law 114–113.

Dated: December 31, 2015.

By Order of the Maritime Administrator:

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2015–33315 Filed 1–5–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2009–52

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Election of Investment Tax Credit in Lieu of Production Tax Credit; Coordination With Department of Treasury Grants for Specified Energy Property in Lieu of Tax Credits.

DATES: Written comments should be received on or before March 7, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Michael Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Kerry Dennis, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Kerry.Dennis@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Election of Investment Tax Credit in Lieu of Production Tax Credit; Coordination with Department of Treasury Grants for Specified Energy Property in Lieu of Tax Credits.

OMB Number: 1545–2145.

Form Number: Notice 2009–52.

Abstract: This notice provides a description of the procedures that taxpayers will be required to follow to make an irrevocable election to take the investment tax credit for energy property under § 48 of the Internal Revenue Code in lieu of the production tax credit under § 45. This election was created by the American Recovery and Reinvestment Act of 2009, H.R. 1, 123 STAT. 115 (the Act), which was enacted on February 17, 2009. This notice includes information about election procedures and the documentation required to complete the election. The notice also discusses the coordination of this irrevocable election with an election to take a Department of Treasury grant for specified energy property.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This notice is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 30, 2015.

Michael Joplin,

Tax Analyst.

[FR Doc. 2015–33276 Filed 1–5–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Loan Guaranty: Specially Adapted Housing Assistive Technology Grant Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The U. S. Department of Veterans Affairs (VA) announces the availability of funds for the Specially Adapted Housing Assistive Technology (SAHAT) Grant Program for fiscal year (FY) 2016. The objective of the grant is to encourage the development of new assistive technologies for specially adapted housing.

This Notice is intended to provide applicants with the information necessary to apply for the SAHAT Grant Program. Registration will be available at *www.Grants.gov.* VA strongly recommends referring to the Loan Guaranty—Specially Adapted Housing Assistive Technology Grant Program final rule (38 CFR part 36) in conjunction with this Notice. The registration process described within this Notice applies only to applicants who will register to submit project applications for FY 2016 SAHAT Grant Program funds.

DATES: Applications for the SAHAT Grant Program must be submitted via *www.Grants.gov* by 11:59 p.m. Eastern Time on February 29, 2016. The SAHAT Grant Program application package for funding opportunity, VA–SAHAT–16–01, is available through *www.Grants.gov* and is listed as VA-Specially Adapted Housing Assistive Technology Grant Program.

Applications may not be sent by mail, email or facsimile. All application materials must be in a format compatible with the *www.Grants.gov* application submission tool. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected. Technical assistance with the preparation of an initial SAHAT Grant Program application is available by contacting the program official listed below.

FOR FURTHER INFORMATION CONTACT: Robert Mims (Program Manager), Specially Adapted Housing Program, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–8816 (not a toll-free number).

Full Text of Announcement: This Notice is divided into eight sections. Section I provides a summary of and background information on the SAHAT Grant Program as well as the statutory authority, desired outcomes, funding priorities, definitions and delegation of authority. Section II provides award information, funding availability, and the anticipated start date of the SAHAT Grant Program. Section III provides detailed information on eligibility and the threshold criteria for submitting an application. Section IV provides detailed application and submission information, including how to request an application, application content, and submission dates and times. Section V describes the review process, scoring criteria, and selection process. Sections VI provides award administration information such as award notices and reporting requirements. Section VII provides agency contacts. Section VIII provides additional information related to the SAHAT Grant Program. This Notice includes citations from 38 CFR part 36, which applicants and stakeholders are expected to read to increase their knowledge and understanding of the SAHAT Grant Program.

SUPPLEMENTARY INFORMATION:

I. Program Description

A. Summary

Pursuant to the Veterans' Benefit Act of 2010, the Secretary of Veterans Affairs (Secretary), through the Loan Guaranty Service (LGY) of the Veterans Benefits Administration (VBA), is authorized to provide grants of financial assistance to develop new assistive technology. The objective of the grant, known as the Specially Adapted Housing Assistive Technology (SAHAT) Grant Program, is to encourage the development of new assistive technologies for adapted housing.

B. Background

LGY currently administers the Specially Adapted Housing (SAH) Grant Program. Through the SAH program, LGY provides funds to eligible Veterans and Servicemembers with certain service-connected disabilities to help purchase or construct an adapted home, or modify an existing home, to allow them to live more independently. Currently, most SAH adaptations involve structural modifications such as ramps, wider hallways and doorways, roll-in showers and other accessible bathroom features, etc. The Department of Veterans Affairs (VA) acknowledges there are many emerging technologies that could improve home adaptions or otherwise enhance a Veteran's or Servicemember's ability to live independently, such as voice-recognition and voice-command operations, living environment controls, and adaptive feeding equipment. Therefore, VA has defined ''new assistive technology'' as an advancement that the Secretary determines could aid or enhance the ability of a Veteran or Servicemember to live in an adapted home.

C. Statutory Authority

Public Law 111–275, the Veterans' Benefits Act of 2010 (the Act), was enacted on October 13, 2010. Section 203 of the Act amended chapter 21, title 38, United States Code, to establish the SAHAT Grant Program. The Act authorizes VA to provide grants of up to $200,000 per fiscal year, through September 30, 2016, to a ''person or entity'' for the development of specially adapted housing assistive technologies and limits to $1 million the aggregate amount of such grants VA may award in any fiscal year.

Reference: 38 U.S.C. 2108 and 38 CFR 36.4412

D. Desired Outcomes and Funding Priorities

Grantees will be expected to leverage grant funds to develop new assistive technologies for specially adapted housing. Pursuant to 36 CFR 36.4412, the Secretary may establish scoring priorities based on the specific needs of Veterans and Servicemembers. For FY 2016, the Secretary has established innovation and unmet needs, as described in scoring criteria 1 and 2 contained in Section V(A) of this announcement, as top priorities. Additional information regarding how these priorities will be scored is contained in Section V(A) of this announcement.

E. Definitions

Definitions of terms used in the SAHAT Grant Program are contained in 38 CFR 36.4412(b).

F. Delegation of Authority

Pursuant to 38 CFR 36.4412(i), each VA employee appointed to or lawfully fulfilling any of the following positions is hereby delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Secretary with respect to the SAHAT Grant Program authorized by 38 U.S.C. 2108:

1. Under Secretary for Benefits
2. Deputy Under Secretary for Economic Opportunity
3. Director, Loan Guaranty Service
4. Deputy Director, Loan Guaranty Service

II. Award Information

A. Funding Availability

The aggregate amount of assistance VA may award in any fiscal year is limited to $1,000,000. This funding will be provided as an assistance agreement in the form of grants. The number of assistance agreements VA will fund as a result of this announcement will be based on the quality of the technology grant applications received and the availability of funding. However, the maximum amount of assistance a technology grant applicant may receive in any fiscal year is limited to $200,000.

B. Additional Funding Information

Funding for these projects is not guaranteed and is subject to the availability of funds and the evaluation of technology grant applications based on the criteria in this announcement. In appropriate circumstances, VA reserves the right to partially fund technology grant applications by funding discrete portions or phases of proposed projects. If VA decides to partially fund a technology grant application, it will do so in a manner that does not prejudice any application or affect the basis upon which the application, or portion thereof, was evaluated and selected for award, and therefore maintains the integrity of the competition and selection process. Award of funding through this competition is not a guarantee of future funding. The SAHAT Grant Program is administered annually and does not guarantee subsequent awards. Renewal grants to provide new assistive technology will not be considered under this announcement.

C. Start Date

The anticipated start date of grants funded under this announcement is April 4, 2016.

III. Eligibility Information

A. Eligible Applicants

As authorized by 38 U.S.C. 2108, the Secretary may provide a grant to a ''person or entity'' for the development of specially adapted housing assistive technologies. In order to foster competition and best serve the needs of Veterans and Servicemembers, VA is placing no restrictions on the types of eligible entities, except as noted in Section III(C) of this announcement.

B. Cost Sharing or Matching

There is no cost sharing, matching, or cost participation for the SAHAT Grant Program. However, leveraged resources will be considered as an evaluation criterion during the application review process (see scoring criterion 6 in Section V of this announcement). Leveraged resources are not included in the approved budget (outlined in the 424A) for the project and need not be an eligible and allowable cost under the grant. Any form of proposed leveraging that is evaluated under Section V scoring criteria must be included in the application and the application must describe how the technology grant applicant will obtain the leveraged resources and what role VA funding will play in the overall project.

C. Threshold Criteria

As stated in Section III(A), VA is placing no restrictions on the types of eligible entities. However, all technology grant applicants and applications must meet the threshold criteria set forth below. Failure to meet any of the following threshold criteria in the application will result in the automatic disqualification of the application for funding consideration. Ineligible participants will be notified within 30 days of the finding of disqualification for award consideration based on the following threshold criteria:

1. Projects funded under this announcement must involve new assistive technologies that the Secretary determines could aid or enhance the ability of a Veteran or Servicemember to live in an adapted home.

2. Projects funded under this announcement must not be used for the completion of work which was to have been completed under a prior grant.

3. Applications in which the technology grant applicant is requesting

assistance funds in excess of $200,000 will not be reviewed.

4. Applications that do not substantially comply with the application and submission information provided in Section IV of this announcement will be rejected.

5. Applications submitted via mail, email, or facsimile will not be reviewed.

6. Applications must be received through *www.Grants.gov,* as specified in Section IV of this announcement, on or before the application deadline published in Section IV of this announcement. Applications received through *www.Grants.gov* after the application deadline will be considered late and will not be reviewed.

7. Technology grant applicants that have an outstanding obligation to the Federal Government that is in arrears or have an overdue or unsatisfactory response to an audit will be deemed ineligible.

8. Technology grant applicants in default by failing to meet the requirements for any previous Federal assistance will be deemed ineligible.

9. Applications submitted by entities deemed ineligible will not be reviewed.

All technology grant recipients, including individuals and entities formed as for-profit entities, will be subject to the rules on Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-profit Organizations, as found at 2 CFR part 200. Where the Secretary determines that 2 CFR part 200 is not applicable or where the Secretary determines that additional requirements are necessary due to the uniqueness of a situation, the Secretary will apply the same standard applicable to exceptions under 2 CFR 200.102.

IV. Application and Submission Information

A. Address To Request Application Package

Technology grant applicants may download the application package from *www.Grants.gov*. Questions regarding the application process should be referred to the program official: Robert Mims (Program Manager), Specially Adapted Housing Program, *Robert.Mims@va.gov*, (202) 632–8816 (This is not a toll-free number.)

B. Content and Form of Application Submission

The SAHAT Grant Program application package provided at *www.Grants.gov* (Funding Opportunity Number: VA–SAHAT–16–01) contains electronic versions of the application forms that are required. Additional attachments to satisfy the required application information may be provided. All technology grant applications must consist of the following:

1. Standard Forms (SF) 424, 424A, and 424B: The SF–424, SF–424A, and SF–424B require general information about the applicant and proposed project. The project budget should be described in SF–424A. Please do not include leveraged resources in SF–424A.

2. Applications: In addition to the forms listed above, each technology grant application must include the following information:

a. A project description, including the goals and objectives of the project, what the project is expected to achieve, and how the project will benefit Veterans and Servicemembers.

b. An estimated schedule including the length of time (not to exceed the grant cycle) needed to accomplish tasks and objectives for the project.

c. A description of what the project proposes to demonstrate and how this new technology will aid or enhance the ability of Veterans and Servicemembers to live in an adapted home.

d. Each technology grant applicant is responsible for ensuring that the application addresses each of the scoring criteria listed in Section V(A) of this announcement.

C. DUNS Number and SAM

Each technology grant applicant, unless the applicant is an individual or Federal awarding agency that is excepted from these requirements under 2 CFR 25.110(b) or (c), or has an exception approved by VA under 2 CFR 25.110(d), is required to:

1. Be registered in the System for Award Management (SAM) prior to submitting an application;

2. Provide a valid Dun and Bradstreet Universal Numbering System (DUNS) number in the application; and

3. Continue to maintain an active SAM registration with current information at all times during which the technology grant applicant has an active Federal award or an application under consideration by VA.

VA will not make an award to an applicant until the applicant has complied with all applicable DUNS and SAM requirements and, if the applicant has not fully complied with the requirements by the time VA is ready to make an award, VA will determine the applicant is not qualified to receive a Federal award and will use this determination as a basis for making the award to another applicant.

D. Submission Dates and Times

Applications for the SAHAT Grant Program must be submitted via *www.Grants.gov* to be transmitted to VA by 11:59 p.m. Eastern Time on February 29, 2016. Submissions received after this application deadline will be considered late and will not be reviewed or considered. Submissions via email, mail, or fax will not be accepted.

Applications submitted via *www.Grants.gov* must be submitted by an individual registered with *www.Grants.gov* and authorized to sign applications for Federal assistance. For more information and to complete the registration process, visit *www.Grants.gov.* Technology grant applicants are responsible for ensuring that the registration process does not hinder timely submission of the application.

It is the responsibility of grant applicants to ensure a full and complete application is submitted via *www.Grants.gov.* Applicants are encouraged to periodically review the ''Version History Tab'' of the funding opportunity announcement in *www.Grants.gov* to determine if any modifications have been made to the funding announcement and/or opportunity package. Upon initial download of the funding opportunity package, applicants will be asked to provide an email address to be notified of any changes to the opportunity package before the closing date. Providing your email address will allow *www.Grants.gov* to send you an email message in the event this funding opportunity package is changed and/or republished on *www.Grants.gov* prior to the posted closing date.

E. Confidential Business Information

It is recommended that confidential business information (CBI) not be included in your application. However, if CBI is included in your application, it will be handled by VA in accordance with 2 CFR 200. Applicants must clearly indicate which portion(s) of their application they are claiming as CBI. VA will evaluate such claims in accordance with 2 CFR 200. If no claim is made, VA is not required to make an inquiry of the applicant.

F. Intergovernmental Review

This section is not applicable to the SAHAT Grant Program.

G. Funding Restrictions

The SAHAT Grant Program does not allow reimbursement of pre-award costs.

V. Application Review Information

Each eligible proposal (based on the Section III threshold eligibility review) will be evaluated according to the criteria established by the Secretary and provided as described below in Section A.

A. Scoring Criteria

The Secretary will score technology grant applications based on the scoring criteria listed below. As indicated in Section I of this announcement, the Secretary is placing most emphasis on criteria 1 and 2 listed below. The establishment of priorities does not establish new scoring criteria but is designed to assist technology grant applicants in understanding how scores will be weighted. Although there is not a cap on the maximum aggregate score possible, a technology grant application must receive a minimum aggregate score of 70 to be considered for a technology grant. The scoring criteria and maximum points are as follows:

1. A description of how the new assistive technology is innovative (up to 50 points);

2. An explanation of how the new assistive technology will meet a specific, unmet need among eligible individuals (up to 50 points);

3. An explanation of how the new assistive technology is specifically designed to promote the ability of eligible individuals to live more independently (up to 30 points);

4. A description of the new assistive technology's concept, size, and scope (up to 30 points);

5. An implementation plan with major milestones for bringing the new assistive technology into production and to the market. Such milestones must be meaningful and achievable within a specific timeframe (up to 30 points); and

6. An explanation of what uniquely positions the technology grant applicant in the marketplace. This can include a focus on characteristics such as the economic reliability of the technology grant applicant, the technology grant applicant's status as a minority or veteran-owned business, or other characteristics that the technology grant applicant wants to include to show how it will help protect the interests of, or further the mission of, VA and the program (up to 20 points).

B. Review and Selection Process

Eligible applications will be evaluated by a five-person review panel comprised of VA employees. Based on this evaluation, the review panel will score applications using the scoring criteria provided in Section V(A), with most emphasis being placed on scoring criteria 1 and 2. The review panel will then rank those applications that receive a minimum aggregate score of 70 in order from highest to lowest. The delegated official will select the highest ranked application(s) based on, and subject to, the availability of funds.

VI. Award Administration Information

A. Award Notices

Although subject to change, the SAHAT Grant Program Office expects to announce grant recipient(s) by April 1, 2016. Prior to executing any funding agreement, VA will contact successful applicant(s), make known the amount of proposed funding, and verify the applicant's desire to receive the funding. In advance of grant award, successful applicants will be required to complete the VA Form 26–0967, which is a ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.'' Any communication between the SAHAT Grant Program Office and successful applicants prior to the issuance of an award notice is not authorization to begin project activities. Once VA verifies that the grant applicant is still seeking funding, VA will issue a signed and dated award notice. The award notice will be sent by U.S. mail to the organization listed on the SF–424.

Unsuccessful applicants will be notified by letter, sent by U.S. mail to the organization listed on the SF–424.

B. Administrative and National Policy Requirements

This section is not applicable to the SAHAT Grant Program.

C. Reporting

VA places great emphasis on the responsibility and accountability of grantees. Grantees must agree to cooperate with any Federal evaluation of the program and provide the following:

1. Quarterly Progress Reports: These reports will be submitted electronically and outline how grant funds were used, describe program progress, and describe any barriers and measurable outcomes.

2. Quarterly Financial Reports: These reports will be submitted electronically using SF–425.

3. Grantee Closeout Report: This final report will be submitted electronically and will detail the assistive technology developed. The Closeout Report must be submitted to the SAHAT Grant Program Office no later than September 30, 2017.

D. Disputes

Competition-related disputes associated with this announcement will be resolved in accordance with 2 CFR 200, *et seq.*

VII. Agency Contact(s)

For additional general information about this announcement contact the program official: Robert Mims (Program Manager), Specially Adapted Housing Program, *Robert.Mims@va.gov,* (202) 632–8816 (This is not a toll-free number.)

If mailing correspondence, other than application material, please send to: Loan Guaranty Service, VA Central Office, Attn: Robert Mims (262), 810 Vermont Avenue NW., Washington, DC 20420.

All correspondence with VA concerning this announcement should reference the funding opportunity title and funding opportunity number listed at the top of this solicitation. Once the announcement deadline has passed, VA staff may not discuss this competition with applicants until the application review process has been completed.

VIII. Other Information

The SAHAT Grant Program is a new program. 38 U.S.C. 2108 authorizes VA to provide grants for the development of new assistive technologies through September 30, 2016. Additional information related to the SAH program administered by LGY is available at: *http://www.benefits.va.gov/homeloans/adaptedhousing.asp*

The SAHAT Grant is not a Veterans' benefit. As such, the decisions of the Secretary are final and not subject to the same appeal rights as decisions related to Veterans' benefits. The Secretary does not have a duty to assist technology grant applicants in obtaining a grant.

Grantees will receive payments electronically through the U.S. Department of Health and Human Services Payment Management System.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Nabors II, Chief of Staff, approved this document on December 30, 2015, for publication.

Dated: December 30, 2015.

William F. Russo,

Director, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2015–33190 Filed 1–5–16; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 81 Wednesday,

No. 3 January 6, 2016

Part II

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Energy Conservation Standards for Ceiling Fan Light Kits; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket Number EERE–2012–BT–STD–0045]

RIN 1904–AC87

Energy Conservation Program: Energy Conservation Standards for Ceiling Fan Light Kits

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

ACTION: Final rule.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including ceiling fan light kits (CFLKs). EPCA also requires the U.S. Department of Energy (DOE) to periodically determine whether more-stringent standards would be technologically feasible and economically justified, and would save a significant amount of energy. In this final rule, DOE is adopting more-stringent energy conservation standards for CFLKs. It has determined that the amended energy conservation standards for these products would result in significant conservation of energy, and are technologically feasible and economically justified.

DATES: The effective date of this rule is March 7, 2016. Compliance with the amended standards established for CFLKs in this final rule is required on and after January 7, 2019.

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: *http://www.regulations.gov/#!docketDetail;D=EERE-2012-BT-STD-0045*. The *www.regulations.gov* Web page will contain instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, 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) 586–7796. Email: *ceiling_fan_light_kits@ee.doe.gov*.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Synopsis of the Final Rule

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles.[2] These products include CFLKs, the subject of this document.

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) EPCA also provides that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards. (42 U.S.C. 6295(m)(1))

In accordance with these and other statutory provisions discussed in this document, DOE is adopting amended energy conservation standards for CFLKs. The amended standards, which are expressed in minimum lumen output per watt (lm/W), are shown in Table I.1. These standards apply to all products listed in Table I.1 and manufactured in, or imported into, the United States starting on January 7, 2019.

TABLE I.1—ENERGY CONSERVATION STANDARDS FOR CEILING FAN LIGHT KITS

[Compliance starting January 7, 2019]

Product type	Lumens [1]	Minimum efficacy (lm/W)
All CFLKs	<120	50
	≥120	$74.0 - 29.42 \times 0.9983^{lumens}$

[1] Use the lumen output for each basic model of lamp packaged with the basic model of CFLK or each basic model of integrated SSL in the CFLK basic model to determine the applicable standard.

A. Benefits and Costs to Consumers

Table I.2 presents DOE's evaluation of the economic impacts of the adopted standards on consumers of CFLKs, as measured by the average life-cycle cost (LCC) savings and the simple payback period (PBP).[3] The average LCC savings are positive for the product class, and the PBP is less than the average lifetime of CFLKs, which is estimated to be 13.8 years (see section IV.F.6).

TABLE I.2—IMPACTS OF AMENDED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF CFLKS

Product class	Average LCC savings (2014$)	Simple payback period (years)
Residential Sector		
All CFLKs	24.3	1.2
Commercial Sector		
All CFLKs	53.4	0.3

DOE's analysis of the impacts of the adopted standards on consumers is described in section IV.F of this document.

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the reference year through the end of the analysis period (2015 to 2048). Using a real discount rate of 7.4 percent, DOE estimates that the INPV for manufacturers of CFLKs in the no-new-standards case is $174.9 million in 2014$. Under the adopted standards, DOE expects that manufacturers may lose up to 3.7

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (Apr. 30, 2015).

[3] The average LCC savings are measured relative to the efficacy distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of standards (see section IV.F.10). The simple PBP, designed to compare specific efficacy levels, is measured relative to the least efficient model on the market (see section IV.C.3).

percent of this INPV, which is approximately $6.4 million. Additionally, based on DOE's interviews with the manufacturers of CFLKs, DOE does not expect significant impacts on manufacturing capacity or loss of employment for the industry as a whole to result from the standards for CFLKs.

DOE's analysis of the impacts of the adopted standards on manufacturers is described in section IV.J of this document.

C. National Benefits and Costs [4]

DOE's analyses indicate that the adopted energy conservation standards for CFLKs would save a significant amount of energy. Relative to the case where no amended energy conservation standard is set (hereinafter referred to as the ''no-new-standards case''), the lifetime energy savings for CFLKs purchased in the 30-year period that begins in the anticipated year of compliance with the amended standards (2019–2048), amount to 0.049 quadrillion Btu (quads).[5] This represents a savings of 3.6 percent relative to the energy use of these products in the no-new-standards case.

The cumulative net present value (NPV) of total consumer costs and savings of the standards for CFLKs ranges from $0.50 billion (at a 7-percent discount rate) to $0.66 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for CFLKs purchased in 2019–2048.

In addition, the standards for CFLKs are projected to yield significant environmental benefits. DOE estimates that the standards would result in cumulative greenhouse gas emission reductions (over the same period as for energy savings) of 3.4 million metric tons (Mt) [6] of carbon dioxide (CO_2), 2.6 thousand tons of sulfur dioxide (SO_2), 5.2 tons of nitrogen oxides (NO_X), 11.2 thousand tons of methane (CH_4), 0.05 thousand tons of nitrous oxide (N_2O), and 0.01 tons of mercury (Hg).[7] The cumulative reduction in CO_2 emissions through 2030 amounts to 3.1 Mt, which is equivalent to the emissions resulting from the annual electricity use of almost 400 thousand homes.

The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 (otherwise known as the ''Social Cost of Carbon'', or SCC) developed by a Federal interagency working group.[8] The derivation of the SCC values is discussed in section IV.L. Using discount rates appropriate for each set of SCC values (see Table I.3), DOE estimates that the net present monetary value of the CO_2 emissions reduction (not including CO_2 equivalent emissions of other gases with global warming potential) is between $0.03 billion and $0.40 billion, with a value of $0.13 billion using the central SCC case represented by $40.0/t in 2015. DOE also estimates that the net present monetary value of the NO_X emissions reduction to be $0.02 billion at a 7-percent discount rate, and $0.03 billion at a 3-percent discount rate.[9]

Table I.3 summarizes the national economic benefits and costs expected to result from the adopted standards for CFLKs.

TABLE I.3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF AMENDED ENERGY CONSERVATION STANDARDS FOR CFLKS *

Category	Present value (billion 2014$)	Discount rate (%)
Benefits		
Consumer Operating Cost Savings	0.56	7
	0.73	3
CO_2 Reduction Value ($12.2/t case) **	0.03	5
CO_2 Reduction Value ($40.0/t case) **	0.13	3
CO_2 Reduction Value ($62.3/t case) **	0.20	2.5
CO_2 Reduction Value ($117/t case) **	0.40	3
NO_X Reduction Monetized Value †	0.02	7
	0.03	3
Total Benefits ††	0.71	7
	0.89	3
Costs		
Consumer Incremental Installed Costs	0.06	7

[4] All monetary values in this section are expressed in 2014 dollars and, where appropriate, are discounted to 2015 unless explicitly stated otherwise. Energy savings in this section refer to the full-fuel-cycle savings (see section IV.H for discussion).

[5] A quad is equal to 10^{15} British thermal units (Btu). The quantity refers to full-fuel-cycle (FFC) energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.

[6] A metric ton is equivalent to 1.1 short tons. Results for NO_X and Hg are presented in short tons.

[7] DOE calculated emissions reductions relative to the no-new-standards-case, which reflects key assumptions in the *Annual Energy Outlook 2015* (*AEO 2015*) Reference case, which generally represents current legislation and environmental regulations for which implementing regulations were available as of October 31, 2014.

[8] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* Interagency Working Group on Social Cost of Carbon, United States Government. May 2013; revised November 2013. Available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf.*

[9] DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,'' published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf.*) See section IV.L.2 for further discussion. Note that the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electricity Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.,* 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.,* 2011), the values would be nearly two-and-a-half times larger. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emissions, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule. Note that DOE is currently investigating valuation of avoided SO_2 and Hg emissions.

TABLE I.3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF AMENDED ENERGY CONSERVATION STANDARDS FOR CFLKS *—Continued

Category	Present value (billion 2014$)	Discount rate (%)
	0.07	3
Net Benefits		
Including CO_2 and NO_X Reduction Monetized Value ††	0.65 0.82	7 3

* This table presents the costs and benefits associated with CFLKs shipped in 2019–2048. These results include benefits to consumers which accrue after 2048 from the products purchased in 2019–2048. The costs account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule.

** The CO_2 values represent global monetized values of the SCC, in 2014$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor. The value for NO_X is the average of high and low values found in the literature.

† The $/ton values used for NO_X are described in section IV.L. DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,'' published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf.*) See section IV.L.2 for further discussion. Note that the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.,* 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.,* 2011), the values would be nearly two-and-a-half times larger. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emissions, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to average SCC with 3-percent discount rate ($40.0/t case).

The benefits and costs of the adopted standards, for CFLKs sold in 2019–2048, can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are the sum of (1) the national economic value of the benefits in reduced operating costs, minus (2) the increases in product purchase prices and installation costs, plus (3) the value of the benefits of CO_2 and NO_X emission reductions, all annualized.[10]

Although the value of operating cost savings and CO_2 emission reductions are both important, two issues are relevant. First, the national operating cost savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, whereas the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of CFLKs shipped in 2019–2048. Because CO_2 emissions have a very long residence time in the atmosphere,[11] the SCC values in future years reflect future CO_2-emissions impacts that continue beyond 2100.

Estimates of annualized benefits and costs of the adopted standards are shown in Table I.4. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction, (for which DOE used a 3-percent discount rate along with the SCC series that has a value of $40.0/t in 2015),[12] the estimated cost of the standards in this rule is $6.0 million per year in increased equipment costs, while the estimated annual benefits are $55 million in reduced equipment operating costs, $7.5 million in CO_2 reductions, and $1.7 million in reduced NO_X emissions. In this case, the net benefit amounts to $59 million per year. Using a 3-percent discount rate for all benefits and costs and the SCC series has a value of $40.0/t in 2015, the estimated cost of the standards is $4.0 million per year in increased equipment costs, while the estimated annual benefits are $41 million in reduced operating costs, $7.5 million in CO_2 reductions, and $1.4 million in reduced NO_X emissions. In this case, the net benefit amounts to $46 million per year.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS FOR CFLKS *

	Discount rate	(million 2014$/year)		
		Primary estimate	Low net benefits estimate	High net benefits estimate
Benefits				
Consumer Operating Cost Savings	7%	55	36	59.
	3%	41	24	43.
CO_2 Reduction Value ($12.2/t case) **	5%	3	1	3.

[10] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2015, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2020 or 2030), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table I.3. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

[11] The atmospheric lifetime of CO_2 is estimated of the order of 30–95 years. Jacobson, MZ (2005), ''Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,' '' *J. Geophys. Res.* 110. pp. D14105.

[12] DOE used a 3-percent discount rate because the SCC values for the series used in the calculation were derived using a 3-percent discount rate (see section IV.L).

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS FOR CFLKS *—Continued

	Discount rate	(million 2014$/year)		
		Primary estimate	Low net benefits estimate	High net benefits estimate
CO_2 Reduction Value ($40.0/t case) **	3%	7	4	8.
CO_2 Reduction Value ($62.3/t case) **	2.5%	11	5	11.
CO_2 Reduction Value ($117/t case) **	3%	22	11	23.
NO_X Reduction Value †	7%	1.7	1.0	4.0.
	3%	1.4	0.7	3.4.
Total Benefits ††	7% plus CO_2 range	60 to 79	38 to 48	66 to 86.
	7%	65	40	71.
	3% plus CO_2 range	45 to 64	26 to 36	50 to 70.
	3%	50	28	55.
Costs				
Consumer Incremental Product Costs	7%	6.0	3.5	6.4.
	3%	4.0	2.3	4.2.
Net Benefits				
Total ††	7% plus CO_2 range	54 to 73	34 to 44	59 to 80.
	7%	59	37	65.
	3% plus CO_2 range	41 to 60	24 to 33	45 to 66.
	3%	46	26	51.

* This table presents the annualized costs and benefits associated with CFLKs shipped in 2019–2048. These results include benefits to consumers which accrue after 2048 from the CFLKs purchased from 2019–2048. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary Estimate assumes the reference case electricity prices and housing starts from *AEO 2015* and decreasing product prices for light-emitting diode (LED) CFLKs, due to price learning. The Low Benefits Estimate uses the Low Economic Growth electricity prices and housing starts from *AEO 2015* and a faster decrease in product prices for LED CFLKs. The High Benefits Estimate uses the High Economic Growth electricity prices and housing starts from *AEO 2015* and the same product price decrease for LED CFLKs as in the Primary Estimate. The methods used to derive projected price trends are explained in section IV.G.

** The CO_2 values represent global monetized values of the SCC, in 2014$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† The $/ton values used for NO_X are described in section IV.L. DOE estimated the monetized value of NOx emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,'' published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf.*) See section IV.L.2 for further discussion. For DOE's Primary Estimate and Low Net Benefits Estimate, the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.,* 2009). For DOE's High Net Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.,* 2011), which are nearly two-and-a-half times larger than those from the ACS study. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emissions, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with 3-percent discount rate ($40.0/t case). In the rows labeled ''7% plus CO_2 range'' and ''3% plus CO_2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

DOE's analysis of the national impacts of the adopted standards is described in sections IV.H, IV.K and IV.L of this document.

D. Conclusion

Based on the analyses culminating in this final rule, DOE found the benefits to the nation of the standards (energy savings, consumer LCC savings, positive NPV of consumer benefit, and emission reductions) outweigh the burdens (loss of INPV and LCC increases for some users of these products). DOE has concluded that the standards in this final rule represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in significant conservation of energy.

II. Introduction

The following section briefly discusses the statutory authority underlying this final rule, as well as some of the relevant historical background related to the establishment of standards for CFLKs.

A. Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (codified as 42 U.S.C. 6291–6309) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances (collectively referred to as ''covered products''), which includes the CFLKs that are the subject of this rulemaking. (42 U.S.C. 6295(ff)) EPCA, as amended, prescribed energy conservation standards for these products (42 U.S.C. 6295(ff)), and authorized DOE to consider whether to amend these standards. Under 42 U.S.C. 6295(m), DOE must also periodically review its already established energy conservation standards for a covered product.

Pursuant to EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. The Federal Trade Commission (FTC) is primarily responsible for labeling, and DOE implements the remainder of the program. Subject to certain criteria and conditions, DOE is required to develop

test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(o)(3)(A) and (r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for CFLKs appear at title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendices V and V1 and 10 CFR 430.23(x).

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including CFLKs. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and (3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)) Moreover, DOE may not prescribe a standard: (1) For certain products, including CFLKs, if no test procedure has been established for the product, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of products that has the same function or intended use if DOE determines that products within such group: (A) Consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d)).

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (EISA 2007), Public L.aw 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE published a final rule amending test procedures for CFLKs on December 24, 2015 (hereafter ''CFLK TP final rule''). 80 FR 80209. In the CFLK TP final rule, DOE specified that CFLKs do not consume power in off mode. Further, the CFLK TP final rule stated that the energy use in standby mode is attributed to the ceiling fan to which the CFLK is attached, and accounted for in the ceiling fan efficiency metric. 80 FR 80209, 80220 (December 24, 2015). Thus, DOE's test procedures and standards for CFLKs address energy consumption only in active mode, as do the amended standards adopted in this final rule.

B. Background

1. Current Standards

The current energy conservation standards apply to CFLKs with medium screw base and pin-based sockets manufactured on and after January 1, 2007, and CFLKs with all other socket types manufactured on or after January 1, 2009. 70 FR 60407, 60413 (October 18, 2005). These standards are set forth in DOE's regulations at 10 CFR 430.32(s).

2. History of Standards Rulemaking for CFLKs

Current energy conservation standards for CFLKs (42 U.S.C. 6295(ff)) were established by the Energy Policy

Act of 2005 (EPAct 2005) (Title I, Subtitle C, section 135(c)), which were later amended by EPCA. Specifically, EPAct 2005 established individual energy conservation standards for three groups of CFLKs: (1) Those having medium screw base sockets (hereafter ''Medium Screw Base product class''); (2) those having pin-based sockets for fluorescent lamps (hereafter ''Pin-Based product class''); and (3) any CFLKs other than those included in the Medium Screw Base product class or the Pin-Based product class (hereafter ''Other Base Type product class''). (42 U.S.C. 6295(ff)(2)–(4)) In a technical amendment published on October 18, 2005, DOE codified the EPCA requirements for the Medium Screw Base and Pin-Based product classes. 70 FR 60413 EPAct 2005 also specified that if DOE did not issue a final rule on energy conservation standards for Other Base Type product class CFLKs by January 1, 2007, a 190 W limit would apply to those products. (42 U.S.C. 6295(ff)(4)(C)) Because DOE did not issue a final rule on standards for CFLKs by that date, DOE published a technical amendment that codified the statute's requirements for Other Base Type product class CFLKs, which applied to Other Base Type product class CFLKs manufactured on or after January 1, 2009. 72 FR 1270 (Jan. 11, 2007). In another technical amendment final rule, DOE added a provision that CFLKs with sockets for pin-based fluorescent lamps must be packaged with lamps to fill all sockets. 74 FR 12058 (Mar. 3, 2009). (42 U.S.C. 6295(ff)(4)(C)(ii)) These standards for CFLKs are codified at 10 CFR 430.32(s)(2)–(4).

To initiate the rulemaking cycle to consider amended energy conservation standards for ceiling fans and CFLKs, on March 15, 2013, DOE published a notice announcing the availability of the framework document, ''Energy Conservation Standards Rulemaking Framework Document for Ceiling Fans and Ceiling Fan Light Kits,'' and a public meeting to discuss the proposed analytical framework for the rulemaking. 76 FR 56678. DOE also posted the framework document on its Web site, in which DOE described the procedural and analytical approaches DOE anticipated using to evaluate the establishment of energy conservation standards for ceiling fans and CFLKs.

DOE held the public meeting for the framework document on March 22, 2013 to present the framework document, describe the analyses DOE planned to conduct during the rulemaking, seek comments from stakeholders on these subjects, and inform stakeholders about and facilitate their involvement in the rulemaking. At the public meeting, and during the comment period, DOE received many comments that both addressed issues raised in the framework document and identified additional issues relevant to this rulemaking.

DOE published a preliminary analysis for the CFLK energy conservation standards rulemaking in the **Federal Register** on October 31, 2014. 78 FR 13563. DOE posted the preliminary analysis, as well as the complete preliminary technical support document (TSD), on its Web site. The preliminary TSD includes the results of the following DOE preliminary analyses: (1) Market and technology assessment; (2) screening analysis; (3) engineering analysis; (4) energy use analysis; (5) product price determination; (6) LCC and PBP analyses; (7) shipments analysis; (8) national impact analysis (NIA); and (9) preliminary manufacturer impact analysis (MIA).

In August 2015, DOE published a notice of proposed rulemaking (NOPR) in the **Federal Register** proposing amended energy conservation standards for CFLKs. 80 FR 48624 (August 13, 2015). In conjunction with the NOPR, DOE also published on its Web site the complete TSD for the proposed rule.[13] The NOPR TSD included updated results of the analyses conducted in the preliminary analysis stage as well as the following additional analyses: 1) LCC subgroup analysis, 2) manufacturer impact analysis, 3) employment impact analysis, 4) utility impact analysis, 5) emissions analysis, 6) monetization of emission reduction benefits, and 7) regulatory impact analysis (RIA). The NOPR TSD was accompanied by the LCC spreadsheet, the NIA spreadsheet, and the MIA spreadsheet—all of which are available on regulations.gov.[14] In the NOPR, DOE invited comment on these analyses and related issues. DOE held a NOPR public meeting on August 18, 2015, to hear oral comments on and solicit information relevant to the proposed rule (hereafter the NOPR public meeting). DOE considered the comments received in response to the NOPR after its publication and at the NOPR public meeting when developing this final rule, and responds to these comments in this rule.

[13] The NOPR TSD is available at regulations.gov under docket number EERE–2012–BT–STD–0045.

[14] Supporting spreadsheets for the NOPR TSD are available at regulations.gov under docket number EERE–2012–BT–STD–0045.

III. General Discussion

A. Product Classes and Scope of Coverage

EPCA defines a ''ceiling fan light kit'' as equipment designed to provide light from a ceiling fan that can be: (1) Integral, such that the equipment is attached to the ceiling fan prior to the time of retail sale; or (2) attachable, such that at the time of retail sale the equipment is not physically attached to the ceiling fan, but may be included inside the ceiling fan at the time of sale or sold separately for subsequent attachment to the fan. (42 U.S.C. 6291(50)(A), (B)) In the CFLK TP final rule, DOE withdrew the current guidance on accent lighting and reinterpreted the EPCA definition of ''ceiling fan light kit'' to include all lighting, including accent lighting. As a result, all lighting packaged with a CFLK is subject to energy conservation requirements. 80 FR 80209, 80213–15 (December 24, 2015). Additionally, in the CFLK TP final rule, DOE reinterpreted the definition of a ceiling fan to include hugger fans, and clarified that the definition includes multi-mount fans and fans that produce a large volume of airflow. 80 FR 80209, 80215–16 (December 24, 2015).

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q)) For further details on product classes, see section IV.A.1 and chapter 3 of the final rule TSD.

B. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. DOE published a final rule amending test procedures for CFLKs on December 24, 2015. 80 FR 80209. Test procedures for CFLKs are provided 10 CFR 430.23(x) and in appendices V and V1 to 10 CFR part 430, subpart B.

1. Standby and Off-Mode Energy Consumption

EPCA directs DOE to update its test procedures to account for standby mode and off-mode energy consumption, with such energy consumption integrated into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already accounts for standby mode and off-mode energy use. (42 U.S.C. 6295(gg)(2)(A)) Furthermore, if an integrated test procedure is technically infeasible, DOE must prescribe a separate standby mode and off-mode test procedure for the covered product, if technically feasible.

In the CFLK TP final rule, DOE determined that CFLKs do not consume power in off mode, and that only CFLKs offering the functionality of a wireless remote control may consume power in standby mode. Because the standby sensor and controller nearly always provide functionality shared between the ceiling fan and the CFLK, DOE concluded that the energy use from standby mode associated with CFLKs is attributed to the ceiling fan to which they are attached, and thus any standby mode energy use will be accounted for in the ceiling fan efficiency metric. Therefore, DOE's test procedures for CFLKs account for only active mode power consumption. 80 FR 80209, 80220 (December 24, 2015).

C. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii)–(iv). Additionally, it is DOE policy not to include in its analysis any proprietary technology that is a unique pathway to achieving a certain efficacy level (EL). Section IV.B of this document discusses the results of the screening analysis for CFLKs, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the final rule TSD.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for CFLKs, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C.5 of this final rule and in chapter 5 of the final rule TSD.

D. Energy Savings

1. Determination of Savings

For each trial standard level (TSL), DOE projected energy savings from application of the TSL to CFLKs purchased in the 30-year period that begins in the year of compliance with any amended standards (2019–2048).[15] The savings are measured over the entire lifetime of products purchased in the 30-year analysis period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards.

DOE used its national impact analysis (NIA) spreadsheet models to estimate energy savings from potential amended standards for CFLKs. The NIA spreadsheet model (described in section IV.H of this document) calculates savings in site energy, which is the energy directly consumed by products at the locations where they are used. Based on the site energy, DOE calculates national energy savings (NES) in terms of primary energy savings at the site or at power plants, and also in terms of full-fuel-cycle (FFC) energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[16] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.2 of this document.

2. Significance of Savings

To adopt standards for a covered product, DOE must determine that such action would result in ''significant'' energy savings. (42 U.S.C. 6295(o)(3)(B)) Although the term ''significant'' is not defined in the Act, the U.S. Court of Appeals for the District of Columbia Circuit opined in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), that Congress intended ''significant'' energy savings in the context of EPCA to be savings that were not ''genuinely trivial.'' The energy savings for all the TSLs considered in this rulemaking, including the adopted standards, are nontrivial, and, therefore, DOE considers them ''significant'' within the meaning of section 325 of EPCA.

E. Economic Justification

1. Specific Criteria

As noted above, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts a manufacturer impact analysis (MIA), as discussed in section IV.J. DOE first uses an annual cash-flow approach to

[15] DOE also presents a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[16] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include: (1) Industry net present value (INPV), which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and payback period (PBP) associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the economic impacts applicable to a particular rulemaking. DOE also evaluates the LCC impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a national standard.

b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating cost (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with amended standards. The LCC savings for the considered ELs are calculated relative to the no-new-standards case that reflects projected market trends in the absence of amended standards. DOE's LCC and PBP analysis is discussed in further detail in section IV.F.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section III.D.1, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes, and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards adopted in this final rule would not reduce the utility or performance of the products under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE transmitted a copy of its proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its determination on this issue. DOE received no adverse comments from DOJ regarding the proposed rule.

f. Need for National Energy Conservation

DOE also considers the need for national energy conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the adopted standards are likely to provide improvements to the security and reliability of the nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the nation's needed power generation capacity, as discussed in section IV.M.

The adopted standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production and use. DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section IV.K; the emissions impacts are reported in section V.C.2 of this document. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L.

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent interested parties submit any relevant information regarding economic justification that does not fit into the other categories described above, DOE could consider such information under ''other factors.''

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as

calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effect potential amended energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F of this final rule.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to CFLKs. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards adopted in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The national impacts analysis uses a second spreadsheet set that provides shipments forecasts and calculates national energy savings and net present value of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (GRIM), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the Web site for this rulemaking: *http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR%252BPS;rpp=25;po=25;D=EERE-2012-BT-STD-0045*. Additionally, DOE used output from the latest version of the U.S. Energy Information Administration's (EIA's) *Annual Energy Outlook* (*AEO*), a widely known energy forecast for the United States, for the emissions and utility impact analyses.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this rulemaking include: (1) A determination of the scope of the rulemaking and product classes; (2) manufacturers and industry structure; (3) existing efficiency programs; (4) shipments information; (5) market and industry trends; and (6) technologies or design options that could improve the energy efficiency of CFLKs. The key findings of DOE's market assessment are summarized below. See chapter 3 of the final rule TSD for further discussion of the market and technology assessment.

1. Product Classes

DOE divides covered products into classes by: (a) The type of energy used; (b) the capacity of the product; or (c) other performance-related features that justify different standard levels, considering the consumer utility of the feature and other relevant factors. (42 U.S.C. 6295(q)) The current product class structure for CFLKs, which was established by EPACT 2005, divides CFLKs into three product classes: CFLKs with medium screw base (E26) sockets (Medium Screw Base product class), CFLKs with pin-based sockets for fluorescent lamps (Pin-Based product class), and any CFLKs other than those in the Medium Screw Base or Pin-Based product classes (Other Base Type product class). In the NOPR analysis, DOE restructured the current three CFLK product classes to one product class: All CFLKs.

Products in the All CFLKs product class are currently subject to either ENERGY STAR Program Requirements for Residential Light Fixtures version 4.0, ENERGY STAR Program requirements for Compact Fluorescent Lamps, version 3, or a 190 watt limitation. (10 CFR 430.32(s)) ENERGY STAR Program Requirements for Residential Light Fixtures version 4.0 minimum efficacy requirements are specific to wattage and length, and ENERGY STAR Program requirements for Compact Fluorescent Lamps version 3 are specific to wattage and whether the lamp is bare or covered. Because DOE is not adopting length or lamp cover as product class setting factors, minimum efficacy requirements for this product class were determined by lamp wattage. Consistent with 42 U.S.C. 6295(o)(1), DOE determined that products in the All CFLKs product class are subject to the highest of the existing standards for each wattage bin. Therefore, for products less than 15 W, DOE set the minimum baseline efficacy at 50 lm/W. For products greater than or equal to 15 W and less than 30 W, DOE set the baseline efficacy at 60 lm/W. For products greater than or equal to 30 W, DOE set the baseline efficacy at 70 lm/W. The combined minimum efficacy requirements based on wattage are shown in Table IV.1.

TABLE IV.1—ALL CFLKS PRODUCT CLASS CURRENT MINIMUM EFFICACY REQUIREMENTS

Lamp power (W)	Minimum efficacy (lm/W)
<15	50.0
≥15 and <30	60.0
≥30	70.0

DOE received several comments agreeing with the restructuring of product classes. Westinghouse stated that having only one product class makes compliance less complex and the standard fairly easy to understand, and provides design flexibility. However, Westinghouse cautioned that if the proposed EL 2 is adjusted even slightly, some of the design flexibility would be lost under a single product class structure. (Westinghouse, Public Meeting Transcript, No. 112 at pp. 26–27) Hunter agreed with Westinghouse's comments. (Hunter, Public Meeting Transcript, No. 112 at p. 27)

Subject to adoption of TSL 2, the American Lighting Association (ALA) also agreed with the proposed class structure because it would simplify compliance. (ALA, No. 115 at p. 7) ASAP and PG&E agreed with the product class combination from a structural perspective. (ASAP, Public Meeting Transcript, No. 112 at p. 27; PG&E, Public Meeting Transcript, No. 112 at p. 27) ASAP and the California Investor Owned Utilities (CA IOUs) supported not using base type as a class setting factor. ASAP also supported not using light source technology as a class setting factor. ASAP and CA IOUs stated that a single product class would eliminate the current standard's product class definitions, which have driven the CFLK market towards inefficient candelabra base lamps to avoid the more stringent standards for CFLKs that use medium screw base lamps. In a joint comment, ASAP, the American Council for an Energy-Efficient Economy, the National Resources Defense Council, and the Northwest Energy Efficiency Alliance (hereafter the ''Joint Comment'') and CA IOUs noted that as

SSL technology continues to improve, and more CFLKs with integrated SSL circuitry (which do not have removable lamps) enter the market, they will be assessed alongside CFLKs with removable lamps under a single product class structure. This would prevent future standards from driving the market to less efficient technology. (Joint Comment, No. 117 at p. 1; CA IOUs, No. 118 at pp. 1–2)

DOE did not receive any comments that disagreed with the product class structure proposed in the NOPR. In this final rule, DOE did not identify any class setting factors for CFLKs that use a different type of energy, offer a different capacity of the product, or provide unique performance-related features to consumers, and thereby warrant a separate product class. Therefore, in this final rule analysis, DOE is adopting a single ''All CFLKs'' product class. (See chapter 3 of the final rule TSD for further details on the CFLK product class.)

2. Metrics

In the NOPR, DOE proposed luminous efficacy as the efficiency metric for CFLKs. DOE used lamp efficacy except where the components in the CFLK necessary to measure lamp efficacy are not designed to be consumer replaceable from the CFLK (*i.e.,* for CFLKs with integrated SSL circuitry, such as those with inseparable LED lighting). In those cases, DOE used luminaire efficacy.

ALA asked DOE to confirm that the lumens per watt requirements for CFLKs that utilized an ANSI base are determined by lumen output per light source rather than the total lumen output of all light sources in the CFLK. (ALA, Public Meeting Transcript, No. 112 at pp. 10–11, 43)

In the final rule, DOE continued to base its analysis on luminous efficacy as the efficiency metric for CFLKs. DOE used lamp efficacy except where the components in the CFLK necessary to measure lamp efficacy are not designed to be consumer replaceable from the CFLK. In those cases, DOE used luminaire efficacy. Hence, for a CFLK packaged with three medium screw base lamps, the minimum efficacy standard applies to each lamp individually.

3. 190 W Limiter Requirement

Current standards require that CFLKs with medium screw base sockets, or pin-based sockets for fluorescent lamps, be packaged with lamps that meet certain efficiency requirements. All other CFLKs must not be capable of operating with lamps that exceed 190 W. In the final rule for energy conservation standards for certain CFLKs published on January 11, 2007, DOE interpreted this 190 W limitation as a requirement to incorporate an electrical device or measure that ensures the light kit is not capable of operating with a lamp or lamps that draw more than a total of 190 W. 72 FR 1270, 1271 (Jan. 11, 2007).

In the NOPR, DOE proposed that CFLKs with solid-state lighting (SSL) circuitry that (1) have SSL drivers and/or light sources that are not consumer replaceable, (2) do not have both an SSL driver and light source that are consumer replaceable, (3) do not include any other light source, and (4) include SSL drivers with a maximum operating wattage of no more than 190 W are considered to incorporate some electrical device or measure that ensures they do not exceed the 190 W limit.[17] DOE proposed to incorporate the clarification in this rulemaking and make it effective 30 days after the publication of the final rule.

DOE received several comments regarding this proposal and addressed these comments in the CFLK TP final rule. 80 FR 80209, 80216–18 (December 24, 2015). In the CFLK TP final rule, DOE clarified that, for purposes of compliance with the CFLK standards at 10 CFR 430.32(s)(4), CFLKs that (1) include only SSL technology; (2) do not include an SSL lamp with an ANSI standard base, and (3) include only SSL drivers with a combined maximum operating wattage of no more than 190 W meet the 190 W limit requirement. 80 FR 80209, 80218 (December 24, 2015)

ALA requested that DOE make the clarification of the 190 W limiter requirement for CFLKs with integrated SSL components effective as soon as possible, either in a separate notice or in the forthcoming final rule of the CFLK test procedure. (ALA, No. 115 at p. 4, 6) The interpretation of the 190 W limit requirement for CFLKs with SSL technology will be effective with the publication of the CFLK TP final rule in the **Federal Register**. 80 FR 80209, 80218 (December 24, 2015)

ALA also requested that DOE clarify that CFLKs subject to amended energy efficiency standards are not to be subject to the 190 W limit requirement or, alternatively, that CFLKs that comply with the amended energy efficiency standards also comply with the 190 wattage limit requirement. ALA reasoned that amended energy efficiency standards would require any CFLK to meet a minimum efficacy standard of 50 lm/W and therefore a CFLK modified to operate a total of more than 190 watts would emit more than 9,500 lumens. Because this is too much light for residential and commercial CFLK applications, consumers would not modify CFLKs subject to DOE's amended efficiency standards to operate at wattages higher than 190 watts. (ALA, No. 115 at p. 7)

As described in section IV.C.3, DOE determined that any amended energy efficiency standards would require lamps packaged with CFLKs to comply with a minimum efficacy of 50 lm/W. CFLKs that are currently packaged with lamps totaling 190 W typically offer a total lumen output of about 1,600 total lumens, or approximately 8 lm/W per lamp included. If each lamp included were to comply with a minimum efficacy standard of 50 lm/W, the lumen output of the CFLK would increase to at least 9,500 lumens, or almost six times greater than the existing light output. This light output is substantially higher than suitable for almost all applications in which CFLKs are used. Therefore, DOE has determined that the amended efficiency standards require lamps to be more efficient than if complying with the 190 W limit requirement. As a result, lamps complying with the amended energy efficiency standards adopted in this rulemaking will be presumed to meet the 190 W limit requirement, and manufacturers will not be required to incorporate an electrical device or measure that ensures the light kit is not capable of operating with a lamp or lamps that draw more than a total of 190 W.

4. Technology Options

In the NOPR market analysis and technology assessment, DOE identified 21 technology options that would be expected to improve the efficiency of CFLKs, as measured by the DOE test procedure. DOE reviewed manufacturer catalogs, recent trade publications, technical journals, and patent filings to identify these technology options.

For compact fluorescent lamps (CFLs), DOE considered technology options related to improvements in electrode coatings, fill gas, phosphors, glass coatings, cold spot optimization, and ballast components. For LED lamps, DOE considered technology options related to improvements in down converters, package architectures, emitter materials, substrate materials, thermal interface materials, heat sink design, thermal management, device-level optics, light utilization, driver design, and electric current.

NEMA asserted that CFLs have reached their ultimate balance of price

[17] DOE proposed these four conditions in the preamble of the NOPR. However, the proposed associated regulatory text incorrectly specified that *both* the SSL light source and SSL driver had to be non-consumer replaceable.

and performance and are no longer a product experiencing a lot of innovation. NEMA followed that CFLs were always intended to be a bridge technology and although there may be minor tweaks left, they have already reached their peak in investment. (NEMA, Public Meeting Transcript, No. 112 at p. 30)

Although CFLs may not be experiencing a lot of innovation, DOE reviewed manufacturer catalogs, recent trade publications, technical journals, and patent filings and identified some technology options that could be used to increase the efficacy of CFLs relative to that of the baseline lamp. DOE considers product price or industry investment in the LCC, NIA and/or MIA analyses, rather than when identifying technology options.

Westinghouse noted that they have provided feedback through NEMA on individual LED technology options. (Westinghouse, Public Meeting Transcript, No. 112 at p. 29) NEMA stated that they preferred to have LED technology evolve naturally, unencumbered by regulatory constraints, because options that might not look useful now may become essential in the future. (NEMA, Public Meeting Transcript, No. 112 at pp. 30–31)

To determine potential ELs in the engineering analysis, DOE considers only technology options that meet the four criteria outlined in the screening analysis. As described in section IV.B, one criterion is to maintain product utility and/or product availability. Thus, features and capabilities of existing products are maintained at higher ELs. Furthermore, all ELs considered specify only the minimum required efficacy rather than specific design options that must be used to comply with that EL. Thus, manufacturers can use the combination of options that works best for current market needs.

Summary of CFLK Technology Options

In summary, DOE has developed the list of technology options shown in Table IV.2 to increase efficacy of CFLKs. See chapter 3 of the final rule TSD for more information on the CFLK technology options.

TABLE IV.2—CFLK TECHNOLOGY OPTIONS

Lamp type	Name of technology option	Description
CFL	Highly Emissive Electrode Coatings	Improved electrode coatings allow electrons to be more easily removed from electrodes, reducing lamp power and increasing overall efficacy.
	Higher-Efficiency Lamp Fill Gas Composition.	Fill gas compositions improve cathode thermionic emission or increase mobility of ions and electrons in the lamp plasma.
	Higher-Efficiency Phosphors	Techniques to increase the conversion of ultraviolet (UV) light into visible light.
	Glass Coatings	Coatings on inside of bulb enable the phosphors to absorb more UV energy, so that they emit more visible light.
	Multi-Photon Phosphors	Emitting more than one visible photon for each incident UV photon.
	Cold Spot Optimization	Improve cold spot design to maintain optimal temperature and improve light output.
	Improved Ballast Components	Use of higher-grade components to improve efficiency of integrated ballasts.
	Improved Ballast Circuit Design	Better circuit design to improve efficiency of integrated ballasts.
	Change in Technology	Replace CFL with LED technology.
LED	Efficient Down Converters	New high-efficiency wavelength conversion materials, such as optimized phosphor conversion, quantum-dots, have the potential for creating warm-white LEDs with improved spectral efficiency, high color quality, and improved thermal stability.
	Improved Package Architectures	Novel package architectures such as color mixing (RGB+) and hybrid architecture to improve package efficacy.
	Improved Emitter Materials	The development of efficient red, green, or amber LED emitters, will allow for optimization of spectral efficiency with high color quality over a range of correlated color temperature (CCT) and which also exhibit color and efficiency stability with respect to operating temperature.
	Alternative Substrate Materials	Alternative substrates such as gallium nitride (GaN), silicon carbide to enable high-quality epitaxy for improved device quality and efficacy.
	Improved Thermal Interface Materials (TIMs).	TIMs that enable high-efficiency thermal transfer for long-term reliability and performance optimization of the LED device.
	Optimized Heat Sink Design	Improve thermal conductivity and heat dissipation from the LED chip, thus reducing efficacy loss from rises in junction temperature.
	Active Thermal Management Systems	Devices such as internal fans and vibrating membranes to improve thermal dissipation from the LED chip.
	Device-Level Optics	Enhancements to the primary optic of the LED package such as surface etching that would optimize extraction of usable light from the LED package and reduce losses due to light absorption at interfaces.
	Increased Light Utilization	Reduce or eliminate optical losses from the lamp housing, diffusion, beam shaping, and other secondary optics to increase efficacy using mechanisms such as reflective coatings and improved diffusive coatings.
	Improved Driver Design	Increase driver efficiency through novel and intelligent circuit design.
	AC LEDs	Eliminate the requirements of a driver and therefore reduce efficiency losses from the driver.
	Reduced Current Density	Driving LED chips at lower currents while maintaining light output, and thereby reducing the efficiency losses associated with efficacy droop.

B. Screening Analysis

DOE uses the following four screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

1. *Technological feasibility.* Technologies that are not incorporated in commercial products or in working

prototypes will not be considered further.

2. *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

3. *Impacts on product utility or product availability.* If it is determined that a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

4. *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b).

In sum, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the above four criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed below.

1. Screened-Out Technologies

In the NOPR, several technology options were screened out based on the four screening criteria. Table IV.3 summarizes the technology options DOE proposed to screen out and the associated screening criteria.

TABLE IV.3—CFLK TECHNOLOGY OPTIONS SCREENED OUT OF THE NOPR ANALYSIS

Technology	Design option excluded	Screening criteria
CFL	Multi-Photon Phosphors	Technological feasibility.
LED	Colloidal Quantum Dot Phosphors	Technological feasibility.
	Improved Emitter Materials	Technological feasibility.

Westinghouse commented that because there is little product development happening in CFL technology and none is expected in the future, DOE can screen in any CFL technology options identified as they are not in the research and development (R&D) phase. (Westinghouse, Public Meeting Transcript, No. 112 at p. 28) DOE uses the four screening criteria previously discussed to determine whether to screen out technology options. While DOE found that the vast majority of technology options for CFLs met all four screening criteria, DOE continues to screen out multi-photon phosphors in this final rule based on technological feasibility. (See chapter 4 of the final rule TSD for further detail.)

Westinghouse commented that there are active legal disputes between manufacturers, including NEMA members, on design and technology patents for three to five of the technology options for LED lamps. Westinghouse favored letting the technology develop naturally without forcing manufacturers to use another manufacturer's technology patents or designs. (Westinghouse, Public Meeting Transcript, No. 112 at p. 29) NEMA added that the LED market is very dynamic. Neither NEMA nor Westinghouse commented on which technology options were involved in the lawsuits, but Westinghouse noted that sometimes they do not realize that they are in violation of a patent or proprietary design until there is enough market share for the competitor to tell them. (NEMA, Public Meeting Transcript, No. 112 at pp. 29–30; Westinghouse, Public Meeting Transcript, No. 112 at p. 33)

DOE reviewed several sources, including patent filings, to determine technology options. DOE can identify technology options and subsequently determine that they meet the four screening criteria even if they require proprietary technology. However, DOE does not consider ELs in the engineering analysis that can only be achieved using proprietary technology.

In the final rule, DOE continued to screen out the technology options in Table IV.3.

2. Remaining Technologies

Through a review of each technology, DOE tentatively concludes that all of the other identified technologies listed in section IV.A.4 met all four screening criteria to be examined further as design options in DOE's final rule analysis. In summary, DOE retained the following technology options:

CFL Design Options

- Highly Emissive Electrode Coatings
- Higher-Efficiency Lamp Fill Gas Composition
- Higher-Efficiency Phosphors
- Glass Coatings
- Cold Spot Optimization
- Improved Ballast Components
- Improved Ballast Circuit Design

LED Design Options

- Efficient Down Converters (with the exception of colloidal quantum-dots phosphors)
- Improved Package Architectures
- Alternative Substrate Materials
- Improved Thermal Interface Materials
- Optimized Heat Sink Design
- Active Thermal Management Systems
- Device-Level Optics
- Increased Light Utilization
- Improved Driver Design
- AC LEDs
- Reduced Current Density

DOE determined that these technology options are technologically feasible because they are being used in commercially-available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicability to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety). For additional details, see chapter 4 of the final rule TSD.

C. Engineering Analysis

DOE derives ELs in the engineering analysis and consumer prices in the product price determination. By combining the results of the engineering analysis and the product price determination, DOE determines typical inputs for use in the LCC and NIA.

1. General Approach

The engineering analysis is generally based on commercially available lamps that incorporate the design options identified in the technology assessment and screening analysis. (See chapters 3 and 4 of the final rule TSD for further information on technology and design options.) The methodology consists of the following steps: (1) Selecting representative product classes, (2)

selecting baseline lamps, (3) identifying more efficacious substitutes, and (4) developing ELs by directly analyzing representative product classes and then scaling those ELs to non-representative product classes. For CFLKs, DOE based the efficiency of the product on the efficacy of the lamps packaged with CFLKs. The details of the engineering analysis are discussed in chapter 5 of the final rule TSD. The following discussion summarizes the general steps of the engineering analysis:

Representative product classes: DOE first reviews CFLKs covered under the scope of the rulemaking and the associated product classes. When a product has multiple product classes, DOE selects certain classes as ''representative'' and concentrates its analytical effort on these classes. DOE selects representative product classes primarily because of their high market volumes and/or distinct characteristics.

Baseline lamps: For each representative product class, DOE selects a baseline lamp as a reference point against which to measure changes resulting from energy conservation standards. Typically, a baseline lamp is the most common, least efficacious lamp in a CFLK sold in a given product class. DOE also considers other lamp characteristics in choosing the most appropriate baseline for each product class, such as wattage, lumen output, and lifetime.

More efficacious substitutes: DOE selects higher efficacy lamps as replacements for each of the baseline lamps considered. When selecting higher efficacy lamps, DOE considers only design options that meet the criteria outlined in the screening analysis (see section IV.B or chapter 4 of the final rule TSD).

Efficacy levels: After identifying the more efficacious substitutes for each baseline lamp, DOE develops efficacy levels (ELs). DOE bases its analysis on three factors: (1) The design options associated with the specific lamps studied; (2) the ability of lamps across different lumen outputs to comply with the standard level of a given product class; and (3) the max-tech EL. DOE then scales the ELs of representative product classes to any classes not directly analyzed.

2. Representative Product Classes

In the NOPR analysis, DOE established one product class (All CFLKs) and analyzed it as representative. DOE did not receive any comments on the representative product class identified in the NOPR analysis. Therefore, in this final rule, DOE continued to analyze the one product class as representative.

3. Baseline Lamps

Once DOE identifies representative product classes for analysis, it selects baseline lamps to analyze in each product class. DOE selects baseline lamps that are typically the most common, least efficacious lamps in a CFLK that meet existing energy conservation standards. Specific lamp characteristics are used to characterize the most common lamps packaged with CFLKs today (*e.g.,* wattage and light output). To identify baseline lamps, DOE reviews product offerings in catalogs and manufacturer feedback obtained during interviews.

In the NOPR analysis, DOE selected a lamp representative of the least efficacious lamp that can be packaged with a CFLK that just meets existing CFLK standards. To calculate lamp efficacy, DOE used the catalog lumens and the catalog wattage of the lamp. In the NOPR analysis, market information indicated that many 14 W CFLs with low lumen outputs typically had an additional feature (*e.g.,* a cover or a coating for rough service operation) that was not used for lamps packaged in CFLKs. Thus, DOE modeled a 14 W CFL as the baseline lamp without these additional features and a light output of 800 lumens, which is a common lumen output for this lamp. DOE assumed the modeled baseline lamp would have the same characteristics (spiral shape, 82 Color Rendering Index [CRI], 2,700 kelvin [K] correlated color temperature [CCT], and 10,000-hour lifetime) as the most common commercially available lamps. (For further detail on the baseline lamp selected in the NOPR analysis, see chapter 5 of the NOPR TSD.) DOE received several comments regarding the baseline selection.

Westinghouse and ALA stated that the proposed baseline was appropriate for medium screw bases. Westinghouse and ALA further stated that the baseline is not the most common lamp used in CFLKs, with Westinghouse noting that 80 percent of the current market uses incandescent candelabra base lamps. (Westinghouse, Public Meeting Transcript, No. 112 at pp. 35–36; ALA, No. 115 at pp. 7–8) ALA added that such lamps, which are low efficiency incandescent lamps, cannot be replaced with the baseline lamp due to their physical size and shape. (ALA, No. 115 at pp. 7–8) Westinghouse and ALA acknowledged, however, that under the current product class structure, the candelabra base lamps are in a product class that is subject to a design standard that requires a power limiter rather than an efficacy standard. (Westinghouse, Public Meeting Transcript, No. 112 at p. 33; ALA, No. 115 at pp. 7–8) Hunter agreed with Westinghouse regarding the proposed baseline. (Hunter, Public Meeting Transcript, No. 112 at p. 36)

Westinghouse further pointed out that the efficacy of the proposed levels is significantly greater than the baseline when considering the baseline to be the candelabra base lamps with average efficacies of 10 to 12 lm/W. (Westinghouse, Public Meeting Transcript, No. 112 at pp. 45–46) Westinghouse stated that there is a gap in the analysis because it neglects to consider the current products being purchased. Westinghouse elaborated that the lamps currently packaged with CFLKs have efficacies between 9 and 10 lm/W, with some 60 W candelabra lamps at 11 lm/W. (Westinghouse, Public Meeting Transcript, No. 112 at pp. 54–55)

As discussed in section IV.A.1, DOE reviewed the existing product class structure and determined that all three existing product classes could be combined into a single product class. Because the existing product classes each are subject to different standards, DOE selected a sub-baseline representative lamp unit to account for the impacts of the product class restructuring in the LCC analysis and NIA. DOE determined that lamps in the Other Base Type product class, which includes candelabra base lamps, generally have the lowest efficacies and selected a sub-baseline representative lamp unit from this product class to serve as a reference point from which to measure changes resulting from the new product class structure. Therefore, DOE did account for the savings from CFLKs packaged with lower efficiency incandescent lamps that are currently being sold on the market. See appendix 7A of the final rule TSD for further detail on the sub-baseline representative lamp unit.

In the final rule analysis, DOE used the same baseline as specified in the NOPR. The modeled baseline for the new, combined All CFLKs product class is specified in Table IV.4. (See chapter 5 of the final rule TSD for further details.)

TABLE IV.4—ALL CFLKS PRODUCT CLASS BASELINE LAMP

Bulb shape	Base type	Lamp type	Lamp wattage (W)	Initial lumen output (lm)	Efficacy (lm/W)	Lamp lifetime (hr)	CRI	CCT (K)
Spiral	E26	CFL	14	800	57.1	10,000	80	2,700

4. More Efficacious Substitutes

After choosing a baseline lamp, DOE identifies commercially available lamps that can serve as more efficacious substitutes. DOE utilized a database of commercially available lamps and selected substitute lamps that both save energy and maintain comparable light output to the baseline lamp. Specifically, in the NOPR analysis, DOE ensured that potential substitutions maintained light output within 10 percent of the baseline lamp lumen output for the lamp replacement scenario and within 10 percent of the baseline fixture lumen output for the light kit replacement scenario. Further, DOE considered only technologies that met all four criteria in the screening analysis. Regarding the lamp characteristics of the substitutes, DOE selected replacement lamp units with lifetimes greater than or equal to that of the lifetime of the baseline lamp. DOE also selected replacement lamp units with a CRI, CCT, and bulb shape comparable to that of the baseline representative lamp unit. (For further detail on the more efficacious substitutes selected in the NOPR analysis, see chapter 5 of the NOPR TSD.)

In the NOPR analysis, DOE considered more efficacious lamps under two different substitution scenarios: (1) A lamp replacement scenario and (2) a light kit replacement scenario. DOE selected the baseline light kit for both scenarios as a two-socket medium base light kit because it was representative of the most common basic CFLK product. In the lamp replacement scenario, DOE assumed that manufacturers would maintain the original light kit design, including the same number of sockets, and replace only the lamp. Thus, DOE selected the more efficacious substitutes to have the same base type as that of the baseline lamp. In the light kit replacement scenario, DOE accounted for the possibility that manufacturers may change light kit designs. Thus, the base type of the more efficacious substitutes was not required to be the same as that of the baseline lamp and the number of sockets could be changed. Specifically, DOE considered replacement light kits with between one and four sockets and/or non-medium screw base types. For example, the EL 1 light kit replacement option utilized three medium screw base 9 W CFLs, and the EL 3 light kit replacement option included one medium screw base 16 W LED lamp.

For the NOPR analysis, DOE determined that a commercially available 3-way LED lamp operated at its middle setting was more efficacious than any other commercially available lamp that could be considered an adequate replacement for the baseline lamp (*i.e.,* has a non-reflector shape, a lumen output within 10 percent of the baseline lamp, a CCT around 2,700 K, a CRI greater than or equal to 80, a lifetime greater than or equal to that of the baseline, and a medium screw base). Specifically, the 3-way lamp is 8 W at its middle setting, and has a light output of 820 lumens, an efficacy of 102.5 lm/W, and a lifetime of 25,000 hours. DOE concluded that the higher EL achieved by the middle setting demonstrated the potential for a standard, non-3-way, 8 W LED lamp to achieve this EL. Therefore, DOE modeled an 8 W lamp with 820 lumens and an efficacy of 102.5 lm/W. DOE assumed the modeled lamp would have similar characteristics to the most common commercially available LED lamps in the 800-lumen range. Hence, DOE modeled the lamp to have an A19 shape, medium base type, 25,000-hour lifetime, 2,700 K CCT, 80 CRI, and dimming functionality.

Regarding the modeled lamp at max tech, Westinghouse commented that while they understood using this approach to determine where the level should be set, they were apprehensive of modeling potential lamps. In general, Westinghouse was cautious of selecting a particular feature and modeling other features. (Westinghouse, Public Meeting Transcript, No. 112 at pp. 39–40) Westinghouse noted that the 3-way lamp used as the basis for the modeled lamp was an A21 shape rather than A19. (Westinghouse, Public Meeting Transcript, No. 112 at pp. 39–40) Westinghouse looked at their own 3-way lamp and found that the highest setting is more efficient than the middle setting. Westinghouse also looked at a 3-way lamp from another manufacturer and found that the middle setting was the least efficient setting. (Westinghouse, Public Meeting Transcript, No. 112 at pp. 39–40) Westinghouse acknowledged that the efficacy of the modeled lamp may have been achieved, but was unclear whether it was done through proprietary technology or just by accident. Either way, Westinghouse asserted that using the middle setting on a product not designed for a CFLK does not seem correct. (Westinghouse, Public Meeting Transcript, No. 112 at pp. 39–40)

NEMA added that unless the modeled lamp is very special, it is probably not dimmable, which is a desired consumer feature. NEMA further stated that the circuitry for dimmability adds power consumption, and could add additional cost as well, so it is likely that the modeled lamp cannot be directly compared to a dimmable lamp. (NEMA, Public Meeting Transcript, No. 112 at p. 40)

PG&E, on the other hand, stated that in five years, lamps that are currently feasible will be obsolete. Thus, PG&E stated that the modeled 3-way max tech lamp will be viable and the best option for the market. (PG&E, Public Meeting Transcript, No. 112 at p. 41) Similarly, ASAP supported DOE's approach in choosing more efficacious substitutes. ASAP stated that an analysis based on currently available products and their performance characteristics will be obsolete when the standard requires compliance. (ASAP, Public Meeting Transcript, No. 112 at p. 41)

When DOE proposes to adopt a standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max tech'') improvements in energy efficiency using the design parameters for the most efficient product available on the market. DOE acknowledges that the 3-way lamp used as the basis for the modeled lamp has an A21 shape; however, DOE modeled the max tech representative lamp unit to have an A19 shape because that is a more common lamp shape. Based on its assessment of lamp catalogs, DOE determined that

LED lamps with A19 shapes include lamps with lumen outputs above and below 820 lumens. Therefore, it should be possible to make an LED lamp with an A19 shape and lumen output of 820 lumens. The modeled lamp has a higher efficacy and more efficient components than similar products currently on the market, and therefore, would achieve and maintain this efficacy within an A19 shape. DOE acknowledges that dimmability is a desired consumer feature and modeled the max tech representative lamp unit to be dimmable. While NEMA noted that dimmability requires additional circuitry, DOE notes that the efficacy of the modeled lamp is based on the performance of a 3-way lamp, which also has additional circuitry that is likely comparable to a dimmable lamp. Therefore, DOE concluded that the efficacy of the modeled lamp is representative of the efficacy of a dimmable product.

CA IOUs commented that LED technology continues to improve. CA IOUs pointed out that recent research and development in LED technology have significantly accelerated the speed of lighting efficiency innovation. DOE's Solid-State Lighting Research and Development Multi-Year Program Plan (MYPP) found that ''the light output of LEDs has increased 20 fold each decade for the last 40 years.'' [18] Some of the first projections for LED performance illustrate how the rate of LED technology innovation observed in the market has surpassed MYPP's original performance expectations. As an example, CA IOUs provided data from the MYPPs showing that in 2006, the MYPP did not expect cool white LED efficacy to exceed 135 lm/W until 2015; however, in 2011, LED efficacy was over 165 lm/W. Observing increases in LED performance with corresponding decreases in price, CA IOUs stated that these trends have surpassed previous forecasts, providing the market with higher performing and lower priced products than originally anticipated. (CA IOUs, No. 118 at pp. 3–4) CA IOUs stated that as LED technology continues to mature, it is critical that DOE account for these expected changes. (CA IOUs, No. 118 at p. 7, 8)

Further, CA IOUs stated that CFLKs primarily include medium screw base and candelabra base omnidirectional and decorative lamps, with CRI ≥80 and CCT ≤2,700 K and provided figures forecasting performance of these lamps. Specifically, based on data gathered from DOE's Lighting Facts Database since 2012, CA IOUs showed that the efficacies of average products and the top 15 percent of products would exceed EL 3 and EL 4 by 2019. (CA IOUs, No. 118 at pp. 5–7)

The Joint Comment noted that the standard would likely require compliance in early 2019 and that the evolution of SSL technology continues to outstrip projections. The Joint Comment continued that recent DOE research indicated that for 2013, the installed base of LEDs in the U.S. increased in all LED applications, more than doubling from 2012 to about 105 million units. The Joint Comment stated that by 2019, SSL options for CFLKs will be available at higher levels of performance than today. (Joint Comment, No. 117 at p. 2) Westinghouse commented that there may be more efficient lamps available on the market in five years than the max tech level. However, the standards from this rulemaking should not prevent consumers from purchasing lamps with a wide range of efficacies, with lower price points available for lower efficacy products. (Westinghouse, Public Meeting Transcript, No. 112 at p. 45)

The increase in the efficacy of LED lamps over the last several years could be indicative of future trends, but it is not certain. New products have been recently introduced to the market that have lower efficacy than previous iterations. DOE cannot be sure that the forecasted improvements in LED technology will occur and LED lamps at the predicted efficacies will be available at the compliance date of this rulemaking. DOE based the more efficacious substitutes in this analysis on technology that is available today. The engineering analysis is based on efficacies achievable through design options that can be found in commercially available products or working prototypes. (See chapter 4 of the final rule TSD for further information on design options.) As noted previously, DOE derives ELs from the efficacies of the more efficacious substitutes identified in the engineering analysis and consumer prices in the product price determination. These results are then combined to determine the cost and savings to the consumer associated with each EL in the LCC.

DOE's review of the market in the final rule analysis did not result in any changes that impacted the selection of more efficacious substitutes. The CFLK representative lamp units that DOE analyzed in the final rule are shown in Table IV.5 for the lamp replacement scenario and in Table IV.6 for the light kit replacement scenario.

TABLE IV.5—ALL CFLKS PRODUCT CLASS DESIGN OPTIONS: LAMP REPLACEMENT SCENARIO

Efficacy level	Lamp type	Base type	Bulb shape	Wattage (W)	Initial lumen output (lm)	Efficacy (lm/W)	CRI	CCT (K)	Lamp lifetime (hr)
Baseline	CFL	E26	Spiral	14	800	57.1	80	2,700	10,000
EL 1	CFL	E26	Spiral	13	800	61.5	80	2,700	10,000
EL 2	CFL	E26	Spiral	11	730	66.4	82	2,700	10,000
	LED	E26	A19	12	800	66.7	82	2,700	25,000
EL 3	LED	E26	A19	8.5	800	94.1	81	2,700	25,000
EL 4	LED	E26	A19	8	820	102.5	80	2,700	25,000

TABLE IV.6—ALL CFLKS PRODUCT CLASS DESIGN OPTIONS: LIGHT KIT REPLACEMENT SCENARIO

Efficacy level	Lamp type	Base type	Bulb shape	Fixture sockets	Lamp wattage (W)	Fixture wattage (W)	Lamp initial lumen output (lm)	Fixture initial lumen output (lm)	Efficacy (lm/W)	CRI	CCT (K)	Lamp life (hr)
Baseline	CFL	E26	Spiral	2	14	28	800	1,600	57.1	80	2,700	10,000

[18] ''Solid-State Lighting Research and Development Multi-Year Program Plan.'' March 2010. Available online at: *http://apps1.eere.energy.gov/buildings/publications/pdfs/ssl/ssl_mypp2010_web.pdf.*

TABLE IV.6—ALL CFLKS PRODUCT CLASS DESIGN OPTIONS: LIGHT KIT REPLACEMENT SCENARIO—Continued

Efficacy level	Lamp type	Base type	Bulb shape	Fixture sockets	Lamp wattage (W)	Fixture wattage (W)	Lamp initial lumen output (lm)	Fixture initial lumen output (lm)	Efficacy (lm/W)	CRI	CCT (K)	Lamp life (hr)
EL 1	CFL	E26	Spiral	3	9	27	520	1,560	57.8	80	2,700	10,000
EL 2	LED	E26	G25	3	8	24	500	1,500	62.5	82	2,700	25,000
EL 3	LED	E26	A21	1	16	16	1,600	1,600	100.0	80	2,700	25,000
EL 4	LED	E26	A21	1	15	15	1,600	1,600	106.7	82	2,700	25,000

5. Efficacy Levels

DOE adopted an equation-based approach to establish ELs for CFLKs. In the NOPR analysis, DOE developed the general form of the equation by evaluating lamps with similar characteristics, such as technology, bulb shape, and lifetime, across a range of lumen packages. The continuous equations specify a minimum lamp efficacy for a given lumen package.

ALA and Westinghouse generally supported the equations used to define the minimum efficacy requirements at each EL. (ALA, Public Meeting Transcript, No. 112 at p. 43; Westinghouse, Public Meeting Transcript, No. 112 at pp. 43–44)

Westinghouse cautioned that lamp designs should be driven by the market and not restricted by requirements at high ELs. Westinghouse noted that the market is volatile and, while a year ago they would not have considered reducing lifetime of their lamps, currently omnidirectional, non-dimmable LED lamps with reduced lifetimes are popular products. (Westinghouse, Public Meeting Transcript, No. 112 at pp. 107–08) While lamps with 25,000 hours and 40,000 hours remain popular, three brands, including Westinghouse, also sell LED lamps with lifetimes between 10,000 and 15,000 hours, no dimmable features, and efficacies of 65–70 lm/W that are in high demand. Westinghouse stated that if consumers want to make tradeoffs between features, such as giving up lifetime for aesthetics, they should have that option available to them. Westinghouse asserted that at higher ELs, manufacturers would lose this design flexibility and consumers will either not want to pay the higher price or not be satisfied with the product. (Westinghouse, Public Meeting Transcript, No. 112 at pp. 52–53)

While certain consumers may opt for a product with low efficacy and minimal features because it has a lower price or offers an aesthetic appeal, DOE found that certain lamp characteristics are commonplace in the market. To maintain the existing product utility to the consumer, DOE ensured that lamps at higher levels can be omnidirectional, dimmable, and achieve the common lifetime on the market. (For LED lamps, DOE determined 25,000 hours to be the most common lifetime.)

In the NOPR analysis, DOE proposed four ELs. (For further details, see chapter 5 of the NOPR TSD.) In the final rule analysis, DOE maintained ELs 1–3 as proposed in the NOPR. In the NOPR, DOE set EL 4 according to the efficacy of the modeled 8 W lamp, but adjusted it to be slightly lower to allow for additional products to meet the level, such as consumer replaceable LED modules and driver systems. Based on a review of the market, in the final rule analysis, DOE determined that certain more efficacious products were now available and adjusted the level downward to a lesser extent to allow for any replacement options in the light kit replacement scenario.

CA IOUs noted that if DOE remains concerned that there will not be enough products on the market when proposed standards require compliance, DOE should consider an EL roughly halfway between EL 2 and EL 3, where many more high-efficiency LED options already exist. (CA IOUs, No. 118 at p. 7) Westinghouse disagreed, stating that an additional EL was not necessary between EL 2 and EL 3. (Westinghouse, Public Meeting Transcript, No. 112 at pp. 54–55)

DOE considered ELs between EL 2 and EL 3, but determined that the price of the LED representative lamp units at those levels was higher than the price of the representative lamp unit at EL 3. It was unlikely that consumers would purchase a CFLK packaged with a less efficient, more expensive lamp. Further, DOE has found that as they introduce more efficacious LED lamps, manufacturers begin to phase out their less efficacious LED lamps which, due to the low volume and older technology, are priced higher. Therefore, DOE did not evaluate lamps at additional ELs.

Table IV.7 presents the ELs for CFLKs. See chapter 5 of the final rule TSD for additional information on the methodology and results of the engineering analysis.

TABLE IV.7—SUMMARY OF EFFICACY LEVELS FOR ALL CFLKS

Representative product class	Efficacy level	Lumen output (lm)	Minimum required efficacy (lm/W)
All CFLKs	EL 1	<260	50
		≥260 and ≤2040	$69.0 - 29.42 \times 0.9983^{lumens}$
		>2040 and <2100	>(1/30) × lumens
		≥2100	70
	EL 2	<120	50
		≥120	$74.0 - 29.42 \times 0.9983^{lumens}$
	EL 3	All	$101.0 - 29.42 \times 0.9983^{lumens}$
	EL 4	All	$108.0 - 29.42 \times 0.9983^{lumens}$

As shown in Table IV.7, DOE made adjustments to EL 1 and EL 2 to ensure that, consistent with 42 U.S.C. 6295(o), the efficacy remains above the current minimum standards summarized in Table IV.1. See sections II.A and IV.A.1 for further discussion of this issue. For lamps less than 15 W, the minimum efficacy is 50 lm/W. For a light output of less than 260 lumens, DOE found that the EL 1 equation could potentially allow lamps that are less than 50 lm/W

to meet standards and therefore set the minimum efficacy requirement at 50 lm/W for lamps in this lumen range. For a light output of less than 120 lumens, DOE found that the EL 2 equation could potentially allow lamps that are less than 50 lm/W to meet standards and therefore set the minimum efficacy requirement at 50 lm/W for lamps in this lumen range. DOE determined that no adjustments to any ELs were necessary to meet the 60 lm/W current standard applicable to lamps greater than 15 W and less than 30 W.

For lamps greater than 30 W, DOE determined that the minimum efficacy is 70 lm/W. DOE found that the equation for EL 1 could potentially allow lamps that are less than 70 lm/W to meet standards. Therefore, for lumens greater than 2040 and less than 2100, DOE set the minimum efficacy requirement at greater than (1/30) × lumens for EL 1. For lumens greater than or equal to 2100, DOE set the minimum efficacy requirement at 70 lm/W. See chapter 5 of the final rule TSD for further information on the anti-backsliding adjustments that DOE made to the ELs.

Westinghouse agreed with setting a minimum level for EL 1 and EL 2 to prevent backsliding. Westinghouse further stated that the levels DOE had identified were appropriate and would not be disruptive to the market. (Westinghouse, Public Meeting Transcript, No. 112 at pp. 43–44) DOE maintained these levels in the final rule.

6. Scaling to Other Product Classes

Typically DOE determines ELs for product classes that were not directly analyzed (''non-representative product classes'') by scaling from the ELs of the representative product classes. As DOE only identified one product class for CFLKs, no scaling was required.

D. Product Price Determination

Because the metric for CFLKs is the efficacy of the lamp with which it is packaged, DOE developed prices for the lamp component of a CFLK. Typically, DOE develops manufacturer selling prices (MSPs) for covered products and applies markups to create consumer prices to use as inputs to the LCC analysis and NIA. Because lamps are difficult to reverse-engineer (*i.e.,* not easily disassembled), DOE directly derives consumer prices for the lamp components of CFLKs in this rulemaking.

DOE first determined the consumer price of a CFLK. In doing so, DOE considered distributor net prices (DNP), distribution channels, and shipment volumes. DOE obtained distributor net prices for CFLKs packaged with a representative lamp unit (*i.e.,* the 13 W spiral CFL). DOE calculated the consumer price of a CFLK in each major distribution channel (electrical/specialty, home centers, and lighting showrooms) by applying the appropriate premium to the distributor net price. DOE developed a weighted average consumer price for a CFLK by using estimated shipments through each distribution channel (80 percent home centers, 12 percent electrical distributors/specialty, 8 percent lighting showrooms).

DOE then determined the consumer price of a lamp in a CFLK. DOE calculated this value based on manufacturer feedback and relative prices for commercially-available lamps. Based on manufacturer feedback, DOE determined that for a CFLK packaged with a CFL, the lamp component comprises an estimated 15 percent of the CFLK consumer price. To develop a consumer price for all other representative lamp units when sold in CFLKs, DOE applied a ratio based on the retail cost of the lamps at other levels relative to the retail cost of the 13 W spiral.

DOE received several comments on the methodology and results of the product price determination. Westinghouse stated that the consumer price results for ELs with LED lamp representative units were not accurate because DOE is forward-modeling prices based on observed retail shelf prices and including legacy products put on clearance to deplete their inventory. (Westinghouse, Public Meeting Transcript, No. 112 at pp. 58–59)

DOE used the latest retail price data available at the time of the analysis and ensured these prices reflected the original lamp price rather than a discounted or rebated price. Based on the lamp prices collected in this rulemaking, DOE has noted a trend showing that lower wattage, more efficacious LED lamps have lower prices than higher wattage, less efficacious LED lamps. Comments received in response to the preliminary analysis of the general service lamp rulemaking indicated that lamp manufacturers begin to phase out their less efficacious LED lamps as they introduce lamps that are more efficacious.[19] The lower volume and older technology likely results in higher prices for the less efficacious products. The results of this product price determination accurately capture this consistently observed price trend for LED lamps.

Westinghouse provided specific comments regarding the consumer price of the EL 4 representative lamp unit that was modeled based on the middle setting of a commercially available 3-way lamp. Westinghouse stated that the price for a 3-way lamp is two to four times higher than the price for a non-dimmable, omnidirectional A-shape lamp, and therefore, would likely not be cost-effective. (Westinghouse, Public Meeting Transcript, No. 112 at pp. 40–41) Further, Westinghouse commented that DOE's resulting average consumer price of $4.09 for the 8 W LED representative lamp unit at EL 4 is more accurate for a 9 W, non-dimmable LED lamp meeting EL 2. Westinghouse stated that a lamp meeting EL 4, if available, would be a commercial product closer to $40 rather than $4. (Westinghouse, Public Meeting Transcript, No. 112 at pp. 57–58)

As noted in section IV.C.4, DOE modeled an 8 W LED lamp at EL 4 at the lumen output and efficacy of the middle (8 W) setting of a commercially available 3-way lamp. DOE determined that this efficacy was achievable by a standard 8 W, non-3-way LED lamp that could be packaged with a CFLK and made available through all CFLK distribution channels. DOE developed the retail price of the representative lamp unit at EL 4 by using a wattage-price trend based on retail prices of non-3-way LED lamps. As noted previously, DOE has observed a trend showing that lower wattage, more efficacious LED lamps are less expensive than higher wattage, less efficacious LED lamps. Therefore, a lower price for the less efficacious LED lamp at EL 2 than the more efficacious LED lamp at EL 4 would not reflect actual prices.

Westinghouse stated that they provide both dimmable and non-dimmable versions of the medium screw base, omnidirectional LED lamp. Westinghouse recommended DOE use a non-dimmable LED lamp as that is a true replacement for CFLs, which are generally not dimmable. Westinghouse noted that the price range for such a lamp at 8.5 W would be close to $4 and would increase by about a dollar with the addition of dimming functionality. (Westinghouse, Public Meeting Transcript, No. 112 at p. 58)

DOE believes that dimming is a feature desired by consumers. Although dimmable CFLs are not available at all levels, dimmable LED lamps are available at all ELs; thus this functionality is maintained in the analysis. In this rulemaking, DOE determines corresponding prices for

[19] Comments for the preliminary analysis of the General Service Lamps Energy Conservation Standards rulemaking can be accessed at: *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0051.*

LED lamps that maintain consumer utility, including dimming functionality.

Westinghouse recommended that DOE obtain component cost information from manufacturers. (Westinghouse, Public Meeting Transcript, No. 112 at p. 59) In the light kit replacement scenario, DOE included the incremental cost due to changes in socket configuration when applicable. Based on manufacturer feedback, DOE estimated the cost of different socket types to the manufacturer and then applied the appropriate manufacturer and distributor markups to obtain the consumer price of the socket.

The Joint Comment stated that LED A-lamp pricing continues to decline, with non-dimmable, 60 W A19 replacement lamps now available for less than $10 per bulb. The Joint Comment continued, stating that the price drops even further in regions with utility rebates. The Joint Comment also stated that by 2019, SSL options for CFLKs will be available at lower cost than today. (Joint Comment, No. 117 at p. 2) CA IOUs stated that based on DOE's forecasts in its 2006 MYPP and 2015 MYPP reports, LED package prices, which are comparable to LED lamp prices, have steadily decreased from 2006 and at a rate faster than initially projected. Additionally, CA IOUs used price data collected since December 2013 [20] from nine retailers to show an observed trend in the past two years and forecasted trend until 2020 of decreasing prices for candelabra base and medium screw base LED lamps. CA IOUs concluded that LED market-level price trends as well as prices observed for products specific to this rulemaking have shown a consistent decline over time. CA IOUs stated that these trends have surpassed previous forecasts, providing the market with higher performing and lower priced products than originally anticipated. (CA IOUs, No. 118 at pp. 3–7)

Declining prices of LED lamps over the last several years can be indicative of a future trend, but it is not certain. DOE used the latest pricing data available at the time of the analysis to determine consumer prices. In this final rule, DOE maintains the same methodology for the product price determination as that used in the NOPR analysis. (See chapter 7 of the final rule TSD for further details on the methodology and results.)

[20] CA IOUs collected LED lamp price data from nine lighting retailers' Web sites (*i.e.,* Home Depot, Lowe's, Ace Hardware, Wal-Mart, Costco, 1000Bulbs.com, Bulbs.com, and BulbAmerica.com) for roughly each month since December 2013, with the most recent monthly data including over 2,000 unique products.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of CFLKs at different efficiencies in representative U.S. homes and commercial buildings, and to assess the energy savings potential of increased CFLK efficacy. To develop annual energy use estimates, DOE multiplied CFLK input power by the number of hours of use (HOU) per year. The energy use analysis estimates the range of energy use of CFLKs in the field (*i.e.,* as they are actually used by consumers). The energy use analysis also provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended standards.

1. Operating Hours

a. Residential Sector

In the NOPR analysis, to determine the average HOU of CFLKs in the residential sector, DOE collected data from a number of sources. Consistent with the approach taken in the general service lamps (GSL) preliminary analysis,[21] DOE used data from various field metering studies of GSL operating hours in the residential sector. To account for any difference in CFLK HOU compared to GSL HOU, DOE considered two factors: (1) The relative HOU for GSLs installed in ceiling light fixtures compared to all GSLs based on data from the Residential Lighting End-Use Consumption Study (RLEUCS),[22] and (2) the HOU associated with the specific room types in which CFLKs are installed based on installation location data from a Lawrence Berkeley National Laboratory survey of ceiling fan and CFLK owners (LBNL survey) [23] and room-specific HOU data from RLEUCS. As in the GSL preliminary analysis, DOE assumed that CFLK operating hours do not vary by light source technology. ALA agreed with the methodology used to estimate operating hours for CFLKs in the residential sector and also agreed that CFLK operating hours do not vary by light source technology. (ALA, No. 115 at p. 8) DOE, therefore, maintained its NOPR approach for the final rule.

DOE determined the regional variation in average HOU using average HOU data from regional metering studies, all of which are listed in the energy use chapter (chapter 6 of the final rule TSD). DOE organized the regional variation in HOU by each EIA Residential Energy Consumption Survey (RECS) reportable domain (*i.e.,* state, or group of states). For regions without HOU metered data, DOE used data from adjacent regions.

To estimate the variability in CFLK HOU by room type, DOE developed HOU distributions for each room type using data from the Northwest Energy Efficiency Alliance's Residential Building Stock Assessment Metering Study (RBSAM),[24] which is a metering study of 101 single-family houses in the Northwest. DOE assumed that the shape of the HOU distribution for a particular room type would be the same across the United States, even if the average HOU for that room type varied by geographic location. To determine the room and geographic location-specific HOU distributions, DOE scaled the HOU distribution for a given room type from the RBSAM study by the average HOU in a given region, adjusted based on the geographic location-specific variability in HOU between different room types from RLEUCS.

Based on the approach described in this section, DOE estimated the national weighted-average HOU of CFLKs to be 2.0 hours per day. For more details on the methodology DOE used to estimate the HOU for CFLKs in the residential sector, see chapter 6 of the final rule TSD.

b. Commercial Sector

The HOU for CFLKs in commercial buildings were developed using lighting data for 15 commercial building types obtained from the 2010 U.S. Lighting Market Characterization (LMC).[25] For each commercial building type presented in the LMC, DOE determined

[21] DOE has published a framework document and preliminary analysis for amending energy conservation standards for general service lamps. Further information is available at *www.regulations.gov* under Docket ID: EERE–2013–BT–STD–0051.

[22] DNV KEMA Energy and Sustainability and Pacific Northwest National Laboratory. *Residential Lighting End-Use Consumption Study: Estimation Framework and Baseline Estimates.* 2012. (Last accessed October 13, 2015.) *http://apps1.eere.energy.gov/buildings/publications/pdfs/ssl/2012_residential-lighting-study.pdf.*

[23] Kantner, C.L.S., S.J. Young, S. M. Donovan, and K. Garbesi. *Ceiling Fan and Ceiling Fan Light Kit Use in the U.S.—Results of a Survey on Amazon Mechanical Turk.* 2013. Lawrence Berkeley National Laboratory: Berkeley, CA. Report No. LBNL–6332E. (Last accessed October 13, 2015.) *http://www.escholarship.org/uc/item/3r67c1f9.*

[24] Ecotope Inc. *Residential Building Stock Assessment: Metering Study.* 2014. Northwest Energy Efficiency Alliance: Seattle, WA. Report No. E14–283. (Last accessed October 13, 2015.) *http://neea.org/docs/default-source/reports/residential-building-stock-assessment-metering-study.pdf?sfvrsn=6.*

[25] Navigant Consulting, Inc. *Final Report: 2010 U.S. Lighting Market Characterization.* 2012. U.S. Department of Energy. (Last accessed October 13, 2015.) *http://apps1.eere.energy.gov/buildings/publications/pdfs/ssl/2010-lmc-final-jan-2012.pdf.*

average HOU based on the fraction of installed lamps utilizing each of the light source technologies typically used in CFLKs and the HOU for each of these light source technologies. A national-average HOU for the commercial sector was then estimated by weighting the building-specific HOU for lamps used in CFLKs by the relative floor space of each building type as reported in the 2003 EIA Commercial Buildings Energy Consumption Survey (CBECS).[26] To capture the variability in HOU for individual consumers in the commercial sector, DOE applied a triangular distribution to each building type's weighted-average HOU with a minimum of 80 percent and a maximum of 120 percent of the weighted-average HOU value. For further details on the commercial sector operating hours, see chapter 6 of the final rule TSD.

2. Input Power

DOE developed its estimate of the power consumption of CFLKs by scaling the input power and lumen output of the representative lamp units for CFLKs characterized in the engineering analysis to account for the lumen output of CFLKs in the market. DOE estimated average CFLK lumen output based on a weighted average of CFLK models from data collected in 2014 from in-store shelf surveys and product offerings on the Internet. DOE estimated the market share of each identified CFLK model based on price. See chapter 6 of the final rule TSD for details on the price-weighting market share adjustment and how DOE estimated average weighted lumen output for all CFLKs.

3. Lighting Controls

Based on the technical issues pertaining to the ability of CFLs to dim, as well as the significant price premium for dimmable CFLs, DOE assumed in the NOPR analyses that CFLKs are not likely to feature dimmable CFLs. ALA agreed with this assumption. (ALA, No 115 at p. 8) In the final rule analyses, DOE again assumed CFL CFLKs are not operated with controls. On the other hand, in the NOPR analyses, DOE assumed that some fraction of LED and incandescent CFLKs are likely to be operated with a dimmer, which DOE considered to be the only relevant lighting control for CFLKs. ALA and Lutron supported this assumption. (ALA, No. 115 at p. 8; Lutron, No. 113 at p. 2) For the final rule analyses, as in the NOPR analyses, DOE used the results of an LBNL survey[27] to estimate that 11 percent of CFLKs are operated with dimmers. DOE assumed that the fraction of CFLKs used with dimmers is the same in the residential sector and the commercial sector. Furthermore, DOE assumed that an equal fraction of LED and incandescent CFLKs are operated with dimmers, based on the increasing fraction of commercially available dimmers that are now compatible with LEDs, the increase in LED lamps that are being designed to operate on legacy dimmers, and the assumption that integral LEDs have built-in dimming capability with no compatibility issues. DOE used the 2010 LMC[28] and the aforementioned LBNL survey to account for the likelihood that a CFLK with a dimmer will be installed in a given room type. This affects the impact of dimming controls on energy use because, as discussed previously, average HOU varies by room type.

In the NOPR analyses, DOE assumed dimmable CFLKs have an average energy reduction of 30 percent. This estimate was based on a meta-analysis of field measurements of energy savings from commercial lighting controls by Williams, *et al.*[29] Because field measurements of energy savings from controls in the residential sector are very limited, DOE assumed that controls would have the same impact as in the commercial sector. ALA and Lutron agreed with DOE's energy savings estimate from the use of dimmers in the residential sector. (ALA, No. 115 at p. 8; Lutron, No. 113 at p. 2). For the final rule analyses, DOE maintained its assumption of an average 30 percent energy reduction in both sectors. Chapter 6 of the final rule TSD provides details on how DOE accounted for the impact of dimmers on CFLK energy use.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for CFLKs. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- The LCC (life-cycle cost) is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (product price, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP (payback period) is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher ELs by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For each CFLK standards case (*i.e.,* case where a standard would be in place at a particular TSL), DOE measures the change in LCC based on the estimated change in efficacy distribution in the standards case relative to the estimated efficacy distribution in the no-new-standards case. These efficacy distributions include market trends for products that may exceed the efficacy associated with a given TSL as well as the current energy conservation standards. In contrast, the PBP for a given EL is measured relative to the baseline product.

For each considered EL, DOE calculated the LCC and PBP for a nationally representative consumer sample in each of the residential and commercial sectors. DOE developed consumer samples based on the 2009 RECS and the 2003 CBECS, for the residential and commercial sectors, respectively. For each consumer in the sample, DOE determined the energy consumption of CFLKs and the appropriate electricity price. By developing consumer samples, the analysis captured the variability in energy consumption and energy prices associated with the use of CFLKs.

DOE added sales tax, which varied by state, to the cost of the product developed in the product price determination to determine the total installed cost. DOE assumed that the installation costs did not vary by EL, and therefore did not consider them in the analysis. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for product

[26] U.S. Department of Energy-Energy Information Administration. *2003 CBECS Survey Data.* (Last accessed October 13, 2015.) *http://www.eia.gov/consumption/commercial/data/2003/index.cfm?view=microdata.*

[27] Kantner, *et al.* (2013), op. cit.

[28] *Navigant Consulting, Inc. Final Report: 2010 U.S. Lighting Market Characterization. 2012. U.S. Department of Energy. (Last accessed October 13, 2015.) http://apps1.eere.energy.gov/buildings/publications/pdfs/ssl/2010-lmc-final-jan-2012.pdf.*

[29] Williams, A., B. Atkinson, K. Garbesi, E. Page, and F. Rubinstein. Lighting Controls in Commercial Buildings. *LEUKOS.* 2012. 8(3): pp. 161–180. (Last accessed October 22, 2015.) *http://eetd.lbl.gov/publications/lighting-controls-commercial-buildings.*

lifetime and discount rates, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and CFLK user samples. The model calculated the LCC and PBP for products at each EL for sample of 10,000 consumers per simulation run.

DOE calculated the LCC and PBP for all consumers as if each were to purchase a new product in the expected year of compliance with amended standards. At this time, DOE estimates publication of a final rule in 2016. For purposes of its analysis, DOE assumed a compliance date three years after publication of any final amended standard (*i.e.,* 2019).

Table IV.8 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the final rule TSD and its appendices.

TABLE IV.8—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Multiplied the weighted-average consumer price of each CFLK lamp and socket (determined in the product price determination) with a scaling factor to account for the total weighted-average CFLK lumen output. For LED lamps, DOE used a price learning analysis to project CFLK lamp prices to the compliance year.
Sales Tax	Derived 2019 population-weighted-average tax values for each state based on Census population projections and sales tax data from Sales Tax Clearinghouse.
Disposal Cost	Assumed 35% of commercial CFLs are disposed of at a cost of $0.70 per CFL. Assumptions based on industry expert feedback and a Massachusetts Department of Environmental Protection mercury lamp recycling rate report.
Annual Energy Use	Derived in the energy use analysis. Varies by geographic location and room type in the residential sector and by building type in the commercial sector.
Energy Prices	Electricity: Based on 2014 marginal electricity price data from the Edison Electric Institute. Variability: Marginal electricity prices vary by season, U.S. region, and baseline electricity consumption level.
Energy Price Trends	Based on *AEO 2015* price forecasts.
Lamp Replacements	For lamp failures during the lifetime of the CFLK, consumers replace lamps with lamp options available in the market that have the same base type and provide a similar lumen output to the initially packaged lamps.
Residual Value	Represents the value of surviving lamps at the end of the CFLK lifetime. DOE discounts the residual value to the start of the analysis period and calculates it based on the remaining lamp's lifetime and price in the year the CFLK is retired.
Product Lifetime	Based on a ceiling fan lifetime distribution, with a mean of 13.8 years.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances.
Efficacy Distribution	Estimated by the market-share module of shipments model. See chapter 9 of the final rule TSD for details.
Compliance Date	2019.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the final rule TSD.

1. Product Cost

DOE developed the weighted-average CFLK socket costs and consumer prices for all representative lamp units presented in the engineering analysis in the product price determination (chapter 7 of the final rule TSD). DOE did not account for the remaining price of the CFLKs (*i.e.,* CFLK price excluding the lamps and sockets) in the LCC calculation because these are assumed to be the same for all CFLKs regardless of efficacy. As discussed earlier, DOE scaled the lumen output of each representative lamp unit by a factor equal to the ratio of the market-weighted average total lumen output to the baseline lamp lumen output. For consistency, DOE also multiplied the price of the lamp and socket by the same scaling factor to determine the total product cost.

DOE also used a price learning analysis to account for changes in lamp prices that are expected to occur between the time for which DOE has data for lamp prices (2014) and the assumed compliance date of the rulemaking (2019). For details on the price learning analysis, see section IV.G.

DOE applied sales tax, which varies by geographic location, to the total product cost. DOE collected sales tax data from the Sales Tax Clearinghouse [30] and used population projections from the Census Bureau [31] to develop population-weighted-average sales tax values for each state in 2019.

2. Disposal Cost

Disposal cost is the cost a consumer pays to dispose of their retired CFLK. As in the NOPR analyses, DOE assumed in the final rule analyses that because LED lamps do not contain mercury, LED CFLKs do not have an associated disposal cost. DOE also assumed that the fraction of commercial consumers who pay to recycle CFLs is smaller than the fraction who pay to recycle linear fluorescent lamps. DOE estimates that the fraction of commercial consumers who pay disposal fees for fluorescent lamps will increase to 35 percent by 2019 based on a 2004 report from the Association of Lighting and Mercury Recyclers,[32] which estimated a 29 percent commercial recycling rate, and a 2009 draft report from the Massachusetts Department of Environmental Protection [33] that indicated a recycling rate of approximately 34 percent. Given this

[30] Sales Tax Clearinghouse, Inc. *The Sales Tax Clearinghouse.* (Last accessed October 22, 2015.) *https://thestc.com/STRates.stm.*

[31] U.S. Department of Commerce-Bureau of the Census. Table A1: Interim Projections of the Total Population for the United States and States: April 1, 2000 to July 1, 2030. *Population Division, Interim State Population Projections.* 2005.

[32] Association of Lighting and Mercury Recyclers. *National Mercury-Lamp Recycling Rate and Availability of Lamp Recycling Services in the U.S.* 2004. (Last accessed October 13, 2015.) *http://www.lamprecycle.org/wp-content/uploads/2014/02/ALMR_capacity_statement.2004.-pdf.pdf.*

[33] Massachusetts Department of Environmental Protection. *Draft 2009 Mercury Lamp Recycling Rate Determination.* 2011. Massachusetts.

increased recycling percentage and DOE's assumption that the rate of commercial fluorescent lighting recycling would increase by the compliance date of this rulemaking, DOE has assumed that 35 percent of consumers of commercial CFLs pay to recycle their lamps by 2019. DOE assumes that this fraction will have saturated by 2019 and will remain constant throughout the analysis period due to the availability of free options for recycling small numbers of CFLs and the likelihood that some CFLs in the commercial sector will not be disposed of through recommended methods. DOE also assumed that the disposal cost is $0.70 per lamp based on feedback from a lighting industry expert and stakeholder comments received on the GSL preliminary analysis TSD.[34] ALA agreed with DOE's identical assumptions on disposal costs in the NOPR analyses. (ALA, No. 115 at p. 8)

3. Annual Energy Consumption

For each consumer sample, DOE determined the energy consumption for a CFLK at different ELs using the approach described above in section IV.E of this document.

4. Energy Prices

DOE used marginal electricity prices to calculate the operating costs associated with each EL in the final rule analyses. Marginal electricity prices may provide a better representation of consumer costs than average electricity prices because marginal electricity prices more accurately reflect the expected change in a consumer's electric utility bill due to an increase in end-use efficiency. In the LCC analysis, marginal electricity prices vary by season, region, and baseline household electricity consumption level. DOE estimated these prices using data published with the Edison Electric Institute (EEI) Typical Bills and Average Rates reports for summer and winter 2014.[35] DOE assigned seasonal marginal prices to each household or commercial building in the LCC sample based on its location and its baseline monthly electricity consumption for an average summer or winter month. For a detailed discussion of the development of electricity prices, see appendix 8D of the final rule TSD.

5. Energy Price Trends

To arrive at electricity prices in future years, DOE multiplied the marginal 2014 electricity prices by the forecast of annual residential or commercial electricity price changes for each Census division from EIA's *AEO 2015,* which has an end year of 2040.[36] For each purchase sampled, DOE applied the projection for the Census division in which the purchase was located. The *AEO* electricity price trends do not distinguish between marginal and average prices, so DOE used the *AEO 2015* trends for the marginal prices. DOE reviewed the EEI data for the years 2007 to 2014 and determined that there is no systematic difference in the trends for marginal vs. average electricity prices in the data.

DOE used the electricity price trends associated with the *AEO* reference case scenarios for the nine Census divisions. The reference case is a business-as-usual estimate, given known market, demographic, and technological trends. DOE also included *AEO* High Growth and *AEO* Low-Growth scenarios in the analysis. The high- and low-growth cases show the projected effects of alternative economic growth assumptions on energy markets. To estimate the trends after 2040, DOE used the average rate of change during 2025–2040.

6. Lamp Replacements

In the LCC analysis, DOE assumes that in both the commercial and residential sectors, lamps fail only at the end of the lamp service life. The service life (in years) is determined by dividing the lamps' rated lifetime (in hours) by the lamps' average operating hours per year.

Replacement costs include, in principle, both the lamps and labor associated with replacing a CFLK lamp at the end of its lifetime. However, DOE assumes that labor costs for lamp replacements are negligible and therefore did not include them in the analysis. Thus, DOE considers that the only first costs associated with lamp replacements are lamp purchase costs to consumers.

DOE assumed that consumers replace failed lamps with new lamps chosen from options available in the lighting market that have the same base type and provide an equivalent lumen output. DOE modeled this decision using a consumer-choice model, which incorporates consumer sensitivity to first cost and operation and maintenance (O&M) cost. DOE accounted for the first cost associated with purchasing a replacement lamp, the electricity consumption and operating costs which depend on the replacement lamp wattage, and the residual value of the lamp at the end of the CFLK lifetime. For details, see chapter 8 of the final rule TSD.

7. Product Lifetime

DOE accounted for variability in the CFLK lifetimes by assigning a lifetime distribution[37] that is tied to the lifetime of the ceiling fan[38] to which the CFLK is attached. DOE used the ceiling fan lifetime distribution determined in the preliminary analysis of the energy conservation standards rulemaking for ceiling fans.[39] If originally packaged lamps fail before the end of the CFLK lifetime, DOE assumed that consumers replace those lamps with lamps of the same socket type and equivalent lumen output, as described in the previous section.

8. Residual Value

The residual value represents the remaining dollar value of surviving lamps at the end of the CFLK lifetime, discounted to the compliance year. DOE assumed that all lamps with lifetimes shorter than the CFLK lifetime are replaced. To account for the value of any initially packaged or replacement lamps with remaining life to the consumer, the LCC model applies this residual value as a ''credit'' at the end of the CFLK lifetime, which is discounted back to the start of the analysis period. Because DOE estimates that LED lamps undergo price learning, the residual value of these lamps is calculated based on the LED lamp price in the year the CFLK is retired.

9. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present value of future operating costs. DOE estimated a distribution of residential discount rates for CFLKs based on

[34] These comments can be viewed on the General Service Lamps Energy Conservation Standards docket Web site: *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0051.*

[35] Edison Electric Institute. *Typical Bills and Average Rates Report.* Winter 2014 published April 2014, Summer 2014 published October 2014: Washington, DC.

[36] U.S. Energy Information Administration. *Annual Energy Outlook 2015 with Projections to 2040.* 2015. Washington, DC Report No. DOE/EIA–0383(2015). (Last accessed October 13, 2015.) *http://www.eia.gov/forecasts/aeo/pdf/0383(2015).pdf.*

[37] DOE used a Weibull distribution to model the lifetime of ceiling fans. Weibull distributions are commonly used to model appliance lifetimes.

[38] The lifetime of the ceiling fan, rather than that of the CFLK, is used because the fan, having moving parts, is likely to have a shorter life, and the available data suggest that when fans cease to function, their light kit is also retired.

[39] DOE has published a framework document and preliminary analysis for establishing energy conservation standards for ceiling fans. Further information is available at *www.regulations.gov* under Docket ID: EERE–2012–BT–STD–0045.

consumer financing costs and opportunity cost of funds related to appliance energy cost savings and maintenance costs.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. DOE estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's Survey of Consumer Finances [40] (SCF) for 1995, 1998, 2001, 2004, 2007, and 2010. Further, using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each type, is 4.4 percent. See chapter 8 of the final rule TSD for further details on the development of consumer discount rates.

To establish commercial discount rates for the LCC analysis, DOE estimated the cost of capital for companies that purchase CFLKs. The weighted-average cost of capital is commonly used to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so their cost of capital is the weighted average of the cost to the firm of equity and debt financing, as estimated from financial data for publicly traded firms in the sectors that purchase CFLKs. For this analysis, DOE used Damodaran online [41] as the source of information about company debt and equity financing. The average rate across all types of companies, weighted by the shares of each type, is 5.0 percent. See chapter 8 of the final rule TSD for further details on the development of commercial sector discount rates.

10. Efficacy Distributions

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular EL, DOE's LCC analysis considered the projected distribution (market shares) of product efficacies in the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards) and each of the standards cases (*i.e.,* the cases where a standard would be set at each TSL) at the assumed compliance year. The estimated market shares for the no-new-standards case and each standards case for CFLKs are determined by the shipments analysis and are shown in Table IV.9. See section IV.G of this document and chapter 9 of the final rule TSD for further information on the derivation of the market efficacy distributions.

TABLE IV.9—MARKET EFFICACY DISTRIBUTION BY TRIAL STANDARD LEVEL IN 2019

Trial standard level	Sub-baseline (%)	EL 0 (%)	EL 1 (%)	EL 2 (%)	EL 3 (%)	EL 4 (%)	Total (%)
No-new-standards	55.9	0.0	26.3	10.2	3.5	4.1	100
TSL 0	0.0	0.0	82.2	10.2	3.5	4.1	100
TSL 1	0.0	0.0	82.2	10.2	3.5	4.1	100
TSL 2	0.0	0.0	0.0	51.3	3.5	45.2	100
TSL 3	0.0	0.0	0.0	0.0	3.5	96.5	100
TSL 4	0.0	0.0	0.0	0.0	0.0	100.0	100

11. LCC Savings Calculation

As in the NOPR analysis, in the final rule reference scenario, DOE calculated the LCC savings at each TSL based on the change in LCC for each standards case compared to the no-new-standards case, considering the efficacy distribution of products derived by the shipments analysis. Unlike the roll-up approach applied in the preliminary analysis, where the market share of ELs below the standard level 'rolls up' to the least efficient EL still available in each standards case, the reference approach allows consumers to choose more-efficient (and sometimes less expensive) products at higher ELs and is intended to more accurately reflect the impact of a potential standard on consumers.

DOE also performed the roll-up approach as an alternative scenario to calculate LCC savings. For details on both the reference scenario and the roll-up approach, see chapter 8 of the final rule TSD.

12. Payback Period Analysis

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more-efficient products, compared to the least efficient products on the market, through energy cost savings. Payback periods are expressed in years. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each EL are the change in total installed cost of the product and the change in the initial operating expenditures relative to the least efficient product on the market. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates and energy price trends are not needed. DOE did not consider the impact of replacement lamps (that replace the initially packaged lamps when they fail) in the calculation of the PBP.

As noted above, EPCA, as amended, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered EL, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price forecast for the year in which compliance with the amended standards would be required.

[40] Board of Governors of the Federal Reserve System. *Survey of Consumer Finances.* 1989, 1992, 1995, 1998, 2001, 2004, 2007, and 2010. (Last accessed October 13, 2015.) *http://www.federalreserve.gov/econresdata/scf/scfindex.htm.*

[41] Damodaran, A. *Cost of Capital by Sector.* January 2014. (Last accessed October 13, 2015.) *http://people.stern.nyu.edu/adamodar/New_Home_Page/datafile/wacc.htm.*

G. Shipments Analysis

DOE uses projections of product shipments to calculate the national impacts of potential amended energy conservation standards on energy use, NPV, and future manufacturer cash flows. Historical shipments data are used to build up an equipment stock, and to calibrate the shipments model to project shipments over the course of the analysis period based on the estimated future demand for CFLKs. Details of the shipments analysis are described in chapter 9 of the final rule TSD.

The shipments model projects total shipments and market share efficacy distributions in each year of the 30-year analysis period (2019–2048) for the no-new-standards case and each of the standards cases. Shipments are calculated for the residential and commercial sectors assuming 95 percent of shipments are to the residential sector and 5 percent are to the commercial sector. DOE further assumed in its analysis that CFLKs are primarily found on standard and hugger ceiling fans. DOE also assumed that the distribution of CFLKs by light source technology in the commercial sector is the same as the light source technology distribution in the residential sector.

The shipments model consists of three main components: (1) A demand model that determines the total demand for new CFLKs in each year of the analysis period, (2) a stock model that tracks the age distribution of the stock over the analysis period, and (3) a modified consumer-choice model that determines the market shares of purchased CFLKs across ELs.

1. Shipments Demand and Stock Accounting

The CFLK shipments demand model considers four market segments that impact the net demand for total shipments: Replacements for retired stock, additions due to new building construction, additions due to expanding demand in existing buildings, and reductions due to building demolitions, which erodes demand from replacements and existing buildings.

The stock accounting model tracks the age (vintage) distribution of the installed CFLK stock. The age distribution of the stock is a key input to both the NES and NPV calculations, because the operating costs for any year depend on the age distribution of the stock. Older, less efficient units may have higher operating costs, while newer, more-efficient units have lower operating costs. The stock accounting model is initialized using historical shipments data and accounts for additions to the stock (*i.e.,* shipments) and retirements. The age distribution of the stock in 2012 is estimated using results from the LBNL survey of ceiling fan owners.[42] The stock age distribution is updated in subsequent years using projected shipments and retirements determined by the stock age distribution and a product retirement function.

2. Market-Share Projections

The modified consumer-choice model estimates the market shares of purchases in each year in the analysis period for each EL presented in the engineering analysis. In the case of CFLKs, the lamps included with the CFLK are chosen by the CFLK manufacturer. A key assumption of DOE's CFLK consumer-choice model is that when LED lamps reach price parity with comparable CFLs, manufacturers will purchase LED lamps to package with a CFLK, making only those lamps available to the consumer. In other words, DOE assumes that CFLK manufacturers will not pay a price premium to package with CFLs compared to LED lamps. Prior to the point when LED lamps reach price parity with CFLs, market share to LED CFLKs is allocated following an adoption curve discussed in more detail below.

As described in the engineering analysis, DOE assumed that CFLK manufacturers could respond in two ways to an amended energy conservation standard. Manufacturers could maintain the current base type and number of lamps in a CFLK design and simply replace lamps currently packaged with CFLKs with a more-efficient option (lamp replacement scenario), or they could reconfigure CFLKs to include a different base type and/or number of lamps, in addition to packaging with more-efficient lamp options (light kit replacement scenario). DOE assumed that there was no inherent preference between the two scenarios and split market share evenly between them.

DOE's shipments model estimates the adoption of LED technologies using an incursion curve and a modified consumer-choice model in both the no-new-standards and amended standards cases. For the final rule analysis, DOE used the Bass diffusion curve developed in the *Energy Savings Potential of Solid-State Lighting in General Illumination Applications*[43] (SSL report) for GSLs to estimate the market share apportioned to LED ELs. DOE assumed the adoption of LEDs in the CFLK market would trail behind adoption of LED technology in the GSL market by 3.5 years. In the final rule analysis, DOE's LED incursion curve for CFLKs results in a market share of 14 percent for LED lamps in 2019.

In the NOPR analysis, DOE assumed the market for LED lamps would naturally move to more efficacious ELs in the no-new-standards case as well as the standards cases based on observed trends in the efficacy of LED lamps on the market over time. CA IOUs were supportive of DOE's efforts to model the efficacy trend of LEDs. (CA IOUs, No. 118 at p. 1) In the final rule, DOE continued to use the same methodology to project LED efficacy over the analysis period.

3. Price Learning

In the final rule analysis, DOE assumed that price learning would occur only for LEDs. DOE used the price trends developed in the GSLs preliminary analysis for the reference scenario in the base case of that rulemaking (*i.e.,* shipments of LED GSLs were affected by the EISA 2007 backstop but not by a GSL final rule). That scenario assumed that LED GSLs would experience the same learning rate historically observed for CFLs. Most recent estimates for LED GSL price trends indicate faster historic price decline;[44] therefore, DOE believes the scenario it used may be a conservative estimate of LED GSL price trends. Details on the development of the price trends are in chapter 9 of the final rule TSD and chapter 9 of the GSL preliminary analysis TSD.[45]

4. Impact of EISA 2007 Backstop

In the preliminary analysis for the ongoing GSL energy conservation standards rulemaking,[46] DOE

[42] Kantner, *et al.* (2013), op. cit.

[43] Navigant Consulting, Inc. *Energy Savings Potential of Solid-State Lighting in General Illumination Applications.* 2012. U.S. Department of Energy. (Last accessed October 23, 2015.) *http://apps1.eere.energy.gov/buildings/publications/pdfs/ssl/ssl_energy-savings-report_jan-2012.pdf.*

[44] Navigant Consulting, Inc. *Energy Savings Forecast of Solid-State Lighting in General Illumination Applications.* 2014. U.S. Department of Energy. Report No. DOE/EE–1133. (Last accessed October 23, 2015.) *http://apps1.eere.energy.gov/buildings/publications/pdfs/ssl/energysavingsforecast14.pdf.*

[45] U.S. Department of Energy—Office of Energy Efficiency and Renewable Energy. Preliminary Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: General Service Lamps. December 2014. Washington, DC (Last accessed October 23, 2015.) *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0051-0022.*

[46] The GSL energy conservation standards preliminary analysis technical support document and public meeting information are available at

Continued

determined that lamps that have base types specified by ANSI, have a lumen output of at least 310 lumens, and are intended to serve in general lighting applications meet the GSL definition. Therefore, DOE considers candelabra-base lamps that meet the lumen output and general application requirements to meet the GSL definition, which available information indicates would include all candelabra-base lamps currently packaged with CFLKs. All lamps that meet the GSL definition would be subject to the EISA 2007 backstop requirement prohibiting, beginning on January 1, 2020, the sale of any GSL that does not meet a minimum efficacy standard of 45 lm/W if the ongoing GSL rulemaking is not completed by January 1, 2017, or if the energy savings of the GSL final rule are not greater than or equal to the savings from a minimum efficacy standard of 45 lumens per watt. 42 U.S.C. 6295(i)(6)(A)(v).

The Continuing Appropriations Act, 2016 (Pub. L. 114–53, Sept. 30, 2015), in relevant part, continues to restrict the use of appropriated funds in connection with several aspects of DOE's incandescent lamps energy conservation standards program. Specifically, none of the funds made available by the Act may be used to implement or enforce standards for GSILs, intermediate base incandescent lamps and candelabra base incandescent lamps. Thus, DOE is not considering GSILs in the GSL rulemaking. Because GSILs are not included in the scope of the GSL rulemaking, DOE assumed that any GSL final rule would not yield sufficient energy savings to avoid triggering the EISA 2007 45 lm/W backstop. Therefore, DOE assumed that the backstop would go into effect on January 1, 2020.

As a result, in the CFLK NOPR analysis, DOE assumed in both the no-new-standards and the standards-case shipment projections that candelabra-base lamps with efficacy below the minimum requirement of 45 lm/W will no longer be an option available for packaging with CFLKs beginning January 1, 2020. The Joint Comment supported that all lamps packaged with CFLKs, including candelabra-based lamps, will be subject to a 45 lm/W standard starting January 1, 2020. (Joint Comment, No. 117 at p. 2). In the final rule, DOE continued to assume that all lamps packaged with CFLKs would be subject to the 45 lm/W standard beginning January 1, 2020.

5. Impact of a Standard on Shipments

For the CFLK final rule analyses, DOE used an initial relative price elasticity of demand of −0.34, which is the value DOE has typically used for residential appliances. DOE notes that the fractional drop in CFLK shipments in the standards cases is proportional to the change in CFLK purchase price compared to the total price of a ceiling fan and CFLK system.

For this final rule, DOE assumed that the vast majority of CFLKs are sold with ceiling fans and acknowledges that any standard adopted on ceiling fans that would increase the average price of ceiling fans would decrease shipments of CFLKs. However, DOE did not assume a standard on ceiling fans in its projections for CFLK shipments because DOE has not yet adopted a ceiling fan standard.[47] In any ECS NOPR for ceiling fans, DOE will consider the impact of these adopted CFLK standards in its projections of ceiling fan shipments.

H. National Impact Analysis

The NIA assesses the national energy savings (NES) and the national net present value (NPV) from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific ELs.[48] (''Consumer'' in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV based on projections of annual product shipments, along with the annual energy consumption, total installed cost, and the costs of relamping.[49] For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of CFLKs sold from 2019 through 2048.

DOE evaluates the impacts of amended standards by comparing a no-new-standards-case projection with standards-case projections. The no-new-standards-case projection characterizes energy use and consumer costs in the absence of amended energy conservation standards. The standards-case projections characterize energy use and consumer cost for the market distribution where CFLKs that do not meet the TSL being analyzed are excluded as options available to the consumer. As described in section IV.G of this final rule, DOE developed market share distributions for CFLKs at each EL in the no-new-standards case and each of the standards cases in its shipments analysis.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV.10 summarizes the inputs and methods DOE used for the NIA analysis for the final rule. Discussion of these inputs and methods follows the table. See chapter 10 of the final rule TSD for further details.

TABLE IV.10—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2019.
No-new-standards Case Forecasted Efficacies.	Estimated by market-share module of shipments model including impact of SSL incursion.
Standards Case Forecasted Efficacies.	Estimated by market-share module of shipments model including impact of SSL incursion.
Annual Energy Consumption per Unit.	Annual weighted-average values are a function of energy use at each EL, including impacts of relamping over the CFLK lifetime.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each EL. Incorporates projection of future LED lamp prices based on historical data.

regulations.gov under docket ID EERE–2013–BT–STD–0051–0022: *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0051.*

[47] The ceiling fans energy conservation standards docket (docket number EERE–2012–BT–STD–0045–0065) is located at regulations.gov: *http://www.regulations.gov/#!docketDetail;D=EERE-2012-BT-STD-0045.*

[48] The NIA accounts for impacts in the 50 states and U.S. territories.

[49] For the NIA, DOE adjusts the installed cost data from the LCC analysis to exclude sales tax, which is a transfer.

TABLE IV.10—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS—Continued

Inputs	Method
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit.	Annual values do not change with efficacy level. Replacement lamp costs are calculated for each efficacy level over the analysis period.
Energy Prices	*AEO 2015* forecasts (to 2040) and extrapolation through 2048.
Energy Site-to-Primary and FFC Conversion.	A time-series conversion factor based on *AEO 2015.*
Discount Rate	Three and seven percent.
Present Year	2015.

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.F.10 of this document describes how DOE developed an energy efficacy distribution for the no-new-standards case (which yields a shipment-weighted average efficacy) for the first year of the forecast period. To project the trend in efficacy for CFLKs over the entire shipments projection period, DOE used estimates for LED incursion and a modified consumer-choice model sensitive to the first cost of available lamp options. For standards cases, lamp options that do not meet the standard are eliminated as options for the consumer-choice model. The consumer-choice model used to project market shares over the course of the analysis period is further described in chapter 9 of the final rule TSD.

2. National Energy Savings

The NES analysis involves a comparison of national energy consumption of the considered products in each potential standards case (TSL) with consumption in the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE accounts for changes in unit energy consumption as the lamps packaged with the CFLK are retired at the end of the lamp lifetime and new lamps are purchased as replacements for the existing CFLK. DOE uses a consumer-choice model, described in section IV.G, to determine the mix of lamps chosen as replacements.

DOE calculated annual NES based on the difference in national energy consumption for the no-new-standards case and for the case where a standard is set at each TSL. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO 2015.* Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

In 2011, in response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use full-fuel-cycle (FFC) measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (August 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (NEMS) is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [50] that EIA uses to prepare its *Annual Energy Outlook.* The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the final rule TSD.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are: (1) Total annual installed cost; (2) total annual savings in operating costs; and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the forecast period.

The operating cost savings are primarily energy cost savings, which are calculated using the estimated energy savings in each year and the projected price of electricity. To estimate electricity prices in future years, DOE multiplied the average regional energy prices by the forecast of annual national-average residential or commercial electricity price changes in the Reference case from *AEO 2015,* which has an end year of 2040. To estimate price trends after 2040, DOE used the average annual rate of change in prices from 2025 to 2040.

DOE estimated the range of potential impacts of amended standards by considering high and low benefit scenarios. In the high benefits scenario, DOE used the High Economic Growth *AEO 2015* estimates for new housing starts and electricity prices along with its reference LED price learning trend. As discussed in section IV.G, the reference LED price trend assumes the learning rate measured from historical CFL price trends can be applied to cumulative LED shipments to determine future LED prices. In the low benefits scenario, DOE used the Low Economic Growth *AEO 2015* estimates for housing starts and electricity prices, along with a high LED learning rate. The high LED learning rate is estimated from historical LED price trends and shows a faster price decline in comparison to the CFL learning rate as estimated by LBNL.[51] The benefits to consumers from amended CFLK standards are lower if LED prices decline faster because consumers convert to LED CFLKs more

[50] For more information on NEMS, refer to *The National Energy Modeling System: An Overview,* DOE/EIA–0581 (98) (Feb. 1998) (Available at: *http://webapp1.dlib.indiana.edu/virtual_disk_library/index.cgi/4265704/FID3754/pdf/Multi/058198.pdf*).

[51] Gerke, B., A. Ngo, A. Alstone, and K. Fisseha. *The Evolving Price of Household LED Lamps: Recent Trends and Historical Comparisons for the US Market.* 2014. Lawrence Berkeley National Laboratory: Berkeley, CA. Report No. LBNL–6854E. (Last accessed October 13, 2015.) *http://eetd.lbl.gov/publications/the-evolving-price-of-household-led-l.*

quickly in the no-new-standards case. NIA results based on these alternative scenarios are presented in appendix 10C of the final rule TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this final rule, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis.[52] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. For this final rule, DOE analyzed the impacts of the considered standard levels on low-income households and small businesses that purchase CFLKs. Chapter 11 of the final rule TSD describes the consumer subgroup analysis.

J. Manufacturer Impact Analysis

DOE conducted an MIA for CFLKs to estimate the financial impact of adopted standards on CFLK manufacturers. For this rulemaking, DOE considered CFLK manufacturers to be companies that produce ceiling fans with CFLKs or produce CFLKs for the purpose of attaching them to ceiling fans. While the adopted CFLK standards regulate the efficacy of the lamps used in CFLKs, DOE does not consider lamp manufacturers as part of the MIA for this rulemaking. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA relies on the GRIM, an industry cash-flow model customized for the CFLKs covered in this rulemaking. The key GRIM inputs are data on the industry cost structure, product costs, shipments, assumptions about markups, and conversion costs. The key MIA output is INPV. DOE used the GRIM to calculate cash flows using standard accounting principles and to compare changes in INPV between a no-new-standards case and various TSLs (the standards cases). The difference in INPV between the no-new-standards and standards cases represents the financial impact of amended energy conservation standards on CFLK manufacturers. Different sets of assumptions (scenarios) produce different INPV results. The qualitative part of the MIA addresses factors such as manufacturing capacity; characteristics of, and impacts on, any particular subgroup of manufacturers; and impacts on competition.

DOE outlined its complete methodology for the MIA in the previously published NOPR. The complete MIA is also presented in chapter 12 of the final rule TSD.

1. Manufacturer Production Costs

Manufacturing more efficacious CFLKs can result in changes in manufacturer production costs (MPCs) as a result of varying components required to meet ELs at each TSL. Changes in MPCs for these more efficacious components can impact the revenue, gross margin, and the cash flows of CFLK manufacturers. In the final rule, DOE adjusted the number of lamps used per CFLK when calculating the overall CFLK MPCs to be consistent with calculations in other downstream analyses, such as the NIA and LCC. For a complete description of the MPCs, see chapter 12 of the final rule TSD.

2. Shipment Projections

INPV, which is the key GRIM output, depends on industry revenue, which depends on the quantity and prices of CFLKs shipped in each year of the analysis period. Industry revenue calculations require forecasts of: (1) Total annual shipment volume of CFLKs; (2) the distribution of shipments across the replacement scenarios (because prices vary by replacement scenario); and, (3) the distribution of shipments across ELs (because prices vary with CFLK efficacy). In the final rule, DOE included sub-baseline shipments that do not meet the 45 lm/W baseline efficacy. These shipments represent the number of shipments that would not meet or exceed the efficacy levels required by the EISA 2007 backstop in the years prior to the compliance date for the EISA 2007 backstop (January 1, 2020) in the no-new-standards case. For a complete description of the shipments analysis, see chapter 9 of the final rule TSD.

3. Markup Scenarios

In the final rule, DOE modeled only one markup scenario for the MIA, the preservation of gross margin markup scenario. DOE did not model additional manufacturer markup scenarios, because there are already significant market transformations taking place due to the implementation of the EISA 2007 backstop, which is included in the no-new-standards case. DOE finds that higher efficacy standards analyzed in the standards cases, above 45 lm/W, would not significantly alter the manufacturer markup modeled in the no-new-standards case for the CFLK market. DOE determined that the two-tiered markup scenario used in the NOPR was not applicable to the CFLK market in the final rule, because by 2021, the vast majority of CFLK shipments in the no-new-standards case use LED lamps. Therefore, DOE determined that by 2021, LEDs will no longer be considered a premium product and would not likely command a premium markup even in the no-new-standards case. For a complete description of the markup scenario used in the MIA, see chapter 12 of the final rule TSD.

4. Capital and Product Conversion Costs

Amended energy conservation standards could cause manufacturers to incur additional one-time conversion costs to bring their tooling and product designs into compliance with amended CFLK standards in the light kit replacement scenario. For the MIA, DOE classified these conversion costs into two major groups: (1) Capital conversion costs and (2) product conversion costs. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing tooling equipment such that new product designs can be fabricated and assembled. Product conversion costs are investments in research, development, testing, marketing, certification, and other non-capitalized costs necessary to make product designs comply with amended CFLK standards.

In the NOPR, DOE conducted a bottom-up analysis that used manufacturer feedback to develop capital and product conversion costs for CFLK manufacturers for each product class at each EL. Based on comments received from ALA, DOE modeled a high investment scenario in addition to the low investment scenario that was

[52] United States Office of Management and Budget. Circular A–4: Regulatory Analysis,'' (Sept. 17, 2003), section E (Available at: *www.whitehouse.gov/omb/memoranda/m03-21.html*).

used in the NOPR, due to the uncertainty of these conversion costs across the entire CFLK industry. ALA commented that to comply with TSL 4, CFLK manufacturers would be forced to redesign most of their CFLKs at a significant cost. (ALA, No. 115 at pp. 2–3) ALA added that CFLK manufacturers would be required to undertake costly redesigns of popular CFLK products to comply with TSLs 3 or 4. (ALA, No. 115 at p. 3)

The conversion costs calculated in the NOPR were used as the conversion costs in the low investment scenario and DOE estimated the high investment scenario conversion costs based on the range of responses given by manufacturers during manufacturer interviews. This high investment scenario reflects ALA's concerns that higher TSLs would present significant investments for CFLK manufacturers to comply with the analyzed TSLs. Each conversion cost investment scenario leads to different levels of investment by CFLK manufacturers, which, when used in the discounted cash flow model, result in varying free cash flow impacts on CFLK manufacturers.

In addition to modeling a high and low investment scenario in the final rule, DOE estimated conversion costs in the no-new-standards case incurred by CFLK manufacturers complying with the minimum 45 lm/W backstop required by EISA 2007. DOE also estimated the value of stranded assets in the form of production equipment made obsolete by the EISA 2007 backstop. DOE assumed that CFLK manufacturers would be required to make these investments regardless of DOE adopting the amended CFLK standards in this final rule. Therefore, the conversion costs and stranded assets associated with EISA 2007 backstop compliance are included in the no-new-standards case of the CFLK final rule and are additive to the conversion costs incurred in the standards cases analyzed by this rulemaking.

5. Other Comments From Interested Parties

During the NOPR public meeting and comment period, interested parties had the opportunity to comment on the assumptions, methodology, and results of the NOPR MIA. ALA commented that at TSLs 3 and 4, impact to CFLK manufacturers would be significant and that CFLK manufacturers cannot fully pass on the expected price increases to consumers in the highly-competitive CFLK market. ALA stated that, in summary, if DOE adopts TSL 3 or TSL 4 as a final energy conservation standard, CFLK manufacturers would be forced to significantly raise their prices to comply with the standard and this would be an untenable burden for industry to bear. (ALA, No. 115 at p. 3) DOE notes that the MPC and MSP of CFLKs using LEDs decrease throughout the analysis period and becomes less costly than CFLs just a few years after compliance with the CFLK standards is required. Because of the decreasing MPCs of CFLKs using LEDs, DOE has determined that manufacturers would most likely be able to maintain the no-new-standards case manufacturer margins estimated in the preservation of gross margin markup scenario. Additionally, DOE notes that both the decreasing MPCs of LEDs and the high percentage of CFLKs using LEDs in the no-new-standards case support DOE's decision to model only a preservation of gross margin markup in the final rule for the MIA. For more information on the benefits and burdens of the analyzed TSLs, see section V.C.1.

6. Manufacturer Interviews

DOE interviewed manufacturers representing more than 30 percent of covered CFLK sales in the United States. DOE conducted interviews as part of the preliminary analysis and NOPR analysis. DOE outlined the key issues for CFLK manufacturers in the NOPR. 78 FR 48657 (August 13, 2015). DOE considered the information received during these interviews in the development of the NOPR and this final rule. DOE did not conduct additional interviews with manufacturers between the publication of the NOPR and this final rule.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of carbon dioxide (CO_2), nitrogen oxides (NO_X), sulfur dioxide (SO_2), and mercury (Hg). The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, methane (CH_4) and nitrous oxide (N_2O), as well as the reductions to emissions of all species due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion. The associated emissions are referred to as upstream emissions.

The analysis of power sector emissions uses marginal emissions factors that were derived from data in *AEO 2015,* as described in section IV.M. The methodology is described in chapters 13 and 15 of the final rule TSD.

Combustion emissions of CH_4 and N_2O are estimated using emissions intensity factors published by the U.S. Environmental Protection Agency (EPA), GHG Emissions Factors Hub.[53] The FFC upstream emissions are estimated based on the methodology described in chapter 15 of the final rule TSD. The upstream emissions include both emissions from fuel combustion during extraction, processing, and transportation of fuel, and ''fugitive'' emissions (direct leakage to the atmosphere) of CH_4 and CO_2.

The emissions intensity factors are expressed in terms of physical units per megawatt hour (MWh) or million British thermal units (MMBtu) of site energy savings. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

For CH_4 and N_2O, DOE calculated emissions reduction in tons and also in terms of units of carbon dioxide equivalent (CO_2eq). Gases are converted to CO_2eq by multiplying each ton of gas by the gas' global warming potential (GWP) over a 100-year time horizon. Based on the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,[54] DOE used GWP values of 28 for CH_4 and 265 for N_2O.

The *AEO* incorporates the projected impacts of existing air quality regulations on emissions. *AEO 2015* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of the end of October 2014. DOE's estimation of impacts accounts for the presence of the emissions control programs discussed in the following paragraphs.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap and trading programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous states and the District of Columbia (D.C.). SO_2 emissions from 28

[53] Available at: *http://www.epa.gov/climateleadership/inventory/ghg-emissions.html.*

[54] Intergovernmental Panel on Climate Change. Chapter 8: Anthropogenic and Natural Radiative Forcing. In *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change.* T. F. Stocker, D. Qin, G.-K. Plattner, M. M. B. Tignor, S. K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex, and P. M. Midgley, Editors. 2013. Cambridge University Press: Cambridge, United Kingdom and New York, NY, USA. (Last accessed October 23, 2015.) *http://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5_Chapter08_FINAL.pdf.*

eastern states and D.C. were also limited under the Clean Air Interstate Rule (CAIR), which created an allowance-based trading program that operates along with the Title IV program in those States and D.C. 70 FR 25162 (May 12, 2005). CAIR was remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) but parts of it remained in effect. On July 6, 2011 EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (August 8, 2011). On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. See *EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012). The court ordered EPA to continue administering CAIR. On April 29, 2014, the U.S. Supreme Court reversed the judgment of the D.C. Circuit and remanded the case for further proceedings consistent with the Supreme Court's opinion.[55] On October 23, 2014, the D.C. Circuit lifted the stay of CSAPR.[56] Pursuant to this action, CSAPR went into effect (and CAIR ceased to be in effect) as of January 1, 2015.

EIA was not able to incorporate CSAPR into *AEO 2015,* so it assumes implementation of CAIR. Although DOE's analysis used emissions factors that assume that CAIR, not CSAPR, is the regulation in force, the difference between CAIR and CSAPR is not relevant for the purpose of DOE's analysis of emissions impacts from energy conservation standards.

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by any regulated EGU. In past rulemakings, DOE recognized that there was uncertainty about the effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, but it concluded that no reductions in power sector emissions would occur for SO_2 as a result of standards.

Beginning in 2016, however, SO_2 emissions will fall as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO 2015* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Under the MATS, emissions will be far below the cap established by CAIR, so it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by any regulated EGU.[57] Therefore, DOE believes that energy conservation standards will generally reduce SO_2 emissions in 2016 and beyond.

CAIR established a cap on NO_X emissions in 28 eastern States and the District of Columbia.[58] Energy conservation standards are expected to have little effect on NO_X emissions in those States covered by CSAPR because excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions. However, standards would be expected to reduce NO_X emissions in the States not affected by CAIR, so DOE estimated NO_X emissions reductions from the standards considered in this final rule for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would likely reduce Hg emissions. DOE estimated mercury emissions reductions using the reference and side cases published with *AEO 2015,* which incorporates the MATS.

L. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this rule, DOE considered the estimated monetary benefits from the reduced emissions of CO_2 and NO_X that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for each of these emissions and presents the values considered in this final rule.

For this final rule, DOE relied on a set of values for the social cost of carbon (SCC) that was developed by a Federal interagency process. The basis for these values is summarized in the next section, and a more detailed description of the methodologies used is provided as an appendix to chapter 14 of the final rule TSD.

1. Social Cost of Carbon

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of CO_2. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in CO_2 emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b) of Executive Order 12866, agencies must, to the extent permitted by law, ''assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.'' The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions that have small, or ''marginal,'' impacts on cumulative global emissions. The estimates are

[55] *See EPA* v. *EME Homer City Generation,* 134 S.Ct. 1584, 1610 (U.S. 2014). The Supreme Court held in part that EPA's methodology for quantifying emissions that must be eliminated in certain States due to their impacts in other downwind States was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR.

[56] *See Georgia* v. *EPA,* Order *(D.C. Cir. filed October 23, 2014)* (*No. 11–1302),*

[57] DOE notes that the Supreme Court recently remanded EPA's 2012 rule regarding national emission standards for hazardous air pollutants from certain electric utility steam generating units. See *Michigan* v. *EPA* (Case No. 14–46, 2015). DOE has tentatively determined that the remand of the MATS rule does not change the assumptions regarding the impact of energy efficiency standards on SO_2 emissions. Further, while the remand of the MATS rule may have an impact on the overall amount of mercury emitted by power plants, it does not change the impact of the energy efficiency standards on mercury emissions. DOE will continue to monitor developments related to this case and respond to them as appropriate.

[58] CSAPR also applies to NO_X and it would supersede the regulation of NO_X under CAIR. As stated previously, the current analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR with regard to DOE's analysis of NO_X emissions is slight.

presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed these SCC estimates, technical experts from numerous agencies met on a regular basis to explore the technical literature in relevant fields, discuss key model inputs and assumptions, and consider public comments. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of CO_2 emissions, the analyst faces a number of serious challenges. A report from the National Research Council [59] points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of greenhouse gases (GHGs); (2) the effects of past and future emissions on the climate system; (3) the impact of changes in climate on the physical and biological environment; and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise serious questions of science, economics, and ethics and should be viewed as provisional.

Despite the serious limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing CO_2 emissions. The agency can estimate the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC values appropriate for that year. The NPV of the benefits can then be calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across Federal agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: Global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per metric ton of CO_2. These interim values represented the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules.

c. Current Approach and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. Specially, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: The FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change (IPCC). Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: (1) Climate sensitivity; (2) socio-economic and emissions trajectories; and (3) discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

In 2010, the interagency group selected four sets of SCC values for use in regulatory analyses. Three values are based on the average SCC from three integrated assessment models, at discount rates of 2.5, 3, and 5 percent. The fourth value, which represents the 95th percentile SCC estimate across all three models at a 3 percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The values grow in real terms over time, as depicted in Table IV.11. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects,[60] although preference is given to consideration of the global benefits of reducing CO_2 emissions. Table IV.11 presents the values in the 2010 interagency group report,[61] which is reproduced in appendix 14A of the final rule TSD.

[59] National Research Council. *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use.* 2010. National Academies Press: Washington, DC (Last accessed October 16, 2015.) *http://www.nap.edu/catalog/12794/hidden-costs-of-energy-unpriced-consequences-of-energy-production-and.*

[60] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no *a priori* reason why domestic benefits should be a constant fraction of net global damages over time.

[61] Interagency Working Group on Social Cost of Carbon. *Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866.* 2010. United States Government. (Last accessed October 16, 2015.) *http://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf.*

TABLE IV.11—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

The SCC values used for this document were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature, as described in the 2013 update from the interagency working group (revised July 2015).[62]

Table IV.12 shows the updated sets of SCC estimates from the latest interagency update in 5-year increments from 2010 to 2050. The full set of annual SCC estimates between 2010 and 2050 is reported in appendix 14B of the final rule TSD. The central value that emerges is the average SCC across models at the 3-percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

TABLE IV.12—ANNUAL SCC VALUES FROM 2013 INTERAGENCY REPORT (REVISED JULY 2015), 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	10	31	50	86
2015	11	36	56	105
2020	12	42	62	123
2025	14	46	68	138
2030	16	50	73	152
2035	18	55	78	168
2040	21	60	84	183
2045	23	64	89	197
2050	26	69	95	212

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable because they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned previously points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of analytical challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling.[63]

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2013 interagency report (revised July 2015) adjusted to 2014$ using the implicit price deflator for gross domestic product (GDP) from the Bureau of Economic Analysis. For each of the four sets of SCC cases specified, the values for emissions in 2015 were $12.2, $40.0, $62.3, and $117 per metric ton avoided (values expressed in 2014$). DOE derived values after 2050 using the relevant growth rates for the 2040–2050 period in the interagency update.

DOE multiplied the CO_2 emissions reduction estimated for each year by the

[62] Interagency Working Group on Social Cost of Carbon. *Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* 2015. United States Government. (Last accessed October 23, 2015.) *https://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf.*

[63] In November 2013, OMB announced a new opportunity for public comment on the interagency technical support document underlying the revised SCC estimates. 78 FR 70586. In July 2015, OMB published a detailed summary and formal response to the many comments that were received. *https://www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions.* It also stated its intention to seek independent expert advice on opportunities to improve the estimates, including many of the approaches suggested by commenters.

SCC value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

In response to the CFLKs NOPR, DOE received a comment from a group of trade associations led by the U.S. Chamber of Commerce. This group objected to DOE's continued use of the SCC in the cost-benefit analysis and stated that the SCC calculation should not be used in any rulemaking until it undergoes a more rigorous notice, review and comment process. (U.S. Chamber of Commerce, No. 114 at p. 4) In contrast, DOE received another comment from the Environmental Defense Fund, Institute for Policy Integrity at New York University School of Law, Natural Resources Defense Council, and Union of Concerned Scientists affirming DOE's use of the SCC values proposed in the NOPR. (Environmental Defense Fund, *et al.,* No. 116 at p. 1)

In response to the U.S. Chamber of Commerce, *et al.,* in conducting the interagency process that developed the SCC values, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. Key uncertainties and model differences transparently and consistently inform the range of SCC estimates. These uncertainties and model differences are discussed in the interagency Working Group's reports, which are reproduced in appendices 14A and 14B of the final rule TSD, as are the major assumptions. Specifically, uncertainties in the assumptions regarding climate sensitivity, as well as other model inputs such as economic growth and emissions trajectories, are discussed and the reasons for the specific input assumptions chosen are explained. However, the three integrated assessment models used to estimate the SCC are frequently cited in the peer-reviewed literature and were used in the last assessment of the IPCC. In addition, new versions of the models that were used in 2013 to estimate revised SCC values were published in the peer-reviewed literature (see appendix 14B of the final rule TSD for discussion). Although uncertainties remain, the revised estimates that were issued in November 2013 are based on the best available scientific information on the impacts of climate change. The current estimates of the SCC have been developed over many years, using the best science available, and with input from the public. In November 2013, OMB announced a new opportunity for public comment on the interagency technical support document underlying the revised SCC estimates. 78 FR 70586. In July 2015, OMB published a detailed summary and formal response to the many comments that were received.[64] DOE stands ready to work with OMB and the other members of the interagency Working Group on further review and revision of the SCC estimates as appropriate.

2. Social Cost of Other Air Pollutants

The Environmental Defense Fund, *et al.* encouraged DOE to consider monetizing the benefits of greenhouse gas reductions other than CO_2. (Environmental Defense Fund, *et al.,* No. 116 at p. 1) As noted previously, DOE has estimated how the considered energy conservation standards would reduce site NO_X emissions nationwide and decrease power sector NO_X emissions in those 22 States not affected by the CAIR.

DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,'' published in June 2014 by EPA's Office of Air Quality Planning and Standards. The report includes high and low values for NO_X (as $PM_{2.5}$) for 2020, 2025, and 2030 discounted at 3 percent and 7 percent,[65] which are presented in chapter 14 of the Final Rule TSD. DOE assigned values for 2021–2024 and 2026–2029 using, respectively, the values for 2020 and 2025. DOE assigned values after 2030 using the value for 2030.

DOE multiplied the emissions reduction (tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate. DOE will continue for evaluate the monetization of avoided NO_X emissions and will make any appropriate updates in energy conservation standards rulemakings.

DOE is evaluating appropriate monetization of avoided SO_2 and Hg emissions in energy conservation standards rulemakings. DOE has not included monetization of those emissions in the current analysis.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the electric power industry that would result from the adoption of new or amended energy conservation standards. The utility impact analysis estimates the changes in installed electrical capacity and generation that would result for each TSL. The analysis is based on published output from the NEMS associated with *AEO 2015.* NEMS produces the *AEO* Reference case, as well as a number of side cases to estimate the marginal impacts of reduced energy demand on the utility sector. These marginal factors are estimated based on the changes to electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the final rule TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity use calculated in the NIA to provide estimates of selected utility impacts of new or amended energy conservation standards.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards

[64] *https://www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions.* OMB also stated its intention to seek independent expert advice on opportunities to improve the estimates, including many of the approaches suggested by commenters.

[65] For the monetized NO_X benefits associated with $PM_{2.5}$, the related benefits (derived from benefit-per-ton values) are based on an estimate of premature mortality derived from the ACS study (Krewski *et al.,* 2009), which is the lower of the two EPA central tendencies. Using the lower value is more conservative when making the policy decision concerning whether a particular standard level is economically justified so using the higher value would also be justified. If the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.,* 2012), the values would be nearly two-and-a-half times larger. (See chapter 14 of the Final Rule TSD for further description of the studies mentioned above.)

consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased consumer spending on new products to which the new standards apply; and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS).[66] BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[67] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, based on the BLS data alone, DOE believes net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this final rule using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 3.1.1 (ImSET).[68] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rule. Therefore, DOE generated results for near-term timeframes, where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the final rule TSD.

O. Proposed Standards in August 2015 NOPR

1. Proposed Standard

In the NOPR, DOE proposed to adopt amended standards for CFLKs. DOE proposed adopting TSL 2, which would set energy conservation standards at EL 2 for All CFLKs. DOE received several comments on the proposed standard level.

Several stakeholders commented on the range and quality of products that would be available at TSL 3 and TSL 4, which can be met by only LED lamps, as opposed to TSL 2, which be met by both CFLs and LED lamps. CA IOUs supported amending standards for CFLKs, but requested DOE consider a standard higher than TSL 2. (CA IOUs, No. 118 at p. 2, 8) CA IOUs said that according to a 2014 press release from the European Council for an Energy-Efficient Economy,[69] many LED lamps with similar characteristics to the representative lamps presented in DOE's analysis (omnidirectional, approximately 800 lumens, 2,700 CCT, CRI of 80 or greater, and screw base) already comfortably exceed TSL 3. Especially as the market continues to advance, CA IOUs believe that setting a standard level at TSL 3 would not result in the unavailability of compliant products serving CFLK applications. (CA IOUs, No. 118 at p. 2) CA IOUs noted they had provided sufficient data indicating the LED industry will be able to comfortably support the EL at TSL 3, for a standard requiring compliance in 2019. (See section IV.C.4 and IV.D for a summary of data provided by CA IOUs) (CA IOUs, No. 118 at p. 7) PG&E stated that there was less innovation and R&D in CFL technology and more in LED and therefore, the largest benefit to the consumer would be a standard that can be met only by LED lamps (*i.e.,* TSL 3). (PG&E, Public Meeting Transcript, No. 112 at p. 129)

ASAP added that regarding both energy savings and performance characteristics, LED technology will replace CFLs in CFLKs. (ASAP, Public Meeting Transcript, No. 112 at pp. 129–130) The Joint Comment and CA IOUs stated that while manufacturers commented that TSL 3 or TSL 4 would reduce consumer choice because the CFLs commonly found in CFLKs today would no longer meet the standard, no unique utility has been defined that distinguishes CFLKs that use CFLs from ones that use LED lamps. (Joint Comment, No. 117 at p. 2; CA IOUs, No. 118 at p. 2) The Joint Comment and CA IOUs asserted that adopting TSL 3 would improve performance without loss of utility. (Joint Comment, No. 117 at p. 2; CA IOUs, No. 118 at p. 2) According to the Joint Comment, CA IOUs, and ASAP, the primary distinguishing characteristic of CFLKs that use CFLs appears to be lower cost. (Joint Comment, No. 117 at p. 2; CA IOUs, No. 118 at p. 2; ASAP, Public Meeting Transcript, No. 112 at pp. 129–130) ASAP warned that experience with low-priced CFLs had not been good and, therefore, maintaining CFLs would negatively impact consumer satisfaction, while adopting TSL 3 would maintain long-term health of the product category. ASAP stated that while DOE's methodology was sound, the rapid pace of technology called for an ambitious approach in setting standards. (ASAP, Public Meeting Transcript, No. 112 at pp. 129–130)

On the other hand, Hunter stated that the market for CFLKs was aesthetically-driven and because they were not driving innovation in LED technology, they could not ensure that the base types and associated product offerings would be there at levels higher than the proposed TSL 2. (Hunter, Public Meeting Transcript, No. 112 at p. 131) ALA stated that TSL 2 would allow manufacturers to continue to offer CFLKs with CFLs, which consumers value for their unique combination of performance and price. (ALA, No. 115 at p. 2) Further, it would allow manufacturers to continue offering

[66] Data on industry employment, hours, labor compensation, value of production, and the implicit price deflator for output for these industries are available upon request by calling the Division of Industry Productivity Studies (202–691–5618) or by sending a request by email to *dipsweb@bls.gov*.

[67] U.S. Department of Commerce–Bureau of Economic Analysis. *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II).* 1992. U.S. Government Printing Office: Washington, DC (Last accessed October 23, 2015.) *https://ia801602.us.archive.org/5/items/regionalmultipl00unit/regionalmultipl00unit.pdf.*

[68] Scott, M., J. Roop, O. Livingston, R. Schultz, and P. Balducci. *ImSET 3.1: Impact of Sector Energy Technologies Model Description and User's Guide.* 2009. Pacific Northwest National Laboratory,: Richland, WA. (Last accessed October 15, 2015.) *http://www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf.*

[69] *http://www.eceee.org/all-news/press/2014/rapid-development-LED-lamps.*

consumers nearly all CFLK models currently on the market at or near current market prices. (ALA, No. 115 at p. 2)

Further, ALA stated that manufacturers would have limited flexibility to comply with TSLs 3 or 4, which would negatively impact consumers. Westinghouse stated that while the main barrier to adoption of CFLs had been features, for LED lamps it is cost and size. (Westinghouse, Public Meeting Transcript, No. 112 at pp. 44–45) ALA stated that at TSL 3 manufacturers would need to redesign CFLKs with small base sockets and high lumen outputs and at TSL 4 manufacturers would need to redesign the most common, least efficacious CFLKs at significant cost, or else discontinue them, limiting the range of CFLKs available to consumers. (ALA, No. 115 at pp. 2–3) According to ALA, redesigning CFLKs to comply with TSL 3 or TSL 4 would, in many cases, adversely impact aesthetic appeal, a significant part of the utility CFLKs offer to consumers. (ALA, No. 115 at p. 3)

Lamps Plus stated that adopting TSL 2 does not limit potential CFLK designs and, at the same time, allows more efficient SSL technology to continue to develop. (Lamps Plus, Public Meeting Transcript, No. 112 at p. 132) ALA noted that the market is already moving towards more energy-efficient products. (ALA, Public Meeting Transcript, No. 112 at p. 131) PG&E agreed that the market was moving towards more efficient products, however, PG&E contended that this trend indicated that a higher standard (*i.e.,* TSL 3 or TSL 4) would just push the market in the direction it is already headed. (PG&E, Public Meeting Transcript, No. 112 at p. 129)

In its evaluation of TSLs, DOE assessed which products would be available at the time manufacturers would need to comply with standards. As TSL 4 corresponding to EL 4 is based on a modeled product, a lamp suitable for direct replacement that complies with EL 4 is not currently commercially available. DOE learned through interviews that most CFLK manufacturers do not manufacture lamps, but rather purchase lamps from another supplier or manufacturer to package in CFLKs. Because lamp manufacturers are not required to comply with standards promulgated by this rulemaking, DOE is uncertain as to whether such a lamp meeting EL 4 would be commercially available at the time CFLK manufacturers would need to comply with any amended standards.

DOE determined that EL 4 can be met by other methods available to CFLK manufacturers; however, most of these options require redesigns of existing fixtures. Some commercially available lamps with smaller base types meet EL 4, but these are available with low lumen outputs and would therefore require several lamps to be incorporated into a new CFLK to provide the same amount of light. Some commercially available lamps with the same base type as the baseline lamp are available at EL 4, but these have higher lumen outputs such that a CFLK would have to be redesigned with fewer sockets to maintain the same light output. Alternatively, LED modules and drivers with a similar lumen output as the baseline lamp could be incorporated as consumer replaceable parts in CFLKs. However, all of these methods of meeting EL 4 reflect the fact that, for most situations, direct lamp replacement would not be a means of meeting the EL.

At TSL 3 which corresponds to EL 3, the representative lamp unit is the most efficacious commercially available LED lamp that could be considered an adequate substitute for the baseline lamp (*i.e.,* has a non-reflector shape, a lumen output within 10 percent of the baseline lamp, a CCT around 2,700 K, a CRI greater than or equal to 80, a lifetime greater than or equal to that of the baseline, and a medium screw base). Small base lamps are available only with low lumen outputs, consumer replaceable LED modules and drivers in limited lumen ranges, and a few integrated LED modules and drivers systems are available at EL 3.

At TSL 2, which corresponds to EL 2, the representative lamp units are a commercially available LED lamp and CFL and at TSL 1, which corresponds to EL 1, the representative lamp unit is a commercially available CFL, all of which are considered adequate substitutes for the baseline lamp (*i.e.,* have a non-reflector shape, a lumen output within 10 percent of the baseline lamp, a CCT around 2,700 K, a CRI greater than or equal to 80, a lifetime greater than or equal to that of the baseline, and a medium screw base). At EL 2 and EL 1, CFLK manufacturers can choose from a large number of suitable options for direct lamp replacements, as well as fixture redesigns to meet this level. In particular, both consumer replaceable as well as integrated LED modules and drivers are available with lumen outputs that are not an option at higher ELs.

DOE also received comments regarding the energy savings as well as costs and benefits to consumers, manufacturers, and the nation resulting from the TSLs evaluated. ASAP recommended that DOE adopt TSL 3 given the potential energy savings estimated for that level. (ASAP, Public Meeting Transcript, No. 112 at pp. 129–130) The Joint Comment and CA IOUs stated that TSL 3 would generate significantly more energy savings than TSL 2. (Joint Comment, No. 117 at p. 1; CA IOUs, No. 118 at p. 2) On the other hand, Westinghouse commented that by proposing TSL 2, DOE had appropriately chosen a level that results in maximum energy savings. (Westinghouse, Public Meeting Transcript, No. 112 at p. 133) Lutron supported the proposal of TSL 2, stating that it would result in significant energy savings, well beyond that analyzed from the baseline. (Lutron, No. 113 at p. 2)

The Joint Comment and CA IOUs stated that DOE's analysis shows that adopting TSL 3 would result in CFLKs that are competitive on a first cost basis and superior on an LCC basis. (Joint Comment, No. 117 at p. 2; CA IOUs, No. 118 at p. 2) Further, the Joint Comment and CA IOUs noted that DOE's analysis shows that TSL 3 and TSL 4 with NPVs of $0.70 billion and $0.71 billion, respectively, at a 7% discount rate, are more cost effective than TSL 2 with NPV at $0.50 billion. (Joint Comment, No. 117 at p. 1; CA IOUs, No. 118 at p. 2)

Westinghouse appreciated that DOE factored INPV in its decision, an element Westinghouse stated is sometimes outweighed by other factors in some rulemakings. (Westinghouse, Public Meeting Transcript, No. 112 at p. 133) ALA stated that the MIA indicates that the economic impacts of TSLs 3 and 4 on manufacturers would be grave. ALA added that if TSL 3 or TSL 4 were adopted, CFLK manufacturers would be forced to significantly raise their prices in order to comply with the standard, which would be an untenable burden for industry to bear. (ALA, No. 115 at p. 3)

ALA stated that relative to TSL 2, the incremental burdens imposed on manufacturers by TSLs 3 and 4 are much larger than the corresponding incremental benefits in terms of national energy savings and consumer benefits. (ALA, No. 115 at p. 3) ALA and Lutron agreed that TSL 2 ensures the standard is economically justified while TSLs 3 and 4 do not. (ALA, No. 115 at pp. 2–3; Lutron, No. 113 at p. 2)

When selecting a TSL, DOE weighs the benefits and burdens of each TSL, considering to the extent practicable factors such as national energy savings and costs to the consumer, industry, and the nation. DOE first considers the max tech level, and then less-stringent levels until DOE determines the maximum

increase in energy efficiency that is technologically feasible and economically justified. In the NOPR analysis and in this final rule DOE determined that TSL 2 is the highest TSL for which the benefits outweigh the burdens. (See section V.C.1 for further details.)

2. Regulatory Text

ALA commented that DOE should clarify that 10 CFR 430.32(s)(2) and 10 CFR 430.32(s)(3) are inapplicable to CFLKs subject to DOE's amended CFLK efficiency standards by replacing the phrase ''manufactured on or after January 1, 2007'' in each paragraph with ''manufactured on or after January 1, 2007, and before January 7, 2019.'' (ALA, No. 115 at p. 7)

Paragraphs (2) and (3) of 10 CFR 430.32(s) specify the current standards for respectively, CFLKs with medium screw base sockets and CFLKs with pin-base sockets for fluorescent lamps. Paragraph (4) of 10 CFR 430.32(s) specifies the current standards for CFLKs with other socket types. Once the amended standards established in this final rule require compliance, the efficacy and energy consumption requirements in 10 CFR 430.32(s)(2) through (s)(4) will be superseded by the amended standards. DOE notes that only the efficacy and energy consumption requirements are amended by this rulemaking. The other requirements in paragraphs (2)–(4) of 10 CFR 430.32(s) will remain in effect after the compliance date of this rule. Specifically, the following requirements will remain in effect: (1) The requirement for CFLKs to be packaged with lamps to fill all sockets; (2) lumen maintenance at 1,000 hours, lumen maintenance at 40 percent of lifetime, rapid cycle stress test, and lifetime for CFLKs with medium screw base sockets packaged with compact fluorescent lamps; and (3) use of an electronic ballast for CFLKs with pin-base sockets for fluorescent lamps.

The proposed regulatory language would have codified amended standards from this rulemaking in 10 CFR 430.32 (s)(5). As proposed, the efficacy and energy consumption standards in paragraphs (2) and (3) of 10 CFR 430.32(s) would no longer have been applicable to CFLKs subject to the amended standards by specifying an exception in paragraphs (2) and (3) for the minimum efficacy requirement provided in paragraph (s)(5) and specifying an exception in paragraph (4) for the requirements provided in paragraph (s)(5). This text was intended to indicate that the efficacy standards established in this rulemaking would supersede current efficacy and energy consumption requirements. Taking into consideration stakeholder suggestions, in this final rule, DOE modified the proposed regulatory language in paragraph (s)(2), (3), and (4) to state that the standards in those paragraphs are applicable to ceiling fan light kits manufactured on or after January 1, 2009 and prior to 3 years after date of final rule publication in the **Federal Register**. Further, in paragraph (s)(5), DOE has specified all of standards to which CFLKs will be subject at the compliance date of amended standards adopted in this final rule. For clarity, the references to paragraph (s)(5) in paragraphs (s)(2)–(s)(4) were eliminated, and all of the non-efficacy and energy consumption requirements were reiterated in paragraph (s)(5).

Philips expressed concern over the use of the term ''lifetime'' in the table of requirements, recommending that the term ''rated life'' be used instead. Philips referred DOE to the Philips and NEMA comments on the CFL test procedure rulemaking for further suggestions and background. (Philips, No. 119 at p. 3)

The certification values for compliance with the lifetime requirement in 10 CFR 430.32(s)(2) should be determined according to definitions and procedures specified in applicable DOE test procedures. Lifetime is a statutory definition, and DOE has proposed related definitions when necessary in test procedures for products included in this rulemaking (*i.e.,* CFLs and LED lamps). See *http://www.regulations.gov/#!docketDetail;D=EERE-2015-BT-TP-0014* and *http://www.regulations.gov/#!docketDetail;D=EERE-2011-BT-TP-0071* for further details.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for CFLKs. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for CFLKs, and the standards levels that DOE is adopting in this final rule. Additional details regarding DOE's analyses are contained in the final rule TSD supporting this document.

A. Trial Standard Levels

DOE analyzed the benefits and burdens of four TSLs for CFLKs. These TSLs were developed by combining specific ELs for each of the product classes analyzed by DOE. DOE presents the results for the TSLs in this document, while the results for all ELs that DOE analyzed are in the final rule TSD. Table V.1 presents the TSLs and the corresponding ELs for CFLKs. TSL 4 represents the maximum technologically feasible (''max-tech'') energy efficiency for the CFLK product class.

TABLE V.1—CFLK TRIAL STANDARD LEVELS

All CFLKs efficacy level	Trial standard level
1	1
2	2
3	3
4	4

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on CFLK consumers by looking at the effects potential amended standards at each TSL would have on the LCC and PBP. DOE also examined the impacts of potential standards on consumer subgroups. These analyses are discussed below.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency products affect consumers in two ways: (1) Purchase price increases, and (2) annual operating costs decrease. As discussed in section IV.D, however, DOE projects that higher-efficiency CFLKs will have a lower purchase price than less efficient products. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the final rule TSD provides detailed information on the LCC and PBP analyses.

Table V.2 and Table V.3 show the LCC and PBP results for the TSL efficacy levels considered for the All CFLKs product class. In the first table, the simple payback is measured relative to the least efficient product on the market. In the second table, the LCC savings are measured relative to the no-new-standards efficacy distribution in the compliance year (see section IV.F.10 of this document).

TABLE V.2—AVERAGE LCC AND PBP RESULTS BY EFFICACY LEVEL FOR ALL CFLKS

EL	Average costs (2014$)				Simple payback (years)	Average lifetime (years)
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
Residential Sector						
Sub *	2.8	17.4	70.3	71.3	.....	13.8
0	5.5	3.6	40.4	45.6	0.2	13.8
1	8.8	3.4	40.0	48.4	0.4	13.8
2	19.4	2.9	33.4	51.8	1.2	13.8
3	10.5	2.0	23.4	32.8	0.5	13.8
4	9.3	1.9	22.0	30.3	0.4	13.8
Commercial Sector						
Sub *	2.8	76.9	194.5	196.7	.....	13.8
0	5.5	15.8	136.9	142.9	0.0	13.8
1	8.8	14.9	157.2	167.3	0.1	13.8
2	19.4	12.8	140.8	160.6	0.3	13.8
3	10.5	9.0	107.7	117.8	0.1	13.8
4	9.3	8.5	104.9	113.8	0.1	13.8

* "Sub" corresponds to the sub-baseline (*i.e.,* lamps that have efficacies below the baseline set for the new product class structure set forth in this rulemaking).

Note: The results for each EL are calculated assuming that all consumers use products at that efficacy level. The PBP is measured relative to the least efficient product currently available on the market.

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS-CASE EFFICACY DISTRIBUTION FOR ALL CFLKS

TSL	Life-cycle cost savings	
	% of Consumers that experience	Average savings *
	Net cost	2014$
Residential Sector		
—	0.6	23.0
1	0.6	23.0
2	9.7	24.3
3	7.6	30.9
4	7.6	30.9
Commercial Sector		
—	10.5	28.7
1	10.5	28.7
2	1.9	53.4
3	0.3	67.7
4	0.3	67.8

* The LCC savings calculation excludes consumers with zero LCC savings (no impact).

Note: The results for each TSL represent the impact of a standard set at that TSL, based on the no-new-standards-case and standards-case efficacy distributions calculated in the shipments analysis. The calculation excludes consumers with zero LCC savings (no impact).

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on low-income households and small businesses that purchase CFLKs. Table V.4 and Table V.5 compare the average LCC savings for each TSL and the simple PBP at each efficacy level for the two consumer subgroups to the average LCC savings and the simple PBP for the entire sample. In most cases, the average LCC savings and the simple PBP for low-income households and small businesses that purchase CFLKs are not substantially different from the average LCC savings and simple PBP for all households and all buildings, respectively. Chapter 11 of the final rule TSD presents the complete LCC and PBP results for the subgroups.

TABLE V.4—COMPARISON OF LCC SAVINGS AND PBP FOR LOW-INCOME HOUSEHOLDS AND ALL HOUSEHOLDS

TSL	Average LCC savings (2014$)		Simple payback period (years)	
	All	Low-income	All	Low-income
—	23.0	23.0	0.2	0.2
1	23.0	23.0	0.4	0.4
2	24.3	24.1	1.2	1.2
3	30.9	30.6	0.5	0.5
4	30.9	30.7	0.4	0.4

TABLE V.5—COMPARISON OF LCC SAVINGS AND PBP FOR SMALL BUSINESSES AND ALL BUSINESSES

TSL	Average LCC savings (2014$)		Simple payback period (years)	
	All	Low-income	All	Low-income
—	28.7	31.7	0.0	0.0
1	28.7	31.7	0.1	0.1
2	53.4	51.9	0.3	0.3
3	67.7	65.4	0.1	0.1
4	67.8	65.5	0.1	0.1

c. Rebuttable Presumption Payback

As discussed in section IV.F.12, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption payback period for each of the considered TSLs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedures for CFLKs. In contrast, the PBPs presented in section V.B.1.a were calculated using distributions that reflect the range of energy use in the field.

Table V.6 presents the rebuttable presumption payback periods for the considered TSLs. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for this rule are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, nation, and environment. The results of that analysis serve as the basis for DOE to evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

TABLE V.6—REBUTTABLE-PRESUMPTION PAYBACK PERIOD RESULTS

TSL	Residential sector	Commercial sector
—	0.2	0.4
1	0.4	0.1
2	1.1	0.2
3	0.5	0.1
4	0.4	0.1

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of CFLKs. Section V.B.2.a describes the expected impacts on manufacturers at each TSL. Chapter 12 of the final rule TSD explains the analysis in further detail.

a. Industry Cash-Flow Analysis Results

DOE examined the financial impacts (represented by changes in INPV) of today's adopted standards on CFLK manufacturers as well as the conversion costs that DOE estimates CFLK manufacturers would incur at each TSL. To evaluate the range of cash-flow impacts on the CFLK industry, DOE used the preservation of gross margin markup scenario to estimate the impacts on manufacturers. The preservation of gross margin markup scenario assumes that in the standards cases, manufacturers would be able to pass along any potential higher production costs required for more efficacious products to their consumers. Specifically, the industry would be able to maintain its average no-new-standards case gross margin (as a percentage of revenue) despite any potential higher production costs in the standards cases.

DOE also modeled a low investment scenario and a high investment scenario for manufacturers that corresponds to the range of potential investments manufacturers must make to comply with amended standards. Each investment scenario results in a unique set of cash flows and corresponding industry values at each TSL.

In the following discussion, the INPV results refer to the difference in industry value between the no-new-standards case and the standards cases that result from the sum of discounted cash flows from the reference year (2015) through the end of the analysis period (2048). The results also discuss the difference in cash flows between the no-new-standards case and the standards cases in the year before the compliance date for the adopted standards. This difference in cash flow represents the size of the required conversion costs relative to the cash flow generated by the CFLK industry in the absence of amended energy conservation standards.

To assess the upper (less severe) end of the range of potential impacts on CFLK manufacturers, DOE modeled a low investment conversion cost scenario and to assess the lower (more severe) end of the range of potential impacts on CFLK manufacturers, DOE modeled a high investment conversion cost scenario.

In both the high and low investment scenarios, DOE expects that most manufacturers will not incur conversion costs at any of the TSLs in the lamp

replacement scenario as a result of amended CFLK standards. Conversion costs in the lamp replacement scenario at each of the TSLs are attributed to complying with the EISA 2007 45 lm/W backstop rather than the standards adopted in this final rule. For the light kit replacement scenario, as efficacy levels increase with each TSL, product conversion costs will increase incrementally in proportion with the increasing amount of R&D needed to design more efficacious CFLKs. Manufacturers will incur capital conversion costs in the light kit replacement scenario as a result of amended CFLK standards requiring retooling costs to produce fixtures using LEDs. The product and conversion costs incurred by complying with today's CFLK standard in the light kit replacement scenario are additive to conversion costs incurred by complying with the EISA 2007 45 lm/W backstop. In the following results, DOE expresses conversion costs in terms of the conversion cost investment scenarios, which aggregate the conversion costs incurred by complying with the EISA 2007 backstop and the incremental conversion costs incurred at each TSL.

Table V.7 and Table V.8 present the projected range of potential results for CFLK manufacturers for the low investment and high investment scenarios.

TABLE V.7—MANUFACTURER IMPACT ANALYSIS FOR CEILING FAN LIGHT KITS—LOW INVESTMENT SCENARIO

	Units	No-new-standards case	Trial standard levels			
			1	2	3	4
INPV	2014$ millions	174.9	175.2	169.9	166.2	166.0
Change in INPV	2014$ millions		0.3	(5.0)	(8.7)	(8.9)
	%		0.2	(2.8)	(5.0)	(5.1)
Product Conversion Costs	2014$ millions	4.5	4.5	5.1	5.3	5.3
Capital Conversion Costs	2014$ millions	10.6	10.6	11.9	12.2	12.3
Total Conversion Costs	2014$ millions	15.1	15.1	17.0	17.5	17.7

TABLE V.8—MANUFACTURER IMPACT ANALYSIS FOR CEILING FAN LIGHT KITS—HIGH INVESTMENT SCENARIO

	Units	No-new-standards case	Trial standard levels			
			1	2	3	4
INPV	2014$ millions	174.9	175.2	168.5	164.3	164.0
Change in INPV	2014$ millions		0.3	(6.4)	(10.6)	(10.9)
	%		0.2	(3.7)	(6.0)	(6.2)
Product Conversion Costs	2014$ millions	4.5	4.5	5.6	6.0	6.1
Capital Conversion Costs	2014$ millions	10.6	10.6	13.3	13.9	14.1
Total Conversion Costs	2014$ millions	15.1	15.1	18.9	20.0	20.3

For the no-new-standards case, DOE typically assumes conversion costs are zero because manufacturers typically do not need to make additional investments beyond their normal capital expenditures and investments in research and development if no standards are prescribed by a rulemaking. However, DOE included conversion costs in the no-new-standards case since manufacturers would have to make significant investments to comply with the EISA 2007 45 lm/W backstop. DOE estimates CFLK manufacturers will incur product conversion costs of $4.5 million and capital conversion costs of $10.6 million to comply with the efficacy requirements prescribed by the EISA 2007 backstop. Product conversion costs include investments in research, development, testing, and marketing that manufacturers must make redesigning CFLKs to accommodate lamps that meet the EISA 2007 backstop efficacy requirements. Capital conversion costs include investments in production equipment that CFLK manufacturers would be required to make in order to significantly expand their CFLK manufacturing capacity to meet expected market demand for CFLKs that accommodate more efficacious CFL and LED lamps to comply with the EISA 2007 backstop.

TSL 1 sets the efficacy level at EL 1 for all CFLKs. At TSL 1, DOE estimates the impact on INPV to be $0.3 million or a change in INPV of 0.2 percent. At TSL 1, industry free cash flow (operating cash flow minus capital expenditures) is expected to decrease by approximately 12 percent to $9.3 million, compared to the no-new-standards case value of $10.5 million in 2018, the year leading up to the energy conservation standards.

The percentage impact on INPV is slightly positive at TSL 1. DOE anticipates that most manufacturers would not be significantly impacted at this TSL. DOE projects that in 2019, 100 percent of shipments that meet the efficacy level required by the no-new-standards case would also meet or exceed the efficacy level required at TSL 1.

At TSL 1, the shipment-weighted average MPC increases by 11 percent relative to the no-new-standards case MPC in 2019, the expected year of compliance. In both the high and low investment scenarios, manufacturers are able to recover their conversion costs through a moderate increase in MPC over the course over of the analysis period, resulting in a slightly positive INPV impact at TSL 1.

TSL 2 sets the efficacy level at EL 2 for all CFLKs. At TSL 2, DOE estimates impacts on INPV range from −$6.4 million to −$5.0 million, or a change in INPV of −3.7 percent to −2.8 percent. At TSL 2, industry free cash flow is expected to range from $7.8 million to $8.5 million, which represents a decrease of approximately 26 percent to 19 percent respectively, compared to the no-new-standards case value of $10.5 million in 2018, the year leading up to the energy conservation standards.

Percentage impacts on INPV are slightly negative at TSL 2. DOE anticipates that most manufacturers would not lose a significant portion of their INPV at TSL 2 because the ELs at this TSL can be met by purchasing replacement lamps that are currently available on the market. DOE projects that in 2019, 40 percent of shipments

that meet or exceed the efficacy level required by the no-new-standards case would also meet or exceed the efficacy level required at TSL 2.

DOE expects product conversion costs will rise from $4.5 million at TSL 1 to $5.1 million at TSL 2 in the low investment scenario and from $4.5 million at TSL 1 to $5.6 million at TSL 2 in the high investment scenario. Manufacturers will incur product conversion costs, primarily driven by increased R&D efforts needed to redesign CFLKs to use LED lamps that meet the efficacy level at TSL 2. Capital conversion costs will increase from $10.6 million at TSL 1 to $11.9 million at TSL 2 in the low investment scenario and from $10.6 million at TSL 1 to $13.3 million at TSL 2 in the high investment scenario.

At TSL 2, the shipment-weighted average MPC increases by 25 percent relative to the no-new-standards case MPC in 2019. Manufacturers are not able to recover the $17.0 million in conversion costs in the low investment scenario or the $18.9 million in conversion costs in the high investment scenario through the increase in MPC over the course of the analysis period, resulting in slightly negative INPV impacts at TSL 2.

TSL 3 sets the efficacy level at EL 3 for all CFLKs. At TSL 3, DOE estimates impacts on INPV range from −$10.6 million to −$8.7 million, or a change in INPV of −6.0 percent to −5.0 percent. At this level, industry free cash flow is expected to range from $7.4 million to $8.3 million, which represents a decrease of approximately 30 percent and 21 percent respectively, compared to the no-new-standards case value of $10.5 million in 2018, the year leading up to the energy conservation standards.

Percentage impacts on INPV range are moderately negative at TSL 3. TSL 3 sets the first efficacy level that can be met only by LED lamps. DOE projects that in 2019, 17 percent of shipments that meet or exceed the efficacy level required by the no-new-standards case would also meet or exceed the efficacy level required at TSL 3.

DOE expects product conversion costs will rise from $5.1 million at TSL 2 to $5.3 million at TSL 3 in the low investment scenario and from $5.6 million at TSL 2 to $6.0 million at TSL 3 in the high investment scenario. Product conversion costs are driven primarily by increased R&D efforts needed to redesign CFLKs to accommodate the more efficacious LED lamps. DOE expects capital conversion costs to increase from $11.9 million at TSL 2 to $12.2 million at TSL 3 in the low investment scenario and from $13.3 million at TSL 2 to $13.9 million at TSL 3 in the high investment scenario as a result of retooling costs necessary to produce redesigned CFLK fixtures that use LEDs at TSL 3.

At TSL 3, the shipment-weighted average MPC increases by 27 percent relative to the no-new-standards case MPC in 2019. Manufacturers are not able to recover the $17.5 million in conversion costs in the low investment scenario or the $20.0 million in conversion costs in the high investment scenario through the increase in MPC over the course of the analysis period, resulting in moderately negative INPV impacts at TSL 3.

TSL 4 sets the efficacy level at EL 4 for all CFLKs, which represents max-tech. At TSL 4, DOE estimates impacts on INPV to range from −$10.9 million to −$8.9 million, or a change in INPV of −6.2 percent to −5.1 percent. At this level, industry free cash flow is expected to range from $7.2 million to $8.3, which represents a decrease of approximately 31 percent and 21 percent respectively, compared to the no-new-standards case value of $10.5 million in 2018, the year leading up to the energy conservation standards.

Percentage impacts on INPV are moderately negative at TSL 4. DOE projects that in 2019, 9 percent of shipments that meet or exceed the efficacy level required by the no-new-standards case would also meet or exceed the efficacy level required at TSL 4.

DOE expects product conversion costs will rise by less than $50 thousand dollars from TSL 3 to TSL 4 in the low investment scenario and slightly rise from $6.0 million at TSL 3 to $6.1 million at TSL 4 in the high investment scenario. DOE estimates manufacturers will incur slightly higher product conversion costs as they allocate more capital to R&D efforts necessary to redesign CFLKs that meet the max-tech EL. DOE expects capital conversion costs to increase slightly from $12.2 million at TSL 3 to $12.3 million at TSL 4 in the low investment scenario and from $13.9 million at TSL 3 to $14.1 million at TSL 4 in the high investment scenario due to retooling costs associated with the high number of models that will be redesigned in the light kit replacement scenario at TSL 4.

At TSL 4, the shipment-weighted average MPC increases by 26 percent relative to the no-new-standards case MPC in 2019. Manufacturers are not able to recover the $17.7 million in conversion costs in the low investment scenario or the $20.3 million in conversion costs in the high investment scenario through the increase in MPC over the course of the analysis period, resulting in moderately negative INPV impacts at TSL 4.

b. Impacts on Employment

DOE determined that there was only one CFLK manufacturer with domestic production of CFLKs, and this manufacturer's sales of ceiling fans packaged with CFLKs represents a very small portion of their overall revenue. During manufacturer interviews, manufacturers stated that the vast majority of manufacturing of the CFLKs they sell is outsourced to original equipment manufacturers located abroad. These original equipment manufacturers produce CFLKs based on designs from domestic CFLK manufacturers. Because of this feedback, DOE did not quantitatively assess any potential impacts on domestic production employment due to amended energy conservation standards on CFLKs.

c. Impacts on Manufacturing Capacity

CFLK manufacturers stated that they did not anticipate manufacturing capacity constraints as a result of amended energy conservation standards. If manufacturers redesign their CFLK fixtures to comply with amended standards, the original equipment manufacturers of CFLKs would be able to make the changes necessary to comply with standards in the estimated three years from the publication of this final rule to the compliance date. Additionally, at the standard levels adopted in this final rule, manufacturers have a range of options to comply with standards for a significant portion of the CFLKs by replacing the lamps with existing products that are sold on the market today. DOE does not anticipate any impact on manufacturing capacity as a result of this rulemaking. See section V.C.1 for more details on the standard adopted in this rulemaking.

d. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop an industry cash-flow estimate may not be adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche product manufacturers, and manufacturers exhibiting cost structures substantially different from the industry average could be affected disproportionately. DOE identified small business manufacturers as a subgroup that would require a separate analysis in the MIA. DOE analyzes the impacts on small businesses in section VI.B of this final

rule. DOE did not identify any other adversely impacted manufacturer subgroups for CFLKs for this rulemaking based on the results of the industry characterization.

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of recent or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducted a cumulative regulatory burden analysis as part of this rulemaking.

DOE identified a number of requirements, in addition to amended energy conservation standards for CFLKs, that CFLK manufacturers could face for products they manufacture approximately three years prior to and three years after the estimated compliance date of these amended standards. The following section addresses key concerns that manufacturers raised during interviews regarding cumulative regulatory burden.

Manufacturers raised concerns about existing regulations and certifications separate from DOE's energy conservation standards that CFLK manufacturers must meet. These include California Title 20, which has energy conservation standards identical to DOE's existing CFLK standards, but requires an additional certification, and Interstate Mercury Education and Reduction Clearinghouse (IMERC) labeling requirements, among others.

DOE discusses these and other requirements in chapter 12 of the final rule TSD, which lists the estimated compliance costs of those requirements when available. In considering the cumulative regulatory burden, DOE evaluates the timing of regulations that impact the same product because the coincident requirements could strain financial resources in the same profit center and consequently impact capacity. DOE identified the upcoming ceiling fan standards rulemaking and the GSLs standards rulemaking, as well as the 45 lm/W standard for GSLs in 2020, as potential sources of additional cumulative regulatory burden on CFLK manufacturers.

DOE has initiated a rulemaking to evaluate the energy conservation standards of ceiling fans by publishing a notice of availability for a framework document (78 FR 16443; Mar. 15, 2013) and preliminary analysis TSD. (79 FR 64712; Oct. 31, 2014) The CFLK standards adopted in this rulemaking affect many of the same manufacturers as the ongoing ceiling fan standards rulemaking and have a similar projected compliance date. Due to these similar projected compliance dates, manufacturers could potentially be required to make investments to bring CFLKs and ceiling fans into compliance during the same time period. Additionally, redesigned CFLKs could also require adjustments to ceiling fan redesigns separate from those potentially required by the ceiling fan rulemaking.

DOE has also initiated a rulemaking to evaluate the energy conservation standards of GSLs by publishing notices of availability for a framework document (78 FR 73737; Dec. 9, 2013) and preliminary analysis TSD. (79 FR 73503; Dec. 11, 2014) In addition, if standards from the GSL standards rulemaking do not produce savings greater than or equal to the savings from a minimum efficacy standard of 45 lm/W, sales of GSLs that do not meet the minimum 45 lm/W standard would be prohibited as of January 1, 2020. (42 U.S.C. 6295(i)(6)(A)(v)) Any potential standards established by the GSL rulemaking are also projected to require compliance in 2020. Potential standards promulgated from the GSL standards rulemaking and/or the operation of the GSL 45 lm/W provision will impact GSLs available to be packaged with CFLKs. Therefore, regardless of the standards in this rulemaking, CFLK manufacturers will likely need to package more efficacious lamps with CFLKs.

In addition to the amended energy conservation standards on CFLKs, several other existing and pending Federal regulations may apply to other products produced by lamp manufacturers and may subsequently impact CFLK manufacturers. These lighting regulations include the finalized metal halide lamp fixture standards (79 FR 7745; Feb. 10, 2014), the finalized general service fluorescent lamp standards (80 FR 4041; Jan. 26, 2015), and the ongoing high-intensity discharge lamp standards (80 FR 6016; Feb. 4, 2015). DOE acknowledges that each regulation can impact a manufacturer's financial operations. Multiple regulations affecting the same manufacturer can strain manufacturers' profit and possibly cause them to exit particular markets. Table V.9 lists the other DOE energy conservation standards that could also affect CFLK manufacturers in the three years leading up to and after the estimated compliance date of amended energy conservation standards for these products.

TABLE V.9—OTHER DOE REGULATIONS POTENTIALLY AFFECTING CFLK MANUFACTURERS

Regulation	Approximate compliance date	Estimated industry total conversion expenses
Metal Halide Lamp Fixtures	2017	$25 million (2012$).[70]
General Service Fluorescent Lamps	2018	$26.6 million (2013$).[71]
High-Intensity Discharge Lamps	*2018	N/A.†
Ceiling Fans	*2019	N/A.†
General Service Lamps	*2019	N/A.†
Candelabra-Base Incandescent Lamps and Intermediate-Base Incandescent Lamps.	β N/A	N/A.†
Other Incandescent Reflector Lamps	β N/A	N/A.†

* The dates listed are an approximation. The exact dates are pending final DOE action.

† For energy conservation standards for rulemakings awaiting DOE final action, DOE does not have a finalized estimated total industry conversion cost.

β These rulemakings are placed on hold due to the Continuing Appropriations Act, 2016 (Pub. L. 114–53, Sept. 30, 2015).

Note: For minimum performance requirements prescribed by the Energy Independence and Security Act of 2007 (EISA 2007), DOE did not estimate total industry conversion costs because an MIA was not completed as part of the final rule codifying these statutorily-prescribed standards.

3. National Impact Analysis

a. Significance of Energy Savings

Toestimate the energy savings attributable to potential standards for CFLKs, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2019–2048). Table V.10 presents DOE's projections of the NES for each TSL considered for CFLKs. The savings were calculated using the approach described in section IV.H of this document.

TABLE V.10—CUMULATIVE NATIONAL ENERGY SAVINGS FOR CFLKS SHIPPED IN 2019–2048

	Trial standard level (quads)			
	1	2	3	4
Primary Energy	0.008	0.047	0.066	0.067
FFC Energy	0.008	0.049	0.069	0.070

OMB Circular A–4 [72] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using nine, rather than 30, years of product shipments. The choice of a nine-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[73] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to CFLKs. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a nine-year analytical period are presented in Table V.11. The impacts are counted over the lifetime of CFLKs purchased in 2019–2027.

TABLE V.11—CUMULATIVE NATIONAL ENERGY SAVINGS FOR CFLKS; NINE YEARS OF SHIPMENTS

[2019–2027]

	Trial standard level (quads)			
	1	2	3	4
Primary Energy	0.008	0.047	0.064	0.065
FFC Energy	0.008	0.049	0.067	0.068

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for CFLKs. In accordance with OMB's guidelines on regulatory analysis,[74] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.12 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2019–2048.

TABLE V.12—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CFLKS SHIPPED IN 2019–2048

Discount rate	Trial standard level (billion 2014$)			
	1	2	3	4
3%	0.21	0.66	0.95	0.97
7%	0.21	0.50	0.70	0.71

[70] Estimated industry conversion expenses were published in the TSD for the February 2014 Metal Halide Lamp Fixtures final rule. 79 FR 7745. The TSD for the 2014 Metal Halide Lamp Fixture final rule can be found at *https://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/16.*

[71] Estimated industry conversion expenses were published in the TSD for the January 2015 general service fluorescent lamps final rule. 80 FR 4042. The TSD for the 2015 general service fluorescent lamps final rule can be found at *https://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/24.*

[72] U.S. Office of Management and Budget. *Circular No. A–4, Regulatory Analysis.* 2003. Washington, DC (Last accessed October 23, 2015.) *http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf.*

[73] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6 year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some consumer products, the compliance period is 5 years rather than 3 years.

[74] U.S. Office of Management and Budget, ''Circular A–4: Regulatory Analysis,'' section E, (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.13. The impacts are counted over the lifetime of products purchased in 2019–2027. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.13—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CFLKS; NINE YEARS OF SHIPMENTS
[2019–2027]

Discount rate	Trial standard level (billion 2014$)			
	1	2	3	4
3%	0.21	0.66	0.92	0.93
7%	0.21	0.50	0.68	0.69

The above results reflect the use of a default trend to estimate the change in price for CFLKs over the analysis period (see section IV.G of this document). DOE also conducted a sensitivity analysis that considered a higher rate of price decline than the reference case. The results of these alternative cases are presented in appendix 10C of the final rule TSD. In the high-price-decline case, the NPV is lower than in the default case. This is due the faster adoption of LED CFLKs in the no-new-standards case, which results in consumers moving to CFLKs that already meet or exceed potential standards. Therefore in this scenario, setting a standard does not move as many consumers to a higher efficacy level, resulting in lower energy savings from the standard.

c. Indirect Impacts on Employment

DOE expects energy conservation standards for CFLKs to reduce energy bills for consumers of those products, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered in this rulemaking. DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2019–2024), where these uncertainties are reduced.

The results suggest that the adopted standards are likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the final rule TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

DOE has concluded that the standards adopted in this final rule would not reduce the utility or performance of the CFLKs under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the adopted standards.

5. Impact of Any Lessening of Competition

As discussed in section III.E.1.e, the Attorney General of the United States (Attorney General) to determine the impact, if any, of any lessening of competition likely to result from an amended standard and to transmit such determination in writing to the Secretary within 60 days of the publication of a final rule, together with an analysis of the nature and extent of the impact. To assist the Attorney General in making such determination, DOE provided the Department of Justice (DOJ) with copies of the NOPR and the TSD for review. In its assessment letter responding to DOE, DOJ concluded that the proposed energy conservation standards for CFLKs are unlikely to have a significant adverse impact on competition. DOE is publishing the Attorney General's assessment at the end of this final rule.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, chapter 15 of the final rule TSD presents the estimated reduction in generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this rulemaking.

Energy conservation resulting from amended standards for CFLKs is expected to yield environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases. Table V.14 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The table includes both power sector emissions and upstream emissions. The emissions were calculated using the multipliers discussed in section IV.K. DOE reports annual emissions reductions for each TSL in chapter 13 of the final rule TSD.

TABLE V.14—CUMULATIVE EMISSIONS REDUCTION FOR CFLKS SHIPPED IN 2019–2048

	Trial standard level			
	1	2	3	4
Power Sector Emissions				
CO_2 (*million metric tons*)	0.65	3.28	4.50	4.59
SO_2 (*thousand tons*)	0.71	2.56	3.40	3.46

TABLE V.14—CUMULATIVE EMISSIONS REDUCTION FOR CFLKS SHIPPED IN 2019–2048—Continued

	Trial standard level			
	1	2	3	4
NO_X (*thousand tons*)	0.52	3.25	4.53	4.63
Hg (*tons*)	0.00	0.01	0.01	0.01
CH_4 (*thousand tons*)	0.09	0.35	0.47	0.47
N_2O (thousand tons)	0.01	0.05	0.07	0.07
Upstream Emissions				
CO_2 (*million metric tons*)	0.02	0.14	0.20	0.20
SO_2 (*thousand tons*)	0.00	0.03	0.04	0.04
NO_X (*thousand tons*)	0.23	1.98	2.82	2.89
Hg (*tons*)	0.00	0.00	0.00	0.00
CH_4 (*thousand tons*)	1.32	10.88	15.54	15.92
N_2O (thousand tons)	0.00	0.00	0.00	0.00
Total FFC Emissions				
CO_2 (*million metric tons*)	0.66	3.42	4.70	4.79
SO_2 (*thousand tons*)	0.71	2.59	3.44	3.50
NO_X (*thousand tons*)	0.75	5.23	7.36	7.53
Hg (*tons*)	0.00	0.01	0.01	0.01
CH_4 (*thousand tons*)	1.42	11.23	16.01	16.39
CH_4 (thousand *tons* CO_2*eq*)*	39.62	314.42	448.21	458.92
N_2O (thousand tons)	0.01	0.05	0.07	0.07
N_2O (*thousand tons* CO_2*eq*)*	3.58	13.67	18.23	18.56

* CO_2eq is the quantity of CO_2 that would have the same GWP.

As part of the analysis for this rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that DOE estimated for each of the considered TSLs for CFLKs. As discussed in section IV.L of this document, for CO_2, DOE used the most recent values for the SCC developed by an interagency process. The four sets of SCC values for CO_2 emissions reductions in 2015 resulting from that process (expressed in 2014$) are represented by $12.2/metric ton (the average value from a distribution that uses a 5-percent discount rate), $40.0/metric ton (the average value from a distribution that uses a 3-percent discount rate), $62.3/metric ton (the average value from a distribution that uses a 2.5-percent discount rate), and $117/metric ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). The values for later years are higher due to increasing damages (public health, economic and environmental) as the projected magnitude of climate change increases.

Table V.15 presents the global value of CO_2 emissions reductions at each TSL. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values; these results are presented in chapter 14 of the final rule TSD.

TABLE V.15—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR PRODUCTS SHIPPED IN 2019–2048

TSL	SCC Case * (million 2014$)			
	5% Discount rate, average	3% Discount rate, average	2.5% Discount rate, average	3% Discount rate, 95th percentile
Power Sector Emissions				
1	8.7	29.5	43.3	83.2
2	33.1	128.3	196.0	379.4
3	43.9	172.9	265.3	513.6
4	44.6	176.1	270.4	523.5
Upstream Emissions				
1	0.3	0.9	1.2	2.4
2	1.4	5.4	8.3	16.1
3	1.9	7.6	11.7	22.6
4	2.0	7.8	11.9	23.1

TABLE V.15—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR PRODUCTS SHIPPED IN 2019–2048—Continued

TSL	SCC Case * (million 2014$)			
	5% Discount rate, average	3% Discount rate, average	2.5% Discount rate, average	3% Discount rate, 95th percentile
Total FFC Emissions				
1	9.0	30.3	44.5	85.5
2	34.5	133.7	204.4	395.5
3	45.8	180.5	277.0	536.2
4	46.6	183.9	282.3	546.6

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.2, $40.0, $62.3, and $117 per metric ton (2014$). The values are for CO_2 only (*i.e.,* not CO_{2eq} of other greenhouse gases).

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed on reduced CO_2 emissions in this rulemaking is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this rule the most recent values and analyses resulting from the interagency review process.

DOE also estimated the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from the considered TSLs for CFLKs. The dollar-per-ton value that DOE used is discussed in section IV.L of this document. Table V.16 presents the cumulative present values for NO_X emissions for each TSL calculated using 7-percent and 3-percent discount rates. This table presents values that use the low dollar-per-ton values, which reflect DOE's primary estimate. Results that reflect the range of NO_X dollar-per-ton values are presented in Table V.18.

TABLE V.16—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR CFLKS SHIPPED IN 2019–2048

TSL	Million 2014$	
	3% Discount rate	7% Discount rate
Power Sector Emissions		
1	3.49	3.44
2	15.73	10.88
3	21.20	13.98
4	21.59	14.18
Upstream Emissions		
1	1.75	1.85
2	9.51	6.52
3	13.08	8.51
4	13.34	8.64
Total FFC Emissions		
1	5.25	5.29
2	25.24	17.40
3	34.27	22.49
4	34.93	22.82

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) No other factors were considered in this analysis.

8. Summary of National Economic Impacts

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V.17 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each TSL for CFLKs considered in this rulemaking, at both a 7-percent and 3-percent discount rate. The CO_2 values used in the columns of each table correspond to the four sets of SCC values discussed above.

TABLE V.17—NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Billion 2014$ Consumer NPV at 3% discount rate added with:			
	SCC Case $12.2/metric ton and 3% low NO_X values	SCC Case $40.0/metric ton and 3% low NO_X values	SCC Case $62.3/metric ton and 3% low NO_X values	SCC Case $117/metric ton and 3% low NO_X values
1	0.22	0.25	0.26	0.30
2	0.72	0.82	0.89	1.08
3	1.03	1.16	1.26	1.52

TABLE V.17—NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS—Continued

TSL	Billion 2014$ Consumer NPV at 3% discount rate added with:			
	SCC Case $12.2/metric ton and 3% low NO_X values	SCC Case $40.0/metric ton and 3% low NO_X values	SCC Case $62.3/metric ton and 3% low NO_X values	SCC Case $117/metric ton and 3% low NO_X values
4	1.05	1.19	1.28	1.55
	Consumer NPV at 7% discount rate added with:			
TSL	SCC Case $12.2/metric ton and 7% low NO_X values	SCC Case $40.0/metric ton and 7% low NO_X values	SCC Case $62.3/metric ton and 7% low NO_X values	SCC Case $117/metric ton and 7% low NO_X values
1	0.22	0.25	0.26	0.30
2	0.55	0.65	0.72	0.91
3	0.76	0.90	0.99	1.25
4	0.78	0.91	1.01	1.28

In considering the above results, two issues are relevant. First, the national operating cost savings are domestic U.S. monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2019 to 2048. Because CO_2 emissions have a very long residence time in the atmosphere,[75] the SCC values in future years reflect future climate-related impacts that continue beyond 2100.

C. Conclusion

When considering standards, the new or amended energy conservation standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)). The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

For this final rule, DOE considered the impacts of amended standards for CFLKs at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest EL that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of: (1) A lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases; (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (for example, between renters and owners, or builders and purchasers). Having less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a regulatory option decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of shipments and changes in the volume of product purchases in chapter 9 of the final rule TSD. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or

[75] The atmospheric lifetime of CO_2 is estimated of the order of 30–95 years. Jacobson, MZ, ''Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,''' *J. Geophys. Res.* 110. pp. D14105 (2005).

consumer price sensitivity variation according to household income.[76]

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy conservation standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[77] DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

1. Benefits and Burdens of TSLs Considered for CFLK Standards

Table V.18 and Table V.19 summarize the quantitative impacts estimated for each TSL for CFLKs. The national impacts are measured over the lifetime of CFLKs purchased in the 30-year period that begins in the anticipated year of compliance with amended standards (2019–2048). The energy savings, emissions reductions, and value of emissions reductions refer to FFC results. The ELs contained in each TSL are described in section V.A of this document.

TABLE V.18—SUMMARY OF ANALYTICAL RESULTS FOR CFLK TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
Cumulative FFC National Energy Savings (quads):				
quads	0.008	0.049	0.069	0.070
NPV of Consumer Costs and Benefits (2014$ billion):				
3% discount rate	0.21	0.66	0.95	0.97
7% discount rate	0.21	0.50	0.70	0.71
Cumulative FFC Emissions Reduction (Total FFC Emission):				
CO_2 (*million metric tons*)	0.66	3.42	4.70	4.79
SO_2 (*thousand tons*)	0.71	2.59	3.44	3.50
NO_X (*thousand tons*)	0.75	5.23	7.36	7.53
Hg (*tons*)	0.00	0.01	0.01	0.01
CH_4 (*thousand tons*)	1.42	11.23	16.01	16.39
CH_4 (*thousand tons CO_2eq*)*	39.62	314.42	448.21	458.92
N_2O (*thousand tons*)	0.01	0.05	0.07	0.07
N_2O (*thousand tons CO_2eq*)*	3.58	13.67	18.23	18.56
Value of Emissions Reduction (Total FFC Emissions):				
CO_2 (*2014$ billion*)**	0.009 to 0.086	0.034 to 0.396	0.046 to 0.536	0.047 to 0.547
NO_X—3% discount rate (*2014$ million*)	5.2 to 12.4	25.2 to 58.3	34.3 to 78.9	34.9 to 80.4
NO_X—7% discount rate (*2014$ million*)	5.3 to 11.6	17.4 to 38.4	22.5 to 49.7	22.8 to 50.4

* CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).
** Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

TABLE V.19—SUMMARY OF ANALYTICAL RESULTS FOR CFLK TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1*	TSL 2*	TSL 3*	TSL 4*
Manufacturer Impacts:				
Industry NPV (2014$ million) (No-new-standards case INPV = 174.9)	175.2	168.5–169.9	164.3–166.2	164.0–166.0
Industry NPV (*% change*)	0.2	(3.7)–(2.8)	(6.0)–(5.0)	(6.2)–(5.1)
Residential Sector				
Consumer Average LCC Savings (2014$):				
All CFLKs	23.0	24.3	30.9	30.9
Consumer Simple PBP** (years):				
All CFLKs	0.4	1.2	0.5	0.4
% of Consumers that Experience Net Cost:				
All CFLKs	0.6	9.7	7.6	7.6
Commercial Sector				
Consumer Average LCC Savings (2014$):				
All CFLKs	28.7	53.4	67.7	67.8
Consumer Simple PBP** (years):				
All CFLKs	0.1	0.3	0.1	0.1
% of Consumers that Experience Net Cost:				
All CFLKs	10.5	1.9	0.3	0.3

* Parentheses indicate negative (−) values.
** Simple PBP results are calculated assuming that all consumers use products at that efficacy level. The PBP is measured relative to the least efficient product currently available on the market

[76] P.C. Reiss and M.W. White, Household Electricity Demand, Revisited, *Review of Economic Studies* (2005) 72, 853–883.

[77] Alan Sanstad, Notes on the Economics of Household Energy Consumption and Technology Choice. Lawrence Berkeley National Laboratory (2010) (Available online at: *https://www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf*).

DOE first considered TSL 4, which represents the max-tech EL. TSL 4 would save 0.07 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be $0.71 billion using a discount rate of 7 percent, and $0.97 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 4.79 Mt of CO_2, 3.50 thousand tons of SO_2, 7.53 thousand tons of NO_X, 0.01 tons of Hg, 16.4 thousand tons of CH_4, and 0.07 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 4 ranges from $46.6 million to $546.6 million.

At TSL 4, the average LCC impact is a savings of $30.9 in the residential sector and a savings of $67.8 in the commercial sector. The simple payback period is 0.4 years in the residential sector and 0.1 years in the commercial sector. The fraction of consumers experiencing a net LCC cost is 7.6 percent in the residential sector and 0.3 percent in the commercial sector.

At TSL 4, the projected change in INPV ranges from a decrease of $10.9 million to a decrease of $8.9 million, which corresponds to decreases of 6.2 percent and 5.1 percent, respectively.

The Secretary concludes that at TSL 4 for CFLKs, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the reduction in manufacturer industry value and the potentially limited availability of compliant CFLKs discussed in section IV.O.1. Consequently, the Secretary has concluded that TSL 4 is not economically justified.

DOE then considered TSL 3, which would save an estimated 0.069 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $0.70 billion using a discount rate of 7 percent, and $0.95 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 4.70 Mt of CO_2, 3.44 thousand tons of SO_2, 7.36 thousand tons of NO_X, 0.01 tons of Hg, 16.0 thousand tons of CH_4, and 0.07 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 3 ranges from $45.8 million to $536.2 million.

At TSL 3, the average LCC impact is a savings of $30.9 in the residential sector and a savings of $67.7 in the commercial sector. The simple payback period is 0.5 years in the residential sector and 0.1 years in the commercial sector. The fraction of consumers experiencing a net LCC cost is 7.6 percent in the residential sector and 0.3 percent in the commercial sector.

At TSL 3, the projected change in INPV ranges from a decrease of $10.6 million to a decrease of $8.7 million, which corresponds to decreases of 6.0 percent and 5.0 percent, respectively.

After considering the analysis and weighing the benefits and burdens, the Secretary has concluded that at TSL 3 for CFLKs, the benefits of energy savings, positive NPV of consumer benefits, and the estimated monetary value of the emissions reductions would be outweighed by the reduction in manufacturer industry value and by the potential limited availability of compliant CFLKs discussed in section IV.O.1. Consequently, the Secretary has concluded that TSL 3 is not justified.

DOE then considered TSL 2, which would save an estimated 0.049 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefit would be $0.50 billion using a discount rate of 7 percent, and $0.66 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 3.42 Mt of CO_2, 2.59 thousand tons of SO_2, 5.23 thousand tons of NO_X, 0.01 tons of Hg, 11.2 thousand tons of CH_4, and 0.05 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 2 ranges from $34.5 million to $395.5 million.

At TSL 2, the average LCC impact is a savings of $24.3 in the residential sector and a savings of $53.4 in the commercial sector. The simple payback period is 1.2 years in the residential sector and 0.3 years in the commercial sector. The fraction of consumers experiencing a net LCC cost is 9.7 percent in the residential sector and 1.9 percent in the commercial sector.

At TSL 2, the projected change in INPV ranges from a decrease of $6.4 million to a decrease of $5.0 million, which corresponds to decreases of 3.7 percent and 2.8 percent, respectively.

After considering the analysis and weighing the benefits and burdens, the Secretary has concluded that at TSL 2 for CFLKs, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, the estimated monetary value of the emissions reductions, and positive average LCC savings would outweigh the reduction in manufacturer industry value.

Accordingly, the Secretary has concluded that TSL 2 would offer the maximum improvement in efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy.

Therefore, based on the above considerations, DOE is adopting the energy conservation standards for CFLKs at TSL 2. The amended energy conservation standards for CFLKs, which are expressed as minimum lm/W, are shown in Table V.20.

TABLE V.20—AMENDED ENERGY CONSERVATION STANDARDS FOR CFLKS

Product class	Lumens [1]	Minimum required efficacy (lm/W)
All CFLKs	<120	50
	≥120	$74.0 - 29.42 \times 0.9983^{lumens}$

[1] Use the lumen output for each basic model of lamp packaged with the basic model of CFLK or each basic model of integrated SSL in the CFLK basic model to determine the applicable standard.

2. Summary of Annualized Benefits and Costs of the Adopted Standards

The benefits and costs of the adopted standards can also be expressed in terms of annualized values. The annualized net benefit is the sum of: (1) The annualized national economic value (expressed in 2014$) of the benefits from operating products that meet the adopted standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs, and (2) the annualized monetary value of the benefits of CO_2 and NO_X emission reductions.[78]

[78] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2014, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated

Table V.21 shows the annualized values for CFLKs under TSL 2, expressed in 2014$. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reductions (for which DOE used a 3-percent discount rate along with the average SCC series corresponding to a value of $40.0/ton in 2015 [2014$]), the estimated cost of the adopted standards for CFLKs is $6.0 million per year in increased equipment costs, while the estimated benefits are $55 million per year in reduced equipment operating costs, $7.5 million per year in CO_2 reductions, and $1.7 million per year in reduced NO_X emissions. In this case, the net benefit amounts to $59 million per year.

Using a 3-percent discount rate for all benefits and costs and the average SCC series corresponding to a value of $40.0/ton in 2015 (in 2014$), the estimated cost of the adopted standards for CFLKs is $4.0 million per year in increased equipment costs, while the estimated annual benefits are $41 million in reduced operating costs, $7.5 million in CO_2 reductions, and $1.4 million in reduced NO_X emissions. In this case, the net benefit amounts to $46 million per year.

TABLE V.21—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS (TSL 2) FOR CFLKS

	Discount rate	Million 2014$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Consumer Operating-Cost Savings	7%	55	36	59
	3%	41	24	43
CO_2 Reduction Value ($12.2/t) **	5%	2.6	1.4	2.7
CO_2 Reduction Value ($40.0/t) **	3%	7.5	3.9	7.9
CO_2 Reduction Value ($62.3/t) **	2.5%	11	5	11
CO_2 Reduction Value ($117/t) **	3%	22	12	24
NO_X Reduction Value †	7%	1.7	1.0	4.0
	3%	1.4	0.7	3.4
Total Benefits ††	7% plus CO_2 range	60 to 79	38 to 48	66 to 86
	7%	65	40	71
	3% plus CO_2 range	45 to 64	26 to 36	50 to 70
	3%	50	28	55
Costs				
Consumer Incremental Product Costs	7%	6.0	3.5	6.4
	3%	4.0	2.3	4.2
Total ††	7% plus CO_2 range	54 to 73	34 to 44	59 to 80
	7%	59	37	65
	3% plus CO_2 range	41 to 60	24 to 33	45 to 66
	3%	46	26	51

* This table presents the annualized costs and benefits associated with CFLKs shipped in 2019 – 2048. These results include benefits to consumers which accrue after 2048 from the products purchased in 2019 – 2048. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary Estimate assumes the reference case electricity prices and housing starts from *AEO 2015* and decreasing product prices for LED CFLKs, due to price learning. The Low Benefits Estimate uses the Low Economic Growth electricity prices and housing starts from *AEO 2015* and a faster decrease in product prices for LED CFLKs. The High Benefits Estimate uses the High Economic Growth electricity prices and housing starts from *AEO 2015* and the same product price decrease for LED CFLKs as in the Primary Estimate.

** The CO_2 values represent global monetized values of the SCC, in 2014$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† The $/ton values used for NO_X are described in section IV.L. DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,'' published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf.*) See section IV.L.2 for further discussion. For DOE's Primary Estimate and Low Net Benefits Estimate, the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.,* 2009). For DOE's High Net Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.,* 2011), which are nearly two-and-a-half times larger than those from the ACS study. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emissions, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with a 3-percent discount rate ($40.0/t case). In the rows labeled ''7% plus CO_2 range'' and ''3% plus CO_2 range,'' the operating-cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

with each year's shipments in the year in which the shipments occur (2020, 2030, *etc.*), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that the adopted standards for CFLKs are intended to address are as follows:

(1) Insufficient information and the high costs of gathering and analyzing relevant information leads some consumers to miss opportunities to make cost-effective investments in energy efficiency.

(2) In some cases the benefits of more efficient equipment are not realized due to misaligned incentives between purchasers and users. An example of such a case is when the equipment purchase decision is made by a building contractor or building owner who does not pay the energy costs.

(3) There are external benefits resulting from improved energy efficiency of appliances that are not captured by the users of such equipment. These benefits include externalities related to public health, environmental protection and national energy security that are not reflected in energy prices, such as reduced emissions of air pollutants and greenhouse gases that impact human health and global warming. DOE attempts to qualify some of the external benefits through use of social cost of carbon values.

The Administrator of the Office of Information and Regulatory Affairs (OIRA) in the OMB has determined that the regulatory action is not a significant regulatory action under section (3)(f) of Executive Order 12866. Section 6(a)(3)(A) of the Executive Order states that absent a material change in the development of the planned regulatory action, regulatory action not designated as significant will not be subject to review under section 6(a)(3) unless, within 10 working days of receipt of DOE's list of planned regulatory actions, the Administrator of OIRA notifies the agency that OIRA has determined that a planned regulation is a significant regulatory action within the meaning of the Executive order. Accordingly, DOE did not submit this final rule to OIRA for review.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. (76 FR 3281, Jan. 21, 2011) EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that this final rule is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 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 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 products that are the subject of this rulemaking.

1. Description of the Need For, and Objectives of, the Rule

A description of the need for, and objectives of, the rule is set forth elsewhere in the preamble and not repeated here.

2. Description of Significant Issues Raised by Public Comment

DOE received no comments specifically on the initial regulatory flexibility analysis prepared for this rulemaking. Comments on the economic impacts of the rule are discussed elsewhere in the preamble and did not necessitate changes to the analysis required by the Regulatory Flexibility Act.

3. Description of Comments Submitted by the Small Business Administration

The Small Business Administration did not submit comments on DOE's proposed rule.

4. Description on Estimated Number of Small Entities Regulated

For manufacturers of CFLKs, 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. See 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description available at: *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* CFLK manufacturing is classified under NAICS code 335210, ''Small Electrical Appliance Manufacturing.'' The SBA sets a threshold of 750 employees or less for an entity to be considered as a small business for this category.

To estimate the number of companies that could be small businesses that sell CFLKs covered by this rulemaking, DOE conducted a market survey using publicly available information. DOE's research involved information provided

by trade associations (*e.g.*, ALA [79]) and information from previous rulemakings, individual company Web sites, SBA's database, and market research tools (*e.g.*, Hoover's reports [80]). DOE also asked stakeholders and industry representatives if they were aware of any small businesses during manufacturer interviews and DOE public meetings. DOE used information from these sources to create a list of companies that potentially manufacture or sell CFLKs and would be impacted by this rulemaking. DOE screened out companies that do not offer products covered by this rulemaking, do not meet the definition of a ''small business,'' or are completely foreign owned and operated.

For CFLKs, DOE initially identified a total of 67 potential companies that sell CFLKs in the United States. Of these, DOE identified only one manufacturer that also manufactures the lamps sold with their CFLKs. All other CFLK manufacturers source the lamps packaged with their CFLKs. After reviewing publicly available information on these potential small businesses, DOE determined that 40 were either large businesses or businesses that were completely foreign owned and operated. DOE determined that the remaining 27 companies were small businesses that either manufacture or sell covered CFLKs in the United States. The one CFLK manufacturer that also sells lamps that DOE identified is also a small business. Based on manufacturer interviews, DOE estimates that these small businesses account for approximately 25 percent of the CFLK market. One small business accounts for approximately five percent of the CFLK market, while all other small businesses account for one percent or less of the CFLK market individually.

5. Description and Estimate of Compliance Requirements

At TSL 2, the adopted standard in this final rule, DOE projects that impacts on small businesses as a result of amended standards would be consistent with the overall CFLK industry impacts presented in section V.B.2. Small businesses are not expected to experience differential impacts as a result of the amended CFLK standards due to the majority of large and small businesses sourcing the lamps used in their CFLKs from lamp manufacturers; small and large CFLK businesses typically outsourcing the manufacturing of the CFLKs they sell to original equipment manufacturers located abroad; and the range of available options to replace non-compliant lamps with lamps on the market that can meet the adopted standards.

DOE identified only one CFLK small business that is also a lamp manufacturer. For this analysis, DOE refers to lamp manufacturers as entities that produce and sell lamps, as opposed to purchasing lamps from a third party. The majority of lamps packaged in CFLKs are purchased from lamp manufacturers, then inserted into a CFLK or packaged with a CFLK. Therefore, CFLK businesses will typically not be responsible for the costs associated with producing more efficacious lamps packaged with CFLKs that comply with the adopted standards (though CFLK manufacturers would shoulder any increase in purchase price of a more efficacious lamp).

At the adopted standard level, CFLK businesses have the option to replace the lamps used in their CFLKs with more efficacious lamps available on the market. This lamp replacement option allows most CFLK businesses to comply with the adopted CFLK standards without redesigning their existing CFLKs. However, these more efficacious lamps could be more expensive for CFLK manufacturers to purchase and could require CFLK manufacturers to increase the sale price of their CFLKs to recover these higher production costs. DOE's shipments analysis found that approximately 50 percent of CFLKs sold at TSL 2 will follow this lamp replacement option, allowing these CFLK businesses to avoid redesign and conversion costs. Based on manufacturer interviews, small businesses are just as likely to pursue the lamp replacement option as large businesses.

DOE expects that CFLK businesses that meet amended CFLK standards by redesigning CFLK fixtures instead of replacing lamps are expected to incur conversion costs driven by retooling costs, increased R&D efforts, product certification costs, and testing costs. DOE learned during manufacturer interviews that the majority of the manufacturing of CFLKs by small and large CFLK businesses is outsourced to a limited number of original equipment manufacturers located abroad. CFLK businesses typically pay retooling costs to these original equipment manufacturers located abroad, who operate and maintain machinery used to produce the CFLKs that those businesses then sell.

DOE also learned from manufacturer interviews that, in some cases, multiple CFLK businesses, including small and large CFLK businesses, are outsourcing production to the same original equipment manufacturer located abroad. Small businesses are currently competing against large businesses despite purchasing components at lower volumes, and DOE expects that they will continue to compete after the adoption of standards, because the adopted standards will not significantly disrupt most CFLK manufacturers' supply chain. DOE does not expect that small businesses would be disadvantaged compared to large businesses if they redesign their CFLKs. Total estimated conversion costs for the industry at TSL 2 range from $17.0 million in the low investment scenario to $18.9 million in the high investment scenario.

As stated in section V.B.2.a, DOE estimates that CFLK manufacturers may experience a decrease in INPV ranging from a decrease of 3.7 percent to a decrease of 2.8 percent at TSL 2. For the reasons outlined previously, DOE has determined that most small businesses would not be disproportionally impacted by the adopted CFLK energy conservation standard compared to industry average impacts previously stated. DOE estimates that the overall percent change in INPV for the CFLK industry is reflective of the range of potential impacts for small businesses as well.

DOE notes that because lamp manufacturers typically test and certify their lamps, CFLK businesses can use the testing and certification data provided by the lamp manufacturer to comply with the CFLK standards. By using existing testing and certification data, both large and small CFLK businesses can significantly reduce their own testing and certification costs associated with complying with amended CFLK standards. DOE emphasizes, however, that CFLK manufacturers are ultimately responsible for demonstrating compliance with applicable CFLK standards.

6. Description of Steps Taken To Minimize Impacts to Small Businesses

The discussion in the previous section analyzes impacts on small businesses that would result from DOE's final rule. In reviewing alternatives to the final rule, DOE examined energy conservation standards set at higher and lower ELs.

[79] American Lighting Association Company Information Industry Information Lists, *http://www.americanlightingassoc.com/*) (Last accessed Nov 13, 2015).

[80] Hoovers Company Information Industry Information Lists, *http://www.hoovers.com/*) (Last accessed Nov 13, 2015).

With respect to TSL 4, DOE estimated that while there would be significant consumer benefits from the projected energy savings of 0.07 quads (ranging from $0.71 billion using a 7-percent discount rate to $0.97 billion using a 3-percent discount rate), along with emissions reductions, the overall impacts would result in an INPV reduction of 5.1–6.2 percent. DOE determined that this INPV reduction, along with the potential limited availability of compliant CFLKs, would outweigh the potential benefits. For TSL 3, DOE estimated that while there would be significant consumer benefits from the projected energy savings of 0.069 quads (ranging from $0.70 billion using a 7-percent discount rate to $0.95 billion using a 3-percent discount rate), along with emissions reductions, the overall impacts would result in an INPV reduction of 5.0–6.0 percent. DOE determined that this INPV reduction, along with the potential limited availability of compliant CFLKs, would outweigh the potential benefits. In addition, while TSL 1 would reduce the impacts on small business manufacturers, it would come at the expense of a significant reduction in energy savings and NPV benefits to consumers, achieving 83 percent lower energy savings and 58 percent less NPV benefits to consumers compared to the energy savings and NPV benefits at TSL 2.

EPCA requires DOE to establish standards at the level that would achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Based on its analysis, DOE concluded that TSL 2 achieves the maximum improvement in energy efficiency that is technologically feasible and economically justified. Therefore, DOE did not establish standards at the levels considered at TSLs 3 and 4 because DOE determined that they were not economically justified. DOE's analysis of economic justification considers impacts on manufacturers, including small businesses. While TSL 1 would reduce the impacts on small business manufacturers, EPCA prohibits DOE from adopting TSL 1.

In summary, DOE concluded that establishing standards at TSL 2 balances the benefits of the energy savings and the NPV benefits to consumers at TSL 2 with the potential burdens placed on CFLK manufacturers, including small business manufacturers. Accordingly, DOE does not adopt any of the other TSLs considered in the analysis, or the other policy alternatives detailed as part of the regulatory impacts analysis included in chapter 17 of the final rule TSD.

Additional compliance flexibilities may be available through other means. EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. Additionally, Section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent ''special hardship, inequity, or unfair distribution of burdens'' that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 430, subpart E, and part 1003 for additional details.

C. Review Under the Paperwork Reduction Act

Manufacturers of CFLKs must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for CFLKs, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including CFLKs. *See generally* 10 CFR part 429. The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and App. B, B(1)–(5). The rule fits within this category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this rule. DOE's CX determination for this rule is available at *http://energy.gov/nepa/categorical-exclusion-cx-determinations-cx*.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism.'' 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on Federal 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 has examined this rule and has determined that it 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. 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) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice

Reform,'' 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. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), 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 section 3(a) and section 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 likely to result 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 ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf*.

This rule does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by the private sector. As a result, the analytical requirements of UMRA 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 rule would 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

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the 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 Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 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 OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates 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 should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that this regulatory action, which sets forth amended energy conservation standards for CFLKs, is not a significant energy action because the standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this final rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' Id at FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and

documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is a ''major rule'' as defined by 5 U.S.C. 804(2).

VII. 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

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Issued in Washington, DC, on December 17, 2015.

David T. Danielson,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends parts 429 and 430 of chapter II, subchapter D, of title 10 of the 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.

■ 2. Section 429.33 is amended by revising the introductory text of paragraph (a)(3) to read as follows:

§ 429.33 Ceiling fan light kits.

(a) * * *

(3) For ceiling fan light kits that require compliance with the January 7, 2019 energy conservation standards:

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Section 430.23 is amended by revising the introductory text of paragraph (x)(2) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(x) * * *

(2) For each ceiling fan light kit that requires compliance with the January 7, 2019 energy conservation standards:

* * * * *

■ 5. Section 430.32 is amended by:

■ a. Revising the introductory text of paragraphs (s)(2) and (3);

■ b. Revising paragraph (s)(4); and

■ c. Adding paragraph (s)(5).

The addition and revisions read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(s) * * *

(2) Ceiling fan light kits manufactured on or after January 1, 2007, and prior to January 7, 2019, with medium screw base sockets must be packaged with medium screw base lamps to fill all sockets. These medium screw base lamps must—

* * * * *

(3) Ceiling fan light kits manufactured on or after January 1, 2007, and prior January 7, 2019, with pin-based sockets for fluorescent lamps must use an electronic ballast and be packaged with lamps to fill all sockets. These lamp ballast platforms must meet the following requirements:

* * * * *

(4) Ceiling fan light kits manufactured on or after January 1, 2009, and prior to January 7, 2019, with socket types other than those covered in paragraphs (s)(2) or (3) of this section, including candelabra screw base sockets, must be packaged with lamps to fill all sockets and must not be capable of operating with lamps that total more than 190 watts.

(5) Ceiling fan light kits manufactured on or after January 7, 2019 must be packaged with lamps to fill all sockets, and each basic model of lamp packaged with the basic model of CFLK and each basic model of integrated SSL in the CFLK basic model shall meet the requirements shown in the table:

Lumens [1]	Minimum required efficacy (lm/W)
<120	50
≥120	$(74.0 - 29.42 \times 0.9983^{lumens})$

[1] Use the lumen output for each basic model of lamp packaged with the basic model of CFLK or each basic model of integrated SSL in the CFLK basic model to determine the applicable standard.

(i) Ceiling fan light kits with medium screw base sockets manufactured on or after January 7, 2019 and packaged with compact fluorescent lamps must include lamps that also meet the following requirements:

Lumen Maintenance at 1,000 hours	≥90.0%.
Lumen Maintenance at 40 Percent of Lifetime	≥80.0%.
Rapid Cycle Stress Test	Each lamp must be cycled once for every 2 hours of lifetime of compact fluorescent lamp as defined in § 430.2. At least 5 lamps must meet or exceed the minimum number of cycles.
Lifetime	≥6,000 hours for the sample of lamps.

(ii) Ceiling fan light kits with pin based sockets for fluorescent lamps, manufactured on or after January 7, 2019, must also use an electronic ballast.

* * * * *

Note: The following attachment will not appear in the Code of Federal Regulations.

U.S. DEPARTMENT OF JUSTICE

Antitrust Division

RFK Main Justice Building 950 Pennsylvania Avenue NW., Washington, DC 20530–0001, (202) 514–2401/(202) 616–2645 (Fax)

October 13, 2015

Anne Harkavy

Deputy General Counsel

For Litigation, Regulation and Enforcement

Department of Energy
Washington, DC 20585

Dear Deputy General Counsel Harkavy:

I am responding to your letter of October 2, 2015 seeking the views of the Attorney General about the potential impact on competition of proposed amended energy conservation standards for Ceiling Fan Light Kits. Your request was submitted under Section 325 (o)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended (EPCA), 42 U.S.C. 6295(o)(2)(B)(i)(V), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR 0.40(g).

In conducting its analysis, the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice or increasing industry concentration. A lessening of competition could result in higher prices to manufacturers and consumers.

We have reviewed the proposed standards contained in the Notice of Proposed Rulemaking published in the **Federal Register** (80 FR 156, at 48624–48682, August 13, 2015) (NOPR). We have also reviewed supplementary information submitted to the Attorney General by the Department of Energy, including the Technical Support Document, and reviewed industry source material.

Based on this review, our conclusion is that the proposed amended energy conservation standards set forth in the NOPR for Ceiling Fan Light Kits are unlikely to have a significant adverse impact on competition.

Sincerely,

William J. Baer

[FR Doc. 2015–33071 Filed 1–5–16; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 81 Wednesday,

No. 3 January 6, 2016

Part III

Commodity Futures Trading Commission

17 CFR Parts 23 and 140

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 23 and 140

RIN 3038–AC97

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule and interim final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is adopting regulations to implement a particular provision of the Commodity Exchange Act (''CEA''), as added by the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). This provision requires the Commission to adopt initial and variation margin requirements for certain swap dealers (''SDs'') and major swap participants (''MSPs''). The final rules would establish initial and variation margin requirements for SDs and MSPs but would not require SDs and MSPs to collect margin from non-financial end users.

The Commission is also adopting and inviting comment on an interim final rule that will exempt certain uncleared swaps with certain counterparties from these margin requirements. This interim final rule implements Title III of the Terrorism Risk Insurance Program Reauthorization Act of 2015 (''TRIPRA''), which exempts from the margin rules for uncleared swaps certain swaps for which a counterparty qualifies for an exemption or exception from clearing under the Dodd-Frank Act.

DATES: The rules will become effective April 1, 2016. Comments on the interim final rule (§ 23.150(b)) must be received on or before February 5, 2016.

ADDRESSES: You may submit comments on the interim final rule by any of the following methods:

- CFTC Web site: *http://comments.cftc.gov*. Follow the instructions for submitting comments through the Comments Online process on the Web site.
- Mail: Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- Hand Delivery/Courier: Same as Mail, above.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Please submit your comments using only one of these methods.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov*. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Deputy Director, Division of Clearing and Risk, 202–418–5480, *jlawton@cftc.gov*; Thomas J. Smith, Deputy Director, Division of Swap Dealer and Intermediary Oversight, 202–418–5495, *tsmith@cftc.gov*; Rafael Martinez, Senior Financial Risk Analyst, Division of Swap Dealer and Intermediary Oversight, 202–418–5462, *rmartinez@cftc.gov*; Francis Kuo, Special Counsel, Division of Swap Dealer and Intermediary Oversight, 202–418–5695, *fkuo@cftc.gov*; Paul Schlichting, Assistant General Counsel, Office of General Counsel, 202–418–5884, *pschlichting@cftc.gov*; Stephen A. Kane, Research Economist, Office of the Chief Economist, 202–418–5911, *skane@cftc.gov*; or Lihong McPhail, Research Economist, Office of the Chief Economist, 202–418–5722, *lmcphail@cftc.gov*; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. Statutory Authority

On July 21, 2010, President Obama signed the Dodd-Frank Act.[2] Title VII of the Dodd-Frank Act amended the CEA[3] to establish a comprehensive regulatory framework designed to reduce risk, to increase transparency, and to promote market integrity within the financial system by, among other things: (1) Providing for the registration and regulation of SDs and MSPs; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.

Section 731 of the Dodd-Frank Act added a new section 4s to the CEA setting forth various requirements for SDs and MSPs. Section 4s(e) mandates the adoption of rules establishing margin requirements for uncleared swaps of SDs and MSPs.[4] Each SD and MSP for which there is a Prudential Regulator, as defined below, must meet margin requirements for their uncleared swaps established by the applicable Prudential Regulator, and each SD and MSP for which there is no Prudential Regulator must comply with the Commission's regulations governing margin.

The term Prudential Regulator is defined in section 1a(39) of the CEA, as amended by Section 721 of the Dodd-

[1] 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR Chapter I.

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

[3] 7 U.S.C. 1 *et seq.*

[4] Section 4s(e) also directs the Commission to adopt capital requirements for SDs and MSPs. The Commission proposed capital rules in 2011. Capital Requirements for Swap Dealers and Major Swap Participants, 76 FR 27802 (May 12, 2011). The Commission will address capital requirements in a separate release.

Frank Act. This definition includes the Federal Reserve Board (''FRB''); the Office of the Comptroller of the Currency (''OCC''); the Federal Deposit Insurance Corporation (''FDIC''); the Farm Credit Administration; and the Federal Housing Finance Agency.

The definition specifies the entities for which these agencies act as Prudential Regulators. These consist generally of federally insured deposit institutions, farm credit banks, federal home loan banks, the Federal Home Loan Mortgage Corporation, and the Federal National Mortgage Association. The FRB is the Prudential Regulator under section 4s not only for certain banks, but also for bank holding companies, certain foreign banks treated as bank holding companies, and certain subsidiaries of these bank holding companies and foreign banks.

The FRB is not, however, the Prudential Regulator for nonbank subsidiaries of bank holding companies, some of which are required to be registered with the Commission as SDs or MSPs. Therefore, the Commission is required to establish margin requirements for uncleared swaps for all registered SDs and MSPs that are not subject to a Prudential Regulator. These include, among others, nonbank subsidiaries of bank holding companies, as well as certain foreign SDs and MSPs.

Specifically, section 4s(e)(1)(B) of the CEA provides that each registered SD and MSP for which there is not a Prudential Regulator shall meet such minimum capital requirements and minimum initial margin and variation margin requirements as the Commission shall by rule or regulation prescribe.

Section 4s(e)(2)(B) provides that the Commission shall adopt rules for SDs and MSPs, with respect to their activities as an SD or an MSP, for which there is not a Prudential Regulator imposing (i) capital requirements and (ii) both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization (''DCO'').

Section 4s(e)(3)(A) provides that to offset the greater risk to the SD or MSP and the financial system arising from the use of swaps that are not cleared, the requirements imposed under section 4s(e)(2) shall (i) help ensure the safety and soundness of the SD or MSP and (ii) be appropriate for the risk associated with the uncleared swaps.

Section 4s(e)(3)(C) provides, in pertinent part, that in prescribing margin requirements the Prudential Regulator and the Commission shall permit the use of noncash collateral the Prudential Regulator or the Commission determines to be consistent with (i) preserving the financial integrity of markets trading swaps and (ii) preserving the stability of the United States financial system.

Section 4s(e)(3)(D)(i) provides that the Prudential Regulators, the Commission, and the Securities and Exchange Commission (''SEC'') shall periodically (but not less frequently than annually) consult on minimum capital requirements and minimum initial and variation margin requirements.

Section 4s(e)(3)(D)(ii) provides that the Prudential Regulators, Commission and SEC shall, to the maximum extent practicable, establish and maintain comparable minimum capital and minimum initial and variation margin requirements, including the use of noncash collateral, for SDs and MSPs.

B. International Standards

In October 2011, the Basel Committee on Banking Supervision (''BCBS'') and the International Organization of Securities Commissions (''IOSCO''), in consultation with the Committee on Payment and Settlement Systems (''CPSS'') and the Committee on Global Financial Systems (''CGFS''), formed a working group to develop international standards for margin requirements for uncleared swaps. Representatives of more than 20 regulatory authorities participated. From the United States, the CFTC, the FDIC, the FRB, the OCC, the Federal Reserve Bank of New York, and the SEC were represented.

In July 2012, the working group published a proposal for public comment.[5] In addition, the group conducted a Quantitative Impact Study (''QIS'') to assess the potential liquidity and other quantitative impacts associated with margin requirements.[6]

After consideration of the comments on the proposal and the results of the QIS, the group published a near-final proposal in February 2013 and requested comment on several specific issues.[7] The group considered the additional comments in finalizing the recommendations set out in the report.

The final report was issued in September 2013.[8] This report (the ''2013 international framework'') articulates eight key principles for non-cleared derivatives margin rules, which are described below. These principles represent the minimum standards approved by BCBS and IOSCO and their recommendations to the regulatory authorities in member jurisdictions of these organizations.

C. Proposed Rules

The Commission initially proposed margin requirements for SDs and MSPs in 2011. In response to the 2013 international framework, the Commission re-proposed margin requirements in September 2014.[9]

In developing the proposed rules, the Commission staff worked closely with the staff of the Prudential Regulators.[10] In most respects, the proposed rules would establish a framework for margin requirements similar to the Prudential Regulators' proposal. The proposed rules were consistent with the 2013 international framework. In some instances, as contemplated in the framework, the proposed rules provided more detail than the framework. In a few other instances, the proposed rules were stricter than the framework.

D. Subsequent Amendment to Dodd-Frank

On January 12, 2015, the President signed Title III of TRIPRA. Title III amends sections 731 and 764 of the Dodd-Frank Act to exempt certain transactions of certain commercial end users and others from the Commission's capital and margin requirements.[11] Specifically, section 302 of Title III amends sections 731 and 764 of the Dodd-Frank Act to provide that the Commission's rules on margin requirements under those sections shall not apply to a swap in which a counterparty: (1) Qualifies for an exception under section 2(h)(7)(A) of the Commodity Exchange Act; (2) qualifies for an exemption issued under section 4(c)(1) of the Commodity Exchange Act for cooperative entities as defined in such exemption, or (3) satisfies the criteria in section 2(h)(7)(D) of the Commodity Exchange Act.

Section 303 of TRIPRA requires that the Commission implement the provisions of Title III, ''Business Risk Mitigation and Price Stabilization Act of 2015,'' by promulgating an interim final rule, and seeking public comment on the interim final rule. The Commission is adopting § 23.150(b) as part of this final rule. These exemptions are

[5] BCBS/IOSCO, Consultative Document, Margin requirements for non-centrally cleared derivatives (July 2012).

[6] BCBS/IOSCO, Quantitative Impact Study, Margin requirements for non-centrally cleared derivatives (November 2012).

[7] BCBS/IOSCO, Consultative Document, Margin requirements for non-centrally cleared derivatives (February 2013).

[8] BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (September 2013) (''BCBS/IOSCO Report'').

[9] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 79 FR 59898 (Oct. 3, 2014).

[10] As required by section 4s of the CEA, the Commission staff also has consulted with the SEC staff.

[11] Pub. L. 114–1, 129 Stat. 3.

transaction-based, as opposed to counterparty-based. The Commission will be requesting comment, as required by TRIPRA. If necessary, the Commission will amend § 23.150(b) after receiving comments on the interim final rule.

II. Final Rules

A. Overview

The discussion below addresses: (i) The products covered by the proposed rules; (ii) the market participants covered by the proposed rules; (iii); the nature and timing of the margin obligations; (iv) the methods of calculating initial margin; (v) the methods of calculating variation margin; (vi) permissible forms of margin; (vii) custodial arrangements; (viii) documentation requirements; (ix) the treatment of inter-affiliate swaps; [12] and (x) the implementation schedule. The Commission received 59 written comments on the proposal.[13] They are discussed in the applicable sections.

The rules adopted herein essentially provide for the same treatment as the rules recently adopted by the Prudential Regulators [14] with a few exceptions. The areas where there are differences are (i) the anti-evasion provision in the definition of margin affiliate, (ii) the model approval process, (iii) the calculation of variation margin and related documentation requirements, and the (iv) treatment of inter-affiliate trades. Each of these differences is discussed in the applicable section below.

The Prudential Regulators also issued a provision addressing cross-border application of their margin rule. The Commission will address this aspect of the rule in a separate rulemaking.[15]

B. Products

1. Proposal

As noted above, section 4s(e)(2)(B)(ii) of the CEA directs the Commission to establish both initial and variation margin requirements for certain SDs and MSPs ''on all swaps that are not cleared.'' As a result, the Commission's proposal covered swaps that are uncleared swaps [16] and that are executed after the applicable compliance date.[17]

The term ''cleared swap'' is defined in section 1a(7) of the CEA to include any swap that is cleared by a DCO registered with the Commission. The Commission notes, however, that SDs and MSPs also clear swaps through foreign clearing organizations that are not registered with the Commission. The Commission believes that a clearing organization that is not a registered DCO must meet certain basic standards in order to avoid creating a mechanism for evasion of the uncleared margin requirements. Accordingly, the Commission proposed to include in the definition of cleared swaps certain swaps that have been accepted for clearing by an entity that has received a no action letter or other exemptive relief from the Commission to clear such swaps for U.S. persons without being registered as a DCO.

As a result of the determination by the Secretary of the Treasury to exempt foreign exchange swaps and foreign exchange forwards from the definition of swap,[18] under the proposal the following transactions would not be subject to the requirements: (i) Foreign exchange swaps; (ii) foreign exchange forwards; and (iii) the fixed, physically settled foreign exchange transactions associated with the exchange of principal in cross-currency swaps.

In a cross-currency swap, the parties exchange principal and interest rate payments in one currency for principal and interest rate payments in another currency. The exchange of principal occurs upon the inception of the swap, with a reversal of the exchange of principal at a later date that is agreed upon at the inception of the swap. The foreign exchange transactions associated with the fixed exchange of principal in a cross-currency swap are closely related to the exchange of principal that occurs in the context of a foreign exchange forward or swap. Accordingly, the Commission proposed to treat that portion of a cross-currency swap that is a fixed exchange of principal in a manner that is consistent with the treatment of foreign exchange forwards and swaps. This treatment of cross-currency swaps was limited to cross-currency swaps and did not extend to any other swaps such as non-deliverable currency forwards.

2. Comments

The Commission received several comments involving products. Commenters expressed support for the Commission's decision to exempt foreign exchange forwards and swaps [19] and swaps cleared by an exempt derivatives clearing organization from margin requirements.[20] One commenter asked for clarification that commodity trade options are not subject to the margin requirements.[21]

3. Discussion

The Commission is adopting this aspect of the final regulations substantially as proposed. The Commission is modifying the definition of uncleared swap to eliminate the reference to no-action letters and to require that any exemptive relief be provided by Commission order.

Under sections 4s(e), the Commission is directed to impose initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization. The Commission is interpreting this statutory language to mean all swaps that are not cleared by a registered derivatives clearing organization or a derivatives clearing organization that the Commission has exempted from registration as provided under the CEA.

In particular, the CEA prohibits persons from engaging in a swap that is required to be cleared unless they submit such swaps for clearing to a derivatives clearing organization that is either registered with the Commission as a derivatives clearing organization or exempt from registration. Section 5b(h) of the CEA allows the Commission to exempt, conditionally or unconditionally, a DCO from registration for the clearing of swaps, where the DCO is subject to ''comparable, comprehensive supervision and regulation'' by the appropriate government authorities in its home country. The Commission has granted, by order, relief from registration to derivatives clearing organizations pursuant to section 5b(h) [22] and is considering whether to

[12] Where appropriate, the preamble uses the term affiliate to mean a margin affiliate and the term subsidiary to mean margin subsidiary, as they are defined in § 23.151.

[13] The written submissions from the public are available in the comment file on *www.cftc.gov*. They include, but are not limited to those listed in Appendix B. In citing these comments, the Commission used the abbreviations set forth in the Appendix B.

[14] Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015).

[15] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 80 FR 41376 (July 14, 2015).

[16] The term uncleared swap is defined in proposed Regulation 23.151.

[17] A schedule of compliance dates is set forth in proposed Regulation 23.160.

[18] Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act, 77 FR 69694 (Nov. 20, 2012).

[19] *See* GFXD (initial margin should not apply to physically-settled foreign exchange swaps and forwards and variation margin should be applied via supervisory guidance or national regulation) and CPFM.

[20] *See* ISDA and Sifma (any swap cleared by a derivatives clearing organization whether registered or not should be exempt from margin requirements).

[21] *See* BP. To the extent that any financial instrument is an uncleared swap, it will be covered under the final rule.

[22] *See* In the Matter of the Petition of ASX Clear (Futures) Pty Limited for Exemption from

grant relief to other derivatives clearing organizations before the implementation date of these rules. Accordingly, the Commission is excluding from the definition of uncleared swap, those swaps that are cleared by a derivatives clearing organization that is either registered with or has received an exemption by order or rule from registration.

C. Participants

1. Proposal

Section 4s(e)(3)(A)(2) states that the margin requirements must be ''appropriate to the risks associated with'' the swaps. Because different types of counterparties can pose different levels of risk, the proposed rules established three categories of counterparty: (i) SDs and MSPs, (ii) financial end users,[23] and (iii) non-financial end users.[24] The nature of an SD/MSP's obligations under the rules differed depending on the nature of the counterparty.

2. Comments

Commenters generally urged the Commission to exclude certain entities from the definition of ''financial end user.'' For example, commenters urged the Commission to exclude foreign funds [25] and employee benefit plans such as pension plans,[26] structured finance special purpose vehicles,[27] certain captive finance units,[28] entities guaranteed by a foreign sovereign,[29] small financial institutions (such as small banks) that qualify for an exemption from clearing,[30] certain financial cooperatives,[31] covered bond issuers,[32] and multilateral banks (*e.g.*, International Monetary Fund and World Bank Group).[33] Commenters also urged the Commission to exclude from margin requirements certain other entities that are exempt from clearing.[34] One commenter also supported the exclusion of certain payment card networks and payment solution providers from the definition of a ''financial end user.'' [35]

Commenters pointed out that the exclusion from financial end user for a person that qualifies for the affiliate exemption from clearing pursuant to section 2(h)(7)(D) of the Commodity Exchange Act requires an entity to be acting *as agent* for an affiliate and thus would not capture equivalent entities that act *as principal* for an affiliate.[36] These commenters contended that many such entities act as principal for an affiliate and that the Commission has issued a no-action letter effectively exempting such entities from clearing.[37]

With respect to employee benefit plans, commenters generally argued that these plans should not be subject to margin requirements because they are highly regulated, highly creditworthy, have low leverage and are prudently managed counterparties whose swaps are used primarily for hedging and, as such, pose little risk to their counterparties or the broader financial system. One commenter urged the Commission to exclude both U.S. and non-U.S. public and private employee benefit plans where swaps are hedging risk. This commenter also contended that there may be ambiguity whether certain pension plans are financial end users if they are not subject to the Employee Retirement Income and Security Act of 1974 (''ERISA'') (29 U.S.C. 1002). Another commenter argued that current market practice is not to require initial margin for pension plans.

A number of commenters also requested that the Commission exclude from financial end user structured finance vehicles including securitization special purpose vehicles (''SPVs'') and covered bond issuers. These commenters argued that imposing margin requirements on structured finance vehicles would restrict their ability to hedge interest rate and currency risk and potentially force these vehicles to exit swap markets since these vehicles generally do not have ready access to liquid collateral. These commenters contended that it is impossible for the vast majority of these entities to exchange margin, including variation margin, and that subjecting them to margin requirements would severely restrict the ability of securitization vehicles to hedge interest rate risk and currency risk.

Moreover, commenters argued that covered swap entities, as defined below, that enter a swap may be protected by other means—*e.g.*, a security interest granted in the assets of a securitization SPV. Commenters also noted that these types of entities make payments on a monthly payment cycle using collections received on the underlying assets during the previous month and would not be able to make daily margin calls. These commenters argued that

Registration as a Derivatives Clearing Organization (Aug. 18, 2015); In the Matter of the Petition of Japan Securities Clearing Corporation (JSCC) for Exemption from Registration as a Derivatives Clearing Organization (Oct 26, 2015); In the Matter of the Petition of Korea Exchange, Inc (KRX) for Exemption from Registration as a Derivatives Clearing Organization (Oct. 26, 2015).

[23] This term is defined in Regulation 23.151.

[24] This term is defined in Regulation 23.151 to include entities that are not SDs, MSPs, or financial entities.

[25] *See* ISDA (contending that it will be difficult for a non-U.S. entity to determine which Investment Company Act exemption would apply if it were organized in the U.S.).

[26] *See* ABA (pension plans should not be subject to margin and should be treated as non-financial end users); AIMA (benefit plans should not be subject to margin and there is ambiguity involving whether non-U.S. public and private employee benefit plans would be financial end users); JBA (securities investment funds should be exempt from variation margin).

[27] *See* ISDA (structured finance vehicles should be excluded because they do not pose systemic risk, have credit support arrangements to protect counterparties, and lack ready access to liquid collateral for initial and variation margin), JBA (securities investment funds and securitization vehicles are not set up to exchange variation margin and should be treated as non-financial end users), JFMC, Sifma-AMG, SFIG, and Sifma. *See also* FSR (the Commission should explore conditions to minimize risk rather than impose variation margin). *See* SFIG and Sifma (requesting the Commission to exclude structured finance vehicles from the payment of variation margin).

[28] *See* CDEU (wholly owned centralized treasury units of non-financial end users that execute swaps on behalf of those non-financial end users should not be treated as financial end users for margin purposes).

[29] *See* KfW and ICO (entities backed by the full faith and credit and irrevocable guarantee of a sovereign nation should be either within the definition of a sovereign entity or excluded from the definition of a financial end user and hence not subject to margin requirements). *See also* FMS–WM (legacy portfolio entity backed by the full faith and credit of a sovereign government should be included in the definition of a sovereign).

[30] *See* ABA (small banks that qualify for the clearing exemption should be excluded from margin requirements as subjecting them to margin requirements would incentivize them to clear their trades while imposing monitoring costs on them to ensure that they do not have material swaps exposure).

[31] *See* CFC.

[32] *See* ISDA (arguing that the EU proposal has special criteria for covered bond issuers and that covered bond issuers should be able to use collateral arrangements other than the requirements in the Commission's proposal).

[33] *See* Sifma (the Commission should align the definition of multilateral banks in the margin regulations to the definition in the clearing exemption and specify that the United Nations and International Monetary Fund are included among multilateral banks) and MFX (MFX contends that it, as a fund, should be considered a multilateral development bank because the U.S. government is a shareholder through the Overseas Private Investment Corporation's involvement in the fund, the fund poses a similar risk profile as that of a multilateral development bank, and the fund engages in the same types of activities as a multilateral development bank).

[34] *See* W&C (initial and variation margin should not apply to an eligible treasury affiliate as defined in Commission No-Action Letter No. 13–22); ABA; CFC (entities that are exempt from clearing such as exempt cooperatives should be exempt from margin requirements); and CDEU (special purpose vehicles that are subsidiaries of captive finance companies that are exempt from clearing should be exempt from margin). *But see* AFR (cautioning against the scope of the exemption provided to non-financial end users in the proposal and urging the Commission to separate the clearing and margin exemptions).

[35] *See* MasterCard.

[36] *See* CEWG; Sifma; W&C.

[37] *See* CFTC No-Action Letter No. 13–22 (June 4, 2013).

significant structural changes would be necessary for securitization vehicles to post and collect variation margin.

These commenters urged the Commission to follow the approach of the proposed European rules under which securitization vehicles would be defined as non-financial entities and would not be required to exchange initial or variation margin. Certain of these commenters also expressed concerns about consistency with the treatment under the EU proposal. One commenter stated that the EU proposal has special criteria for covered bond issuers and that covered bond issuers should be able to use collateral arrangements other than the requirements in the Commission's proposal. Commenters similarly urged the Commission to follow the EU margin proposal which provided a special set of criteria for covered bond issuers and requested that the Commission develop rules that would permit covered bond issuers to use other forms of collateral arrangements. One commenter, however, argued that requiring SPVs and other asset-backed security issuers to post full margin against all swap contracts would defuse commonly used ''flip clauses'' and decrease the loss exposure of investors in asset-backed securities.[38]

A few commenters urged the Commission to remove a provision in the proposal allowing the Commission to designate entities as financial end users due to concerns that it would allow the Commission to re-categorize nonfinancial entities as financial end users.[39] These commenters argued that in order for an entity to be treated as a financial end user, the Commission would have to provide adequate notice and propose an amendment to the rule to address such concerns.[40]

Commenters also pointed out miscellaneous concerns with the proposal. They have asked for clarification with respect to the process for determining whether an entity is a financial end user,[41] suggested that the change in status of a counterparty over the life of a swap should not affect the classification of the counterparty,[42] and urged the Commission to align its definition of ''financial end user'' with the definition put forth by the Prudential Regulators regarding business development companies.[43] With respect to foreign counterparties, a few commenters argued that the test in the proposal concerning whether a foreign counterparty would be a financial end user if it were organized under the laws of the U.S. or any State is difficult to apply because it would require a covered swap entity to analyze a foreign counterparty's business activities in light of a broad array of U.S. regulatory requirements.[44] Finally, a commenter commended the Commission on its definition of financial end user.[45]

3. Discussion

a. Covered Swap Entities

As noted above, section 4s(e)(2)(B) of the CEA directs the Commission to impose margin requirements on SDs and MSPs for which there is no Prudential Regulator. These entities are defined in proposed § 23.151 as ''covered swap entities'' or ''CSEs.'' The final rule adopts the definition as set forth in the proposal. The final rule also includes special provisions for inter-affiliate swaps between a CSE and its affiliates. The following sections provide a discussion of other significant market participants and applicable standards set forth in the final rule.

b. Financial End Users

(i) Definition

In order to provide certainty and clarity to counterparties as to whether they would be financial end users for purposes of this final rule, the financial end user definition provides a list of entities that would be financial end users as well as a list of entities excluded from the definition. In the final rule, as under the proposed rule, the Commission is relying, to the greatest extent possible, on the counterparty's legal status as a regulated financial entity. The definition lists numerous entities whose business is financial in nature.

In developing the definition, the Commission sought to provide clarity to CSEs and their counterparties about whether particular counterparties would be financial end users and subject to the margin requirements of the final rule. The definition is an attempt to capture all financial counterparties without being overly broad and capturing commercial firms and sovereigns.

The Commission believes that this approach is consistent with the risk-based approach of the final rule, as financial firms generally present a higher level of risk than other types of counterparties because their profitability and viability are more tightly linked to the health of the financial system than other types of counterparties. Because financial counterparties are more likely to default during a period of financial stress, they pose greater systemic risk and risk to the safety and soundness of the CSE.

In developing the list of financial entities, the Commission sought to include entities that engage in financial activities that give rise to Federal or State registration or chartering requirements, such as deposit taking and lending, securities and swaps dealing, or investment advisory activities.

The Commission notes that an entity or person would be classified as a financial end user based on the nature of the activities of that entity or person regardless of the source of the funds used to finance such activities. For example, an entity or person would be a financial entity if it raises money from investors, uses its own funds, or accepts money from clients or customers to predominately engage in investing, dealing, or trading in loans, securities, or swaps.

The list also includes asset management and securitization entities. For example, certain investment funds as well as securitization vehicles are covered, to the extent those entities would qualify as private funds defined in section 202(a) of the Investment Advisers Act of 1940, as amended (the ''Advisers Act''). In addition, certain real estate investment companies would be included as financial end users as entities that would be investment companies under section 3 of the Investment Company Act of 1940, as amended (the ''Investment Company Act''), but for section 3(c)(5)(C), and certain other securitization vehicles would be included as entities deemed not to be investment companies pursuant to Rule 3a–7 of the Investment Company Act.

Because Federal law largely looks to the States for the regulation of the business of insurance, the definition of financial end user in the final rule broadly includes entities organized as insurance companies or supervised as such by a State insurance regulator. This element of the final rule's definition

[38] *See* William J. Harrington.

[39] *See* CDEU; Joint Associations; IECA.

[40] *See* CDEU.

[41] *See* CDEU.

[42] *See* ISDA and Sifma.

[43] *See* JBA.

[44] *See* ISDA (contending that it will be difficult for a non-U.S. entity to determine which Investment Company Act exemption would apply if it were organized in the U.S.); *see also* AIMA (arguing that there is ambiguity regarding whether non-U.S. public and private pension plans would be treated as financial end users).

[45] *See* MasterCard (the definition in the margin regulations is commendable because it is narrower than the definition in Commission Regulation 50.50. Entities that engage in financial activities within the meaning of Section 4(k) of the Bank Holding Company Act that are not a financial end user should be allowed to rely on the end user exception).

would extend to reinsurance and monoline insurance firms, as well as insurance firms supervised by a foreign insurance regulator.

The Commission intends to cover, as financial end users, a broad variety and number of nonbank lending and retail payment firms that operate in the market. To this end, the Commission has included State-licensed or registered credit or lending entities and money services businesses under the final rule's provision incorporating an inclusive list of the types of firms subject to State law. However, the Commission recognizes that the licensing of nonbank lenders in some states extends to commercial firms that provide credit to the firm's customers in the ordinary course of business. Accordingly, the Commission is excluding an entity registered or licensed solely on account of financing the entity's direct sales of goods or services to customers.

Under the final rule, those cooperatives that are financial institutions,[46] such as credit unions, Farm Credit System banks and associations,[47] and other financial cooperatives [48] are financial end users because their sole business is lending and providing other financial services to their members, including engaging in swaps in connection with such loans.[49] The treatment of the uncleared swaps of these financial cooperatives may differ under the final rule due to TRIPRA, which became law after the proposal was issued. More specifically, almost all swaps of the cooperatives that are financial end users qualify for an exemption from clearing if certain conditions are met,[50] and therefore, these uncleared swaps also would qualify for an exemption from margin requirements under § 23.150(b) of the final rule. Uncleared swaps of financial cooperatives that do not qualify for an exemption would be treated as uncleared swaps of financial end users under the final rule.

The final rule's definition of ''financial end user'' is largely similar to the proposed definition, with a few modifications. In the final rule, the Commission added as a financial end user a U.S. intermediate holding company (''IHC'') established or designated for purposes of compliance with the Board's Regulation YY (12 CFR 252.153). Pursuant to Regulation YY, a foreign banking organization with U.S. non-branch assets of $50 billion or more must establish a U.S. IHC and transfer its ownership interest in the majority of its U.S. subsidiaries to the IHC by July 1, 2016. As not all IHCs will be bank holding companies, the Commission is explicitly identifying IHCs in the list of financial end users to clarify that they are included. To the extent an IHC that is not itself registered as a swap entity enters into uncleared swaps with a CSE, the IHC would be treated as a financial end user like other types of holding companies that are not swap entities (*e.g.,* bank holding companies and saving and loan holding companies).

In response to the commenters request to align its definition of financial end user with the Prudential Regulators' definition, the Commission also added business development companies in subparagraph (vi) of the definition of financial end user.

The Commission also has added three entities registered with the Commission to the enumerated list of financial end users: floor brokers, floor traders, and introducing brokers. As defined in section 1a(22) of the CEA, a floor broker generally provides brokering services on an exchange to clients in purchasing or selling any future, securities future, swap, or commodity option. As defined in section 1a(23) of the CEA, a floor trader generally purchases or sells on an exchange solely for that person's account, any future, securities future, swap, or commodity option. As defined in section 1a(31) of the CEA, an introducing broker generally means any person who engages in soliciting or in accepting orders for the purchase and sale of any future, security future, commodity option, or swap. In addition, it also includes anyone that is registered with the Commission as an introducing broker.

In deciding to add these entities to the definition of financial end user, the Commission determined that these entities' services and activities are financial in nature and that these entities provide services, engage in activities, or have sources of income that are similar to financial entities already included in the definition. In this vein, the Commission is also adding to the list of financial end user security-based swap dealers and major security-based swap participants. The Commission believes that by including these financial entities in the definition of financial end user, the definition provides additional clarity to CSEs when engaging in uncleared swaps with these entities. As noted above, financial entities are considered more systemic than non-financial entities and as such, the Commission believes that these entities, whose activities, services, and sources of income are financial in nature, should be included in the definition of financial end user. The Commission notes, however, that if a commercial end user falls within the definition of financial end user under this rule because of, for example, its registration as a floor broker or otherwise, so long as its swaps qualify for an exemption under TRIPRA, those swaps will not be subject to the margin requirements of these rules.

In the proposal, the Commission included in the definition of a financial end user ''An entity that is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in loans, securities, swaps, funds or other assets for resale or other disposition or otherwise trading in loans, securities, swaps, funds or other assets.'' In addition to asking whether the definition was too broad or narrow, as noted above, the Commission asked questions as to whether this prong of the definition was broad enough to capture other types of pooled investment

[46] The Commission expects that state-chartered financial cooperatives that provide financial services to their members, such as lending to their members and entering into swaps in connection with those loans, would be treated as financial end users, pursuant to this aspect of the final rule's coverage of credit or lending entities. However, these cooperatives could elect an exemption from clearing under Regulation 50.51, 17 CFR 50.51, and as a result, their uncleared swaps would also be exempt from the margin requirements of the final rule pursuant to Regulation 23.150(b).

[47] The preamble more fully discusses the status of Farm Credit System institutions as financial end users and their exemptions from clearing and the margin requirements.

[48] The National Rural Utility Cooperative Finance Cooperation (''CFC'') is an example of another financial cooperative. The CFC's comment letter requested that the Commission exempt swaps entered into by nonprofit cooperatives from the margin requirement to the extent they that are already exempt from clearing requirements. Regulation 23.150(b) of the final rule responds to the CFC's concerns.

[49] Most cooperatives are producer, consumer, or supply cooperatives and, therefore, they are not financial end users. However, many of these cooperatives have financing subsidiaries and affiliates. These financing subsidiaries and affiliates would not be financial end users under this final rule if they qualify for an exemption under sections 2(h)(7)(C)(iii) or 2(h)(7)(D) of the CEA. Moreover, certain swaps of these entities may be exempt pursuant to TRIRA and Regulation 23.150(b) of the final rule.

[50] Section 2(h)(7)(C)(ii) of the CEA authorizes the Commission to exempt small depository institutions, small Farm Credit System institutions, and small credit unions with total assets of $10 billion or less from the mandatory clearing requirements for swaps. *See* 7 U.S.C. 2(h)(7) and 15 U.S.C. 78c–3(g). Additionally, the Commission, pursuant to its authority under section 4(c)(1) of the CEA, enacted 17 CFR part 50, subpart C, § 50.51, which allows cooperative financial entities, including those with total assets in excess of $10 billion, to elect an exemption from mandatory clearing of swaps that: (1) They enter into in connection with originating loans for their members; or (2) hedge or mitigate commercial risk related to loans or swaps with their members.

vehicles that should be treated as financial end users.

After reviewing all comments, the Commission is broadening section (xi) of the definition of a ''financial end user'' to include other types of entities and persons that primarily engage in trading, investing, or in facilitating the trading or investing in loans, securities, swaps, funds, or other assets. In broadening the definition, the Commission believes that the enumerated list in the proposal of financial end users was under-inclusive, not covering certain entities that provide or engage in services and activities that are financial in nature. Specifically, the Commission is concerned that the proposed definition did not cover certain financial entities that are not organized as pooled investment vehicles and that trade or invest their own or client funds (*e.g.,* high frequency trading firms) or that provide other financial services to their clients. The Commission's approach also addresses concerns, now or in the future, that one or more types of financial entities might escape classification under the specific Federal or State regulatory regimes included in the definition of ''financial end user.''

In order to address concerns raised by commenters, the final rule removes the provision in the definition of ''financial end user'' that included any other entity that the Commission has determined should be treated as a financial end user. The Commission will monitor the margin arrangements of swap transactions of CSEs to determine if certain types of counterparties, in fact, are financial entities that are not covered by the definition of ''financial end user'' in the final rule. In the event that the Commission finds that one or more types of financial entities escape classification as financial end users under the final rule, the Commission may consider another rulemaking that would amend the definition of ''financial end user'' so it covers such entities.

In the proposal, the Commission stated that ''[f]inancial firms present a higher level of risk than other types of counterparties because the profitability and viability of financial firms is more tightly linked to the health of the financial system than other types of counterparties.'' [51] Accordingly, it is crucial that the definition of financial end user include the types of firms that engage in the activities described above.

Many of the provisions in the financial end user definitions rely on whether an entity's financial activities trigger Federal or State registration or chartering requirements. In its proposal, the Commission included in the definition of ''financial end user'' any entity that would be a financial end user if it were organized under the laws of the United States or any State. A few commenters argued that the proposed test is difficult to apply because it would require a CSE to analyze a foreign counterparty's business activities in light of a broad array of U.S. regulatory requirements.

The Commission has not modified this provision in the final rule. The Commission acknowledges that the test imposes a greater incremental burden in classifying foreign counterparties than it does in identifying U.S. financial end users. The burdens associated with classifying counterparties as financial or non-financial has been a recurring theme during the rulemaking. To reduce the burden, in this instance, the Commission believes that CSEs may rely on good faith representations from their counterparties as to whether they are financial end users under the final rule. The Commission believes the approach in the final rule captures the kinds of entities whose profitability and viability are most tightly linked to the health of the financial system.

In this respect, the Commission's financial end user definition is broad by design. Exclusion from the financial end user definition for any enterprise engaged extensively in financial and market activities should, as a practical matter, be the exception rather than the rule. The Commission believes it is appropriate to require a CSE that seeks to exclude a foreign financial enterprise from the rule's margin requirements to ascertain the basis for that exclusion under the same laws that apply to U.S. entities.

The Commission has included in the final rule not only an entity that is or would be a financial end user but also an entity that is or would be a swap entity, if it were organized under the laws of the United States or any State. Since a financial end user is defined as ''a counterparty that is not a swap entity,'' the purpose of this addition is to make clear that an entity that is not a registered swap entity in the U.S. but acts as a swap entity in a foreign jurisdiction would be treated as a financial end user under the final rule.

As noted above, the Commission believes that financial firms present a higher level of risk than other types of counterparties because the profitability and viability of financial firms is more tightly linked to the health of the financial system than other types of counterparties. Accordingly, the Commission has adopted a definition of financial end user that includes the types of firms that engage in the activities described above.

The final rule, like the proposal, excludes certain types of counterparties from the definition of financial end user. The definition of financial entities [52] excludes the government of any country, central banks, multilateral development banks,[53] the Bank for International Settlements, captive finance companies,[54] and agent affiliates.[55] The exclusion for sovereign entities, multilateral development banks and the Bank for International Settlements is consistent with the 2013 international framework and the definition of the Prudential Regulators.[56]

The Commission believes that this approach is appropriate as these entities generally pose less systemic risk to the financial system as their activities generally have a different purpose in the financial system leading to a lower risk profile in addition to posing less counterparty risk to a swap entity. Thus, the Commission believes that application of the margin requirements that would apply for financial end users to swaps with these counterparties is

[51] 79 FR at 57360 (September 24, 2014).

[52] Regulation 23.151.

[53] Some commenters requested additional clarity that certain entities would be included as multilateral development banks. *See* SIFMA; MFX. The definition in the final rule includes an enumerated list of entities in addition to any other entity that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member or which the relevant Agency determines poses comparable credit risk. Entities that meet this part of the definition would be treated as multilateral development banks for purposes of the final rule.

[54] A captive finance company is an entity that is excluded from the definition of financial entity under section 2(h)(7)(c)(iii) of the CEA for purposes of the requirement to submit certain swaps for clearing. That section describes it as ''an entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company.''

[55] An agent affiliate is an entity that is an affiliate of a person that qualifies for an exception from the requirement to submit certain trades for clearing. Under section 2(h)(7)(D) of the CEA, ''an affiliate of a person that qualifies for an exception under subparagraph (A) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate, acting on behalf of the person and as an agent, uses the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity.''

[56] As discussed below, captive finance companies and agent affiliates are excluded by TRIPRA from the definition of financial entity.

not necessary to achieve the objectives of this rule.

The Commission notes that States would not be excluded from the definition of financial end user, as the term ''sovereign entity'' includes only central governments. This does not mean, however, that States are categorically classified as financial end users. Whether a State or particular part of a State (*e.g.,* counties, municipalities, special administrative districts, agencies, instrumentalities, or corporations) would be a financial end user depends on whether that part of the State is otherwise captured by the definition of financial end user. For example, a State entity that is a ''governmental plan'' under ERISA would meet the definition of financial end user.

As noted above, commenters requested that the Commission exclude a number of other entities from the definition of financial end user including small banks that qualify for an exception from clearing,[57] certain financial cooperatives,[58] pension plans,[59] structured finance vehicles,[60] and covered bond issuers.[61] Depository institutions, financial cooperatives, employee benefit plans, structured finance vehicles, and covered bond issuers are financial end users for purposes of the final rule. The interim final rule addresses the comments raised regarding the uncleared swaps of small banks and certain financial cooperatives by providing an exemption for such swaps that qualify for an exemption from clearing. The uncleared swaps of small banks or financial cooperatives that do not qualify for the exemptive treatment would be treated as swaps of financial end users under the final rule.

The Commission has not modified the definition of financial end user to exclude pension plans, structured finance vehicles, or covered bonds issuers.

Congress explicitly listed an employee benefit plan as defined in paragraph (3) and (32) of section 3 of the ERISA in the definition of ''financial entity'' in the Dodd-Frank Act, meaning that a pension plan would not benefit from an exclusion from clearing even if the pension plan used swaps to hedge or mitigate commercial risk. The Commission believes that, similarly, when a pension plan enters into an uncleared swap with a CSE, the pension plan should be treated as a financial end user and subject to the requirements of the final rule.

The definition of employee benefit plan in the final rule is the same as in the proposal and is defined by reference to paragraphs (3) and (32) of the ERISA. Paragraph (3) provides that the term ''employee benefit plan'' or ''plan'' means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan. Paragraph (32) describes certain governmental plans. In response to concerns raised by commenters, the Commission believes that these broad definitions would cover all pension plans regardless of whether the pension plan is subject to the ERISA. In addition, non-U.S. employee benefit plans would be included as an entity that would be a financial end user, if it were organized under the laws of the United States or any State thereof.

The Commission believes that all of these entities should qualify as financial end users; their financial and market activities comprise the same range of activities as the other entities encompassed by the final rule's definition of financial end user. The Commission notes that the increase in the size of positions necessary to constitute material swaps exposure in the final rule should address some of the concerns raised by these commenters with respect to the applicability of initial margin requirements.

(ii) Small Banks

As noted above, banks would be financial end users under the final rule. They would be subject to initial margin requirements if they entered into uncleared swaps with CSEs and, as discussed below, had material swaps exposure. However, TRIPRA also excluded certain swaps with small banks from the margin requirements of this rule. In particular, section 2(h)(7)(A) of the Commodity Exchange Act excepts from clearing any swap where one of the counterparties is not a financial entity, is using the swap to hedge or mitigate commercial risk, and notifies the Commission how it generally meets its financial obligations associated with entering into uncleared swaps.[62] As authorized by the Dodd-Frank Act, the Commission has excluded depository institutions, Farm Credit System Institutions, and credit unions with total assets of $10 billion or less, from the definition of ''financial entity,'' thereby permitting those institutions to avail themselves of the clearing exception for end users.[63] Uncleared swaps with those entities would be eligible for the TRIPRA exemption in the Commission's margin rules, provided they meet other requirements for the clearing exception. As a consequence of TRIPRA, if a small bank with total assets of $10 billion or less enters into a swap with a CSE that meets the requirements of the exception from clearing, that swap will not be subject to the margin requirements of these rules.

When a bank with total assets greater than $10 billion enters into a swap with a CSE, the CSE will be required to post and collect initial margin pursuant to the rule only if the bank had a material swaps exposure and is not otherwise exempt.[64] The final rule requires a CSE to exchange daily variation margin with a bank with total assets above $10 billion, regardless of whether the bank has material swaps exposure. However, the CSE will only be required to collect variation margin from a bank when the amount of both initial margin and variation margin required to be collected exceeds the minimum transfer amount of $500,000.

[57] *See* ABA.

[58] *See* CFC.

[59] *See* ABA; AIMA. These commenters generally argued that pension plans should not be subject to margin requirements because they are highly regulated, highly creditworthy, have low leveraged and are prudently managed counterparties whose swaps are used primarily for hedging and, as such, pose little risk to their counterparties or the broader financial system.

[60] *See* FSR; ISDA; JBA; JFMC; SIFMA AMG; SFIG. Commenters argued that imposing margin requirements on structured finance vehicles would restrict their ability to hedge interest rate and currency risk and potentially force these vehicles to exit swaps markets since these vehicles generally do not have ready access to liquid collateral. Certain of these commenters also expressed concerns about consistency with the treatment under the EU proposal.

[61] *See* ISDA (arguing that the EU proposal has special criteria for covered bond issuers and that covered bond issuers should be able to use collateral arrangements other than the requirements in the Commission's proposal).

[62] A ''financial entity'' is defined to mean (i) a swap dealer; (ii) a security-based swap dealer; (iii) a major swap participant; (iv) a major security-based swap participant; (v) a commodity pool; (vi) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940; (vii) an employee benefit plan as defined in sections 3(3) and 3(32) of the Employment Retirement Income Security Act of 1974; (viii) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956. *See* 7 U.S.C. 2(h)(7)(C)(i).

[63] *See* 7 U.S.C. 2(h)(7)(C)(ii) and 77 FR 42560 (July 19, 2012); 77 FR 20536 (April 5, 2012).

[64] The final rule defines material swaps exposure as an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards and foreign exchange swaps with all counterparties for June, July, and August of the previous calendar year that exceeds $8 billion, where such amount is calculated only for business days.

(iii) Multilateral Development Banks

The proposed definition of the term ''multilateral development bank,'' includes a provision encompassing ''[a]ny other entity that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member or which the Commission determines poses comparable credit risk.''

As described above, the final rule excludes from the definition of financial end user a ''sovereign entity'' defined to mean a central government (including the U.S. government) or an agency, department, or central bank of a central government. An entity guaranteed by a sovereign entity is not explicitly excluded from the definition of financial end user in the final rule, unless that entity qualifies as a central government agency, department, or central bank. The existence of a government guarantee does not in and of itself exclude the entity from the definition of financial end user.

(iv) Material Swaps Exposure

The Commission proposed a ''material swaps exposure'' level of $3 billion. This threshold is lower than the guidelines contained in WGMR and also in the EU's consultation paper. The Commission proposed a lower threshold based on data it analyzed concerning the required margin on cleared swaps.

A number of commenters argued that the Commission should raise the level of material swaps exposure to the threshold of €8 billion set out in the 2013 international framework to be consistent with the EU and Japanese proposals.[65] A commenter suggested that adopting different exposure levels may result in the failure of an international framework.[66] Commenters suggested that the Commission conduct further studies on the uncleared swaps markets before adopting a threshold.[67] Some commenters expressed the view that the international implementation of material swaps exposure threshold treats the threshold more as a scope provision, to define the group of financial firms in the swaps market whose activities rise to a level appropriate to the exchange of initial margin as a policy matter.[68]

Commenters representing public interest groups and CCPs expressed policy concerns about whether the $3 billion threshold was conservative enough, focusing on the collective systemic risk posed by all smaller counterparties in the aggregate. Other commenters representing CSEs and financial end users expressed concerns about the additional initial margin they would be required to exchange compared to foreign firms, and the associated competitive impacts.

Commenters also commented on the method for calculating material swaps exposure. A few commenters suggested that a daily aggregate notional measure was burdensome and the Commission should use a month-end notional amount like the EU proposal and consistent with the international framework.[69] Commenters urged the Commission to make clear that inter-affiliate swaps would not be included for purposes of determining the material swaps exposure.[70] Certain of these commenters also argued that the proposal could require an entity to double-count inter-affiliate swaps in assessing material swaps exposure.

Commenters also argued that certain other swaps should not be counted for purposes of the material swaps exposure calculation. A few commenters argued that foreign exchange swaps and foreign exchange forwards that are exempt from the definition of swap by Treasury determination should not be included for purposes of determining material swaps exposure.[71] Other commenters argued that hedging positions should not be counted toward material swaps exposure.[72] A commenter argued that the material swaps exposure calculation should not include swaps of all affiliates of a financial end user.[73]

A few commenters urged the Commission to make clear that a CSE may rely on representations of its counterparties in assessing whether it is transacting with a financial end user with material swaps exposure.[74] One commenter urged the Commission to clarify what happens when a financial end user counterparty that had a material swaps exposure falls below the threshold.[75]

The final rule increases the level of the aggregate notional amount of transactions that gives rise to material swaps exposure to $8 billion. The material swaps exposure threshold of $8 billion in the final rule is broadly consistent with the €8 billion established by the 2013 international framework and the EU and Japanese proposals. In the proposal, the Commission had calibrated the proposed $3 billion threshold to the size of a potential swap portfolio between a CSE and a financial end user for which the initial margin amount would often exceed the proposed initial margin threshold amount of $65 million, reducing the burden of calculating initial margin amounts for smaller portfolios.

The material swaps exposure threshold of $8 billion in the final rule has been calibrated relative to the €8 billion established by the 2013 international framework in the manner described below. At this time, the Commission believes the better course is to calibrate the final rule's material swaps exposure threshold to the higher 2013 international framework amount, in recognition of each financial end user's overall potential future swaps exposure to the market rather than its potential future exposure to one dealer. In this regard, the Commission notes that variation margin will still be exchanged without any threshold, and further that the $8 billion threshold may warrant further discussion among international regulators in future years, if implementation of the threshold proves to create concerns about market coverage for initial margin.

In the final rule, ''material swaps exposure'' for an entity means that an

[65] *See* ABA; AIMA; CEWG, CPFM; CCMR; FHLB; FSR; GPC; IFM, ISDA; ICI; IIB; JBA; MFA: Sifma AMG; Sifma; Shell TRM; NERA; and Vanguard. By contrast, one commenter suggested reducing the threshold below $3 billion. CME. Another commenter expressed concerns that entities below $3 billion could have considerable exposures. AFR. One commenter cautioned against the aggressive use of thresholds to manage liquidity. Barnard.

[66] *See* JBA (financial institutions will abide by different rules depending on their counterparties' jurisdiction).; *see also* MFA (competitive discrepancies may result).

[67] *See* IFM; Sifma; ABA. *See also* ISDA (Commission's calculations assume that a covered swap counterparty has all its swaps with one party).

[68] For example, one commenter acknowledged data described by the Commission in the proposed rule indicating that bilateral initial margin exposures between one CSE and a financial end user could exceed $50 million for a portfolio with a gross notional value well below the USD-equivalent of the international €8 billion threshold. But the commenter urged the Commission to shift its focus from the $65 million amount, as a bilateral constraint, and recognize that a financial end user will often use multiple dealers. Accordingly, the commenter urged the Commission to treat the material swaps exposure threshold as a focus on a financial end user's multilateral exposures with all its dealers, which provides the rationale for the higher international threshold.

[69] *See* JBA; Sifma.

[70] *See* ABA; CEWG; CDEU; FSR; GPC; ICI; ISDA: Sifma AMG; Sifma; Shell TRM; Vanguard.

[71] *See* ICI; ABA; ISDA; GPC; Sifma; Sifma AMG; Vanguard. The final rule defines ''foreign exchange forward and foreign exchange swap'' to mean any foreign exchange forward, as that term is defined in section 1a(24) of the Commodity Exchange Act (7 U.S.C. 1a(24)), and foreign exchange swap, as that term is defined in section 1a(25) of the Commodity Exchange Act (7 U.S.C. 1a(25)). *See* Regulation 23.151.

[72] *See* GPC; CFC.

[73] *See* CDEU (many non-financial end users have financial end users as affiliates, and certain of their swaps should be excluded).

[74] *See* ABA; FHLB: IFM; ISDA; BP; Shell TRM; CEWG; *see also* GPC; SIFMA.

[75] *See* FHLB.

entity and its affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for June, July, and August of the previous calendar year that exceeds $8 billion, where such amount is calculated only for business days.[76] The final rule's definition also provides that an entity shall count the average daily aggregate notional amount of an uncleared swap, an uncleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time. In addition, as discussed below, the calculation does not include a swap or security-based swap that is exempt pursuant to TRIPRA.

The time period for measuring material swaps exposure is June, July and August of the previous calendar year under the final rule, the same period as under the proposal. The Commission believes that using the average daily aggregate notional amount[77] during June, July, and August of the previous year, instead of a single as-of date, is appropriate to gather a more comprehensive assessment of the financial end user's participation in the swaps market, and to address the possibility that a market participant might ''window dress'' its exposure on an as-of date such as year-end, in order to avoid the Commissions' margin requirements. Material swaps exposure would be calculated based on the previous year. For example, for the period January 1, 2017 through December 31, 2017, an entity would determine whether it had a material swaps exposure with reference to June, July, and August of 2016.[78]

The definition of material swaps exposure also contains a number of other changes from the proposed definition. Commenters urged the Commission to make clear that inter-affiliate swaps would not be included for purposes of determining the material swaps exposure.[79] Certain of these commenters also argued that the proposal could require an entity to double-count inter-affiliate swaps in assessing material swaps exposure.

In order to address concerns about double counting affiliate swaps, the final rule provides that an entity shall count the average daily aggregate notional amount of an uncleared swap, an uncleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time.[80] The Commission also believes that the revised definition of affiliate in the final rule (described below) should help mitigate some of the concerns raised by commenters about the inclusion of an affiliate's swaps in determining material swaps exposure.[81]

The final rule's definition of material swaps exposure also states that for purposes of this calculation, an entity shall not count a swap that is exempt pursuant to § 23.150(b).[82] This change is consistent with the statutory exemptions provided by Congress in TRIPRA 2015 and ensures that exempt swaps do not count toward determining whether an entity has material swaps exposure.

As the material swaps exposure is designed to measure the overall derivatives exposure of an entity, the final rule's calculation of material swaps exposure continues to include foreign exchange swaps and foreign exchange forwards as well as swaps used to hedge. The final rule also does not make a distinction between uncleared swaps entered into prior to and after the effective dates for mandatory clearing. The Commission believes that the increase in the level of the material swaps exposure to $8 billion in the final rule should address many of the concerns raised by commenters about the inclusion of particular categories of swaps. Moreover, the material swaps exposure threshold is intended to identify entities that engage in significant derivatives activity in order to determine whether their swaps activity should be subject to initial margin requirements under the final rule.

The Commission believes the final rule's approach is appropriate in assessing a swap counterparty's overall size and risk exposure and providing for a simple and transparent measurement of exposure that presents only a modest operational burden. This approach also is intended to achieve consistency with other jurisdictions based on the 2013 international framework which sets a threshold based on overall gross notional non-centrally cleared derivatives activity.[83] Moreover, given that the Commission is viewing the final rule's material swaps exposure as an indicator of a financial end user's overall exposure in the market and revising the threshold upward to $8 billion, the Commission believes the inclusiveness of the calculation adopted in the final rule is appropriate.

Although the final rule does not explicitly provide how a CSE should determine if a financial end user counterparty has material swaps exposure, the Commission believes that it would be reasonable for a CSE to rely on good-faith representations of its counterparty in making such assessments.

One commenter urged the Commission to clarify what happens when a financial end user counterparty that had a material swaps exposure falls below the threshold. Because the material swaps exposure determination applies to a financial end user for an entire calendar year, depending on whether the financial end user exceeded the threshold during the third calendar quarter of the previous year, it is possible for a CSE to have a portfolio of swaps with a financial end user whose

[76] The final rule also includes a new definition of ''business day'' that means any day other than a Saturday, Sunday, or legal holiday. This definition is described further below.

[77] A few commenters suggested that a daily aggregate notional measure was burdensome and that the Commission should use a month-end notional amount like the EU proposal and consistent with the international framework. JBA; SIFMA. The Commission has maintained the daily aggregate notional amount.

[78] As a specific example of the calculation for material swaps exposure, consider a financial end user (together with its affiliates) with a portfolio consisting of two uncleared swaps (*e.g.,* an equity swap, an interest rate swap) and one uncleared security-based credit swap. Suppose that the notional value of each swap is exactly $10 billion on each business day of June, July, and August of 2016. Furthermore, suppose that a foreign exchange forward is added to the entity's portfolio at the end of the day on July 31, 2016, and that its notional value is $10 billion on every business day of August 2016. On each business day of June and July 2016, the aggregate notional amount of uncleared swaps, security-based swaps and foreign exchange forwards and swaps is $30 billion. Beginning on June 1, 2016, the aggregate notional amount of uncleared swaps, security-based swaps and foreign exchange forwards and swaps is $40 billion. The daily average aggregate notional value for June, July, August 2016 is then (22 × $30 billion + 23 × $30 billion + 21 × $40 billion)/(22 + 20 + 23) = $33.5 billion, in which case this entity would be considered to have a material swaps exposure for every date in 2017.

[79] *See* ABA; WGCEF; FSR; GPC; ICI; ISDA: SIFMA AMG; SIFMA; Vanguard.

[80] The Commission made a similar change to the definition of ''initial margin threshold amount'' as described in Regulation 23.151.

[81] For example, the revised definition of ''affiliate'' generally would not treat investment funds that share an investment adviser or investment manager as affiliates.

[82] The Commission made a similar change to the definition of ''initial margin threshold amount'' as described in Regulation 23.151.

[83] One commenter urged the Commission to conform with the 2013 international framework where material swaps exposure is based on derivatives (not swaps). *See* ICI. Another commenter urged the Commission to exclude registered swap dealers from the material swaps exposure calculation as this could cause affiliates of the swap dealer to exceed the material swaps exposure threshold. *See* FSR. The final rule does not exclude registered swap dealers from the material swaps exposure threshold. The Commission believes that financial affiliates of a registered swap dealer should be treated as having a material swaps exposure based on their level of risk.

status under the material swaps exposure test changes from time to time. New § 23.161(c) of the final rule addresses this concern and explains what happens upon a change in counterparty status.

For example, if a financial end user is moving below the threshold for the upcoming calendar year, the CSE is not obligated under the final rule to exchange initial margin with that end user during that calendar year, either for new swaps entered into that year or existing swaps from a prior year. Any margin that had been previously collected while the counterparty had a material swaps exposure would not be required under the final rule for as long as the counterparty did not have a material swaps exposure. In addition, a CSE's swaps with a financial end user without material swaps exposure would continue to be subject to the variation margin requirements of the final rule.

If a financial end user is moving above the threshold for the upcoming calendar year, the treatment of the existing swaps and the new swaps is the same as described for swaps before and after the rule's compliance implementation date. As described in more detail below, the parties have the option to document the old and new swaps as separate portfolios for netting purposes under an eligible master netting agreement, and exchange initial margin only for the new portfolio of swaps entered into during the new calendar year after the financial end user triggered the material swaps exposure threshold determination.

(v) Margin Affiliates and Margin Subsidiaries

The proposal defined an ''affiliate'' as any company that controls, is controlled by, or is under common control with another company.[84] The proposal defined the control of another company generally as the ownership or power to vote 25% or more of any class of voting securities of another entity; or the ownership of 25% or more of the total equity in any entity; or the power to elect a majority of the directors or trustees of an entity. An entity would be a subsidiary of another entity if it were controlled by that other entity.

Commenters raised a number of concerns with the proposal's definitions of ''affiliate,'' ''subsidiary'' and ''control.'' While one commenter expressed support for the proposal's definition of control,[85] the vast majority of commenters argued for a modified definition of control that did not use the 25 percent threshold.[86] One commenter suggested that these terms should be defined by reference to whether an affiliate or subsidiary is consolidated under accounting standards.[87] A number of these commenters urged the Commission to use a majority ownership test (51 percent or more) for determining control.[88] Certain commenters expressed concern about the cross-border application of these definitions.[89]

Commenters also expressed particular concerns about the application of these definitions in the proposal to investment funds, including during the seeding period. A number of commenters urged the Commission to use the same criteria as the 2013 international framework as the basis for determining whether or not an investment fund is an affiliate of a fund sponsor.[90] Commenters also argued that seed capital contributed by a fund sponsor should not be viewed as control even if the ownership by the fund sponsor exceeds 25 percent.[91] One commenter, for example, suggested that passive investors should be excluded even where they own more than 51 percent of the ownership interests.[92] A few commenters also suggested that registered funds may treat each separately managed ''sleeve'' of the fund as a separate registered fund.[93]

Commenters also expressed particular concerns about how the definitions applied to pension funds. One commenter argued that the sponsor of a pension should not be an affiliate of the pension fund by virtue of appointing trustees or directors of the pension fund.[94] This commenter urged that pension plans should not be deemed to have any affiliates other than those entities to whom a CSE counterparty has recourse for relevant pension trades. Other commenters argued that pension plans should be exempted from the definition of affiliate which could conflict with fiduciary obligations under ERISA.[95]

The term affiliate is used in the definition of initial margin threshold amount which means a credit exposure of $50 million that is applicable to uncleared swaps between a CSE and its affiliates with a counterparty and its affiliates. The inclusion of affiliates in this definition is meant to make clear that the initial margin threshold amount applies to an entity and its affiliates.

Similarly, the term ''affiliate'' is also used in the definition of ''material swaps exposure,'' as material swaps exposure takes into account the exposures of an entity and its affiliates. The term ''affiliate'' is also used for determining the compliance date for a CSE and its counterparty in § 23.161.

Using financial accounting as the trigger for affiliation, rather than a legal control test, should address many of the concerns raised by commenters. In addition, the Commission believes that this approach reflects a more accurate method for discerning whether an entity has control over another entity. Although consolidation tests under any other accounting standard that the entity may use must also be applied on a case-by-case basis, like the proposed rule's ''control'' test, the analysis has already been performed for companies that prepare their financial statements in accordance with relevant standards. For companies that do not prepare these statements, the Commission believes that industry participants are more familiar with the relevant accounting

[84] The Commission notes that under the proposal the Commission used the terms affiliate and subsidiary; however in its final rule, it is using the term ''margin affiliate'' and ''margin subsidiary''.

[85] *See* Better Markets.

[86] *See* ACLI; FSR; CEWG; the GPC; IIB; ISDA; JBA; MFA; Sifma AMG; Sifma; Vanguard. (One commenter argued that the definitions of affiliate and control should not include relationships with or through the U.S. government and its representatives. *See* Freddie.)

[87] *See* ISDA.

[88] *See* ACLI; Commercial Energy Working Group; IIB; JBA; IFM; SIFMA AMG; SIFMA; TIAA–CREF; Vanguard. For example, one commenter argued that applying the initial margin threshold would be difficult with a 25 percent control test and it would be hard to agree on allocation of the threshold among the parties. ACLI.

[89] *See* CCMR; IIB; SIFMA AMG. For example, one commenter argued that a 50 percent ownership threshold would conform to the EU Proposal. *See* IIB.

[90] *See* AIMA; CCMR; ICI; SIFMA AMG; Vanguard; MFA. The 2013 international framework states that investment funds that are managed by an investment adviser are considered distinct entities that are treated separately when applying the threshold as long as the funds are distinct legal entities that are not collateralized by or otherwise guaranteed or supported by other investment funds or the investment adviser in the event of fund insolvency or bankruptcy. One commenter suggested an investment fund separateness to determine whether an investment fund is a separate legal entity. This commenter also urged the Commission to incorporate the concept of ''effective control'' as developed by the Financial Accounting Standards Board (''FASB'') to cover variable interest entities and special purpose entities. *See* Better Markets.

[91] *See* ACLI; Sifma; Sifma AMG. One commenter also urged the Commission to clarify that independently controlled accounts are separate counterparties. *See* Sifma.

[92] *See* Sifma AMG.

[93] *See* ICI; Sifma AMG.

[94] *See* GPC (arguing this could foreclose pension plans from using third-party custodians).

[95] *See* FSR (arguing that how a swap entity allocates its initial margin threshold to the ERISA plan must be done in a way not to violate the fiduciary duty to the pension plan and that would requirement input from the Department of Labor).

standards and tests, and they will be less burdensome to apply.[96]

Additionally, the accounting consolidation analysis typically results in a positive outcome (consolidation) at a higher level of an affiliation relationship than the 25 percent voting interest standard of the legal control test. This is responsive to commenters' concerns that the proposed definitions were over-inclusive.

Because there are circumstances where an entity holds a majority ownership interest and would not consolidate, the Prudential Regulators have reserved the right to include any other entity as an affiliate or subsidiary based on a conclusion that either company provides significant support to, or is materially subject to the risks or losses of, the other company. This provision is meant to leave discretion to the Prudential Regulators in order to avoid evasion. The Commission has determined not to include this provision at this time.

The Commission believes that the modifications to the definition of affiliate will address many of the concerns raised by commenters, including with respect to investment and pension funds. Investment funds generally are not consolidated with the asset manager other than during the seeding period or other periods in which the manager holds an outsized portion of the fund's interests although this may depend on the facts and circumstances. The Commission believes that during these periods, when an entity may own up to 100 percent of the ownership interest of an investment fund, the investment fund should be treated as an affiliate.

This approach to investment funds is similar to that in the 2013 international framework. The Commission acknowledges that some accounting standards, such as the GAAP and IFRS variable interest standards, sometimes require consolidation between a sponsor or manager and a special purpose entity created for asset management, securitization, or similar purposes, under circumstances in which the manager does not hold interests comparable to a majority equity or voting control share. On balance, the Commission believes it is appropriate to treat these consolidated entities as affiliates of their sponsors or managers. They are structured with legal separation to address the concerns of passive investors, but the manager retains such levels of influence and exposure as to indicate its status is beyond that of another minority or passive investor.

In the case of pension funds that are associated with a non-financial end user, the Commission believes that consolidation of the pension fund with its parent would be the exception to the rule under applicable accounting standards. Even if consolidation is applicable for some pension funds, the parent would, as a general matter, be exempt from the rule under TRIPRA and would not be included in the threshold amount calculations.

(vi) Treasury Affiliates Acting as Principal

The Commission has issued no-action letters providing relief with respect to certain Treasury affiliates acting as principal from the clearing requirement provided that certain conditions are met.[97] Some commenters urged the Commission to provide similar treatment here.[98] The Commission has determined that similar treatment is appropriate. The Commission has included in the definition of financial end user a provision stating that the term shall not include an eligible treasury affiliate that the Commission has exempted by rule. The Commission will act to implement this approach by rule in a separate procedure.

The Prudential Regulators final rules do not include this provision. The Prudential Regulators have stated, however, that if the CFTC acted to exclude these entities by rule, the entities would be excluded from the Prudential Regulators' rule.[99]

c. Non-Financial End Users

(i) Proposal

Non-financial end users under the proposal included any entity that was not an SD, an MSP, or a financial end user. The proposal did not require CSEs to exchange margin with non-financial end users. The Commission believes that such entities, which generally are using swaps to hedge commercial risk, pose less risk to CSEs than financial entities.

To ensure the safety and soundness of CSEs, the proposal required a CSE (i) to enter into certain documentation with all counterparties to provide clarity about the parties' respective rights and obligations and (ii) to calculate hypothetical initial and variation margin amounts each day for positions held by non-financial entities that have material swaps exposure to the covered counterparty.[100] That is, the CSE would be required to calculate what the margin amounts would be if the counterparty were another SD or MSP and compare them to any actual margin requirements for the positions.[101] These calculations would serve as risk management tools to assist the CSE in measuring its exposure and to assist the Commission in conducting oversight of the CSE.

(ii) Comments

Many commenters supported the Commission's decision not to impose margin requirements on non-financial end users.[102] One commenter raised concerns about certain uncleared matched commodity swaps that economically offset each other and that are used to hedge municipal prepayment transactions for the supply of long-term natural gas or electricity (municipal prepayment transactions as described earlier).[103] However, two commenters expressed concerns with this decision.[104] These concerns ranged from fears that large market players (such as the type of entities that once included Enron, among others) would be able to participate in the markets on an unmargined basis to disappointment that the Commission did not at least include a requirement for a specific internal exposure limit for commercial counterparties.

Many commenters opposed the documentation requirement in the proposal, citing administrative burdens on the parties and noting that non-

[96] The Commission is deleting the definition of the term ''subsidiary.'' This term is no longer used in this set of rules.

[97] See CFTC No-Action Letter No. 13–22 (June 4, 2013); CFTC No-Action Letter No. 14–144 (Nov. 26, 2014).

[98] *See* W&C (initial and variation margin should not apply to an eligible treasury affiliate as defined in Commission No-Action Letter No. 13–22).

[99] 80 FR 74840 at 74856.

[100] Proposed Regulations 23.154(a)(6) and 23.155(a)(3).

[101] This is consistent with the requirement set forth in section 4s(h)(3)(B)(iii)(II) of the CEA that SDs and MSPs must disclose to counterparties who are not SDs or MSPs a daily mark for uncleared swaps.

[102] *See* ABA; ETA; CDEU (asking the Commission to make explicit in the rule text the exclusion for non-financial end users from the margin requirements); COPE.

[103] This commenter contended that each side of this matched pair of swaps could be subject to different margin treatment that could make these transactions prohibitively expensive. In particular, according to this commenter, the first or ''front-end'' swap in this matched pair would be between a non-financial end user (typically a government gas supply agency) and a swap entity, while the second swap or ''back-end'' swap generally would be between a swap entity and a prepaid gas supplier that is a swap entity or other financial entity.

[104] *See* Public Citizen (opposed the exemption, citing that non-financial end users are not exempt by statute); AFR (suggesting that the Commission should separate clearing and margin exemptions while expressing concerns regarding the scope of this exemption). AFR further argued that margin should be required where the volume of swaps could present risks to the financial system or to affiliated entities deemed to be systemically important.

financial end users currently use other forms of documentation.[105] Other commenters asked the Commission for clarification with respect to aspects of the documentation requirement.[106]

The majority of commenters opposed the hypothetical margin calculation requirement for non-financial end users.[107] Commenters generally noted the extra burdens this requirement may place on CSEs and the non-financial end user, who must monitor their swaps exposures to determine if they exceed the material swaps exposure threshold. Only one commenter expressed support for this requirement.[108]

(iii) Discussion

In response to the comments, the Commission has removed the hypothetical margin calculation and documentation requirements concerning non-financial end users. Although the Commission continues to believe that its documentation and hypothetical margin calculation requirements would promote the financial soundness of CSEs, the Commission recognizes the additional administrative burdens that its proposed requirements could impose on CSEs and on non-financial end users. The Commission has other requirements that should address the monitoring of risk exposures for these entities.[109]

Moreover, under the interim final rule discussed below, certain transactions with certain financial counterparties are exempt from the Commission's margin requirements. Section 23.150 of the final rule implements the exemptions enacted in Title III of TRIPRA, which excludes these swaps from the statutory directive issued to the Commission by section 4s of the CEA to impose margin requirements for all uncleared swaps.

The Commission is implementing the transaction based (as opposed to counterparty based) TRIPRA exemptions in § 23.150(b) of the final rule. With respect to municipal prepayment transactions, the Commission notes that CSEs that are parties to these and other types of matched or offsetting swap transactions would need to evaluate each swap to determine whether the requirements of the final rule apply. Under the final rule, it is possible that one swap may be exempt from the requirements of the rule while an offsetting swap is subject to the final rule's requirements as these requirements are set on a risk basis as required under the statute.

A commenter also contended that the rule would cause counterparties to matched commodity swaps to face increased costs to the extent that the rules apply a capital charge to a CSE in connection with these matched swaps. The Commission notes that capital requirements of CSEs are outside the scope of this rulemaking and therefore is not addressing the capital implications of Municipal Prepayment Transactions at this time.

D. Nature and Timing of Margin Requirements

1. Initial Margin

a. Proposal

Subject to thresholds discussed below, the proposal required each CSE to collect initial margin from, and to post initial margin with, each covered counterparty on or before the business day after execution [110] for every swap with that counterparty.[111] The proposal required the CSEs to continue to post and to collect initial margin until the swap is terminated or expires.[112]

Recognizing the greater risk that SDs, MSPs, and financial end users pose to the financial system, the Commission proposed to require SDs and MSPs to collect initial margin from, and to post initial margin with, one another. SDs and MSPs also would be required to collect initial margin from, and post initial margin to, financial end user counterparties that have exceeded the material swaps exposure threshold. SDs and MSPs would be required to collect variation margin from, and post variation margin to, each other and all financial end user counterparties.

The proposal contains a provision stating that a CSE would not be deemed to have violated its obligation to collect initial or variation margin if it took certain steps to collect margin from its counterparty in the event the counterparty failed to post.[113] Specifically, if a counterparty failed to pay the required initial margin to the CSE, the CSE would be required to make the necessary efforts to attempt to collect the initial margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms,[114] or otherwise demonstrate upon request to the satisfaction of the Commission that it has made appropriate efforts to collect the required initial margin or commenced termination of the swap.

b. Comments

Commenters generally expressed support for two-way initial and variation margin.[115] One commenter suggested that CSEs should not be required to post margin but only to collect margin.[116] Another commenter further supported allowing more time to raise the required initial margin if an increase is mandated as a result of model recalibration.[117]

All commenters that addressed the Commission's proposed timing requirement for initial margin collection opposed it.[118] The basis for these objections included the fact that the settlement and delivery periods for many types of eligible margin securities are longer than the time allowed for margin collection under the proposed rule; the potential inability of financial end users to arrange for collateral transfers under the proposed rule's timeframes; and the difficulties encountered where the parties are in distant time zones.[119]

Other concerns included the fact that valuations are typically determined after market close and that the proposed rule did not include time for portfolio reconciliation and dispute resolution. A commenter suggested that, since financial end users would be required to exchange margin with a CSE in amounts determined by the CSE's models, the final rule should allow for a dispute resolution process acceptable to both the CSE and its counterparty. Commenters proposed a number of alternatives, including moving to a T+2

[105] *See* ISDA; Joint Associations; CDEU; Freddie; COPE; ABA; ETA; BP; Shell TRM.

[106] *See* Sifma (seeking assurance that (i) a CSE would not violate its obligations to maintain sufficient margin if it releases margin to a counterparty at the conclusion of a dispute resolution mechanism consistent with the U.S. implementation of Basel and the Commission is not requiring the parties to lock in dispositive valuation methods; and (ii) if a non-bank swap entity and a non-financial end user have not agreed to exchange margin, the parties will not need to modify their trading documentation to address matters specified in the proposal such as valuation methodologies and data sources); JBA (seeks clarification on the level of documentation required to ''allow the counterparty and regulators to calculate a reasonable approximation of the margin requirement independently); FHLB (arguing that documentation requirement with respect to dispute resolution are inadequate).

[107] *See* ISDA; Sifma; Joint Associations; JBA; FSR; ETA; NGCA/NCSA; CDEU; COPE; BP; Shell TRM; CEWG.

[108] *See* AFR.

[109] *See e.g.,* § 23.600 of the CFTC's regulations.

[110] Commission Regulation 23.200(e) defines execution to mean, ''an agreement by the counterparties (whether orally, in writing, electronically, or otherwise) to the terms of the swap transaction that legally binds the counterparties to such terms under applicable law.'' 17 CFR 23.200(e).

[111] Proposed §§ 23.152(a) and 23.153(d).

[112] Proposed § 23.152(b).

[113] Proposed § 23.152(c).

[114] *See* § 23.504(b)(4) of the CFTC's regulations.

[115] *See* Barnard; ICI; MFA; Public Citizen; AFR; CME; GPC.

[116] *See* JBA.

[117] *See* CCMR.

[118] *See* JFMC; Joint Associations; JBA; Sifma; Sifma-AMG; ISDA; ETA; Shell TRM; BP; GPC; and NGSA/NGCA.

[119] *See* ISDA; Sifma; JFMC; and JBA.

basis;[120] requiring prompt margin calls no later than a T+1 or T+2 basis with margin transfer occurring one or two days thereafter or according to the standard settlement cycle for the type of collateral; requiring margin collection and settlement weekly; or simply requiring margin collection on a prompt or reasonable basis.

One commenter asked for clarification that the Commission would not require the calculation and collection of margin more than once a day.[121]

c. Discussion

(i) Two-Way Margin

Consistent with the proposal, the final rule requires a CSE to collect initial margin when it engages in an uncleared swap with another swap entity. Because all swap entities will be subject to a Prudential Regulator or Commission margin rule that requires them to collect initial margin on their uncleared swaps, the final rule will result in a collect-and-post system for all uncleared swaps between swap entities.

When a CSE engages in an uncleared swap with a financial end user with material swaps exposure,[122] the final rule will require the CSE to collect *and* post initial margin with respect to the uncleared swap. Under the final rule, a CSE transacting with a financial end user with material swaps exposure must (i) calculate its initial margin collection amount using an approved internal model or the standardized look-up table, (ii) collect an amount of initial margin that is at least as large as the initial margin collection amount less any permitted initial margin threshold amount (which is discussed in more detail below), and (iii) post at least as much initial margin to the financial end user with material swaps exposure as the CSE would be required to collect if it were in the place of the financial end user with material swaps exposure.

The Commission is not adopting a ''collect only'' approach for financial end user counterparties recommended by a number of financial industry commenters. The posting requirement under the final rule is one way in which the Commission seeks to reduce overall risk to the financial system, by providing initial margin to non-dealer swap market counterparties that are interconnected participants in the financial markets (*i.e.,* financial end users that have material swap exposure).[123] Commenters representing public interest groups and asset managers supported this aspect of the Commission's approach, stating that it not only would better protect financial end users from concerns about failure of a CSE, but also would act as a discipline on CSEs by requiring them to post margin reflecting the risk of their swaps business.

The final rule permits a CSE to select from two methods (the standardized look-up table or the internal margin model) for calculating its initial margin requirements as described in more detail in the paragraphs that follow. In all cases, the initial margin amount required under the final rule is a minimum requirement; CSEs are not precluded from collecting additional initial margin (whether by contract or subsequent agreement with the counterparty) in such forms and amounts as the CSE believes is appropriate.

The provisions of the final rule requiring a CSE to collect initial margin amounts calculated under the standardized approach or an internal model apply only with respect to counterparties that are financial end users with material swaps exposure or swap entities.[124]

(ii) Timing

The final rule establishes the timing under which a CSE must comply with the initial margin requirements set out in §§ 23.154 and 155. Under § 23.152 of the final rule, a CSE, on each business day, must comply with the initial margin requirements for a period beginning on or before the business day following the day of execution of the swap and ending on the date the uncleared swap is terminated or expires. ''Business day'' is defined in § 23.151 to mean any day other than a Saturday, Sunday, or legal holiday. [125]

In practice, each CSE typically will have a portfolio of swaps with a specific counterparty, and the CSE will collect and post initial margin for that portfolio with that counterparty on a rolling basis. The final rule requires the CSE to collect and post initial margin each business day for its portfolio of swaps with that counterparty, based on the initial margin amount calculated for that portfolio by the CSE on the previous business day.[126]

As the CSE and its counterparty enter into new swaps, adding them to the portfolio, these new swaps need to be incorporated into the CSE's calculation of initial margin amounts to be posted and collected on this daily cycle. When a CSE and its counterparty are located in the same or adjacent time zones, this is a straightforward process. However, when the CSE is located in a distant time zone from the counterparty, or the two parties observe different sets of legal holidays, this can be less straightforward.

The Commission added new provisions to the final rule to accommodate practical considerations that arise in these circumstances.[127] The final rule requires the CSE to post and collect initial margin on or before the end of the business day after the ''day of execution,'' as defined in § 23.151 of the rule. The ''day of execution'' is determined with reference to the point in time at which the parties enter into the uncleared swap.

When the location of the CSE is in a different time zone than the location of the counterparty, the ''day of execution'' definition provides three special accommodations for the difference. These accommodations are made in recognition of the fact that each of the two parties to the swap will, as a practical necessity, observe its own ''business day'' in transmitting instructions to the third-party custodian.

First, if at the time the parties enter into the swap, it is a different calendar day at the location of each party, the day of execution is deemed to be the later of the two calendar days. For example, if a CSE located in New York enters into

[120] *See* ISDA.

[121] *See* MFA.

[122] The calculation of ''material swaps exposure'' is addressed in more detail in the discussion of the definitions above.

[123] Some of these commenters contrasted the Commission's 2014 proposed approach with those of European and Japanese regulators. In the United States, many financial end users operate outside of the jurisdiction of the Commission to impose margin requirements. Thus, unlike the proposed Japanese and European requirements, which would cover a broader array of financial entities, a collect-only regime in the United States would be applicable only to CSEs and thus could leave a large number of financial entities with significant unmargined potential future exposures to their swap dealers.

[124] The same is true with respect to the final rule's requirements for eligible collateral and custody of initial margin collected by a CSE.

[125] A ''business day'' under the final rule is not limited by or tied to typical business hours. A swap dealer seeking to post or collect margin may make the transfer during a ''business day'' but at a time which is before or after typical business hours.

[126] Of course, if the initial margin amounts have not changed, or the change to the posting or collecting amount (combined with changes in the variation margin amount, as applicable) is less than the minimum transfer amount specified in § 23.151, no posting or collection will be required.

[127] The approach is patterned on principles incorporated in the Commission's rulemaking on clearing execution, with differences the Commission believes are appropriate in consideration of the bilateral nature of uncleared swap margin and the non-standardized terms of uncleared swaps. *See* Clearing Requirement Determination Under Section 2(h) of the CEA, 77 FR 74,284 (Dec. 13, 2012), *available at: http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-29211a.pdf.*

a swap at 3:30 p.m. on Monday with a counterparty located in Japan, in the Japanese counterparty's location, it is 4:30 a.m. on Tuesday, and the day of execution (for both parties) will be deemed to be Tuesday.

Second, if an uncleared swap is entered into between 4:00 p.m. and midnight in the location of a party, then such uncleared swap shall be deemed to have been entered into on the immediately succeeding day that is a business day for both parties, and both parties shall determine the day of execution with reference to that business day. For example, if a CSE located in New York enters into a swap at noon on Friday with a counterparty located in the U.K., and in the U.K. counterparty's location, it is 5:00 p.m. on Friday, then the U.K. counterparty will be deemed to enter into the swap the following Monday. Or, if a CSE located in New York enters into a swap at noon on Friday with a counterparty located in Japan, and in the Japanese counterparty's location, it is 1:00 a.m. on Saturday, then the Japanese counterparty will be deemed to enter into the swap the following Monday. In both examples, the day of execution (for both parties) will be Monday.

Third, if the day of execution determined under the foregoing rules is not a business day for both parties, the day of execution shall be deemed to be the immediately succeeding day that is a business day for both parties. For example, this addresses the outcome arising from an uncleared swap entered into by a CSE in New York at noon on Friday with a counterparty in Japan, where it would be 1:00 a.m. on Saturday. Under the first provision, the later calendar day would be deemed the day of execution, which would be Saturday. Accordingly, this third provision would operate to move the deemed day of execution to the next business day for both parties, *i.e.* Monday. As a further example under the same circumstances, except that the Monday was a legal holiday in New York, the day of execution would then be deemed to be Tuesday for both parties.

Section 23.152 consistently requires the CSE to begin posting and collecting initial margin reflecting that swap no later than the end of the business day following that day of execution and thereafter collect and post on a daily basis. The Commission believes the final rule should provide adequate time for the CSE to include the new swap in the regular initial margin cycle, under which the CSE calculates the initial margin posting and collection requirements each business day for a portfolio of swaps with a counterparty, and under which the independent custodian(s) for both parties must hold segregated eligible margin collateral in those amounts by the end of the next business day, pursuant to the respective instruction of the parties. The CSE is required to continue including the swap in its determination of the initial margin posting and collection requirements for that portfolio until the date the swap expires or is terminated.

The Commission has made limited adjustments to the final rule to accommodate operational concerns created by differences in time zones and legal holidays between the counterparties, but otherwise has retained the proposed approach. The Commission recognizes that the final rule requires initial margin to be posted and collected so quickly that CSE and their counterparties may be required to take precautionary steps. These could include (i) pre-positioning eligible margin collateral at the custodian, (ii) using readily-transferrable forms of eligible collateral, such as cash, or (iii) initially supplying readily-transferrable forms of eligible collateral and subsequently arranging to substitute other eligible margin collateral after the initial margin collateral has been delivered to the custodian and the minimum margin requirements have been satisfied.

The Commission also recognizes that the final rule will require portfolio reconciliation and dispute resolution to be performed after initial margin has been collected, as adjustments to the original margin call, rather than before. While the Commission recognizes the incremental regulatory burden created by the final rule's timing requirement, the Commission believes the additional delay that would be introduced by the commenters' alternatives would reduce the overall effectiveness of the margin requirements, as any further timing delay will result in an increased margin period of risk, which is not accounted for in calculating the initial margin amount.[128]

Under § 23.152 of the final rule, a CSE shall not be deemed to have violated its obligation to collect or post initial or variation margin from or to a counterparty if: (1) The counterparty has refused or otherwise failed to provide or accept the required margin to or from the CSE; and (2) the CSE has (i) made the necessary efforts to collect or to post the required margin, or has otherwise demonstrated upon request to the satisfaction of the Commission that it has made appropriate efforts to collect the required margin, or (ii) commenced termination of the uncleared swap with the counterparty promptly following the applicable cure period and notification requirements.

Under the final rule, disputes that may arise between a CSE and its counterparty should be handled pursuant to the terms of the relevant contract or agreement and in the normal course of business. A CSE would not be deemed to have violated its obligation to collect or post initial or variation margin from or to a counterparty if the counterparty is acting in accordance with agreed-upon practices to settle a disputed trade.

2. Netting Arrangements

a. Proposal

The proposal would permit netting of initial margin across swaps and variation margin across swaps, but would not permit the netting of initial and variation margin.[129] Any netting would have to be done pursuant to an eligible master netting agreement (''ENMA'').[130] The agreement would create a single legal obligation for all individual transactions covered by the agreement upon an event of default. It would specify the rights and obligations of the parties under various circumstances.[131]

The proposed rule provided that if uncleared swaps entered into prior to the applicable compliance date were included in the EMNA, those swaps would be subject to the margin requirements.[132] Under the proposal, a CSE would need to establish a new EMNA to cover swaps entered into after the compliance date in order to exclude pre-compliance date swaps.

b. Comments

A number of commenters argued that, in order to allow close-out netting and contain costs, the final rule should not require new master agreements to separate pre- and post-compliance date swaps, and that parties should be permitted to use credit support annexes that are part of the EMNA instead of new master agreements to distinguish

[128] For example, if the Commission provided T+3 as the required timing for the posting of margin, the initial margin model's margin period of risk of 10 days, would only end up being 7 days, as the initial margin amount would not be available for another 3 days after its calculation (*i.e.,* 10 days (margin period of risk)—3 days (T+3 posting requirement) = 7 days).

[129] Proposed §§ 23.152(c) and 23.153(c).

[130] Proposed § 23.151, definition of ''eligible master netting agreement.''

[131] *Id.*

[132] The netting provisions in the proposal were in § 23.153(c).

pre-and post-compliance date swaps.[133] One party also asked the Commission for confirmation that the requirement to separately margin pre- and post-effective date swaps applies only to initial and not variation margin.[134] Another party argued that ISDA should publish and standardize a credit support annex that would conform to the requirements of the margin regulations and parties should be allowed to use such credit support annex alongside other existing credit support annexes among the parties.[135]

c. Discussion

The final rule permits a CSE to calculate initial margin (using an initial margin model) or variation margin on an aggregate net basis across uncleared swap transactions that are executed under an EMNA.[136] Although the proposal provided that the margin requirements would not apply to uncleared swaps entered into before the rule's compliance dates, as a general rule, the proposal provided that if an EMNA covered uncleared swaps that were entered into before the applicable compliance date, those uncleared swaps would be subject to the requirements of the rule and must be included in the aggregate netting portfolio for purposes of calculating the required margin.

As discussed by several commenters, the Commission recognizes that CSEs and their counterparties may wish to separate netting portfolios under a single EMNA. Accordingly, the final rule provides that an EMNA may identify one or more separate netting portfolios that independently meet the requirement for close-out netting[137] and to which, under the terms of the EMNA, the collection and posting of margin applies on an aggregate net basis separate from and exclusive of any other uncleared swaps covered by the agreement. (These separate netting portfolios are commonly covered by separate credit support annexes to the EMNA.)

This rule facilitates the ability of the parties to document two separate netting sets, one for uncleared swaps that are subject to the final rule and one for swaps that are not subject to the margin requirements. A netting portfolio that contains only uncleared swaps entered into before the applicable compliance date is not subject to the requirements of the final rule. The rule does not prohibit the parties from including one or more pre-compliance-date swaps in the netting portfolio of uncleared swaps subject to the margin rule, but they will thereby become subject to the final rule's margin requirement, as part of the netting portfolio. Similarly, any netting portfolio that contains any uncleared swap entered into after the applicable compliance date will subject the entire netting portfolio to the requirements of the final rule.

The netting provisions of the final rule also address the implications of status changes for counterparties. As discussed above, the final rule imposes a requirement to exchange initial margin only with respect to financial end users whose swap portfolios exceed the material swap exposure threshold. This means that a CSE may accumulate a portfolio of swaps with a financial end user below the threshold, subject to a variation margin requirement, and later if the financial end user crosses the threshold, only new swaps entered into after the change in the financial end user's status will be subject to both initial and variation margin requirements. To address this possibility, the final rule extends the treatment of separate netting portfolios under a single ENMA beyond pre-compliance-date swaps to include separate netting portfolios for swaps entered into before and after a financial end user's change into a higher risk status.[138]

The netting provisions in the final rule are modified from the proposal in order to provide clarifications to address implementation concerns raised by commenters. The proposed rule provided that if uncleared swaps entered into prior to the applicable compliance date were included in the EMNA, those swaps would be subject to the margin requirements.[139] Under the proposal, a CSE would need to establish a new EMNA to cover swaps entered into after the compliance date in order to exclude pre-compliance date swaps.

The final rule addresses the commenters' concerns regarding close-out netting and preserves close-out netting by allowing an EMNA to identify one or more separate netting portfolios to which the requirements of the final rule apply on an aggregate net basis. Thus, under the final rule, pre-compliance date swaps in the same EMNA as post-compliance date swaps would be subject to the requirements of the final rule unless they are treated under the EMNA as separately identified netting portfolio.

The Commission believes it would be inconsistent with the purposes and objectives of the rule to permit a CSE to net a counterparty's uncleared swap obligations to the CSE in determining margin collection amounts, unless the CSE can conclude on a well-founded basis that the netting provisions of the agreement can be enforced against the counterparty (as required in accordance with the final rule's definition of the EMNA).

The Commission will address commenters' concerns regarding the lack of availability of netting in foreign jurisdictions in its application of the margin rule on cross-border transaction final rule.

The Commission does not believe that it would be appropriate for margin requirements for uncleared swaps to be offset by netting other products or exposures across markets against other products that may present different concerns about safety and soundness or financial stability, or that are not subject to similar associated margin requirements. Such treatment appears inconsistent with the purposes of the Dodd-Frank Act.

E. Calculation of Initial Margin

1. Overview

a. Proposal

Under the proposed rules, a CSE could calculate initial margin using either a model-based method or a standardized table-based method.[140] The required amount of initial margin would be the amount computed pursuant to either an internal model or the table minus an initial margin threshold amount of $65 million.[141] In the proposal, the initial margin threshold was calculated on a consolidated basis (*i.e.* including all of the entity's affiliates). This amount

[133] *See* TIAA–CREF; CPFM; ICI; Sifma; ISDA; Sifma-AMG; ABA; JBA; CS; AIMA; MFA; FSR; Freddie; ACLI; and FHLB. One commenter also requested clarification that the use of an EMNA does not prevent use of a master-master netting agreement. The final rule requires that any uncleared swaps that are netted for purposes of calculating the margin requirements under the final rule are subject to an EMNA that meets the definition in § 23.151 of the final rule regardless of whether or not there is a master-master agreement.

[134] *See* ICI.

[135] *See* Freddie.

[136] Initial margin and variation margin amounts may not be netted against each other under the final rule. In addition, initial margin netting is only for the purposes of calculating the collection amount or post amount under an approved initial margin model, which may not be netted against each other.

[137] *See* § 23.151 (paragraph 1 of the EMNA definition).

[138] As discussed earlier, the change in status might also occur as a counterparty moves in or out of financial end user status entirely. The final rule extends the separate netting portfolio treatment to all status changes equally.

[139] The netting provisions in the proposal were in § 23.153.

[140] Proposed § 23.154.

[141] Proposed § 23.151, definition of ''initial margin threshold amount.''

could not be less than zero.[142] The initial margin specified under the proposal would be a minimum requirement, and the parties would have been free to require more initial margin. To ease the transaction costs associated with the exchange of margin, the Commission also proposed a minimum transfer amount of $650,000.[143]

b. Comments

A few commenters urged that the threshold should be set for individual legal entities within a group instead of at the group level,[144] while at least one commenter expressed support for applying the threshold to the larger consolidated group.[145] One commenter argued that firms should be required to disclose their aggregate uncollateralized exposures from use of the initial margin threshold as well as allocation of the threshold across counterparties, including affiliated counterparties.[146] The same commenter also argued that the full amount of gross initial margin should be exchanged, and asked for increased disclosure requirements regarding uncollateralized exposures (*e.g.,* exposures that fall below the initial margin threshold).

Commenters also suggested that the minimum transfer amount should apply separately to initial and variation margin.[147] A commenter also urged the Commission to revisit the amounts periodically to ensure international consistency.[148] Another commenter suggested that entities for which the U.S. Dollar is not the common or transacting currency or whose payment obligations are in another currency should be allowed to use an average exchange rate between the U.S. Dollar and the foreign currency for calculating thresholds.[149] One commenter also suggested that the Commission allow the counterparties to set a minimum transfer amount below $650,000.[150] Another commenter requested confirmation that the rule allows a minimum transfer amount but does not require it.

Commenters also asked for separate treatment of various arrangements under which the assets of a single investment fund or pension plan are treated as separate portfolios or accounts, each assigned some portion of the fund's or plan's total assets for purposes of managing them pursuant to different investment strategies or by different investment managers as agent for the fund or plan.[151] Commenters said these ''separate accounts'' are generally managed under documentation that caps the asset manager's ability to incur liabilities on behalf of the fund or plan at the amount of the assets allocated to the account.

c. Discussion

As an initial matter, the final rules allow CSEs to choose between model-based and table-based initial margin calculations. The Commission expects that some CSEs may choose to adopt a mix of internal models and standardized approaches to calculating initial margin requirements. For example, it may be the case that a CSE engages in some swap transactions on an infrequent basis to meet client demands but the level of activity does not warrant all of the costs associated with building, maintaining, and overseeing a quantitative initial margin model. Further, some CSE clients may value the transparency and simplicity of the standardized approach. In such cases, the Commission expects that it would be acceptable to use the standardized approach to margin such swaps.

Under certain circumstances it may be appropriate to employ both a model based and standardized approach to calculating initial margins. At the same time, the Commission is aware that differences between the standardized approach and internal model based margins across different types of swaps could be used to ''cherry pick'' the method that results in the lowest margin requirement. Rather, the choice to use one method over the other should be based on fundamental considerations apart from which method produces the most favorable margin results. Similarly, the Commission does not anticipate there should be a need for CSEs to switch between the standardized or model-based margin methods for a particular counterparty, absent a significant change in the nature of the entity's swap activities. The Commission expects CSEs to provide a rationale for changing methodologies if requested. The Commission will monitor for evasion of the swap margin requirements through selective application of the model and standardized approach as a means of lowering the margin requirements.

The final rule does not require a CSE to collect or to post initial margin collateral to the extent that the aggregate un-margined exposure either to or from its counterparty remains below $50 million.[152] In this regard, the final rule is generally consistent with the 2013 international framework and the 2014 proposal. The initial margin threshold amount of $50 million has been adjusted relative to the $65 million threshold in the proposed rule in the manner described below.

The Commission believes that allowing CSEs to apply initial margin thresholds of up to $50 million is consistent with the rule's risk-based approach, as it will provide relief to counterparties, while ensuring that initial margin is collected from those counterparties with exposure over the threshold, which could pose greater systemic risk to the financial system. The initial margin threshold also should serve to reduce the aggregate amount of initial margin collateral required by the final rule.

Under the final rule, the initial margin threshold applies on a consolidated entity level. It will be calculated across all non-exempted[153] uncleared swaps between a CSE and its affiliates and the counterparty and the counterparty's affiliates.[154] The requirement to apply the threshold on a fully consolidated basis applies to both the counterparty to which the threshold is being extended and the counterparty that is extending the threshold. Applying this threshold on a consolidated entity level precludes the possibility that CSEs and their counterparties could create legal entities and netting sets that have no economic basis and are constructed solely for the purpose of applying additional thresholds to evade margin requirements.

Although some commenters suggested the Commission should not implement the threshold across the CSE and counterparties on a consolidated basis, and instead rely on general anti-evasion authority to address efforts to exploit the threshold, the Commission has not done so. The revisions to the affiliate and subsidiary definitions in the final

[142] Proposed § 23.154(a)(4).

[143] Proposed § 23.151.

[144] CEWG; BP; Shell TRM; ISDA; Sifma AMG.

[145] Public Citizen.

[146] CME.

[147] *See* ISDA; JBA; Sifma.

[148] *See* Sifma.

[149] *See* ICI.

[150] *See* Shell TRM.

[151] One industry group commenter also cited as an example a securitization vehicle that creates separate issuances of asset-backed securities through use of a series trust.

[152] § 23.151, definition of ''initial margin threshold amount.''

[153] To the extent that an uncleared swap transaction is exempt from the margin requirements pursuant to § 23.150(b), consistent with TRIPRA, the interim final rule excludes the exempted swap transaction from the calculation of the initial margin threshold amount.

[154] The threshold may be allocated among entities within the consolidated group, at the agreement of the CSE and the counterparties, but the total must remain below $50 million on a combined basis. For an example illustrating allocations, see the 2014 proposal.

rule, described above, simplify implementation of the consolidated approach and should help address some of the concerns raised by commenters in this respect.

The Commission notes that the threshold represents a minimum requirement and should not be viewed as preventing parties from contracting with each other to require the collection of initial margin at a lower threshold, using the same method as set forth in the final rule. For such transactions, the Commission expects CSEs to make their own internal credit assessments when making determinations as to the credit and other risks presented by their specific counterparties. Therefore, a CSE dealing with a counterparty it judges to be of high credit quality may determine that a counterparty-specific threshold of up to $50 million is appropriate.

In response to commenters, and to clarify the Commission's intent, the Commission notes that the $50 million threshold is measured as the amount of initial margin for the relevant portfolio of uncleared swaps pursuant to either the internal model or standardized initial margin table used by the CSE.[155] The Commission has not incorporated suggestions by a commenter that the Commission permit the threshold to be calculated in foreign currencies. Conversion to USD can be readily accomplished and provides a measure of relative consistency in application from counterparty to counterparty within and across CSEs.

In addition, the Commission has not incorporated suggestions by commenters for separate treatment of various arrangements under which the assets of a single investment fund vehicle or pension plan are treated as separate portfolios or accounts, each assigned some portion of the fund's or plan's total assets for purposes of managing them pursuant to different investment strategies or by different investment managers as agent for the fund or plan.[156] Commenters said these ''separate accounts'' are generally managed under documentation that caps the asset manager's ability to incur liabilities on behalf of the fund or plan at the amount of the assets allocated to the account.

While the Commission recognizes these types of asset management approaches are well-established industry practice, and that separate managers acting for the same fund or plan do not currently take steps to inform the fund or plan of their uncleared swap exposures on behalf of their principal on a frequent basis, the Commission is not persuaded that it would be appropriate to extend each separate account its own initial margin threshold. Based on the comments, it appears the liability cap on each account manager often will be reflected in the fund's or plan's contract with the manager. If one manager breaches its limit, there could be cross-default implications for other managed accounts, and in periods of market stress, the cumulative effect of multiple managers' uncleared swaps could, in turn, strain the fund or plan's resources. Because all the swaps are transacted on behalf of a single legal principal, the Commission does not believe that the subdivision of these separately managed accounts is sufficient to merit the extension of separate thresholds.[157] Nevertheless, the Commission expects that in most cases, two separate investment funds of a single asset manager would not be consolidated under the relevant accounting standards and thus would not be affiliates under this rule.

The final rule provides for a minimum transfer amount for the collection and posting of margin by CSEs. The final rule does not require a CSE to collect or post margin from or to any individual counterparty unless and until the combined amount of initial and variation margin that must be collected or posted under the final rule, but has not yet been exchanged with the counterparty, is greater than $500,000.[158] This minimum transfer amount is consistent with the 2013 international framework and has been adjusted relative to the amount that appeared in the proposal in the manner described below.

The final rule has been modified from the proposal to make clear that the minimum transfer amount applies to the combined amount of initial and variation margin. The Commission believes that the proposal's minimum transfer amount of $500,000 is appropriately sized to generally alleviate the operational burdens associated with making de minimis margin transfers and that the amount applies to both initial and variation margin transfers on a combined basis. The Commission also confirms that the minimum transfer amount is allowed but not required under the final rule, and parties are free to collect and post margin below that amount.

2. Models

As in the proposed rule, the final rule adopts an approach whereby CSEs may calculate initial margin requirements using an approved initial margin model. As in the case of the proposal, the final rule also requires that the initial margin amount be set equal to a model's calculation of the potential future exposure of the uncleared swap consistent with a one-tailed 99 percent confidence level over a 10-day close-out period. More specifically, under the final rule, initial margin models must capture all of the material risks that affect the uncleared swap including material non-linear price characteristics of the swap.[159]

For example, the initial margin calculation for a swap that is an option on an underlying asset, such as an option on a credit default swap contract, would be required to capture material

[155] Although one commenter urged the Commission to require CSEs to make granular disclosures about the use of the $65 million threshold to their investors, credit providers, and the central counterparties of which the CSE is a member, the suggestion is beyond the scope of this margin rulemaking. The Commission notes the final rule does not prohibit a CSE from providing this information, should it wish to negotiate that arrangement with an interested party.

[156] One industry group commenter also cited as an example a securitization vehicle that creates separate issuances of asset-backed securities through use of a series trust.

[157] Some commenters expressing this concern made the same point with respect to application of the material swaps exposure threshold, which is also calculated on a legal entity basis. The Commission has the same reservations about subdividing the material swaps exposure test at the managed account level, and these reservations are even somewhat compounded given that the Commission has revised the threshold to $8 billion in reflection of the financial end user's overall market exposure, instead of a CSE-specific exposure.

[158] *See* § 23.151 of the final rule. The minimum transfer amount only affects the timing of margin collection; it does not change the amount of margin that must be collected once the $500,000 threshold is crossed. For example, if the margin amount due from (or to) the counterparty were to increase from $500,000 to $800,000, the CSE would be required to collect the entire $800,000 (subject to application of any applicable initial margin threshold amount).

[159] *See* § 23.154(b)(2) of the final rule. An exception to this requirement has been made in the specific case of cross-currency swaps. In a cross-currency swap, one party exchanges with another party principal and interest rate payments in one currency for principal and interest rate payments in another currency, and the exchange of principal occurs upon the inception of the swap, with a reversal of the exchange of principal at a later date that is agreed upon at the inception of the swap.

Under the final rule, an initial margin model need not recognize any risks or risk factors associated with the foreign exchange transactions associated with the fixed exchange of principal embedded in a cross-currency swap as defined in § 23.151 of the final rule. The initial margin model must recognize all risks and risk factors associated with all other payments and cash flows that occur during the life of the cross-currency swap. In the context of the standardized margin approach, described further below, the gross initial margin rates have been set equal to those for interest rate swaps. This treatment recognizes that cross-currency swaps are subject to risks arising from fluctuations in interest rates but does not recognize any risks associated with the fixed exchange of principal since principal is typically not exchanged on interest rate swaps.

non-linearities arising from changes in the price of the underlying asset or changes in its volatility. Moreover, the margin calculations for derivatives in distinct product-based asset classes, such as equity and credit, must be performed separately without regard to derivatives contracts in other asset classes. Each derivative contract must be assigned to a single asset class in accordance with the classifications presented in the final rule (*i.e.,* foreign exchange or interest rate, commodity, credit, and equity). The presence of any common risks or risk factors across asset classes cannot be recognized for initial margin purposes.

The Commission's belief is that these modeling standards should ensure a strong initial margin regime for uncleared swaps that sufficiently limits systemic risk and reduces potential counterparty exposures.

a. Commission Approval

The proposal required CSEs to obtain the written approval of the Commission before using a model to calculate initial margin.[160] The CSE would have to demonstrate that the model satisfied all of the requirements of this section on an ongoing basis.[161] In addition, a CSE would have to notify the Commission in writing before extending the use of a model that has been approved for one or more types of products to any additional product types, making any change to any initial margin model that has been approved that would result in a material change in the CSE's assessment of initial margin requirements, or making any material change to assumptions used in an approved model.[162] The Commission could rescind its approval of a model if the Commission determined that the model no longer complied with this section.[163]

(i) Comments

While one commenter disapproved of the use of proprietary initial margin models,[164] several commenters supported the use of either a proprietary [165] or a standardized (developed by the industry) initial margin model.[166] One commenter urged the Commission to recognize a model that has been approved by other regulators, including foreign authorities in jurisdictions with margin requirements consistent with the 2013 international standards.[167] Another commenter suggested that the Commission provide more information regarding the process for model approval.[168]

(ii) Discussion

Under the final regulations, all initial margin models must be approved before being used for margin calculation purposes. In the event that a model is not approved, initial margin calculations would have to be performed according to the standardized initial margin approach that is detailed in Regulation 23.154(c) and discussed below.

Given the number of SDs and the likely complexity of the models, the Commission is concerned that, with its limited resources, it might not be able to review models as thoroughly and expeditiously as it would like. Accordingly, the Commission has determined to amend the final rules to provide that a CSE may use a model approved by a registered futures association (''RFA'') or the Commission. Currently, the National Futures Association (''NFA'') is the only RFA.

As an RFA, NFA is required to establish minimum capital and other financial requirements applicable to its members that are at least as stringent as the capital and financial requirements imposed by the Commission. This requirement to establish financial requirements extends to SD and MSP margin requirements for uncleared swap transactions.

The Commission anticipates that NFA margin rules will recognize the use of models, and that the minimum requirements for such models, including the quantitative and qualitative requirements of the models, are the same as, or more stringent than, the requirements set forth in final § 23.154. Accordingly, final § 23.154 provides that an SD or MSP may use models to compute initial margin requirements if such models have been approved by NFA.

Given that CSEs may engage in highly specialized and complex swap dealing activity, it is expected that specific initial margin models may vary across CSEs. Accordingly, the specific analyses that will be undertaken in the context of any single model review may have to be tailored to the specific swap dealing activity of the CSE. Initial margin models will also undergo periodic reviews to ensure that they remain compliant with the requirements of the rule and are consistent with existing best practices over time.

Given the complexity and diverse nature of uncleared swaps, it is expected that CSEs may choose to make use of vendor-supplied products and services in developing their own initial margin models. The final rule does not place any limitations or restrictions on the use of vendor-supplied model components such as specific data feeds, computing environments, or calculation engines beyond those requirements that must be satisfied by any initial margin model. In particular, the Commission will conduct a holistic review of the entire initial margin model and assess whether the entire model and related inputs and processes meet the requirements of the final rule.[169]

To the extent that a CSE uses vendor-supplied inputs in conjunction with its own internal inputs and processes, the model approval decision will apply to the specific initial margin model used by a CSE and not to a generally available vendor-supplied model. To the extent that one or more vendors provide models or model-related inputs (*e.g.,* calculation engines) that, in conjunction with the CSEs' own internal methods and processes, are part of an approved initial margin model, the Commission may also approve those vendor models and model-related inputs for use by other CSEs though that determination will be made on a case-by-case basis depending on the entirety of the processes that are employed in the application of the vendor-supplied inputs and models by a CSE.

In many instances, CSEs whose margin models would be subject to Commission or RFA review would be affiliates of entities whose margin models would be subject to review by one of the Prudential Regulators. In such situations, the Commission or the RFA would coordinate with the Prudential Regulators in order to avoid duplicative efforts and to provide expedited approval of Prudential Regulator approved models.[170] For

[160] Proposed § 23.154(b)(1). *See* BCBS/IOSCO Report at 12: ''any quantitative model that is used for initial margin purposes must be approved by the relevant supervisory authority.''

[161] *Id.*

[162] Proposed § 23.154(b)(1).

[163] *Id.*

[164] *See* AFR (supporting instead the adoption of a unified modeling capacity within the regulatory community).

[165] *See* Barnard; SIFMA; GPC (cautioning that initial margin models must be consistent with commonly accepted market practice and should be open for review by market participants).

[166] *See* CPFM; Sifma; MetLife; Freddie; AFR.

[167] *See* IFM.

[168] *See* JBA (asking the Commission to provide information regarding the data and documents necessary to the process, and also the timeline for the submissions); *see also* Shell TRM (urging the Commission to adopt a process for provisional approval of models).

[169] The Commission expects that NFA will conduct a similar process for the models it reviews.

[170] Whether an initial margin model has obtained a Prudential Regulators approval will be given a significant weight in determining whether the model meets the Commission's standards.

example, if a Prudential Regulator had approved a model of an insured depository institution registered as an SD, Commission or RFA review of a comparable model used by its non-bank affiliate would be greatly facilitated. Similarly, the Commission or the RFA would coordinate with the SEC for CSEs that are dually registered and would coordinate with foreign regulators that had approved margin models for foreign CSEs.

The provision permitting a CSE to use a model approved by an RFA is a point of distinction between the Commission's rules and those of the Prudential Regulators. The Prudential Regulators do not have a comparable rule.

b. Applicability to Multiple Swaps

(i) Proposal

The proposal provided that to the extent more than one uncleared swap is executed pursuant to an EMNA [171] between a CSE and a covered counterparty, the CSE would be permitted to calculate initial margin on an aggregate basis with respect to all uncleared swaps governed by such agreement.[172] However, only exposures in certain asset classes could be offset. If the agreement covered uncleared swaps entered into before the applicable compliance date, those swaps would have to be included in the calculation.[173]

The proposal defined EMNA as any written, legally enforceable netting agreement that creates a single legal obligation for all individual transactions covered by the agreement upon an event of default (including receivership, insolvency, liquidation, or similar proceeding) provided that certain conditions are met. These conditions include requirements with respect to the CSE's right to terminate the contract and to liquidate collateral and certain standards with respect to legal review of the agreement to ensure that it meets the criteria in the definition.

(ii) Comments

A number of commenters requested that the Commission remove the ''suspends or conditions payment'' language.[174] These commenters argued that this provision would be inconsistent with the ISDA Master Agreement which allows a non-defaulting counterparty to suspend payment to a defaulting counterparty.[175]

A few commenters urged the Commission to align its definition with that of the Prudential Regulators,[176] while others argued that ISDA master agreements should qualify as ENMAs.[177] One commenter supported the use of netting agreements,[178] while others cautioned that entities operating in jurisdictions where netting is not enforceable may be penalized by having to put up a greater amount of collateral.[179]

Commenters generally expressed support for the recognition of foreign stays in the proposal's definition of ENMA.[180] A few commenters argued that a limited stay under State insolvency and receivership laws applicable to insurance companies also should be recognized under this provision.[181] Some commenters also argued for permitting appropriate contractual stays.[182]

A number of commenters expressed various concerns with the provision of the EMNA that requires a CSE to conduct sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that the agreement meets the requirements with respect to the CSE's right to terminate the contract and liquidate collateral and that in the event of a legal challenge (including one resulting from default or from receivership, insolvency, liquidation, or similar proceeding), the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions.[183] These commenters urged that requiring a legal opinion would be expensive and may not be able to be given without qualification, meaning parties can never be certain that a contract is enforceable.[184] Some of these commenters recommended removing the requirement that the ENMA be enforceable in multiple jurisdictions since it would be legally impractical.[185]

(iii) Discussion

The final rule defines an EMNA to be any written, legally enforceable netting agreement that creates a single legal obligation for all individual transactions covered by the agreement upon an event of default (including receivership, insolvency, liquidation, or similar proceeding) provided that certain conditions are met.[186] These conditions include requirements with respect to the CSE's right to terminate the contract and liquidate collateral and certain standards with respect to legal review of the agreement to ensure it meets the criteria in the definition. The legal review must be sufficient so that the CSE may conclude with a well-founded basis that, among other things, the contract would be found legal, binding, and enforceable under the law of the relevant jurisdiction and that the contract meets the other requirements of the definition.

The EMNA definition includes a requirement that the agreement not include a walkaway clause, which is defined as a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement.

[171] This term is defined in proposed § 23.151.

[172] Proposed § 23.154(b)(2).

[173] *Id.*

[174] ACLI; FSR; Freddie; ISDA; MetLife; Sifma AMG; Sifma; and Vanguard.

[175] One commenter urged the Commission not to ''outsource'' the EMNA definition to ISDA, noting that the vast majority of existing master netting agreements are governed by the ISDA Master Agreement. The commenter argued that the ISDA Master Agreement contains provisions that may be contrary to the interests of counterparties other than ISDA's large swap entity members, such as mandatory arbitration covenants. *See* Better Markets. So long as an agreement meets the requirements of the EMNA definition, however, the Commission is not endorsing, requiring. or prohibiting use of a particular master netting agreement in the final rule.

[176] *See* Sifma; FHLB.

[177] *See* ETA; Joint Associations; NGSA/NGCA.

[178] *See* Barnard.

[179] *See* JFMC. *See also* ISDA (suggesting netting restrictions on posting variation margin (where restricted by law for example) to non-netting counterparties).

[180] AIMA; ICI; SIFMA. However, at least one commenter expressed concern that allowing for foreign jurisdiction and contractual stays could limit important bankruptcy protections for commercial end users and argued that the rule should recognize and clearly state that market participants' rights to avoid stays and other limitations of their close-out rights should be protected. CEWG.

[181] *See* ACLI; MetLife.

[182] *See* ISDA; Sifma AMG (a party should be allowed to suspend ongoing performance where an event of default or potential event of default has occurred and is continuing); AFR (upon the default of a party, the non-defaulting party should be allowed to enter into a limited contractual stay and suspend payment obligation to the defaulting party according to the process set forth in the ISDA 2014 Resolution Stay Protocol).

[183] One commenter, for example, urged ''would'' should be changed to ''should'' as ''would'' is difficult to satisfy in bankruptcy courts making it difficult to state with certainty. CEWG.

[184] ACLI; GPC; ICI; JBA; Sifma AMG; *see also* CEWG.

[185] *See* GPC; Sifma AMG.

[186] This definition of ENMA aligns with the recently adopted definition of a ''qualifying master netting agreement'' for bank regulatory capital purposes and the Prudential Regulators' margin requirements. *See* Regulatory Capital Rules, Liquidity Coverage Ratio: Interim Final Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions, 79 FR 78287 (Dec. 30, 2014).

The proposed EMNA definition included additional language in the definition of walkaway clause that would expressly preclude an EMNA from including a clause that permits a non-defaulting counterparty to ''suspend or condition payment'' to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is or otherwise would be, a net creditor under the agreement. This additional language is not being included in the final rule's definition of EMNA. Therefore, the commenters' concerns regarding the impact of the additional proposed language on current provisions of the ISDA Master Agreement are moot.

Like the proposal, the final rule's definition of EMNA contains a stay condition regarding certain insolvency regimes where rights can be stayed. In particular, the second clause of this condition has been modified to provide that any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than (i) in receivership, conservatorship, or resolution by a Prudential Regulator exercising its statutory authority, or substantially similar laws in foreign jurisdictions that provide for limited stays to facilitate the orderly resolution of financial institutions, or (ii) in an agreement subject by its terms to any of the foregoing laws.[187]

The Commission did not modify the final rule's definition of EMNA to recognize stays under State insolvency and receivership laws for insurance companies. The Commission believes that other changes to the rule should help address these concerns as explained further below.

The Commission did not modify the provision relating to the legal enforceability of the EMNA definition in the final rule. The Commission believes that the legal review must be sufficient so that the CSE may conclude with a well-founded basis that, among other things, the contract would be found legal, binding, and enforceable under the law of the relevant jurisdiction and that the contract meets the other requirements of the definition. In some cases, the legal review requirement could be met by reasoned reliance on a commissioned legal opinion or an in-house counsel analysis. In other cases, for example, those involving certain new derivative transactions or derivative counterparties in jurisdictions where a CSE has little experience, the CSE would be expected to obtain an explicit, written legal opinion from external or internal legal counsel addressing the particular situation. The rules set an outcome-based standard for a review that is sufficient so that an institution may conclude with a well-founded basis that, among other things, the contract would be found legal, binding, and enforceable under the law of the relevant jurisdiction and that the contract meets the other requirements of the definition.

The Commission recognizes that there may be certain jurisdictions where a netting arrangement may not be enforceable; the Commission will address this issue in its final rule on the application of margin rule to cross-border transactions.

c. Elements of a Model

The final rule specifies a number of conditions that a model would have to meet to receive Commission approval.[188] These conditions relate to the technical aspects of the model as well as broader oversight and governance standards. They include, among others, the following.

(i) Ten-Day Close-Out Period

Under the proposal, the model must calculate potential future exposure using a one-tailed 99 percent confidence interval for an increase in the value of the uncleared swap or netting set of uncleared swaps due to an instantaneous price shock that is equivalent to a movement in all material underlying risk factors, including prices, rates, and spreads, over a holding period equal to the shorter of ten business days or the maturity of the swap.

The Commission received a number of comments concerning the length of the assumed close-out period used in the initial margin calculations. Commenters suggested that ten days was too long and suggested that a close-out period of three to five days was adequate to ensure sufficient time to close out or hedge a defaulting counterparty's swap contract.[189] Another commenter suggested that a ten day close out period was too short and that the resulting initial margins would not always be larger and more conservative than initial margins charged on cleared swaps.[190] The same commenter also argued that the Commission should require an ex-post 99% initial margin coverage and not simply a 99% confidence level sampling to better reflect the liquidity and risk profile of the uncleared markets and to retain incentives to promote central clearing. One commenter argued that mandating a 10 day close out period for all swaps is not sufficiently risk-sensitive as the approach fails to take into account the liquidity of any particular swap.[191] Another commenter argued for allowing market participants to determine appropriate market-based liquidation periods.[192] Two commenters supported the 10-day holding period.[193]

Since uncleared swaps are expected to be less liquid than cleared swaps, the final rule specifies a minimum close-out period for the initial margin model of 10 business days, compared with a typical requirement of 3 to 5 business days used by central counterparties (CCPs).[194] Accordingly, to the extent that uncleared swaps are expected to be less liquid than cleared swaps and to the extent that related capital rules which also mitigate counterparty credit risk similarly require a 10-day close-out period assumption, the Commission's view is that a 10-day close-out period assumption for margin purposes is appropriate.[195]

At the same time, the Commission is aware that it may not be the case that the regulatory minimum required initial margin on an uncleared swap will always be larger than the initial margin required on any related cleared swap as margining practices vary among DCOs. In some cases, they may exceed minimum required margin levels due to the specific risk of the swap in question and the margining practices of the DCO. Moreover, given the complexity and diversity of the uncleared swap market, the Commission believes that it is not possible and unnecessary to prescribe a specific and different close-out horizon for each type of uncleared swap that may exist in the marketplace. The Commission does believe that it is appropriate for a CSE to use a close-out period longer than ten-days in those circumstances in which the specific risk of the swap indicates that doing so is prudent. In terms of specifying a regulatory minimum requirement, however, the Commission believes that a ten-day close-out period is sufficiently

[187] *See* § 23.151.

[188] Proposed § 23.154(b)(3).

[189] Pension Coalition. *See also* CCMR (10 day horizon is not risk-adjusted and the horizon should be set according to the type of swap); ISDA (liquidity horizon should be consistent with requirements in other jurisdictions); Sifma AMG (the horizon should be closer to 5 days).

[190] CME.

[191] *See* CCMR.

[192] *See* NERA.

[193] *See* Public Citizen; AFR.

[194] *See* § 23.154(b)(2)(i) of the final rule.

[195] In cases where a swap has a remaining maturity of less than 10 days, the remaining maturity of the swap, rather than 10 days, may be used as the close-out period in the margin model calculation.

long to generally guard against the heightened risk of less liquid, uncleared swaps.

Under the final rule, the initial margin model calculation must be performed directly over a 10-day period. In the context of bank regulatory capital rules, a long horizon calculation (such as 10 days), under certain circumstances, may be indirectly computed by making a calculation over a shorter horizon (such as 1 day) and then scaling the result of the shorter horizon calculation to be consistent with the longer horizon. The rule does not provide this option to CSEs using an approved initial margin model. The Commission's view is that the rationale for allowing such indirect calculations that rely on scaling shorter horizon calculations has largely been based on computational and cost considerations that were material in the past but are much less so in light of advances in computational speeds and reduced computing costs. Moreover, the Commission believes that the more accurate approach would be to use the 10 day period rather than the scaling approach. Therefore, as a result of the less burdensome calculations, the Commission is retaining this requirement.

(ii) Portfolio Offsets

Under the proposal, an initial margin model may reflect offsetting exposures, diversification, and other hedging benefits for uncleared swaps that are governed by the same EMNA by incorporating empirical correlations within the broad risk categories, provided the CSE validates and demonstrates the reasonableness of its process for modeling and measuring hedging benefits. Under the proposal, the categories were agriculture, credit, energy, equity, foreign exchange/interest rate, metals, and other. Empirical correlations under an eligible master netting agreement could be recognized by the model within each broad risk category, but not across broad risk categories. In the proposal, the sum of the initial margins calculated for each broad risk category would be used to determine the aggregate initial margin due from the counterparty.

The Commission received comments on a range of issues that broadly relate to the recognition of portfolio risk offsets.

One commenter requested that the rule specify only a single commodity asset class rather than the four separate asset classes that were set forth in the proposal (agricultural commodities, energy commodities, metal commodities and other commodities).[196] Another commenter suggested that the margin requirements should be more reflective of risk offsets that exist between disparate asset classes such as equity and commodities.[197]

Many commenters generally argued for allowing a broader set of offsets. Some commenters suggested that for the purposes of calculating model-based initial margin amounts portfolio offsets should be recognized between uncleared swaps, cleared swaps, and other products such as positions in securities or futures.[198] Some commenters promoted a ''risk factor based'' approach and suggested that initial margin models should allow for offsets across risk factors even if these risk factors are present in uncleared swaps across multiple asset classes such as equity and credit.[199]

For example, the commenters stated that both an equity swap and a credit swap may be exposed to some amount of interest rate risk. The commenters suggested that the interest rate risk inherent in the equity and credit swaps should be recognized on a portfolio basis so that any offsetting interest rate exposure across the two swaps could be recognized in the initial margin model. This approach would effectively require that all uncleared swaps be described in terms of a number of ''risk factors'' and the initial margin model would consider the exposure to each risk factor separately. The initial margin amount required on a portfolio of uncleared swaps would then be computed as the sum of the amounts required for each risk factor.

This ''risk factor'' based approach described above is different from the Commission's proposal. Under the proposal, initial margin on a portfolio of uncleared swaps was calculated on a product-level basis. In terms of the above example, initial margin would have been calculated separately for the equity swap and calculated separately for the credit swap. In the case of both the equity and credit swap, interest rate risk in the swap would have been modeled and measured without regard to the interest rate exposure of the other swap. The total initial margin requirement would have been the sum of the initial margin requirement for the equity swap and the credit swap. Accordingly, no offset would have been recognized between any potentially offsetting interest rate exposure in the equity and credit swap.

The final rule permits a CSE to use an internal initial margin model that reflects offsetting exposures, diversification, and other hedging benefits within four broad risk categories: Credit, equity, foreign exchange and interest rates (considered together as a single asset class), and commodities when calculating initial margin for a particular counterparty if the uncleared swaps are executed under the same EMNA.[200]

The rule no longer divides commodities into smaller asset classes. The Commission has decided to group all uncleared commodity swaps into a single asset class for initial margin calculation purposes. The Commission believes that there is enough commonality across different commodity categories to warrant recognition of conceptually sound and empirically justified risk offsets. Moreover, the Commission notes that both the proposal and the final rule take a relatively broad view of the other asset classes: Equity, credit, interest rates and foreign exchange. In prescribing the granularity of the asset classes there is a clear trade-off between simplicity and certainty around the stability of hedging relationships in narrowly defined asset classes and the greater flexibility and risk sensitivity that is provided by broader asset class distinctions. Therefore, the Commission has decided to adopt a commodity asset class definition that is consistent with the other three asset classes and is appropriate in light of current market practices and conventions.

The final rule does not permit an initial margin model to reflect offsetting exposures, diversification, or other hedging benefits across broad risk

[196] *See* Sifma (Bentsen) (suggesting that there are significant and relatively stable correlations across related commodity categories that should not be ignored for hedging and margining purposes; commodity index swaps are a significant source of uncleared commodity swap activity and these swaps are a significant source of uncleared commodity swap activity and comprise exposures to each of the four commodity sub-asset classes that were identified; implementing the proposal's four separate sub-asset classes would not be appropriately risk sensitive and would be difficult and burdensome to implement for a significant class of commodity swaps); *see also* ISDA (all commodities should be one asset class as would be consistent with the 2013 international framework).

[197] Sifma AMG

[198] CCMR; GPC; CEWG; Sifma; MFA; Sifma AMG (offsets should be allowed for risk across all instruments and asset classes subject to the same master netting agreement so long as there is sound theoretical basis and significant empirical support); IECA and BP (netting should be allowed across swaps and physical commodity forward transactions entered pursuant to an ISDA master agreement with physical annexes).

[199] *See* ISDA (some assets may be classified as swaps in one jurisdiction but as some other type of financial instrument in another jurisdiction); Sifma; JBA.

[200] *See* final rule § 23.154(b)(2)(v).

categories.[201] Hence, the margin calculations for derivatives in distinct product-based asset classes, such as equity and credit, must be performed separately without regard to derivatives contracts in other asset classes. Each derivative contract must be assigned to a single asset class in accordance with the asset class classification presented in the standardized minimum gross initial margin requirements for uncleared swaps. The presence of any common risks or risk factors across asset classes cannot be recognized for initial margin purposes.

As a specific example, if a CSE entered into two uncleared credit swaps and two uncleared commodity swaps with a single counterparty under an EMNA, the CSE could use an approved initial margin model to perform two separate initial margin calculations: The initial margin collection amount calculation for the uncleared credit swaps and the initial margin collection amount calculation for the uncleared commodity swaps. Each calculation could recognize offsetting and diversification within the uncleared credit swaps and within the uncleared commodity swaps. The result of the two separate calculations would then be summed together to arrive at the total initial margin collection amount for the four uncleared swaps (two uncleared credit swaps and two uncleared commodity swaps).

The Commission believes that the qualitative and quantitative basis for allowing for risk offsets among uncleared swaps within a given, and relatively broad, asset class such as equities is conceptually stronger and better supported by historical data and experience than is the basis for recognizing such offsets across disparate asset classes such as foreign exchange and commodities. Uncleared swaps that trade within a given asset class, such as equities, are likely to be subject to similar market fundamentals and dynamics as the underlying instruments themselves trade in related markets and represent claims on related financial assets. In such cases, it is more likely that a stable and systematic relationship exists that can form the conceptual and empirical basis for applying risk offsets.

By contrast, uncleared swaps in disparate asset classes such as foreign exchange and commodities are generally unlikely to be influenced by similar market fundamentals and dynamics that would suggest a stable relationship upon which reasonable risk offsets could be based. Rather, to the extent that empirical data and analysis suggest some degree of risk offset exists between swaps in disparate asset classes, this relationship may change unexpectedly over time in ways that could demonstrably weaken the assumed risk offset. Accordingly, the Commission has decided to allow for risk offsets that have a sound conceptual and empirical basis across uncleared swaps within the broad asset classes as listed in the final rule but not to allow risk offsets across swaps in differing asset classes.

Moreover, the Commission notes that the final asset class described above is interest rates and foreign exchange taken as a group. Accordingly, the final rule will allow conceptually sound and empirically supported risk offsets between an interest rate swap on a foreign interest rate and a currency swap in a foreign currency.

The Commission has considered the risk factor based approach described above and has decided not to adopt that approach, but to adopt the proposed approach in the final rule for a number of reasons.

First, a product-based approach to calculating initial margin is clear and transparent. In many market segments it is quite common to report and measure swap exposures on a product-level basis.[202] As an example, the Bank for International Settlements regularly publishes data on the outstanding notional amounts of OTC derivatives on a product-level basis. In addition, existing trade repositories, such as the DTCC global trade repositories for interest rate and credit swaps, report credit and interest rate derivatives on a product-level basis. Moreover, a risk factor based approach has the potential to be opaque and unwieldy. Modern derivative pricing models that are used by banks and other market participants may employ hundreds of risk factors that are not standardized across products or models.

While it is the case that some swaps may have hybrid features that make it challenging to assign them to one specific asset class, the Commission believes that the incidence of this occurrence will be relatively uncommon and can be dealt with under the final rule. In particular, as of December 2014, the Bank for International Settlements reports that of the roughly $630 trillion in gross notional outstanding, roughly 3.6 percent of these contracts cannot be allocated to one of the following broad asset categories: Foreign exchange, interest rate, equity, commodity and credit. The Commission also notes that this fraction has declined from roughly 6.6 percent in June 2012 which suggests that the challenges associated with such hybrid swaps are declining over time. In such cases where the allocation of a particular uncleared swap to a specific asset class is not certain, the Commission expects an allocation to be made based on whichever broad asset class represents the preponderance of the uncleared swap's overall risk profile.

Second, a product-level initial margin model is well aligned with current practice for cleared swaps. Some clearinghouses that offer multiple swaps for clearing, such as the CME, do allow for risk offsets within an asset class but do not generally allow for any risk offsets across asset classes. Again, as a specific example, the CME offers both cleared interest rate and credit default swaps. The CME's initial margin model is a highly sophisticated risk management model that does allow for offsetting among different credit swaps and among different interest rate swaps but does not allow for risk offsets between interest rate and credit swaps. This approach to calculating initial margin also provides a significant amount of transparency as market participants, regulators and the public can assess the extent to which trading activity in specific asset classes generates counterparty exposures that require initial margin.

To the extent that some risk factors may cut across more than one asset class, the use of a risk factor-based margining approach would make evaluating the quantum of risk posed by the trading activity in any one set of products difficult to measure and manage on a systematic basis. This would also pose significant challenges to users of uncleared swaps as well as regulators and the broader public who have an interest in monitoring and evaluating the risks of different uncleared swap activities.

Third, the Commission notes that the final rule's product-level approach to initial margin explicitly allows for risk offsets though the precise form of these offsets differs from a ''risk factor'' based approach. The Commission believes that conceptually sound and empirically justified risk offsets for initial margin are appropriate and have included such offsets in the final rule. In general, there are a large number of possible approaches that could be taken to allow for such offsets. The Commission considered the alternatives raised by the commenters and adopted in the final rule an approach recognizing risk offsets that provides for a significant amount of hedging and diversification benefits while promoting transparency and simplicity in the margining framework.

[201] *Id.*

[202] *http://www.bis.org/statistics/dt1920a.pdf.*

Finally, the Commission notes that it may not have the authority to prescribe margin requirements for all the types of products that may be included in an ENMA. For example, the Commission's authority to set margin requirements relates to certain types of swaps and does not extend to other products such as equity-linked swaps or similar financial instruments. Accordingly, the Commission believes that the margin requirements should be reflective of the risks in a CSE's portfolio of uncleared swaps but may not recognize risks—either as offsets or sources of additional risk from other products that are themselves not uncleared swaps and not subject to the margin requirements of the final rule.

(iii) Stress Calibration and Non-Linear Price Characteristics

The proposed rule required the initial margin model to be calibrated to a period of financial stress. In addition, the proposal requires the model to use risk factors sufficient to measure all material price risks inherent in the transactions for which initial margin is being calculated. Under the proposal, the initial margin model would have been required to include all material risks arising from the nonlinear price characteristics of option positions or positions with embedded optionality and the sensitivity of the market value of the positions to changes in the volatility of the underlying rates, prices, or other material risk factors.

One commenter suggested that the overall level of the proposed initial margin requirements were too high and that the proposed requirement to calibrate the initial margin model to a period of financial stress was too conservative.[203] Another commenter supported the stress period calibration requirement.[204] A third commenter asked for clarification on the term ''period of financial stress.''[205]

Some commenters suggested that the proposal's requirement that the initial margin model include all material nonlinear price characteristics in the underlying uncleared swap was too stringent and should be relaxed,[206] while one commenter applauded the requirement to include risk from nonlinearities.[207] One commenter argued that the initial margin model should incorporate the cost of liquidating large portfolios during periods of stress as well as volatility floors to guarantee a minimum level of volatility assumed.[208]

As noted, the final rule requires the initial margin model to be calibrated to a period of financial stress.[209] In particular, the initial margin model must employ a stress period calibration for each broad asset class (commodity, credit, equity, and interest rate and foreign exchange). The stress period calibration employed for each broad asset class must be appropriate to the specific asset class in question. While a common stress period calibration may be appropriate for some asset classes, a common stress period calibration for all asset classes would be considered appropriate only if it is appropriate for each specific underlying asset class. Also, the time period used to inform the stress period calibration must include at least one year, but no more than five years of equally-weighted historical data.

The final rule's requirement is intended to balance the tradeoff between shorter and longer data spans. Shorter data spans are sensitive to evolving market conditions but may also overreact to short-term and idiosyncratic spikes in volatility. Longer data spans are less sensitive to short-term market developments but may also place too little emphasis on periods of financial stress, resulting in insufficient initial margins. The requirement that the data be equally weighted will establish a degree of consistency in initial margin model calibration while also ensuring that particular weighting schemes do not result in excessive initial margin requirements during short-term bouts of heightened volatility.

Calibration to a stress period helps to ensure that the resulting initial margin requirement is sufficient in a period of financial stress during which swap entities and financial end user counterparties are more likely to default, and counterparties handling a default are more likely to be under pressure. The stress calibration requirement also reduces the systemic risk associated with any increase in initial margin requirements that might occur in response to an abrupt increase in volatility during a period of financial stress, as initial margin requirements will already reflect a historical stress event.

The Commission continues to believe that the overall level of the initial margin requirements is consistent with the goals of prescribing margin requirements that are appropriate for the risk of uncleared swaps and the safety and soundness of the CSE. Moreover, the requirement to calibrate the initial margin model to a period of financial stress has two important benefits. First, initial margin requirements that are consistent with a period of financial stress will help to ensure that counterparties are sufficiently protected against the type of severe financial stresses that are most likely to have systemic consequences. Second, calibrating initial margins to a period of financial stress should have the effect of reducing the extent to which margin changes increase stress.

Specifically, because initial margin levels will be consistent with a period of above average market volatility and risk, a moderate rise in risk levels should not require any increase or re-evaluation of initial margin levels. In this sense, initial margin requirements will be less likely to increase abruptly following a market shock. There may be circumstances in which the financial system experiences a significant financial stress that is even greater than the stress to which initial margins have been calibrated. In these cases, initial margin requirements will rise as margin levels are re-calibrated to be consistent with the new and greater stress level. The Commission expects such occurrences to be relatively infrequent and, ultimately, any risk sensitive and empirically based method for calibrating a risk model must exhibit some sensitivity to changing financial market risks and conditions.

The Commission has decided to retain in the final rule the requirement that initial margin models must include all material nonlinear risks. The Commission is concerned that the uncleared swap market will be comprised of a large number of complex and customized swaps that will display significant nonlinear price characteristics that will have a direct effect on their risk exposure. If the models did not take these into account the initial margin amount collected would be inadequate to cover the swap's or swap portfolio's potential future exposure. Accordingly, the final rule requires that all material nonlinear price characteristics of an uncleared swap be considered in assessing the risk of the swap.

There may be nonlinear price characteristics of a particular uncleared swap that are not material in assessing its risk profile. In such cases, these nonlinear price characteristics need not be explicitly included in the initial margin model. The Commission expects that in determining whether or not a given nonlinear price characteristic is

[203] MetLife

[204] *See* AFR.

[205] *See* Barnard.

[206] JBA, ISDA.

[207] *See* AFR.

[208] *See* CME.

[209] *See* final rule § 23.154(b)(2)(ii).

material, CSEs will engage in a holistic review of the uncleared swap's risk profile and make determinations based on the totality of the uncleared swap's risks.

(iv) Frequency of Margin Calculation

The proposed rule required daily calculation of initial margin. The use of an approved initial margin model may result in changes to the initial margin amount on a daily basis.

One commenter argued that the Commission should follow the approach of the European Union and require parties to establish procedures for adjusting initial margin requirements in response to changing market conditions.[210] Another commenter sought clarification that the initial margin calculation under a model would occur once daily based on the prior day's prices.[211]

The final rule retains the requirement that an approved initial margin model be used to calculate the required initial margin collection amount on a daily basis. As discussed below, the Commission believes that swap portfolios and the variables that are used to calculate the amount of initial margin on those swaps are constantly changing. Therefore, to ensure the adequacy of the amount of initial margin the Commission is requiring daily calculation. In cases where the initial margin collection amount increases, this new amount must be used as the basis for determining the amount of initial margin that must be collected from a financial end user with material swaps exposure or a swap entity counterparty.

In addition, when a CSE faces a financial end user with material swaps exposure, the CSE must also calculate the initial margin collection amount from the perspective of its counterparty on a daily basis. In the event that this amount increases, the CSE must use this new amount as the basis for determining the amount of initial margin that it must post to its counterparty. In cases where this amount decreases, the new amount would represent the new minimum required amount of initial margin. Accordingly, any previously collected or posted collateral in excess of this amount would represent additional initial margin collateral that, subject to bilateral agreement, could be returned.

The use of an approved initial margin model may result in changes to the initial margin collection amount on a daily basis for a number of reasons. First, the characteristics of the swaps that have a material effect on their risk may change over time. As an example, the credit quality of a corporate reference entity upon which a credit default swap contract is written may undergo a measurable decline. A decline in the credit quality of the reference entity would be expected to have a material impact on the initial margin model's risk assessment and the resulting initial margin collection amount.

More generally, as the swaps' relevant risk characteristics change, so will the initial margin collection amount. In addition, any change to the composition of the swap portfolio that results in the addition or deletion of swaps from the portfolio will result in a change in the initial margin collection amount.

Second, the underlying parameters and data that are used in the model may change over time as underlying conditions change. As an example, in the event that a new period of financial stress is encountered in one or more asset classes, the initial margin model's risk assessment of a swap's overall risk may also change. While the stress period calibration is intended to reduce the extent to which small or moderate changes in the risk environment influence the initial margin model's risk assessment, a significant change in the risk environment that affects the required stress period calibration could influence the margin model's overall assessment of the risk of a swap.

Third, quantitative initial margin models are expected to be maintained and refined on a continuous basis to reflect the most accurate risk assessment possible with available best practices and methods.[212] As best practice risk management models and methods change, so too may the risk assessments of initial margin models.

(v) Benchmarking

The proposed rule required a model used for calculating initial margin requirements to be benchmarked periodically against observable margin standards to ensure that the initial margin required is not less than what a CCP would require for similar transactions.[213]

While one commenter supported the benchmarking requirement,[214] other commenters urged the Commission to remove the benchmarking requirement, noting the differences between model parameters and the availability of other risk-mitigating factors at a CSE, such as capital requirements that are not applicable to DCOs.[215] Another commenter suggested that any differences in initial margin requirements for cleared and uncleared swaps should be limited to the amount necessary to reflect counterparty credit risk.[216]

The Commission is retaining the benchmarking requirements. This benchmarking requirement is intended to ensure that any initial margin amount produced by a model is subject to a readily observable minimum. It will also have the effect of limiting the extent to which the use of models might disadvantage the movement of certain types of swaps to DCOs by setting lower initial margin amounts for uncleared transactions than for similar cleared transactions.

d. Control Mechanisms

(i) Proposal

The proposal would have required CSEs to implement certain control mechanisms.[217] They include, among others, the following.

The CSE must maintain a risk management unit in accordance with existing Commission Regulation 23.600(c)(4)(i) that reports directly to senior management and is independent from the business trading units.[218] The unit must validate its model before implementation and on an ongoing basis. The validation process must include an evaluation of the conceptual soundness of the model, an ongoing monitoring process to ensure that the initial margin is not less than what a DCO would require for similar cleared products, and back testing.

If the validation process revealed any material problems with the model, the

[210] *See* Sifma (these procedures allow the counterparties to post increased margin requirements resulting from the recalibration of a model over a period longer than one day).

[211] *See* MFA (suggesting also that the Commission should modify the timing of recalculation to focus on the time at which a collateral taker makes a demand for transfer of collateral and provide that such transfer must be made promptly following the demand).

[212] Section 23.154(b)(iii) of the final rule would require any material change to the model be communicated to the Commission before taking effect. The Commission, however, anticipates that some changes will be made to initial margin models on an ongoing basis consistent with regular and ongoing maintenance and oversight that will not require Commission notification.

[213] Proposed § 23.154(b)(5).

[214] *See* CME.

[215] *See* ISDA; Sifma.

[216] *See* MetLife.

[217] Proposed § 23.154(b)(5).

[218] Commission Regulation 23.600 requires each registered SD/MSP to establish a risk management program that identifies the risks implicated by the SD/MSP's activities along with the risk tolerance limits set by the SD/MSP. The SD/MSP should take into account a variety of risks, including market, credit, liquidity, foreign currency, legal, operational, settlement, and other applicable risks. The risks would also include risks posed by affiliates. *See* 17 CFR 23.600.

CSE would be required to notify the Commission of the problems, describe to the Commission any remedial actions being taken, and adjust the model to insure an appropriate amount of initial margin is being calculated.

The CSE must have an internal audit function independent of the business trading unit that at least annually assesses the effectiveness of the controls supporting the model. The internal audit function must report its findings to the CSE's governing body, senior management, and chief compliance officer at least annually.

(ii) Comments

Some commenters suggested that the model governance, control and oversight standards of the proposed rule were too strict and should not be so closely aligned with the model governance requirements for bank capital models.[219] One commenter suggested that since initial margin amounts must be agreed to between counterparties, it is not practical to require strict model governance standards.[220] Another commenter suggested that the initial margin model not be required to be back tested against the initial margin requirements for similar cleared swaps.[221] One commenter suggested that the frequency with which data must be reviewed and revised as necessary should be annual rather than monthly to better align with other aspects of the proposal that require certain governance processes to be conducted on an annual rather than monthly basis.[222] One commenter also cautioned against creating duplicative requirement for internal auditing since the effectiveness of initial and variation margin calculations are routinely and regularly evaluated as required in other Commission regulations.[223]

The Commission believes that strong model governance, oversight and control standards are crucial to ensuring the integrity of the initial margin model so as to provide for margin requirements that are commensurate with the risk of uncleared swaps. Moreover, the Commission is aware that there will be incentives to minimize the amount of initial margin and that strong governance standards that are intended to result in strong and risk appropriate initial margin amounts is of critical importance.

In light of the clear competitive forces that will exist between cleared and uncleared swaps, the Commission believes that it is appropriate to compare the initial margin requirements of uncleared swaps to those of similar cleared swaps. Further, the Commission understands that comparable cleared swaps with observable initial margin standard may not always be available given the complexity and variety of uncleared swaps. Nevertheless, the Commission believes that where similar swaps trade on a cleared and uncleared basis such comparisons are useful and informative.

More specifically, under the final rule a CSE must periodically, and no less than annually, review its initial margin model in light of developments in financial markets and modeling technologies and make appropriate adjustments to the model. The Commission believes that harmonizing the frequency with which certain model governance processes must be performed will reduce the costs associated with the regular oversight and maintenance of the initial margin model without meaningfully altering the overall standards for model governance. Accordingly, the final rule requires that data used in the initial margin model be reviewed and revised as necessary, but at least annually rather than monthly to ensure that the data is appropriate for the products for which initial margin is being calculated. The Commission notes that different, additional or more granular data series may, at certain times, become available that would provide more accurate measurements of the risks that the initial margin model is intended to capture.

In addition to this regular review process, the final rule also requires that strong oversight, control and validation mechanisms be in place to ensure the integrity and validity of the initial margin model and related processes. More specifically, the final rule requires that the model be independently validated prior to implementation and on an ongoing basis which would also include a monitoring process that includes back-tests of the model and related analyses to ensure that the level of initial margin being calculated is consistent with the underlying risk of the swap being margined. Initial margin models must also be subject to explicit escalation procedures that would make any significant changes to the model subject to internal review and approval before taking effect. Under the final rule, any such review and approval must be based on demonstrable analysis that the change to the model results in a model that is consistent with the requirements of the final rule. Furthermore, under the final rule, any such changes or extensions of the initial margin model must be communicated to the Commission 60 days prior to taking effect to give the Commission the opportunity to rescind its prior approval or subject it to additional conditions.

The Commission also acknowledges that a CSE's internal audit department is required to routinely and regularly audit the effectiveness of initial and variation margin calculations. The Commission believes that this requirement is necessary to ensure compliance with a minimum standard.

e. Input From Counterparties

The Commission received comments regarding counterparty inputs on a CSE's initial margin model. One commenter urged the Commission to allow financial end users to have a role in determining the margin methodology used and suggested that CSEs should not be able to switch methodologies without the consent of the counterparty.[224] Other commenters suggested that the Commission require CSEs to disclose their initial margin models to non-CSE counterparties so that counterparties may validate the margin amount calculated[225] or otherwise allow financial end users access to the initial margin model and the inputs used by the CSE to allow them to challenge margin calls or demand the return of excess collateral during the life of a swap.[226]

The Commission notes that counterparties to a swap with a CSE have other mechanisms through which they could address their concerns without requiring a CSE to disclose its initial margin model methodologies. In particular, the Commission points to Commission Regulation 23.504(b)(4)(i) prescribing trade documentation requirements on counterparties. Specifically, Regulation 23.504(b)(4)(i) requires ''written documentation in which the parties [to a swap] agree on the process, which may include any agreed upon methods, procedures, rules, and inputs, for determining the value of each swap at any time from execution to the termination, maturity, or expiration of such swap for purposes of complying with the margin requirements . . . and regulations . . . .''[227] The Commission believes that the requirements on trade documentation specified in Regulation 23.504(b)(4)(i) should adequately address the concerns of commenters and is not prescribing more specific

[219] *See* JBA and SIFMA and IIB

[220] JBA.

[221] *See* SIFMA.

[222] *See* ISDA.; *see also* NERA.

[223] *See* BP (noting Commission Regulation 23.600).

[224] *See* GPC.

[225] *See* ICI; GPC; MFA.

[226] *See* FHLB.

[227] 17 CFR 23.504(b)(4)(i).

disclosure requirements with respect to internal initial margin models used by a CSE to its counterparties in the final rule.

3. Table-Based Method

a. Method of Calculation

Some CSEs might not have the internal technical resources to develop initial margin models or have simple portfolios for which they want to avoid the complexity of modeling. The table-based method would allow a CSE to calculate its initial margin requirements using a standardized table.[228] The table specifies the minimum initial margin amount that must be collected as a percentage of a swap's notional amount. This percentage varies depending on the asset class of the swap. Except as modified by the net-to-gross ratio adjustment,[229] a CSE would be required to calculate a minimum initial margin amount for each swap and sum up all the minimum initial margin amounts calculated under this section to arrive at the total amount of initial margin. The table is consistent with international standards.[230]

b. Comments

Two commenters suggested that the Commission adopt an altogether different approach to computing standardized initial margins in a manner consistent with the standardized approach for measuring counterparty credit risk exposures that was finalized and published by the Basel Committee on Banking Supervision in March 2014.[231] This approach is intended to be used in bank regulatory capital requirements for the purposes of computing capital requirements for counterparty credit risk resulting from OTC derivative exposures. A third commenter remarked that the table-based method should be modified to reflect greater granularity, including increasing the number of asset categories recognized by the standardized initial margin table.[232] Among other things, this commenter suggested increasing the number of asset categories recognized by the standardized initial margin table.

c. Discussion

In the final rule, the Commission has adopted the proposed approach to standardized initial margin. The Commission has decided not to adopt a different approach advocated by the commenters in the final rule for several reasons. First, the standardized approach for counterparty credit risk has been developed for counterparty capital requirement purposes and, while clearly related to the issue of initial margin for uncleared swaps, it is not entirely clear that this framework can be transferred to a simple and transparent standardized initial margin framework without modification.

Second, the standardized approach that has been published by the Basel Committee on Banking Supervision is not intended to become effective until January 2017 which follows the initial compliance date of the final rule. Accordingly, the Commission expects that some form of the standardized approach will be proposed by U.S. banking regulators prior to January 2017. Following the notice and comment period, a final rule for capitalizing counterparty credit risk exposures will be finalized in the United States. Once these rules are in place and effective it may be appropriate to consider adjusting the approach in this rule to standardized initial margins. Prior to the new capital rules being effective in the United States for the purpose for which they were intended, the Commission does not believe it would be appropriate to incorporate the standardized approach to counterparty credit risk that has been published by the Basel Committee on Banking Supervision into the final margin requirements for uncleared swaps.

The Commission acknowledges the desire to reflect greater granularity in the standardized approach but also notes that the approach in the final rule distinguishes among four separate asset classes and various maturities. The Commission also notes that no commenter provided a specific and fully articulated suggestion on how to modify the standardized approach to achieve greater flexibility without becoming overly burdensome. The Commission also notes that the standardized initial margins are a minimum margin requirement. CSEs and their counterparties are free to develop standardized margin schedules that reflect greater granularity than the final rule's standardized approach so long as the resulting amounts would in all circumstances be at least as large as those required by the final rule's standardized approach to initial margin. Accordingly, the final rule affords CSEs and their counterparties the opportunity to develop simple and transparent margin schedules that reflect the granular and specific nature of the swap activity being margined.

Under the final rule, standardized initial margins depend on the asset class (commodity, equity, credit, foreign exchange and interest rate) and, in the case of credit and interest rate asset classes, further depend on the duration of the underlying uncleared swap. In addition, the standardized initial margin requirement allows for the recognition of risk offsets through the use of a net-to-gross ratio in cases where a portfolio of uncleared swaps is executed under an EMNA.

The net-to-gross ratio compares the net current replacement cost of the non-cleared portfolio (in the numerator) with the gross current replacement cost of the non-cleared portfolio (in the denominator). The net current replacement cost is the cost of replacing the entire portfolio of swaps that are covered under the EMNA. The gross current replacement cost is the cost of replacing those swaps that have a strictly positive replacement cost under the EMNA.

As an example, consider a portfolio that consists of two uncleared swaps under an EMNA in which the mark-to-market value of the first swap is \$10 (*i.e.*, the CSE is owed \$10 from its counterparty) and the mark-to-market value of the second swap is −\$5 (*i.e.*, the CSE owes \$5 to its counterparty). Then the net current replacement cost is \$5 (\$10 − \$5), the gross current replacement cost is \$10, and the net-to-gross ratio would be 5/10 or 0.5.[233]

The net-to-gross ratio and gross standardized initial margin amounts (provided in § 23.154(c)) are used in conjunction with the notional amount of the transactions in the underlying swap portfolio to arrive at the total initial margin requirement as follows:

$$\text{Standardized Initial Margin} = 0.4 \times \text{Gross Initial Margin} + 0.6 \times \text{NGR} \times \text{Gross Initial Margin}$$

where:

Gross Initial Margin = the sum of the notional value multiplied by the appropriate initial margin requirement percentage from Appendix A of each uncleared swap under the EMNA; and

NGR = net-to-gross ratio

[228] Proposed § 23.154(c).

[229] *See* 79 FR 59898, at 59911 (Oct. 3, 2014).

[230] BCBS/IOSCO Report at Appendix A.

[231] *See* JBA; CS.

[232] *See* MFA.

[233] Note that in this example, whether or not the counterparties have agreed to exchange variation margin has no effect on the net-to-gross ratio calculation, *i.e.*, the calculation is performed without considering any variation margin payments. This is intended to ensure that the net-to-gross ratio calculation reflects the extent to which the uncleared swaps generally offset each other and not whether the counterparties have agreed to exchange variation margin. As an example, if a swap dealer engaged in a single sold credit derivative with a counterparty, then the net-to-gross calculation would be 1.0 whether or not the dealer received variation margin from its counterparty.

As a specific example, consider the two-swap portfolio discussed above. Suppose further that the swap with the mark-to-market value of $10 is a sold 5-year credit default swap with a notional value of $100 and the swap with the mark-to-market value of −$5 is an equity swap with a notional value of $100. The standardized initial margin requirement would then be:

$$[0.4 \times (100 \times 0.05 + 100 \times 0.15) + 0.6 \times 0.5 \times (100 \times 0.05 + 100 \times 0.15)] = 8 + 6 = 14.$$

The Commission further notes that the calculation of the net-to-gross ratio for margin purposes must be applied only to swaps subject to the same EMNA and that the calculation is performed *across* transactions in disparate asset classes within a single EMNA such as credit and equity in the above example. That is, all uncleared swaps subject to the same EMNA and subject to the final rule's requirements can net against each other in the calculation of the net-to-gross ratio, as opposed to the modeling approach that allows netting only within each asset class.

This approach is consistent with the standardized counterparty credit risk capital requirements. Also, the equations are designed such that benefits provided by the net-to-gross ratio calculation are limited by the standardized initial margin term that is independent of the net-to-gross ratio, *i.e.*, the first term of the standardized initial margin equation which is 0.4 × Gross Initial Margin.

Finally, if a counterparty maintains multiple uncleared swap portfolios under one or multiple EMNAs, the standardized initial margin amounts would be calculated separately for each portfolio with each calculation using the gross initial margin and net-to-gross ratio that is relevant to each portfolio. The total standardized initial margin would be the sum of the standardized initial margin amounts for each portfolio.

The final rule's standardized approach to initial margin depends on the calculation of a net-to-gross ratio. In the context of performing margin calculations, it must be recognized that at the time uncleared swaps are entered into it is often the case that both the net and gross current replacement cost is zero. This precludes the calculation of the net-to-gross ratio. In cases where a new swap is being added to an existing portfolio that is being executed under an existing EMNA, the net-to-gross ratio may be calculated with respect to the existing portfolio of swaps. In cases where an entirely new swap portfolio is being established, the initial value of the net-to-gross ratio should be set to 1.0. After the first day's mark-to-market valuation has been recorded for the portfolio, the net-to-gross ratio may be re-calculated and the initial margin amount may be adjusted based on the revised net-to-gross ratio.

The final rule requires that the standardized initial margin collection amount be calculated on a daily basis. In cases where the initial margin collection amount increases, this new amount must be used as the basis for determining the amount of initial margin that must be collected from a financial end user with material swaps exposure or a swap entity. In addition, when a CSE faces a financial end user with material swaps exposure, the CSE must also calculate the initial margin collection amount from the perspective of its counterparty on a *daily* basis. In the event that this amount increases, the CSE must use this new amount as the basis for determining the amount of initial margin that it must *post* to its counterparty. In the event that this amount decreases, this new amount would also serve as the basis for the minimum required amount of initial margin. Accordingly, any previously collected or posted initial margin over and above the new requirement could, subject to bilateral agreement, be returned.

As in the case of internal-model-generated initial margins, the margin calculation under the standardized approach must also be performed on a daily basis. Because the standardized initial margin calculation depends on a standardized look-up table (in Regulation 23.154(c)), there are fewer reasons for the initial margin collection amounts to vary on a daily basis. However, there are some factors that may result in daily changes in the initial margin collection amount under the standardized margin calculations.

First, any changes to the notional size of the swap portfolio that arise from any addition or deletion of swaps from the portfolio would result in a change in the standardized margin amount. As an example, if the notional amount of the swap portfolio increased as a result of adding a new swap to the portfolio then the standardized initial margin collection amount would increase.

Second, changes in the net-to-gross ratio that result from changes in the mark-to-market valuation of the underlying swaps would result in a change in the standardized initial margin collection amount.

Third, changes to characteristics of the swap that determine the gross initial margin would result in a change in the standardized initial margin collection amount. As an example, the gross initial margin applied to interest rate swaps depends on the duration of the swap. An interest rate swap with a duration between zero and two years has a gross initial margin of one percent while an interest rate swap with duration of greater than two years and less than five years has a gross initial margin of two percent. Accordingly, if an interest rate swap's duration declines from above two years to below two years, the gross initial margin applied to it would decline from two to one percent. Accordingly, the standardized initial margin collection amount will need to be computed on a daily basis to reflect all of the factors described above.

F. Calculation of Variation Margin

1. Proposal

Under the proposal, each CSE would be required to calculate variation margin for itself and for each covered counterparty using a methodology and inputs that to the maximum extent practicable, and in accordance with existing Regulation 23.504(b)(4) rely on recently-executed transactions, valuations provided by independent third parties, or other objective criteria.[234] In addition, each CSE would need to have in place alternative methods for determining the value of an uncleared swap in the event of the unavailability or other failure of any input required to value a swap.[235]

Similar to the requirement for initial margin, the proposal would require each CSE to collect variation margin from, and to pay variation margin to, each counterparty that is a swap entity or a financial end user, on or before the end of the business day after execution for each swap with that counterparty.[236] The proposed rule required the CSEs to continue to pay or collect variation margin each business day until the swap is terminated or expires.[237]

The proposal would also set forth several control mechanisms.[238] Each CSE would be required to create and maintain documentation setting forth the variation margin methodology with sufficient specificity to allow the counterparty, the Commission, and any applicable Prudential Regulator to calculate a reasonable approximation of the margin requirement independently. Each CSE would be required to evaluate the reliability of its data sources at least annually, and to make adjustments, as appropriate. The proposal would permit

[234] Proposed § 23.155(a)(1) and current § 23.504(b)(4).

[235] Proposed § 23.155(a)(2).

[236] Proposed § 23.153(a).

[237] Proposed § 23.153(b).

[238] Proposed § 23.155(b).

the Commission to require a CSE to provide further data or analysis concerning the methodology or a data source.

2. Comments

Several commenters suggested that the Commission consider alternate methods for calculating variation margin.[239] Commenters stated that the proposal appeared to require a CSE to determine minimum variation margin requirements based on the market value of a swap calculated only from the CSE's own perspective, rather than at a mid-market price consistent with current market practice. These commenters urged that using mid-market swap values to determine variation margin would align more closely with industry practice and would not skew in favor of a CSE.[240] They also remarked that all calculations and methodologies should be available to counterparties.

Further, one commenter remarked that the requirements on the method for calculating variation margin is redundant because other Commission regulations already address variation margin calculation methodology.[241] Additionally, commenters also questioned the Commission's view of variation margin as a settlement or payment, noting for example concerns with the tax and accounting consequences.[242]

Many commenters urged the Commission to provide more time for the delivery of variation margin.[243] One commenter asked for clarification that the collection and calculation of variation margin would occur only once a day based on the closing price of the previous day.[244] Another commenter argued that the frequency of posting variation margin (*i.e.*, daily) could possibly create liquidity pressures and have pro-cyclicality effects.[245]

One commenter also suggested that CSEs should not be required to exchange variation margin with financial end users whose exposures to the CSE fall below the material swaps exposure threshold.[246]

3. Discussion

After carefully reviewing the comments, the Commission is adopting the variation margin requirement largely as proposed, but with a limited number of changes to address concerns raised by commenters with respect to the calculation and exchange of variation margin.

When a CSE engages in an uncleared swap transaction with a financial end user, regardless of whether or not the financial end user has a material swaps exposure, the final rule will require the CSE to collect and post variation margin with respect to the uncleared swap. The final rule requires a CSE to collect or to post (as applicable) variation margin on uncleared swaps in an amount that is at least equal to the increase or decrease (as applicable) in the value of such swaps since the previous exchange of variation margin.

Consistent with the proposal, a CSE may not establish a threshold amount below which it need not exchange variation margin on swaps with a swap entity or financial end user counterparty (although transfers below the minimum transfer amount would not be required).

The Commission believes the bilateral exchange of variation margin will support CSE safety and soundness as well as effectively reduce systemic risk by protecting both the CSE and its counterparty from the effects of a counterparty default.

Unlike the proposal, which used the terms ''pay'' and ''paid'' to refer to the transfer of variation margin, the final rule refers to variation margin in terms of ''post'' and ''collect.'' After carefully reviewing the comments on the proposal that addressed the appropriate characterization of the transfer of variation margin, the Commission has determined that it is more appropriate to refer to variation margin collateral as having been ''posted,'' rather than ''paid,'' consistent with the treatment of initial margin.

Among the reasons underlying the Commission's proposal to refer to variation margin in terms of payment, was the existing market practice of swap dealers to exchange variation margin with other swap dealers in the form of cash. As is discussed below in the final rule's provisions on eligible collateral, the Commission has concluded that it is appropriate to permit financial end users to use other, non-cash forms of collateral for variation margin. This revision to the nomenclature of the final rule is consistent with the Commission's inclusion of eligible non-cash collateral for variation margin.

In the context of cash variation margin, commenters also expressed concerns that the Commission's choice of the ''pay'' nomenclature reflected an underlying premise of current settlement that may be inconsistent with various operational, accounting, tax, legal, and market practices. The Commission's use of the ''post'' and ''collect'' nomenclature for the final rule is not intended to reflect upon or alter the characterization of variation margin exchanges—either as a transfer and settlement or a provisional form of collateral—for other purposes in the market.

Under the final rule, ''variation margin'' means the collateral provided by one party to its counterparty to meet the performance of its obligations under one or more uncleared swaps between the parties as a result of a change in value of such obligations since the last time such collateral was provided.[247] The amount of variation margin to be collected or posted (as appropriate) is the amount equal to the cumulative mark-to-market change in value to a CSE of an uncleared swap, as measured from the date it is entered into (or, in the case of an uncleared swap that has a positive or negative value to a CSE on the date it is entered into, such positive or negative value plus any cumulative mark-to-market change in value to the CSE of a uncleared swap after such date), less the value of all variation margin previously collected, plus the value of all variation margin previously posted with respect to such uncleared swap.[248] The CSE must collect this amount if the amount is positive, and post this amount if the amount is negative.

The Commission wishes to clarify that the reference in the rule text to the ''cumulative mark-to-market change in value to a CSE of an uncleared swap'' is not designed or intended to have the effect suggested by commenters. The market value used to determine the cumulative mark-to-market change will be mid-market prices, if that is consistent with the agreement of the parties.[249] The final rule is consistent with market practice in this respect. The rule text's reference to ''change in value to a covered swap entity'' refers to whether the value change is positive or negative from the CSE's standpoint. This ties to the final rule's requirement

[239] *See* MetLife; Sifma-AMG; Freddie; FHLB (parties should seek prices based on recently-executed transactions, valuations provided by independent third-parties or other objective criteria).

[240] These commenters argued that this approach would result in dealer exposures being over-collateralized and their counterparties' exposures being under-collateralized.

[241] *See* ISDA.

[242] *See e.g.*, ACLI.

[243] *See* JFMC; GPC; and ISDA.

[244] *See* MFA.

[245] *See* NERA.

[246] *See* ISDA.

[247] § 23.155.

[248] § 23.151.

[249] Additionally, the Commission notes that the final margin requirements should be viewed as minimums. To the extent that two counterparties agree to transfer collateral in addition to the minimum amount required by the final rule, the final rule will not impede them.

for the CSE to post variation margin when the variation margin amount is positive, or to collect variation margin when the variation margin amount is negative.

In calculating variation margin amounts, the final rule permits netting across a portfolio of uncleared swaps between the CSE and a particular counterparty, subject to a number of conditions. These provisions are discussed in more detail above.

Consistent with the proposal, the final rule requires a CSE to exchange variation margin for uncleared swaps with swap entities and financial end users (regardless of whether the financial end user has a material swaps exposure). However, as discussed earlier, the enactment of TRIPRA exempts certain nonfinancial counterparties from the scope of this rulemaking for uncleared swaps that hedge or mitigate commercial risk.[250] The Commission is not requiring that CSEs exchange variation margin with respect to the swaps that are exempted from the margin final rule by TRIPRA.

Overall, this aspect of the variation margin provisions of the final rule is consistent with the approach for initial margin. The final rule largely retains the proposed rule's requirement for variation margin to be posted or collected on a T+1 timeframe. The final rule requires variation margin to be posted or collected no less than once per business day, beginning on the business day following the day of execution. These provisions of the final rule operate in the same way as those discussed earlier in the description of the final rule's initial margin requirements.

The one difference is that all transactions with financial end user counterparties are subject to the variation margin requirements, while only financial end user counterparties with material swaps exposure are subject to initial margin requirements. The Commission believes it is appropriate to apply the minimum variation margin requirements to non-exempted transactions with all financial entity counterparties, not just those with a material swaps exposure, because the daily exchange of variation margin is an important risk mitigant that (i) reduces the build-up of risk that may ultimately pose systemic risk; (ii) does not, in aggregate, reduce the amount of liquid assets readily available to posting and collecting entities because it simply transfers resources from one entity to another; and (iii) reflects both current market practice and a risk management best practice.

The final rule in this area is consistent with that of the Prudential Regulators but is more detailed in one respect. The Commission's rule requires that variation margin calculations use methods, procedures, rules, and inputs that, to the maximum extent practicable rely on recently-executed transactions, valuations provided by independent third parties, or other objective criteria.

The Commission believes that the accurate valuation of positions is a critical element in assuring the safety and soundness of CSEs and in preserving the integrity of the financial system. The standard set forth in the Commission's rule is consistent with recently-issued international standards.[251]

G. Forms of Margin

1. Initial Margin

a. Proposal

In general, the Commission believes that margin assets should share the following fundamental characteristics. The assets should be liquid and, with haircuts, hold their value in times of financial stress. The value of the assets should not exhibit a significant correlation with the creditworthiness of the counterparty or the value of the swap portfolio.[252]

Guided by these principles, the Commission proposed that CSEs may only post or accept certain assets to meet initial margin requirements to or from covered counterparties.[253] These are assets for which there are deep and liquid markets and, therefore, assets that can be readily valued and easily liquidated.

Certain assets would be prohibited from use as initial margin because the Commission was concerned that the use of those assets could compound risk.[254] These included any asset that is an obligation of the party providing such asset or an affiliate of that party. These also include instruments issued by bank holding companies, depository institutions, and market intermediaries. These restrictions reflected the Commission's view that the price and liquidity of securities issued by the foregoing entities are very likely to come under significant pressure during a period of financial stress when a CSE may be resolving a counterparty's defaulted swap position and, therefore, present an additional source of risk.

b. Comments

Commenters generally supported the Commission's proposed asset categories or sought limited modifications. Several commenters argued in support of including other assets (such as interests in money market funds and high quality liquid debt securities) in the list of eligible collateral or allowing parties to negotiate acceptable forms of collateral.[255] Commenters who asked the Commission to consider GSE securities as eligible collateral for variation margin joined many others who opposed limiting variation margin collateral to cash only.

Commenters representing the interests of asset managers, mutual funds, and other institutional asset managers asked the Commission to expand the list of eligible collateral to include money market mutual funds and bank certificates of deposit, in the interests of providing financial end users with a higher yield than cash held by the margin custodian and more liquidity than direct holdings of government or corporate bonds. Some commenters requested that bank certificates of deposit be considered eligible collateral for margin purposes.

Commenters stated that GSE debt securities already are widely used as collateral for uncleared swaps and should continue to be eligible under the final rule given their historically low levels of volatility. A smaller number of the commenters argued that GSE mortgage-backed securities (''MBS'') also should be eligible collateral given that markets have accepted GSE MBS as liquid, high-quality securities along with other GSE debt. A number of commenters suggested that GSE debt securities and MBS should qualify as eligible collateral, regardless of whether or not the GSE is operating with capital support or another form of financial assistance from the United States.

Some commenters also questioned why the minimum haircut for debt securities of GSEs (operating without capital support or other financial assistance from the U.S.) is not lower than the minimum haircuts applicable to corporate debt. Another concern that some commenters raised is that the capital and margin rule for uncleared swaps is inconsistent in its treatment of GSE securities with the liquidity

[250] The Commission is not requiring that CSEs collect initial or variation margin from these so-called ''commercial end user'' counterparties.

[251] Risk Mitigation Standards for Non-centrally Cleared OTC Derivatives, International Organization of Securities Commissions (January 28, 2015).

[252] *See* BCBS/IOSCO Report at 16.

[253] Proposed § 23.156(a)(1).

[254] Proposed § 23.156(a)(2).

[255] *See* ICI; ISDA; CPFM; GPC; Sifma-AMG; IECA (letters of credit); Freddie; and CDEU.

coverage ratio rule that the Board, OCC, and FDIC issued in 2014.[256]

One commenter cautioned against classifying the debt securities of federal home loan banks as eligible collateral and stated that asset-backed securities issued by a U.S. Government-sponsored enterprises (''GSE'') should not be precluded from the list of eligible collateral solely because those securities are not unconditionally guaranteed by a GSE whose obligations are fully guaranteed by the U.S. government.[257] Another commenter cautioned against including equities in the list of eligible collateral because of their inherent risky nature.[258] Commenters also suggested that the Commission allow parties to model haircuts for eligible collateral.[259]

Commenters also requested that the Commission provide guidance about the rule's application to current market practice incorporating contractual provisions specifying an agreed-upon currency of settlement, transport, transit currencies and termination currencies. Additionally, commenters urged the Commission to permit any cross-currency sensitivity between the swap portfolio credit exposure and the margin collateral provided against that exposure to be measured as a component of the margin required to be exchanged under the rule.

Finally, some commenters urged the Commission to perform annual reviews of the eligible collateral categories and the haircuts.[260]

c. Discussion

With respect to initial margin, the final rule includes an expansive list of the types of collateral that is largely consistent with the list set forth in the proposal. Eligible collateral for initial margin includes immediately available cash funds denominated in any major currency or the currency of settlement, debt securities that are issued or guaranteed by the U.S. Department of Treasury or by another U.S. government agency, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, multilateral development banks, certain GSEs' debt securities, certain foreign government debt securities, certain corporate debt securities, certain listed equities, shares in certain investment funds, and gold.

The Commission is including equities as eligible collateral in the final rule, with the requirement for a minimum 15 percent haircut on equities in the S&P 500 Index and a minimum 25 percent haircut for those in the S&P 1500 Composite Index but not in the S&P 500 Index.[261] The Commission notes that, even with these restrictions designed to address liquidity and volatility, CSEs should also take concentrations into account, and prudently manage their acceptance of initial margin collateral, with the idiosyncratic risk of equity—and publicly traded debt—issuers in mind. The Commission notes that it is important to consider longer time periods incorporating periods of market stress, and the minimum haircuts are calibrated accordingly.

To accommodate the concern of certain commenters that argued for an inclusion of money market mutual funds and bank certificates of deposit in the list of eligible collateral for initial margin and to provide flexibility while maintaining a level of safety, the final rule adds redeemable securities in a pooled investment fund that holds only securities that are issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury, and cash funds denominated in U.S. dollars. To provide a parallel collateral option for uncleared swap portfolios in denominations other than U.S. dollars, the pooled investment fund may be structured to invest in pool of securities that are denominated in a common currency and issued by, or fully guaranteed as to the timely payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20 percent risk weight under applicable regulatory capital rules, and cash denominated in the same currency.

The final rule requires these pooled investment vehicles to issue redeemable securities representing the holder's proportional interest in the fund's net assets, issued and redeemed only on the basis of the fund's net assets prepared each business day after the holder makes its investment commitment or redemption request to the fund. These criteria are similar to those used for bank trust department common trust funds and common investment funds, to facilitate liquidity of the redeemable securities while still protecting holders of the fund's securities from dilution. The final rule also provides that assets of the fund may not be transferred through securities lending, securities borrowing, reverse repurchase agreements, or similar arrangements. This is to ensure consistency with the prohibition under the final rule against custodian rehypothecation of initial margin collateral.

Consistent with the proposal, the final rule generally does not include asset-backed securities (''ABS''), including MBS, within the permissible category of publicly-traded debt securities. However, ABS are included as eligible collateral if they are issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury or another U.S. government agency whose obligations are fully guaranteed by the full faith and credit of the United States government; or if they are fully guaranteed by a U.S. GSE that is operating with capital support or another form of direct financial assistance received from the U.S. government that enables repayment of the securities.

Publicly traded debt securities (that are not ABS) issued by GSEs are included in eligible collateral as long as the issuing GSE is either operating with capital support or another form of direct financial assistance received from the U.S. government that enables full repayment of principal and interest on these securities, or the CSE determines the securities are ''investment grade'' (as defined by the appropriate prudential regulator).

Although the Commission received several comments concerning the proposal's treatment of GSE securities, only modest changes have been made in the final rule. In the final rule, the Commission recognizes the unique nature of GSE securities by placing them in a category separate from both securities issued directly by U.S. government agencies and those from non-GSE, private sector issuers. However, the Commission continues to believe the final rule should treat GSE securities differently depending on whether or not the GSE enjoys explicit government support, in the interests of both the safety and soundness of CSE and the stability of the financial system.

GSE debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government. Existing law, however, authorizes the United States Treasury to provide lines of credit, up to a specified amount, to certain GSEs in the event they face specific financial difficulties. An act of Congress would be required to provide adequate support if, for example, a GSE were to experience severe difficulty in selling its securities

[256] *See* 79 FR 61439 (October 10, 2014) (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards).

[257] *See* FHLB.

[258] *See* Barnard.

[259] *See* ISDA; Sifma.

[260] As with all of its rules, the Commission will make appropriate changes if it believes it is necessary.

[261] Although equities included in the S&P 500 Index are also included in the S&P 1500 Composite Index, equities in the S&P 500 Index are subject to the 15 percent minimum haircut, not the 25 percent minimum haircut.

in financial markets because investors doubted its ability to meet its financial obligations.[262] The treatment of GSE securities by market participants as if those securities were nearly equivalent to Treasury securities in the absence of explicit Treasury support creates a potential threat to financial market stability, especially if vulnerabilities arise in markets where one or more GSEs are dominant participants, as occurred during the summer of 2008.

The final rule's differing treatment of GSE collateral based on whether or not the GSE has explicit support of the U.S. government helps address this source of potential financial instability and recognizes that securities issued by an entity explicitly supported by the U.S. government might well perform better during a crisis than those issued by an entity operating without such support. The final rule adopts the approach that was used in the proposed rule and assigns the same minimum haircut to both corporate obligations and the debt securities of GSEs that are operating without capital support or another form of financial assistance from the U.S. From the Commission's perspective, this approach facilitates appropriate due diligence when a party considers the creditworthiness of a GSE security that it may accept as collateral.

The final rule retains the 2014 proposal's provision excluding any securities issued by the counterparty or any of its affiliates. To avoid the compounding of risk, the final rule continues to exclude securities issued by a bank holding company, a savings and loan holding company, a foreign bank, a depository institution, a market intermediary, or any company that would be one of the foregoing if it were organized under the laws of the United States or any State, or an affiliate of one of the foregoing institutions. For the same reason, the Commission has expanded this restriction in the final rule also to exclude securities issued by a non-bank systemically important financial institution designated by the Financial Stability Oversight Council. These entities are financial in nature and, like banks or market intermediaries, would be expected to come under significant financial stress in the event of a period of financial stress. Accordingly, the Commission believes that it is also appropriate to restrict securities issued by these entities as eligible margin collateral to ensure that collected collateral is free from significant sources of this type of risk.

The final rule does not allow a CSE to fulfill the rule's minimum margin requirements with any assets not included in the eligible collateral list, which is comprised of assets that should remain liquid and readily marketable during times of financial stress. The use of alternative types of collateral to fulfill regulatory margin requirements would introduce concerns that the changes in the liquidity, price volatility, or other risks of collateral during a period of financial stress could exacerbate that stress) and could undermine efforts to ensure that collateral is subject to low credit, market, and liquidity risk. Therefore, the final rule limits the recognition of margin collateral to the aforementioned list of assets. Counterparties that wished to rely on assets that do not qualify as eligible collateral under the proposed rule still would be able to pledge those assets with a lender in a separate arrangement, such as collateral transformation arrangements, using the cash or other eligible collateral received from that separate arrangement to meet the minimum margin requirements.

The Commission wishes to note here that because the value of noncash collateral and foreign currency may change over time, the proposal would require a CSE to monitor the value of such collateral previously collected to satisfy initial margin requirements and, to the extent the value of such collateral has decreased, to collect additional collateral with a sufficient value to ensure that all applicable initial margin requirements remain satisfied on a daily basis.[263]

Moreover, the Commission notes that the proposal would not restrict the types of collateral that could be collected or posted to satisfy margin terms that are bilaterally negotiated above required amounts. For example, if, notwithstanding the $50 million threshold, a CSE decided to collect initial margin to protect itself against the credit risk of a particular counterparty, the CSE could accept any form of collateral.

2. Variation Margin

a. Proposal

The proposal would require that variation margin be paid in U.S. dollars, or a currency in which payment obligations under the swap are required to be settled.[264] When determining the currency in which payment obligations under the swap are required to be settled, a CSE would be required to consider the entirety of the contractual obligation. For example, in cases where a number of swaps, each potentially denominated in a different currency, are subject to a single master agreement that requires all swap cash flows to be settled in a single currency, such as the Euro, then that currency (Euro) may be considered the currency in which payment obligations are required to be settled.

Under this proposed rule, the value of cash paid to satisfy variation margin requirements is not subject to a haircut.

b. Comments

The Commission received a large number of comments arguing for the broadening of the list of eligible collateral for variation margin to include noncash assets.[265] These commenters generally argued that limiting variation margin to cash is inconsistent with current market practice for financial end users, is incompatible with the 2013 international framework agreement, and would drain the liquidity of these financial end users by forcing them to hold more cash. The same commenters suggested including securities such as U.S. Treasuries or other government bonds.

While some commenters representing public interest groups favored limiting variation margin exchanged between CSEs to cash, some commenters representing the financial sector expressed concern that regulators in other key market jurisdictions have not proposed comparable variation margin restrictions. Commenters also asked the Commission to consider GSE securities as eligible collateral for variation margin.

One commenter asked for clarification on whether a haircut applies if variation margin is paid in the currency in which the swap is denominated.[266] Another commenter asked for confirmation that a cash payment of variation margin would not be subject to any haircuts.[267] One commenter also proposed that the Commission grant the counterparties the flexibility to specify a base currency in their counterparty agreements on a case-by-case basis.[268]

[262] Congress provided such support with the passage of the Agricultural Credit Act of 1987 and with the Housing and Economic Recovery Act of 2008.

[263] Proposed § 23.156(a)(4).

[264] Proposed § 23.156(b).

[265] *See* ICI; JFMC; ISDA; CCRM; CPFM; Sifma; MetLife; GPC; Sifma-AMG; ABA; JBA; AIMA; MFA; FSR; Freddie; CDEU; FHLB; ACLI; NERA; and TIAA–CREF. However, commenters representing public interest groups generally favored the proposed approach.

[266] *See* JBA.

[267] *See* ISDA.

[268] *See* CPFM.

c. Discussion

With respect to variation margin, the proposal would have limited eligible collateral to immediately available cash funds, denominated either in U.S. dollars or in the currency in which payment obligations under the uncleared swap are required to be settled. However, after reviewing comments from financial end users of derivatives, such as insurance companies, mutual funds, and pension funds, the Commission has expanded the list of eligible variation margin for uncleared swaps between a CSE and financial end users. These commenters generally argued that limiting variation margin to cash is inconsistent with current market practice for financial end users; is incompatible with the 2013 international framework agreement; and would drain the liquidity of these financial end users by forcing them to hold more cash. In response to these comments, the final rule permits assets that are eligible as initial margin to also be eligible as variation margin for swap transactions between a CSE and financial end user, subject to the applicable haircuts for each type of eligible collateral.

This change aligns the rule more closely with current market practice. Commenters indicated many types of financial end users exchange variation margin with their swap dealers in the form of non-cash collateral that consists of their investment assets. This practice permits them to maximize their investment income and minimize margin costs, even though these assets are subject to valuation haircuts when posted as variation margin.

The Commission notes however (as described in the 2014 proposal) that most of the variation margin by total volume continues to be in the form of cash exchanged between SDs. Therefore, consistent with the proposal, variation margin exchanged by a CSE with another swap entity must be in the form of immediately available cash. The Commission continues to believe that limiting variation margin exchanged between a CSE and a swap entity to cash is consistent with regulatory and industry initiatives to improve standardization and efficiency in the OTC swaps market. Swap entities have access to cash, and its continued use as variation margin between swap entities will reduce the potential for disputes over the value of variation margin collateral, due to the absence of associated market and credit risks. Also, in periods of severe market stress, the ultimate liquidity of cash variation margin exchanged between CSEs—which occupy a key position to provide and maintain trading liquidity in the market for uncleared swaps—should assist in preserving the financial integrity of that market and the stability of the U.S. financial system.

However, for reasons discussed below, the Commission is revising the final rule to expand the denominations of immediately available cash funds that are eligible. Whereas the proposal only recognized U.S. dollars or the currency of settlement, the final rule expands the category to include any major currency.[269]

3. Currency of Settlement, Collateral Valuation, and Haircuts

For those assets whose values may show volatility during times of stress, the final rule imposes an 8 percent cross-currency haircut, and standardized prudential supervisory haircuts that vary by asset class. When determining how much collateral will be necessary to satisfy the minimum initial margin requirement for a particular transaction, a CSE must apply the relevant standardized prudential supervisory haircut to the value of the eligible collateral. The final rule's haircuts guard against the possibility that the value of non-cash eligible margin collateral could decline during the period between when a counterparty defaults and when the CSE closes out that counterparty's swap positions.

The Commission has revised the cross-currency haircut applicable to eligible collateral under the final rule. The cross-currency haircut will apply whenever the eligible collateral posted (as either variation or initial margin) is denominated in a currency other than the currency of settlement, except that variation margin in immediately available cash funds in any major currency is never subject to the haircut. The amount of the cross-currency haircut remains 8 percent, as it was in the proposal.

The Commission has decided to eliminate the haircut on variation margin provided in immediately available cash funds denominated in all major currencies because the cash funds are liquid at the point of counterparty default, and there are deep and liquid markets in the major currencies that allow conversion or hedging to the currency of settlement or termination at relatively low cost. The Commission is including in the final rule the cross-currency haircut for all eligible noncash variation and initial margin collateral, in consideration of the limitations on market liquidity that can frequently arise on those assets in periods of market stress.

In response to commenters' request for clarification, the Commission has revised the final rule text for the cross-currency haircut to refer to the ''currency of settlement,'' and have eliminated the corresponding formulation offered for comment in the proposal.[270] Commenters requested that the Commission provide guidance about the rule's application to current market practice incorporating contractual provisions specifying an agreed-upon currency of settlement, transport currencies and transit, and termination currencies.[271]

In identifying the ''currency of settlement'' for purposes of this final rule, the Commission will look to the contractual and operational practice of the parties in liquidating their periodic settlement obligations for an uncleared swap in the ordinary course, absent a default by either party. To provide greater clarity, the Commission has added a new definition of ''currency of settlement'' to the rule. The Commission has defined ''currency of settlement'' to mean a currency in which a party has agreed to discharge payment obligations related to an uncleared swap or a group of uncleared swaps subject to a master agreement at the regularly occurring dates on which such payments are due in the ordinary course.

For eligible non-cash initial margin collateral, the final rule expressly carves out of the cross-currency haircut assets denominated in a single termination currency designated as payable to the non-posting counterparty as part of the eligible master netting agreement. The final rule accommodates agreements under which each party has a different termination currency. If the non-posting counterparty has the option to select among more than one termination currency as part of the agreed-upon termination and close-out process, the agreement does not meet the final rule's single termination currency condition. However, the single termination currency condition does not rule out an

[269] The final rule defines the following as a ''major currency'': United States Dollar (USD); Canadian Dollar (CAD); Euro (EUR); United Kingdom Pound (GBP); Japanese Yen (JPY); Swiss Franc (CHF); New Zealand Dollar (NZD); Australian Dollar (AUD); Swedish Kronor (SEK); Danish Kroner (DKK); Norwegian Krone (NOK); and any other currency as determined by a Prudential Regulator or the Commission.

[270] The 2014 proposal was formulated as ''the currency in which payment obligations under the swap are required to be settled.'' Proposed Rule, § 23.156(a)(1)(iii).

[271] The guidance the Commission is providing about currencies of settlement is specific to the application of this final rule on margin collecting and posting requirements for uncleared swaps.

eligible master netting agreement establishing more than one discrete netting set and establishing separate margining and early termination provisions for such a select netting set with its own single termination currency.[272]

As an alternative to the 8 percent cross-currency haircut, commenters urged the Commission to permit any cross-currency sensitivity between the swap portfolio credit exposure and the margin collateral provided against that exposure to be measured as a component of the margin required to be exchanged under the rule. The Commission is concerned this alternative presupposes the CSE's certain knowledge, at the time margin amounts must be determined, of the collateral denomination to be posted by the counterparty in response to the margin call and the denomination of future settlement payments. The likelihood of such information being predictably available to the CSE does not square with commenters' depiction of the amount of optionality exercised with respect to these factors by swap market participants in current market practice.

The 8 percent foreign currency haircut—to the extent it arises in application of the final rule—is additive to the final rule's standardized prudential supervisory haircuts that vary by asset class. These haircuts are unchanged from the proposal. They have been calibrated to be broadly consistent with valuation changes observed during periods of financial stress, as noted above.

Although commenters suggested that the Commission permit CSEs to determine haircuts through the firm's internal models, the Commission believes the simpler and more transparent approach of the standardized haircuts is adequate to establish appropriately conservative discounts on eligible collateral. The final rule permits initial margin calculations to be performed using an initial margin model in recognition of the fact that swaps and swap portfolios are characterized by a number of complex and inter-related risks that depend on the specifics of the swap and swap portfolio composition and are difficult to quantify in a simple, transparent and cost-effective manner. The exercise of establishing appropriate haircuts based on asset class of eligible collateral across long exposure periods is much simpler as the risk associated with a position in any particular margin eligible asset can be reasonably and transparently determined with readily available data and risk measurement methods that are widely accepted.

Finally, because the value of collateral may change, a CSE must monitor the value and quality of collateral previously collected or posted to satisfy minimum initial margin requirements. If the value of such collateral has decreased, or if the quality of the collateral has deteriorated so that it no longer qualifies as eligible collateral, the CSE must collect or post additional collateral of sufficient value and quality to ensure that all applicable minimum margin requirements remain satisfied on a daily basis.

4. Other Collateral

Consistent with the proposal, § 23.156(a)(5) of the final rule states that CSE may collect or post initial margin that is not required pursuant to the rule in any form of collateral.

The Dodd-Frank Act provides that in prescribing margin requirements, the Commission shall permit the use of noncash collateral, as the Commission determines to be consistent with (1) preserving the financial integrity of markets trading swaps; and (2) preserving the stability of the United States financial system. The Commission believes that the eligibility of certain non-cash collateral, subject to the conditions and restrictions contained in the final rule, is consistent with the Dodd-Frank Act, because the use of such non-cash collateral is consistent with preserving the financial integrity of markets by trading swaps and preserving the stability of the United States financial system. The non-cash collateral permitted is highly liquid and resilient in times of stress and the rule does not permit collateral exhibiting other significant risk. The use of different types of eligible collateral pursuant to the requirements of the final rule should also incrementally increase liquidity in the financial system.

H. Custodial Arrangements

1. Proposal

Under the proposal, each CSE that posts initial margin with respect to an uncleared swap would be mandated to require that all funds or other property that it provided as initial margin be held by one or more custodians that are not the CSE or the counterparty or are not affiliates of the CSE or the counterparty. Each CSE that collects initial margin with respect to an uncleared swap would be mandated to require that required initial margin be held at one or more custodians that are not the CSE or the counterparty or are not affiliates of the CSE or the counterparty.

Each CSE would be required to enter into custodial agreements containing specified terms. These would include a prohibition on rehypothecating the margin assets and standards for the substitution of assets.

The Commission previously adopted rules implementing section 4s(l) of the Act.[273] The Commission proposed to amend those rules to reflect the approach set out in the proposal where segregation of initial margin would be mandatory under certain circumstances.

2. Comments

The Commission received several comments regarding custody of margin collateral.

Several commenters that operate as custodian banks requested clarification whether the final rule's prohibition against the custodian rehypothecating, repledging, reusing or otherwise transferring initial margin funds or property means that a custodian bank is not permitted to accept cash funds that it holds pursuant to § 23.157 as a general deposit, and use such funds as it would any other funds placed on deposit with it.[274]

Under § 23.156, eligible collateral for initial margin includes ''immediately available cash funds'' that are denominated in a major currency or the currency of settlement for the uncleared swap. It is not practical for cash funds to be held by a custodian as currency that remains the property of the posting party with a security interest being granted to its counterparty, *e.g.*, by placing such currency in a safety deposit box or in the custodian's vault. Rather, the custodian banks explained in their joint comment letter that, under their current business practices, when a customer provides them with cash funds to hold as a custodian, the custodian bank accepts the funds as a general deposit, with the cash becoming property of the custodian bank and the customer holding a contractual debt obligation, *i.e.*, a general deposit account, of the custodian bank.[275]

When holding cash under the arrangement described by the custodian bank commenters, a custodian is not a custodian of a discrete asset but rather a recipient of cash under a contractual arrangement that establishes a debt

[272] As discussed above, the final rule permits discrete netting sets under a single eligible master netting agreement, subject to conditions specified in §§ 23.152(c) and 23.153(c).

[273] Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy, 78 FR 66621 (Nov. 6, 2013).

[274] State Street; SIFMA; ABA, Sifma-AMG.

[275] State Street.

obligation to be paid on demand, *i.e.*, the custodian is acting as a bank. When such a customer has pledged cash funds as collateral under the arrangements described by the commenters, the commenter's property interest is the deposit account liability that the custodian bank owes to the customer.

Several commenters supported the requirement that initial margin be held at a third party custodian that was not affiliated with either the CSE or its counterparty.[276] Other commenters contended that the independent third-party custodian requirement is unnecessary and the Commission should allow for more flexibility in how initial margin is kept, including permitting the counterparties to negotiate acceptable custodians, including affiliated custodians.[277] These commenters expressed concern about complexities that additional parties bring to the relationship, as well as reservations about the capacity and availability of established custodians in the marketplace. One commenter argued against independent third-party custodians, citing increased costs arising from the negotiation of custodial contracts and the cost of developing operational infrastructure, as it is not the current practice for certain financial entities.[278]

Commenters also expressed concerns with meeting the proposal's requirement that the custodial agreement be legal, valid, binding, and enforceable under the laws of all relevant jurisdictions, including asking the Commission to specify that the only relevant jurisdiction is that of the custodian.[279] The same commenters urged more flexibility in custodial agreements to be consistent with current market practice. Another commenter noted that custodians should not be excluded solely because they are affiliates of either the CSE or the counterparty since the number of custodians is limited and many of the largest custodians are affiliates of CSEs.[280] The same commenter also argued that CSEs should not be required to segregate initial margin that is not subject to mandatory posting or collection.

Several commenters recommended lifting the restriction on rehypothecation and reuse of initial margin collateral, either generally or on a conditional basis.[281] One commenter recommended that the final rule allow limited rehypothecation that would meet the requirements of the 2013 international framework if a model for such rehypothecation could be developed for use by counterparties. The commenter also noted that other regulators may permit rehypothecation and, if so, a prohibition would create a competitive disadvantage for market participants subject to the Commission's rule. Other commenters supported the restriction on rehypothecation and reuse.[282] Two commenters argued that the prohibition on rehypothecation and reuse of initial margin should not restrict the custodian's ability to accept cash collateral, as cash collateral would be reinvested in the custodian's account.[283]

Several commenters requested that the final rule allow greater flexibility in segregation arrangements. These commenters requested that the final rule permit arrangements such as title transfer and charge-back of margin, segregation of margin on the books of the CSE or within an affiliate if such collateral is insulated from the CSE's insolvency.

One commenter requested that the final rule clarify that the required custodian arrangements be tri-party, *i.e.*, entered into pursuant to an agreement between the CSE, its counterparty, and the custodian.[284] The commenter wrote that if a CSE's counterparty is not a party to the custodial agreement, it would not be in contractual privity with the unaffiliated custodian, and the CSE essentially would exercise exclusive control over its counterparty' initial margin.

3. Discussion

a. Initial Margin

The final rule establishes minimum standards for the safekeeping of collateral. Section 23.157(a) addresses requirements for when a CSE posts any collateral other than variation margin. Posting collateral to a counterparty exposes a CSE to risks in recovering such collateral in the event of its counterparty's insolvency. To address these risk and to protect the safety and soundness of the CSE, § 23.157(a) requires a CSE that posts any collateral required under the final rule other than variation margin with respect to a uncleared swap to require that such collateral be held by one or more custodians that are neither the CSE, its counterparty, or an affiliates of either counterparty. This requirement applies to initial margin posted by a CSE pursuant to § 23.152.

Section 23.157(b) addresses requirements for when a CSE collects initial margin required by § 23.152. Under § 23.157(b), the CSE shall require that initial margin collateral collected pursuant to § 23.152 be held at one or more custodians that are neither the CSE, its counterparty, or an affiliate of either counterparty. As is the case with initial margin that a CSE posts, the § 23.157(b) applies only to initial margin that a CSE collects as required by § 23.154, rather than all collateral collected.

For collateral subject to § 23.157(a) or § 23.157(b), § 23.157(c) requires the custodian to act pursuant to a custodial agreement that is legal, valid, binding, and enforceable under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or similar proceedings. Such a custodial agreement must prohibit the custodian from rehypothecating, repledging, reusing or otherwise transferring (through securities lending, repurchase agreement, reverse repurchase agreement, or other means) the funds or other property held by the custodian. Cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase other forms of eligible collateral, such eligible noncash collateral is segregated pursuant to § 23.157, and such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin.[285]

In response to the comments, the Commission notes that the ultimate purpose of the custody agreement is twofold: (1) That the initial margin be available to a counterparty when its counterparty defaults and a loss is realized that exceeds the amount of variation margin that has been collected as of the time of default; and (2) initial margin be returned to the posting party after its swap obligations have been fully discharged.

[276] *See* State Street; ICI (in addition to urging the Commission to require mandatory segregation for excess margin amounts); AFR; and Public Citizen.

[277] *See* ISDA; Sifma; GPC; Sifma-AMG; ABA; JBA; MFA; JFMC.

[278] *See* GPC.

[279] *See* BP; Shell; TRM; GPC; ISDA (asking for clarification of the enforceability requirements, including whether the enforceability in bankruptcy provisions refer to the bankruptcy of the CSE or the counterparty); Sifma-AMG (contending that the Commission instead adopt disclosure instead of enforceability requirements).

[280] *See* ISDA.

[281] *See* CPFM; CCMR; IFM; ISDA; Sifma; ABA; CS; and FSR.

[282] *See* ICI; Sifma-AMG; GPC; PublicCitizen; and AFR.

[283] *See* Sifma-AMG and MetLife.

[284] MFA.

[285] As described earlier, collateral other than certain forms of cash is subject to a haircut. As a result, when cash collateral is used to purchase other forms of eligible collateral, a haircut will need to be applied.

The jurisdiction of the custodian is certainly one of the relevant jurisdictions. Thus, a CSE must conduct sufficient legal review to conclude with a well-founded basis and maintain sufficient written documentation of that legal review that in the event of a legal challenge, including one resulting from default or from receivership, conservatorship, insolvency, liquidation, or similar proceedings of the custodian, the relevant court or administrative authorities would find the custodial agreement to be legal, valid, binding, and enforceable under the law applicable to the custodian. A CSE would also be expected to establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to be legal, valid, binding, and enforceable under that law.

The jurisdiction of a CSE's counterparty, however, is also a relevant jurisdiction. The CSE would have to ensure that if a counterparty were to become insolvent, or otherwise be placed under the control of a resolution authority, that there would not be a legal basis to set aside the custodial arrangement, allowing the resolution authority to reclaim for the estate assets that the counterparty had placed with the custodian. Thus, the CSE would have to conduct a sufficient legal review to conclude with a well-founded basis that in the event of a legal challenge, including one resulting from default or from receivership, conservatorship, insolvency, liquidation, or similar proceedings of the counterparty, the relevant court or administrative authorities would find the custodial agreement to be legal, valid, binding, and enforceable by the CSE under the law applicable to the counterparty. For this reason, the Commission declines to follow the commenters' request that the Commission clarify that the only relevant jurisdiction is that of the custodian.

Under § 23.156, eligible collateral for initial margin includes ''immediately available cash funds'' that are denominated in a major currency or the currency of settlement for the uncleared swap. However, permitting initial margin collateral to be held in the form of a deposit liability of the custodian bank is inconsistent with the final rule's prohibition against rehypothecation of such collateral. In addition, employing a deposit liability of the custodian bank—or another depository institution—is inconsistent with the final rule's prohibition against use of obligations issued by a financial firm.

On the other hand, as a practical matter, it is very difficult to eliminate cash entirely. For example, the final rule's T+1 margin collection requirement means that it will often be necessary to use cash to cover the first days of a margin call. In addition, income generated by non-cash assets in custody will be paid in cash. Collateral reinvestments involving replacement of one category of non-cash asset with another category of non-cash asset may create cash balances between settlements. While the parties all have strong business incentives to manage and limit these cash fund balances, eliminating them entirely would result in a number of inefficiencies.

To address these concerns, the Commission has revised the final rule to allow cash funds that are placed with a custodian bank in return for a general deposit obligation to serve as eligible initial margin collateral only in specified circumstances. However, the rule requires the posting party to direct the custodian to reinvest the deposited funds into eligible non-cash collateral of some type, or the posting party to deliver eligible non-cash collateral to substitute for the deposited funds. As noted above, the appropriate haircut must be applied. This reinvestment must occur within a reasonable period of time after the initial placement of cash collateral to satisfy the initial margin requirement, and the amount of eligible collateral must be sufficient to cover the initial margin amount in light of the applicable haircut on the non-cash collateral pursuant to the final rule.

CSEs must appropriately oversee their own initial margin collateral posting and that of their counterparties in order to constrain the use of cash funds, and achieve efficient reinvestment of cash funds in excess of operational and liquidity needs into eligible margin securities. In connection with implementing the final rule, CSEs should ensure these procedures are adequate to assess the levels of cash necessary under the circumstances of each counterparty relationship, and to ensure the custodian will be directed to reinvest the remainder in non-cash collateral promptly, or that the posting party will substitute non-cash assets promptly, as applicable.

Section 23.157(c)(2) provides that, notwithstanding this prohibition on rehypothecating, repledging, reusing or otherwise transferring the funds or property held by the custodian, the posting party may substitute or direct any reinvestment of collateral, including, under certain conditions, collateral collected pursuant to § 23.152(a) or posted pursuant to § 23.152(b).

In particular, for initial margin collected pursuant to § 23.152(a) or posted pursuant to § 23.152(b), the posting party may substitute only funds or other property that meet the requirements for eligible collateral under § 23.156 and where the amount net of applicable haircuts described in § 23.156 would be sufficient to meet the initial margin requirements of § 23.152. The posting party also may direct the custodian to reinvest funds only in assets that would qualify as eligible collateral under § 23.156 and ensure that the amount net of applicable haircuts described in § 23.156 would be sufficient to meet the initial margin requirements of § 23.152. In the cases of both substitution and reinvestment, the final rule requires the CSE to ensure that the value of eligible collateral net of haircuts that is collected or posted remains equal to or above the minimum requirements.

In the cases of both substitution and reinvestment, the final rule requires the posting party to ensure that the value of eligible collateral net of haircuts remains equal to or above the minimum requirements contained in § 23.152. In addition, the restrictions on the substitution of collateral described above do not apply to cases where a CSE has posted or collected more initial margin than is required under § 23.152. In such cases, the initial margin that has been posted or collected in satisfaction of § 23.152 is subject to the restrictions on collateral substitution but any additional collateral that has been posted or collected is not subject to the restrictions on collateral substitution and, as noted above, is not subject to any of the requirements of § 23.157.

The Commission is adopting the segregation requirement in this rule to help ensure the safety and soundness of CSEs subject to the rule and to offset the greater risk to the financial system arising from the use of uncleared swaps. The Commission has retained the requirement that the custodian be unaffiliated with either the CSE or its counterparty. In adopting this requirement, the Commission is more concerned that customer confidence in a particular CSE could be correlated with customer confidence in the affiliated custodian, especially in times of high market stress, whereas the use of independent custodians should offer counterparties a greater measure of confidence. Thus, the Commission believes that it is necessary for the safety and soundness of CSE and to minimize risk to the financial system that collateral be held by a custodian that is neither a counterparty to the swap nor an affiliate of either

counterparty. This arrangement protects both counterparties from the risk of the initial margin being held as part of one counterparty's estate (or its affiliate's estate) in the event of failure, and therefore not available to the other counterparty.

The Commission does not believe that the alternative arrangements suggested by the commenters (*e.g.,* arrangements involving title transfer and charge back of margin) adequately ensure the safety and soundness of the CSE nor adequately offset the risk to the financial system arising from the use of uncleared swaps. In addition, the Commission believes the specific structure of the custody arrangements required by the rule are better left, on balance, to negotiations of the parties, in accordance with the specific concerns of those parties. Tri-party custody may be an optimal arrangement for some firms, while for others, it has not typically been sought under established market practice.

Further, the Commission is declining to revise the proposed regulation to accommodate rehypothecation pursuant to some future model that may be developed. Commenters who argued for allowing limited rehypothecation did not propose a specific model, and hence the Commission is not inclined to permit rehypothecation at this time due to hypothetical scenarios that may or may not develop in the future.

b. Variation Margin

Section 23.157 does not require collateral that is collected or posted as variation margin to be held by a third party custodian or subject such collateral to restrictions on rehypothecation, repledging, or reuse. So, subject to negotiations between the counterparties, a CSE that is a depository institution could collect cash posted to it in satisfaction of section 23.153 from a counterparty without establishing a separate account for the counterparty. The cash funds would be the property of the CSE, which would be permitted to reuse such funds without restriction. Similarly, a CSE's counterparty would not be required to segregate cash funds posted as variation margin by the CSE. The same is true with respect to eligible non-cash collateral exchanged as variation margin with a financial end user pursuant to § 23.156; the segregation and custody requirements of § 23.157 do not apply.

Section 23.156(b) of the final rule permits eligible non-cash collateral to be posted as variation margin for swaps between a CSE and a financial end user. In such circumstances, a CSE or its financial end user counterparty could reach an agreement under which either party could itself hold non-cash collateral posted by the other and such non-cash collateral could be rehypothecated, repledged, or reused.

The final rules in this area are consistent with those of the Prudential Regulators.

I. Documentation

1. Proposal

The proposal sets forth documentation requirements for CSEs.[286] For uncleared swaps between a CSE and a counterparty that is a swap entity or a financial end user, the documentation would be required to provide the CSE with the contractual right and obligation to exchange initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by § 23.150 through § 23.161 of this part. For uncleared swaps between a CSE and a non-financial end user, the documentation would be required to specify whether initial and/or variation margin will be exchanged and, if so, to include the information set forth in the rule. That information would include the methodology and data sources to be used to value positions and to calculate initial margin and variation margin, dispute resolution procedures, and any margin thresholds.

The Commission proposal contains a cross-reference to an existing Commission rule which already imposes documentation requirements on SDs and MSPs.[287] Consistent with that rule, the proposal would apply documentation requirements not only to covered counterparties but also to non-financial end users. Having comprehensive documentation in advance concerning these matters would allow each party to a swap to manage its risks more effectively throughout the life of the swap and to avoid disputes regarding issues such as valuation during times of financial turmoil. This would benefit not only the CSE but the non-financial end user as well.

2. Comments

The Commission received several comments regarding documentation. Commenters sought clarification over aspects of the documentation requirement.[288] One commenter contended that the documentation standards are too burdensome since initial margin methodologies may be proprietary and complex while the other Commission regulations already address documentation standards for valuations.[289] Another commenter argued that it would be difficult to comply with the documentation standards with respect to valuations, and noting that valuation standards are already addressed in other Commission regulations.[290] Commenters remarked that non-financial end users should not be subject to the documentation requirement.[291]

3. Discussion

The Commission is adopting the documentation requirements substantially as proposed, with one exception for non-financial end users. The Commission has removed the documentation requirements with respect to non-financial end users. To the extent that other aspects of the Commission's regulations address similar requirements, the Commission believes that counterparties should be well-positioned to comply with the documentation requirements and should reduce any additional burdens in implementing this requirement.

Under the final rule, the documentation must grant the CSE the contractual right to collect and to impose the obligation to post initial and variation margin in such amounts, in such form, and under such circumstances as are required by the rule. The documentation must also specify the methods, procedures, rules, and inputs for determining the value of each uncleared swap and the procedures by which any disputes concerning the valuation of uncleared swaps may be resolved. Finally, the documentation must also describe the methods, procedures, rules, and inputs used to calculate initial and variation

[286] Proposed § 23.158.

[287] Commission Regulation 23.504.

[288] *See* Sifma (the Commission should clarify the dispute resolution and documentation provisions to indicate that (i) the a CSE would not violate its obligations if it releases margin collateral to a counterparty at the conclusion of a dispute mechanism consistent with the U.S. implementation of Basel; and (ii) the parties would not be required to lock in dispute valuation methods); JBA (seeking clarification on the level of documentation and recommending that the documentation required take into account the composition and size of derivative portfolios); ACLI (documentation requirements should be clarified and harmonized with the requirements from the Prudential Regulators and the SEC); and FHLB (the final rule should require CSEs to have documentation that provides for resolution of disputes regarding the calculation of variation and initial margin and the value of collateral collected or posted).

[289] *See* ISDA.

[290] *See* Freddie.

[291] *See* CDEU (non-financial end users are already subject to documentation requirements in other Commission regulations); and COPE (noting that it is market practice for non-financial end users to use ISDAs); BP; Joint Associations.

margin for uncleared swaps entered into between the CSE and the counterparty.

J. Inter-Affiliate Trades

1. Proposal

The proposal effectively would have required two-way initial margin and variation margin for swaps between CSEs and affiliates that were swap entities or financial end users. The Prudential Regulators' proposal set forth the same requirements.

2. Comments

Many commenters urged the Commission to exclude swaps between affiliates from margin requirements.[292] Commenters generally argued that inter-affiliate swaps are already centrally risk managed and requiring margin on inter-affiliate trades could discourage effective risk management [293] and the current practice of exchanging variation margin should be sufficient to mitigate the risk posed by inter-affiliate trades.[294] They argued that requiring margin generally, and initial margin in particular, on inter-affiliate swaps was unnecessary for systemic stability. They further argued that imposing margin requirements on inter-affiliate swaps would impose significant costs,[295] tie up liquidity,[296] be inconsistent with the approach taken in a number of other jurisdictions,[297] and introduce group-wide third-party credit risk.[298] Sifma also argued that inter-affiliate swaps should not count towards the margin thresholds and a covered swap entity's material swaps exposure. Another commenter suggested that the Commission conduct a study prior to imposing margin on inter-affiliate trades.[299]

Commenters also suggested alternatives to a full two-way collect-and-post regime for initial margin for affiliate swaps. For example, some commenters proposed that instead of each CSE posting and collecting segregated initial margin to and from its affiliate, the CSE would only collect from its affiliate (subject to a wholly owned subsidiary exemption and a de minimis exemption) and the CSE would be permitted to segregate the initial margin within its group, so as to prevent undue third-party custodial risk.[300] Some suggested a CSE would only collect from an affiliate that is not subject to margin and capital requirements.[301] These commenters further argued that certain highly regulated affiliates like U.S. bank holding companies should benefit from an exception to initial margin requirements.[302] Some commenters also suggested an alternative where the Commission would permit the common parent of an affiliate pair to post a single amount of segregated initial margin in which each affiliate would have a security interest.[303]

3. Discussion

The Commission has determined a CSE shall not be required to collect initial margin from a margin affiliate provided that the CSE meets the following conditions: (i) The swaps are subject to a centralized risk management program that is reasonably designed to monitor and to manage the risks associated with the inter-affiliate swaps; and (ii) the CSE exchanges variation margin with the margin affiliate. These two conditions are consistent with recommendations from commenters. They are similar to conditions that were previously established by the Commission when providing an exemption from the clearing requirement for certain inter-affiliate swaps.[304]

The Commission has determined, however, to require CSEs to collect initial margin from non-U.S. affiliates that are financial end users that are not subject to comparable initial margin collection requirements on their own outward-facing swaps with financial end users. For many of the reasons listed by the commenters, as well as in light of the treatment of inter-affiliate swaps by the prudential regulators, the Commission has determined not to otherwise require CSEs to collect initial margin from, or to post initial margin to, affiliates that are CSEs or financial end users. (As discussed below, pursuant to the Prudential Regulators' rules, CSEs would be required to post initial margin to affiliates that are swap entities subject to those rules.)

The Commission first notes that the Prudential Regulators decided not to impose a general two-way initial margin requirement. Instead, the Prudential Regulators have required swap entities subject to their rules to collect initial margin from affiliates that are swap entities or financial end users. Thus, if a CSE enters into a swap with a swap entity subject to the Prudential Regulators' rules, the CSE will post initial margin but will not collect initial margin for the transaction.

The Commission considered the comments that inter-affiliate swaps do not increase the overall risk profile or leverage of the group. The Commission further considered the fact that inter-affiliate two-way margin would substantially increase the overall amount of margin being collected, and thus the cost of swap transactions generally, without a commensurate benefit to risk reduction to the overall group. The Commission notes that considering the risk exposure of the overall group of which a CSE is a part is consistent with the approach taken in its margin rules (and the Prudential Regulators' rules) in other key areas—as in the calculation of material swaps exposure to determine overall swaps exposure and the calculation of the initial margin threshold amount to determine whether there is an obligation to collect or post initial margin.

Second, the Commission notes that the treatment of inter-affiliate transactions is related to what the Commission did when it adopted an exemption to the clearing mandate for inter-affiliate transactions in 2013. In that rulemaking, it considered, but decided against, requiring the exchange of initial margin or variation margin as a condition to using the exemption. It stated that such requirements ''would limit the ability of U.S. companies to efficiently allocate risk among affiliates and manage risk centrally.'' [305]

Third, the Commission considered the decision of the Prudential Regulators' not to impose two-way initial margin and impose a collect only obligation instead. If the Commission were to impose two-way margin, it would be inconsistent with the Prudential Regulators' rule. The Commission further considered whether to impose a collect-only obligation. However, this would result in a two-way requirement in transactions between a swap dealer subject to the Prudential Regulators'

[292] *See* ISDA, JFMC; Sifma, ABA, JBA, CS, Shell TRM (if inter-affiliate transactions are subject to margin requirements, the Commission should define the term ''affiliate'' consistently with other Commission regulations); BP; and FSR. Sifma suggested excluding inter-affiliate swaps from margin requirements if the swaps are subject to a group-wide consolidated risk management program and the exchange of variation margin, and the CSE is part of a group that is subject to consolidated capital requirements consistent with Basel. JBA argued that the risks posed by inter-affiliate trades are generally lower and pointed out the difficulties associated with entering into a CSA with all covered counterparties within a limited timeframe.

[293] *See* Sifma, JBA, ABA, TCH, and CS.

[294] *See* ISDA, Sifma, and CS.

[295] *See* ISDA, Sifma, ABA, and TCH.

[296] *See* ISDA, ABA, TCH, and CS.

[297] *See* ISDA.

[298] *See* ISDA, ABA, TCH, and CS.

[299] *See FSR.*

[300] *See* The Clearing House.

[301] Id.

[302] *See* ISDA.

[303] *See* The Clearing House.

[304] *See* § 50.52.

[305] Clearing Exemption for Swaps between Certain Affiliated Entities, 78 FR 21750 at 21760 (April 11, 2013).

rules and a CSE, a result which the Prudential Regulators determined not to impose. In addition, the Commission considered the difference in mission and overall regulatory framework between the Prudential Regulators and the Commission. For example, the Commission notes that the imposition of a collect only initial margin requirement on swap entities subject to the Prudential Regulators' rules is similar to existing requirements of law, in that banks are subject to significant regulatory restrictions and requirements on inter-affiliate transactions under Sections 23A and 23B of the Federal Reserve Act. The same cannot be said of a collect-only requirement imposed on CSEs, since the restrictions under Sections 23A and 23B do not apply to nonbank affiliates such as CSEs.

For purposes of symmetry, however, the Commission has determined to require a CSE that enters into an inter-affiliate swap with a swap entity that is subject to the rules of the Prudential Regulators to post initial margin with that swap entity in an amount equal to the amount that the swap entity is required to collect under the rules of the Prudential Regulators. This provision imposes no additional burden on the CSE because the other swap entity would be required to collect the initial margin in any case. This provision simply means that a CSE will be required under CFTC rules to post initial margin to the extent that the other swap entity is required under Prudential Regulator rules to collect it.

The Commission also considered its objective of harmonizing its margin rules as much as possible with international standards. The BCBS standards, for example, state that the exchange of initial and variation margin by affiliated parties ''is not customary'' and that initial margin in particular ''would likely create additional liquidity demands.'' [306] The Commission recognized that requiring the posting and collection of initial margin for inter-affiliate swaps would be likely to put CSEs at a competitive disadvantage to firms in other jurisdictions. The Commission understands that many authorities, such as those in Europe and Japan, are not expected to require initial margin for inter-affiliate swaps. These savings could enable such firms to offer swaps to third parties on better terms than firms that incur the costs of inter-affiliate initial margin.

The Commission has determined, however, to require CSEs to exchange variation margin with affiliates that are swap entities or financial end users, as is also required under the Prudential Regulators' rules. Marking open positions to market each day and requiring the posting or collection of variation margin will reduce the risks of inter-affiliate swaps.

As noted above, CSEs will be required to collect initial margin from non-U.S. affiliates that are not subject to comparable initial margin collection requirements on their own outward-facing swaps with financial entities. These affiliates generally would include entities located in jurisdictions for which substituted compliance has not been granted with regard to the collection of initial margin. This requirement would also apply in the case of a series of transactions involving, directly or indirectly, an affiliate that is not subject to comparable initial margin collection requirements. That is, even if the CSE is only in privity of contract with an affiliate who is subject to such requirements, but that affiliate, directly or indirectly, is transacting with another affiliate who is not subject to such requirements, the CSE would be required to collect initial margin.

This provision is an important anti-evasion measure. It is designed to prevent the potential use of affiliates to avoid collecting initial margin from third parties. For example, suppose that an unregistered non-U.S. affiliate of a CSE enters into a swap with a financial end user and does not collect initial margin. Suppose further that the affiliate then enters into a swap with the CSE. Effectively, the risk of the swap with the third party would have been passed to the CSE without any initial margin. The rule would require this affiliate to post initial margin with the CSE in such cases. The rule would further require that the CSE collect initial margin even if the affiliate routed the trade through one or more other affiliates.

K. Implementation Schedule

1. Proposal

The proposed rules set out an implementation schedule for initial margin ranging from December 1, 2015 to December 1, 2019.[307] This extended schedule was designed to give market participants ample time to develop the systems and procedures necessary to exchange margin and to make arrangements to have sufficient assets available for margin purposes. The requirements would be phased-in in steps from the largest covered parties to the smallest.

Variation margin requirements would be implemented on the scheduled first date.

2. Comments

Commenters generally stated that, to the extent practicable, there should be international harmonization of implementation dates for margin and capital requirements.[308] While one commenter supported the proposed compliance date schedules set out in the 2014 proposal,[309] a number of commenters argued that compliance with the final rule should be delayed for 18 months to 2 years in order to allow for operational changes and the need for additional or revised documentation that will be required for CSEs to comply with the rule.[310]

With respect to phasing-in the implementation of the initial margin requirements, a commenter stated that the phase-in provisions should be revised to apply only to uncleared swaps between CSEs.[311] The commenter further stated that non-CSEs should not be required to comply with the initial margin requirements until December 2019. The Commission also received a comment stating that the implementation of the compliance date schedule should not coincide with code freezes and that margin requirements for over-the-counter derivatives should be taken into consideration when finalizing this rule.[312] Still another commenter argued for a delay in implementation to allow the use of the latest developments from BCBS regarding margin calculation best practices and the development of a universal model.[313]

Several commenters urged that the compliance date for variation margin requirements be phased in, in a manner similar to the compliance dates for the initial margin requirements.[314] These commenters argued, among other things, that the phase-in of the variation margin requirements would allow CSEs the time to re-document all necessary swap contracts at one time. Commenters stated that variation margin requirements should be phased in based

[306] BCBS IOSCO Report at 21.

[307] Proposed § 23.160.

[308] *See* Sifma; ABA; Australian Banks.

[309] *See* CME.

[310] *See* JFMC; GPC; JBA; ISDA; Sifma-AMG; JBA; CPFM; and Freddie. ISDA further argues that financial end users that fall below the implementation schedule threshold for each relevant time period should not be subject to initial margin.

[311] *See* GPC.

[312] *See* Sifma.

[313] *See* CS.

[314] *See* ACLI; MefLife; ICI; Sifma; Sifma-AMG; JFMC; GPC; JBA; ISDA; ABA; Freddie; CDEU; and FHLB.

on decreasing notional amount thresholds over a two-year period commencing upon the latter of the publication of the margin rules for over-the-counter derivatives in the U.S., the EU and Japan or the publication of the Commission's comparability determinations with respect to the EU and Japan.[315]

Certain commenters also requested that the Commission extend the meaning of swaps entered into prior to the compliance date to include (1) swaps entered into prior to the applicable compliance date (legacy swaps) that are amended in a non-material manner; (2) novations; and (3) new derivatives that result from portfolio compression of legacy derivatives.[316] These commenters urged that if a general exclusion for novated legacy swaps is not provided, there should be an exclusion for novated swaps between affiliates resulting from organizational restructuring or regulatory requirements such as the swaps push-out rule.

One commenter urged that, during the phase-in period, only entities whose swap volume currently exceeds the applicable threshold should be subject to the margin requirements.[317] The commenter stated that, if the swap activity of either party to a swap declines below the applicable threshold, that party should cease being subject to the initial margin requirements until such time as it exceeds the applicable threshold. Another commenter asked how the margin requirements would apply in the event of a change in status of the counterparty.[318] One commenter requested that the Commission revise the phase-in schedule so that entities that are not CSEs would be subject to the margin requirements in December 2019.[319]

3. Discussion

a. Initial Margin

Under the proposal, the implementation of both initial and variation margin requirements would have started on December 1, 2015. With respect to initial margin requirements, the requirements would have been phased-in between December 1, 2015 and December 1, 2019. Variation margin requirements for all CSE with respect to covered swaps with any counterparty would have been effective as of December 1, 2015. This proposed set of compliance dates was consistent with those set forth in the 2013 international framework.

On March 18, 2015, the BCBS and IOSCO issued a press release announcing that the implementation of the 2013 international framework would be delayed by nine months. This announcement was in response to the fact that to date in March 2015, no jurisdiction had yet finalized rules for margin requirements for non-centrally cleared derivatives. Accordingly, the final rule has been revised to delay the implementation of both initial and variation margin requirements by nine months from the compliance schedule set forth in the proposal. This delay results in a uniform approach with respect to compliance dates across the final rule and the international framework.

The changes to the proposed compliance dates should help address concerns raised by commenters. The Commission agrees that international harmonization of margin and capital requirements are prudent. In light of the concerns raised by the commenters and the delay of the implementation of the 2013 international framework, the Commission has incorporated into the final rule provisions reflecting the implementation schedule for the 2013 international framework that was recently set out by the BCBS and IOSCO.

The final rule adopts a phase-in arrangement for variation margin requirements that is different from the proposal. The Commission believes that a phase-in of variation margin requirements similar to the phase-in of initial margin requirements is not necessary because the collection of daily variation margin is currently an industry best practice and will not require many changes in current swaps business operations for CSE covered swaps entities. However, the Commission has revised the 2014 proposal to include the phase-in of compliance dates for variation margin as set forth above to align with the dates suggested by the BCBS and IOSCO on March 18, 2015.

The Commission further believes that classifying new swap transactions as swaps entered into prior to the compliance date could create significant incentives to engage in amendments and novations for the purpose of evading the margin requirements. Moreover, limiting the extension to ''material'' amendments or ''legitimate'' novations is difficult to do within the final rule as the specific motivation for an amendment or novation is generally not observable. Finally, the Commission believes that classifying some new swap transactions and transactions entered into prior to the compliance date would make the process of identifying those swaps to which the rule applies overly complex and non-transparent. Accordingly, the Commission has elected not to extend the meaning of swaps entered into prior to the compliance date in this manner requested by some commenters at this time. The Commission recognizes that questions have arisen about the effect of compression exercises which may have implications in a variety of contexts. The Commission is open to further discussion before implementation about the best way to address these questions.

For purposes of initial margin, as reflected in the table below, the compliance dates range from September 1, 2016, to September 1, 2020, depending on the average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards and foreign exchange swaps (''covered swaps'') of the CSE and its counterparty (accounting for their respective affiliates) for March, April and May of that year.[320]

Compliance date	Initial margin requirements
September 1, 2016	Initial margin where both the CSE combined with all its affiliates and its counterparty combined with all its affiliates have an average daily aggregate notional amount of covered swaps for March, April and May of 2016 that exceeds $3 trillion.
September 1, 2017	Initial margin where both the CSE combined with all its affiliates and its counterparty combined with all its affiliates have an average daily aggregate notional amount of covered swaps for March, April and May of 2017 that exceeds $2.25 trillion.

[315] *See* Sifma; ABA.

[316] *See* CS; ISDA.

[317] *See* ISDA.

[318] *See* ISDA.

[319] *See* GPC (noting issues with providing confidential position information regarding its uncleared swaps to CSEs).

[320] ''Foreign exchange forward'' and ''foreign exchange swap'' are defined to mean any foreign exchange forward, as that term is defined in section 1a(24) of the Commodity Exchange Act (7 U.S.C. 1a(24)), and foreign exchange swap, as that term is defined in section 1a(25) of the Commodity Exchange Act (7 U.S.C. 1a(25)).

Compliance date	Initial margin requirements
September 1, 2018	Initial margin where both the CSE combined with all its affiliates and its counterparty combined with all its affiliates have an average daily aggregate notional amount of covered swaps for March, April and May of 2018 that exceeds $1.5 trillion.
September 1, 2019	Initial margin where both the CSE combined with all its affiliates and its counterparty combined with all its affiliates have an average daily aggregate notional amount of covered swaps for March, April and May of 2019 that that exceeds $0.75 trillion.
September 1, 2020	Initial margin for any other CSE with respect to covered swaps with any other covered counterparty.

In calculating the amount of covered swaps as set forth in the table above, the final rule provides that a CSE shall count the average daily aggregate notional amount of an uncleared swap, an uncleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap that is exempt from the Commission's margin requirements under § 23.150(b).[321] These provisions were not included in the proposed rule. The purpose of the first provision in the final rule is to prevent double counting of covered swaps between affiliates, a concern raised by number of commenters, which could artificially increase a CSE's average daily aggregate notional amount. The purpose of the second provision is to ensure that swaps that have been exempted from the margin requirements are fully exempted and do not influence other aspects of the rule such as whether an entity maintains a material swaps exposure.

The Commission expects that CSEs likely will need to make a number of operational and legal changes to their current swaps business operations in order to achieve compliance with the provisions of the final rule relating to the initial margin requirements, including potential changes to internal risk management and other systems, trading documentation, collateral arrangements, and operational technology and infrastructure. In addition, the Commission expects that CSEs that wish to calculate initial margin using an initial margin model will need sufficient time to develop such models and obtain regulatory approval for their use. Accordingly, the compliance dates have been structured to ensure that the largest and most sophisticated CSEs and counterparties that present the greatest potential risk to the financial system comply with the requirements first. These swap market participants should be able to make the required operational and legal changes more rapidly and easily than smaller entities engaging in swaps less frequently and pose less risk to the financial system.

b. Variation Margin

For purposes of variation margin, the compliance dates are September 1, 2016 and March 1, 2017. Theses compliance dates also depend on the average daily aggregate notional amount of covered swaps of the CSE combined with its affiliates and its counterparties (combined with that counterparty's affiliates) for March, April and May of that year (the ''calculation period'').[322] Thus, a given CSE may have multiple compliance dates depending on both the combined average daily aggregate notional amount of covered swaps of the CSE and its affiliates during the calculation period as well as the combined average daily notional amount of covered swaps of its counterparties and that counterparty's affiliates during the calculation period.

Compliance date	Initial margin requirements
September 1, 2016	Variation margin where both the CSE combined with all its affiliates and its counterparty combined with all its affiliates have an average daily aggregate notional amount of covered swaps for March, April and May of 2016 that exceeds $3 trillion.
March 1, 2017	Variation margin for any other CSE with respect to covered swaps with any other counterparty that is a swap entity or financial end user.

Calculating the amount of covered swaps set forth in the table above for the purposes of determining variation margin is done in the same manner as calculating the amount of covered swaps for purposes of determining initial margin.[323] A CSE shall count the average daily aggregate notional amount of a uncleared swap, an uncleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap that is exempt from the Commission's margin requirements under § 23.150(b).

c. Changes in Material Swaps Exposure

Once a CSE and its counterparty must comply with the margin requirements for uncleared swaps based on the compliance dates set forth in § 23.161, the CSE and its counterparty shall remain subject to the margin requirements from that point forward. For example, September 1, 2017 is the relevant compliance date where both the CSE combined with all its affiliates and its counterparty combined with all its affiliates have an average aggregate daily notional amount of covered swaps that exceeds $2.25 trillion. If the notional amount of the swap activity for the CSE or the counterparty drops below that threshold amount of covered swaps in subsequent years, their swaps would nonetheless remain subject to the margin requirements. On September 1, 2020, any CSE that did not have an earlier compliance date becomes subject

[321] *See* § 23.150(b) of the final rule.

[322] *See* Regulation 23.161.

[323] As a specific example of the calculation, consider a U.S. based financial end user (together with its affiliates) with a portfolio consisting of two uncleared swaps (*e.g.,* an equity swap, an interest rate swap) and one uncleared security-based credit swap. Suppose that the notional value of each swap is exactly $1 trillion on each business day of March, April and May of 2016. Furthermore, suppose that a foreign exchange forward is added to the entity's portfolio at the end of the day on April 29, 2016, and that its notional value is $1 trillion on every business day of May 2016. On each business day of March and April of 2016, the aggregate notional amount of uncleared swaps, security-based swaps and foreign exchange forwards and swaps is $3 trillion. Beginning on May 1, 2016, the aggregate notional amount of uncleared swaps, security-based swaps and foreign exchange forwards and swaps is $4 trillion. The daily average aggregate notional value for March, April and May 2016 is then (23 × $3 trillion + 21 × $3 trillion + 21 × $4 trillion)/(23 + 21 + 21) = $3.3 trillion, in which case this entity would have a gross notional exposure that would result in its compliance date beginning on September 1, 2016.

to the initial margin requirements with respect to uncleared swaps.

The Commission has declined to make a change in the final rule that would allow a counterparty whose swap activity declines below the applicable threshold set forth in § 23.161 to cease being subject to margin requirements. The Commission believes that allowing entities coverage status to change over time results in additional complexity with little benefit since all entities will be subject to the rule as of September 1, 2020. Accordingly, allowing an entity's coverage status to fluctuate would only be consequential for a limited period of time.

d. Changes in Counterparty Status

The Commission has added § 23.161(c) to the final rule to clarify the applicability of the margin requirements in the event a CSE 's counterparty changes its status (for example, if the counterparty is a financial end user without material swaps exposure and becomes a financial end user without material swaps exposure). Under § 23.161(c), in the event a counterparty changes its status such that an uncleared swap with that counterparty becomes subject to stricter margin requirements, then the CSE shall comply with the stricter margin requirements for any uncleared swap entered into with that counterparty after the counterparty changes its status.

Section 23.161(c) states that in the event a counterparty changes its status such that a uncleared swap with that counterparty becomes subject to less strict margin requirements (such as when a counterparty changes status from a financial end user with material swaps exposure to a financial end user without material swaps exposure), then the CSE may comply with the less strict margin requirements for any swap entered into with that counterparty after the counterparty changes its status as well as for any outstanding uncleared swap entered into after the applicable compliance date and before the counterparty changed its status. As a specific example, if a CSE's counterparty transitioned from a financial end user with material swaps exposure to a financial end user without material swaps exposure, initial margin that had been previously collected could be returned if agreed by both parties since the rule would not require an exchange of initial margin on pre-existing or future uncleared swaps.

e. Applicable EMNA

A CSE may enter into swaps on or after the final rule's compliance date pursuant to the same master netting agreement that governs existing swaps entered into with a counterparty prior to the compliance date. The final rule permits a CSE to (1) calculate initial margin requirements for swaps under an EMNA with the counterparty on a portfolio basis in certain circumstances, if it does so using an initial margin model; and (2) calculate variation margin requirements under the final rule on an aggregate, net basis under an EMNA with the counterparty. Applying the final rule in such a way would, in some cases, have the effect of applying it retroactively to swaps entered into prior to the compliance date under the EMNA.

The Commission received several comments expressing concern that the proposal might require swaps entered into before the compliance dates to be documented under a different EMNA than swaps entered into after the compliance dates in order for the margin requirements not to apply to the pre-compliance dates swaps. As described further above, the Commission has revised the final rule to allow for the establishment of separate netting sets under a single ENMA to avoid this outcome.

f. Standards Expressed in U.S. Dollars

The proposal contained a number of numerical amounts that are expressed in U.S. dollar terms. The amounts include the effective date phase-in thresholds, the initial margin threshold amount, the material swap exposure amount, and the minimum transfer amount. These numerical amounts are expressed in the 2013 international framework in terms of Euros. In the proposal, the Commission translated the Euro amounts from the 2013 international framework using a Euro-U.S. Dollar exchange rate that was broadly consistent with the exchange rate that prevailed at the time of the proposal's publication.

In the proposal, the Commission sought comment on how to deal with fluctuations in exchange rates and how such fluctuations may create inconsistencies in the numerical amounts that are established across differing jurisdictions. One commenter suggested using an average exchange rate calculated over a period of time. Another commenter suggested that the Commission should periodically recalibrate these amounts in response to broad movements in underlying exchange rates.

The Commission believes that persistent and significant fluctuations in exchange rates could result in significant differences across jurisdictions that would complicate cross-border transactions and create competitive inequities. The Commission does not agree, however, that the final rule's numerical amounts should be mechanically linked to either prevailing exchange rates or average exchange rates over a period of time as short term fluctuations in exchange rates would result in high frequency changes that would create significant operational and logistical burdens. Rather, and consistent with the view of one commenter, the Commission expects to consider periodically the numerical amounts expressed in the final rule and their relation to amounts denominated in other currencies in differing jurisdictions. The Commission will then propose adjustments, as appropriate, to these amounts.

In the final rule, the Commission is adjusting the numerical amounts described above in light of significant shifts in the Euro-U.S. Dollar exchange rates since the publication of the proposal. Specifically, the Commission is reducing the value of each numerical quantity expressed in dollars to be consistent with a one for one exchange rate with the Euro. As a specific example, the amount of the initial margin threshold is being changed from $65 million in the proposal to $50 million in the final rule. This change will align the U.S dollar denominated numerical amounts in the final rule with those in the 2013 international framework, will be consistent with amounts that have been proposed in margin rules by the European and Japanese authorities, and will be more consistent with the Euro-U.S. Dollar exchange rate prevailing at the time the final rule is published.

III. Interim Final Rule

A. Background

Title VII of the Dodd-Frank Act established a comprehensive new regulatory framework for derivatives, which the Act generally characterizes as ''swaps'' and ''security-based swaps.'' [324] As part of this new regulatory framework, sections 731 of the Dodd-Frank Act added a new section 4s to the CEA which requires registration with the CFTC of swap dealers and major swap participants.[325]

[324] ''Swaps'' are defined in section 721 of the Dodd-Frank Act to include interest rate swaps, commodity-based swaps, equity swaps and credit default swaps. *See* 7 U.S.C. 1a(47).

[325] *See* 7 U.S.C. 6s; 15 U.S.C. 78o-10. Section 731 of the Dodd-Frank Act requires swap dealers and major swap participants to register with the CFTC, which is vested with primary responsibility for the oversight of the swaps market under Title VII of the Dodd-Frank Act.

These registrants are collectively referred to in this preamble as ''swap entities.''

As noted earlier, sections 731 of the Dodd-Frank Act requires the Commission to adopt rules that apply to all swap dealer and major swap participants without a prudential regulator, imposing capital requirements and initial and variation margin requirements on all uncleared swaps. The capital and margin requirements under sections 731 of the Dodd-Frank Act apply to uncleared swaps and complement other provisions of the Dodd-Frank Act that require the Commission to make determinations as to whether certain swaps, or a group, category, or class of such transactions, should be required to be cleared.[326] If the CFTC has made such a determination, it is generally unlawful for any person to engage in such a swap unless the transaction is submitted to a derivatives clearing organization, as applicable, for clearing.

The clearing requirements, however, do not apply to an entity that is not a financial entity, is using a swap to hedge or mitigate commercial risk, and notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations.[327] Thus, a particular swap might be subject to the capital and margin requirements of section 731 either because it is not subject to the mandatory clearing requirement, or because one of the parties to the swap is eligible for, and elects to use, an exception or exemption from the mandatory clearing requirement. Such a swap is a ''uncleared'' swap for purposes of the capital and margin requirements established under sections 731 of the Dodd-Frank Act.

Sections 731 direct the Commission to impose initial and variation margin requirements on all swaps that are not cleared. Under the proposed rule, the Commission distinguished among different types of counterparties on the basis of risk.[328]

On January 12, 2015, President Obama signed into law TRIPRA. Title III of TRIPRA, the ''Business Risk Mitigation and Price Stabilization Act of 2015,'' amends statutory provisions added by the Dodd-Frank Act relating to margin requirements for swaps and security-based swaps. Specifically, section 302 of TRIPRA's Title III amends sections 731 and 764 of the Dodd-Frank Act to provide that the initial and variation margin requirements do not apply to certain transactions of specified counterparties that would qualify for an exemption or exception from clearing, as explained more fully below. Uncleared swaps that are exempt under section 302 of TRIPRA will not be subject to the Commission's rules implementing margin requirements. In section 303 of TRIPRA, Congress required that the Commission implement the provisions of Title III by promulgating an interim final rule and seeking public comment on the interim final rule.

The Commission is therefore promulgating this interim final rule with a request for comment. As noted above, swaps may be uncleared swaps either because (i) there is an exemption or exception from clearing available; or (ii) the Commission has not determined that such swap is required to be cleared. The exclusions and exemptions from the final margin rule will apply to both categories of uncleared swaps when they involve a counterparty that meets the requirements for an exception or exemption from clearing (*e.g.,* a non-financial end user using swaps to hedge or mitigate commercial risk).

Clearing requirements pursuant to the CEA began to take effect with respect to certain interest rate and credit default swap indices swaps on March 11, 2013.[329] CSEs have accordingly already established methods and procedures to engage in transactions with counterparties that are eligible for the clearing exceptions or exemptions and for recording and reporting the eligibility of these transactions for the exception or exemptions as required under the statute.[330] The Commission expects these processes will function equally well as a basis for the parallel statutory exemptions from initial and variation margin requirements for uncleared swaps implemented pursuant to this interim final rule.

B. Description of the Interim Final Rule

This interim final rule, which adds a new section 23.150(b) to the final rule, adopts the statutory exemptions and exceptions as required under TRIPRA. TRIPRA provides that the initial and variation margin requirements do not apply to the uncleared swaps of three categories of counterparties. In particular, section 302 of TRIPRA amends section 731 so that initial and variation margin requirements will not apply to a swap in which a counterparty (to a CSE) is (1) a non-financial entity (including small financial institution and a captive finance company) that qualifies for the clearing exception under section 2(h)(7)(A) of the Act; (2) a cooperative entity that qualifies for an exemption from the clearing requirements issued under section 4(c)(1) of the Act; or (3) a treasury affiliate acting as agent that satisfies the criteria for an exception from clearing in section 2(h)(7)(D) of the Act.

1. Entities Qualifying for a Clearing Exception

TRIPRA provides that the initial and variation margin requirements of the final rule shall not apply to a uncleared swap in which a counterparty qualifies for an exception under section 2(h)(7)(A) of the CEA.[331] Section 2(h)(7)(A) excepts from clearing swaps where one of the counterparties is not a financial entity, is using the swap to hedge or mitigate commercial risk, and notifies the Commission how it generally meets its financial obligations associated with entering into uncleared swaps. A number of different types of counterparties may qualify for an exception from clearing under section 2(h)(7)(A), including: Non-financial end users, small banks, savings associations, Farm Credit System Institutions, and credit unions. In addition, captive finance companies qualify for an exception from clearing under section 2(h)(7)(A).

a. Non-Financial End Users

A counterparty that is not a financial entity[332] (sometimes referred to as

[326] 7 U.S.C. 2(h). The CEA sets out standards that the Commission is required to apply when making determinations about clearing, which generally address whether a swap is sufficiently standardized to be cleared. 7 U.S.C. 2(h)(2)(D). To date, the Commission has determined that certain interest rate swaps and credit default swaps are required to be cleared. 17 CFR 50.4.

[327] *See* 7 U.S.C. 2(h)(7). Further, the Commission has authority to exempt swaps from the clearing requirement. 7 U.S.C. 6(c)(1).

[328] The final rule takes a similar approach. In implementing this risk-based approach, the final rule distinguishes among four separate types of swap counterparties: (i) Counterparties that are themselves swap entities; (ii) counterparties that are financial end users with a material swaps exposure; (iii) counterparties that are financial end users without a material swaps exposure, and (iv) other counterparties, including nonfinancial end users, sovereigns, and multilateral development banks.

[329] 17 CFR 50.25. *See* 77 FR 44441 (July 30, 2012)

[330] *See, e.g.,* 17 CFR 50.50(b).

[331] *See* 7 U.S.C. 2(h)(7)(A); 15 U.S.C. 78c–3(g)(1).

[332] *See* 7 U.S.C. 2(h)(7)(A); 15 U.S.C. 78c–3(g)(1); 17 CFR 50.50. A ''financial entity'' is defined to mean (i) a swap dealer; (ii) a security-based swap dealer; (iii) a major swap participant; (iv) a major security-based swap participant; (v) a commodity pool; (vi) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940; (vii) an employee benefit plan as defined in sections 3(3) and 3(32) of the Employment Retirement Income Security Act of 1974; (viii) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956. *See* 7 U.S.C. 2(h)(7)(C)(i); 15 U.S.C. 78c–3(g)(3).

''commercial end users'') that is using swaps to hedge or mitigate commercial risk generally would qualify for an exception from clearing under section 2(h)(7)(A) and thus from the requirements of the final rule for uncleared swaps pursuant to section 23.150(b).

b. Small Banks, Savings Associations, Farm Credit System Institutions, and Credit Unions

The definition of ''financial entity'' in section 2(h)(7)(C)(ii) provides that the Commission shall consider whether to exempt small banks, savings associations, Farm Credit System Institutions, and credit unions with total assets of $10 billion or less. Pursuant to this authority, the Commission has exempted small banks, savings associations, Farm Credit System Institutions, and credit unions with total assets of $10 billion or less from the definition of ''financial entity,'' thereby permitting these institutions to avail themselves of the clearing exception when they are using swaps to hedge or mitigate risk.[333] As a result, these small financial institutions that are using uncleared swaps to hedge or mitigate commercial risk would also qualify for an exemption from the initial and variation margin requirements of the final rule pursuant to section 23.150(b).

c. Captive Finance Companies

Section 2(h)(7)(C) also provides that the definition of ''financial entity'' does not include an entity whose primary business is providing financing and uses derivatives for the purposes of hedging underlying commercial risks relating to interest rate and foreign exchange exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company (''captive finance company'').[334] These entities can avail themselves of a clearing exception when they are using swaps to hedge or mitigate commercial risk and thus would be eligible for the exemption in the Commission's margin rules pursuant to section 23.150(b).

2. Certain Cooperative Entities

TRIPRA provides that the initial and variation margin requirements shall not apply to an uncleared swap in which a counterparty qualifies for an exemption issued under section 4(c)(1) of the Commodity Exchange Act from the clearing requirements of section 2(h)(1)(A) of the Commodity Exchange Act for cooperative entities as defined in such exemption.[335] The Commission, pursuant to its authority under section 4(c)(1) of the Commodity Exchange Act, adopted a regulation that allows cooperatives that are financial entities to elect an exemption from mandatory clearing of swaps that: (1) They enter into in connection with originating loans for their members; or (2) hedge or mitigate commercial risk related to loans to members or swaps with their members which are not financial entities or are exempt from the definition of financial entity.[336] The swaps of these cooperatives that would qualify for an exemption from clearing also would qualify pursuant to section 23.150(b) for an exemption from the margin requirements of the final rule.

3. Treasury Affiliates Acting as Agent

TRIPRA provides that the initial and variation margin requirements shall not apply to an uncleared swap in which a counterparty satisfies the criteria in section 2(h)(7)(D) of the Commodity Exchange Act. These sections provide that, where a person qualifies for an exception from the clearing requirements, an affiliate of that person (including an affiliate predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception as well, but only if the affiliate is acting on behalf of the person and as an agent and uses the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity (''treasury affiliate acting as agent'').[337] A treasury affiliate acting as agent that meets the requirements for a clearing exemption would also be eligible for an exemption pursuant to section 23.150(b) from the Commission's final rule.

The Commission requests comments on all aspects of the interim final rule.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities.[338] The RFA does not require agencies to consider the impact of the final rule, including its indirect economic effects, on small entities that are not subject to the requirements of the final rule.[339] In the Proposal, the Commission certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. Following the publication of the proposal, the Commission received a comment on the potential for costs to be passed on to market participants using swaps, including small entities that are not subject to the margin requirements.[340]

The final rule implements the new statutory framework of Section 4s(e) of the CEA, added by Section 731 of the Dodd-Frank Act, which requires the Commission to adopt capital and initial and variation margin requirements for CSEs on all uncleared swaps in order to offset the greater risk to the swap entity and the financial system arising from the use of swaps and security-based swaps that are not cleared. The final margin requirements will apply to uncleared swaps between covered swap entities and their financial end user counterparties.[341]

As discussed in the Proposal, the Commission previously established certain definitions of ''small entities'' to be used in evaluating the impact of its regulations on small entities in accordance with the RFA,[342] and that it has determined that SDs, MSPs and eligible contract participants (''ECPs'') are not small entities for purposes of the RFA.[343] Accordingly, CSEs that are subject to the final rule are not small entities for purposes of the RFA.

[333] *See* 7 U.S.C. 2(h)(7)(C)(ii); 17 CFR 50.50; 77 FR 42560 (July 19, 2012); as recodified by 77 FR 74284 (Dec 13,2012).

[334] *See* 7 U.S.C. 2(h)(7)(C)(iii).

[335] *See* 7 U.S.C. 6(c)(1). The CFTC, pursuant to its authority under section 4(c)(1) of the Commodity Exchange Act, adopted 17 CFR 50.51, which allows cooperative financial entities that meet certain qualifications to elect not to clear certain swaps that are otherwise required to be cleared pursuant to section 2(h)(1)(A) of the Commodity Exchange Act.

[336] *See* 7 U.S.C. 6(c)(1);17 CFR 50.51.

[337] *See* 7 U.S.C. 2(h)(7)(D); 15 U.S.C. 78c–3(g)(4). This exception does not apply to a person that is a swap dealer, security-based swap dealer, major swap participant, major security-based swap participant, an issuer that would be an investment company as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) but for section 3(c)(1) or 3(c)(7) of that Act, a commodity pool, or a bank holding company with over $50 billion in consolidated assets.

[338] 5 U.S.C. 601 *et seq.*

[339] *See e.g., In Mid-Tex Electric Cooperative* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985); *United Distribution Cos.* v. *FERC,* 88 F.3d 1105, 1170 (D.C. Cir. 1996); *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855 (D.C. Cir. 2001).

[340] NERA's comment is addressed below.

[341] In contrast to the proposal, the final rule does not require a CSE to calculate hypothetical initial and variation margin amounts each day for positions held by non-financial end users that have MSEs to the CSE. This should further reduce the possibility that small entities may be indirectly impacted by the final rule.

[342] 47 FR 18618 (Apr. 30, 1982).

[343] *See* 77 FR 30596, 30701 (May 23, 2012) (SDs and MSPs); 66 FR 20740, 20743 (April 25, 2001) (ECPs).

With respect to certain financial end users [344] that may be impacted by the Proposed Rule, the Commission expects that such entities would be similar to eligible contract participants (''ECPs'') and, as such, they would not be small entities.[345] As discussed above, the final rule applies on a cross-border basis and therefore, to uncleared swaps between CSEs and foreign financial end users. Even assuming that there are any foreign financial entities that would not be considered ECPs (and thus, would be small entities), the Commission expects that only a small number of foreign financial entities that are not ECPs, if any, would trade in uncleared swaps.

The Commission notes that to the extent that small entities may be impacted, the final rule contains numerous provisions that are intended to mitigate—or have the effect of mitigating—the cost on such entities. For example, under the final rule, the level of the aggregate notional amount of transactions that give rise to material swaps exposure has been raised from $3 billion to $8 billion, which should result in a fewer financial end users being required to post initial margin. In addition, the final rule provides an initial margin threshold of $50 million from all uncleared swaps between a covered swap entity and its counterparties, which should further reduce the impact of the rule on financial counterparties that may be small entities.

For the reasons discussed above, the Commission finds that there will not be a substantial number of small entities impacted by the final rule. Therefore, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the final rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [346] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. This final rule will result in a mandatory collection of information within the meaning of the PRA. The collection is necessary to implement section 4s(e) of the CEA, which directs the Commission to adopt rules governing margin requirements for SDs and MSPs. In accordance with the requirements of the PRA, the Commission may not conduct or sponsor, and a person is not required to respond to, this collections of information unless it displays a currently valid OMB control number.

As described below, all of the collections of information required by the final rule are covered by existing OMB Control Number 3038–0024 and OMB Control Number 3038–0088, with OMB Control Number 3038–0024 requiring a revision of the burden hours. The titles for these collections of information are ''Regulations and Forms Pertaining to Financial Integrity of the Market Place, OMB control number 3038–0024'' and ''Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, OMB control number 3038–0088.'' [347]

1. Clarification of Collection 3038–0088

The final rule contains reporting and recordkeeping requirements that are part of the existing Commission regulations pertaining to swap trading relationship documentation requirements. The collection of information related to that existing Commission regulation is covered by OMB Control Number 3038–0088.[348]

Specifically, under the final rule, both the formula employed in the standardized method and the approach of the risk-based model that reflect offsetting exposures require that offsets be reflected only for swaps that are subject to the same eligible master netting agreement (''EMNA''). Regulation 23.151 defines the term EMNA and provides that a CSE that relies on the agreement for purpose of margin calculation must establish and maintain written procedures for monitoring relevant changes in the law and to ensure that the agreement continues to satisfy the requirements of this section. Regulation 23.153(d) further specifies that a CSE must demonstrate upon request to the satisfaction of the Commission that it has made appropriate efforts to collect or post the required margin. In addition, Regulation 23.154 establishes standards for initial margin models and requires CSEs to describe to the Commission any remedial actions being taken, and report internal audit findings regarding the effectiveness of the initial margin model to the CSE's board of directors or a committee thereof, to adequately documents all material aspects of its initial margin model; and, to adequately documents internal authorization procedures, including escalation procedures that require review and approval of any change to the initial margin calculation under the initial margin model, demonstrable analysis that any basis for any such change is consistent with the requirements of this section, and independent review of such demonstrable analysis and approval. Regulation 23.155(b) requires a covered swap entity to create and maintain documentation setting forth the variation margin methodology, evaluate the reliability of its data sources at least annually, and make adjustments, as appropriate. It also provides that the Commission at any time may require a covered swap entity to provide further data or analysis concerning the methodology or a data source. Regulation 23.157(c) requires the custodian to act pursuant to a custody agreement that prohibits the custodian from re-hypothecating, repledging, reusing, or otherwise transferring the funds held by the custodian. Regulation 23.158 requires a covered swap entity to execute trading documentation with each counterparty that is either a swap entity or financial end user regarding credit support arrangements.

The reporting and recordkeeping requirements of Regulations 23.154(b)(4) through 23.154(b)(7), and Regulations 23.155(b), 23.157(c) and 23.158, described above, fall under the Commission Regulations 23.500 through 23.506 [349] and are covered by OMB

[344] The RFA focuses on direct impact to small entities and not on indirect impacts on these businesses, which may be tenuous and difficult to discern. *See Mid-Tex Elec. Coop., Inc.* v. *FERC,* 773 F.2d 327, 340 (D.C. Cir. 1985); *Am. Trucking Assns.* v. *EPA,* 175 F.3d 1027, 1043 (D.C. Cir. 1985).

[345] As noted in paragraph (1)(xii) of the definition of ''financial end user'' in section 23.151 of the final rule, a financial end user includes a person that would be a financial entity described in paragraphs (1)(i)–(xi) of that definition, if it were organized under the laws of the United States or any State thereof. The Commission believes that this prong of the definition of financial end user would capture the same type of U.S. financial end users that are ECPs, but for them being foreign financial entities. Therefore, for purposes of the Commission's RFA analysis, these foreign financial end users will be considered ECPs and therefore, like ECPs in the U.S., not small entities.

[346] 44 U.S.C. 3501 *et seq.*

[347] The Commission notes that certain provisions of Regulation 23.158 are already covered by OMB Control Number 3038–0104, which is not affected by this final rule.

[348] *See* OMB Control No. 3038–0088, available at *http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0088.*

[349] *See* 77 FR 55904 (Sept. 12, 2012). Commission Regulation 23.504(b) requires an SD or MSP to maintain written swap trading relationship documentation that must include all terms governing the trading relationship between the SD or MSP and its counterparty, and Commission Regulation 23.504(d) requires that each SD and MSP maintain all documents required to be created pursuant to Commission Regulation 23.504. Commission Regulation 23.502(c) requires each SD and MSP to notify the Commission and any

Control Number 3038–0088. Further, the reporting and recordkeeping requirements in Regulation 23.154(b)(4) through 23.154(b)(7) and Regulations 23.155(b), 23.157(c) and 23.158, would not materially impact the burden estimates currently provided for in OMB Control Number 3038–0088.[350]

2. Revisions to Collection 3038–0024

As noted above, the final will require a new information collection, which is covered by OMB Control Number 3038–0024.[351] However, the final rule will revise the burden hours associated with the collection, as discussed below.

Regulation 23.154(b)(1) requires CSEs that wish to use initial margin models to obtain the Commission's approval, and to demonstrate, on a continuing basis, to the Commission that the models satisfy standards established in Regulation 23.154. These standards include: (i) A requirement that a CSE notify the Commission in writing 60 days before extending the use of the model to additional product types, making certain changes to the initial margin model, or making material changes to modeling assumptions; and (ii) a variety of quantitative requirements, including requirements that the CSE validate and demonstrate the reasonableness of its process for modeling and measuring hedging benefits, demonstrate to the satisfaction of the Commission that the omission of any risk factor from the calculation of its initial margin is appropriate, demonstrate to the satisfaction of the Commission that incorporation of any proxy or approximation used to capture the risks of the covered swap entity's non-cleared swaps is appropriate, periodically review and, as necessary, revise the data used to calibrate the initial margin model to ensure that the data incorporate an appropriate period of significant financial stress.

Currently, there are approximately 106 SDs and MSPs provisionally registered with the Commission. The Commission further estimates that approximately 54 of the SDs and MSPs will be subject to the Commission's margin rules as they are not subject to a Prudential Regulator. The Commission further estimates that all SDs and MSPs will seek to obtain Commission approval to use models for computing initial margin requirements. The Commission estimates that the information collection requirement associated with this aspect of the final rule will impose an average of 240 burden hours per registrant.

Based upon the above, the estimated additional hour burden for collection 3038–0024 was calculated as follows:

Number of registrants: 54.

Frequency of collection: Initial submission and periodic updates.

Estimated annual responses per registrant: 1.

Estimated aggregate number of annual responses: 54.

Estimated annual hour burden per registrant: 240 hours.

Estimated aggregate annual hour burden: 12,960 hours [54 registrants × 240 hours per registrant].

V. Cost Benefit Considerations

A. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its discretionary actions before promulgating a regulation under the CEA or issuing certain orders.[352] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. In this section, the Commission discusses the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.[353] This rulemaking implements the new statutory framework of Section 4s(e) of the CEA, added by Section 731 of the Dodd-Frank Act, which requires the Commission to adopt capital and initial and variation margin requirements for CSEs. Section 4(s)(e) of the CEA requires the Commission to adopt initial and variation margin requirements for CSEs on all of their uncleared swaps, which should be designed to ensure the CSE's safety and soundness and be appropriate for the risk associated with the uncleared swap. In addition, section 4s(e)(3)(D) of the CEA provides that the Commission, the Prudential Regulators, and the SEC, must ''to the maximum extent practicable'' establish and maintain comparable margin rules.

The Commission recognizes that there are inherent trade-offs in developing minimum collateral standards for uncleared swaps. Margin rules for uncleared swaps are designed to reduce the probability of default by the CSE and limit the amount of leverage that can be undertaken by CSEs (and other market participants, in the aggregate), which ultimately mitigates the possibility of a systemic event. The financial crisis of 2008 has had profound and long-lasting adverse effects on the economy, and therefore reducing the potential for another systemic event provides significant, if unquantifiable, benefits. At the same time, the final margin rule will entail new costs for CSEs and financial end users as they will need to provide liquid, high-quality collateral to meet those requirements that exceed current practice and as a result, incur costs in terms of lost returns from investments or in securing additional sources of funding (*e.g.,* interest expenses associated with borrowing funds).[354] In addition, CSEs and financial end users will face certain startup and ongoing costs relating to technology and other operational infrastructure, as well as new or updated legal agreements.[355] The final rule reflects the Commission's reasoned judgment of how best to ensure the safety and soundness of CSEs and the U.S. financial system, in a manner that considers the economic consequences of its policy choices.

The Commission also recognizes that many CSEs are part of bank holding companies with global operations that are subject to overlapping jurisdictions by multiple supervisory authorities, both domestic and foreign. Significant disparities in margin rules can lead to undue competitive distortions and ultimately, opportunities for regulatory arbitrage.[356] It could also lead to

applicable Prudential Regulator of any swap valuation dispute in excess of $20 million if not resolved in specified timeframes.

[350] The Commission is publishing a separate notice in the **Federal Register** to renew OMB Control Number 3038–0088, which will revise the burden estimates relating to the collection titled ''Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants.''

[351] The Commission previously proposed to adopt regulations governing standards and other requirements for initial margin models that would be used by SDs and MSPs to margin uncleared swap transactions. *See* Capital Requirements of Swap Dealers and Major Swap Participants, 76 FR 27,802 (May 12, 2011). As part of the October 3, 2014 proposal, the Commission submitted proposed revisions to collection 3038–0024 for the estimated burdens associated with the margin model to OMB.

[352] 7 U.S.C. 19(a).

[353] The Commission notes that the costs and benefits considered in finalizing the margin rule, and highlighted below, have informed the policy choices described throughout this release.

[354] *See* Appendix A for the Commission's estimates of the funding costs for initial margin and variation margin, as well as a more detailed discussion of certain administrative costs.

[355] For the reasons discussed in Appendix A, these administrative costs are difficult to quantify at this time. Therefore, the Commission discusses the administrative costs related to margin for uncleared swaps qualitatively instead.

[356] That is, if the Commission's margin rules are substantially stricter than that of the Prudential Regulators, such difference could make it less costly to conduct swaps trading in a bank swap dealer as compared to a non-bank swap dealer. Likewise,

Continued

operational inefficiencies as entities within the same corporate group may be precluded from utilizing congruent operational and compliance infrastructure. In light of these concerns, and in accordance with the statutory mandate, the Commission, in developing the final rule, closely consulted and coordinated with the Prudential Regulators and foreign regulators in order to harmonize our respective margin rules to the greatest extent possible.[357]

The baseline against which the costs and benefits associated with this rule will be compared is the status quo, *i.e.,* the uncleared swaps markets as they exist today. At present, swap market participants are not legally required to post either initial or variation margin when engaging in uncleared swaps. Nevertheless, the Commission understands that, for risk management purposes, many CSEs collect initial margin from certain non-CSE counterparties and exchange variation margin with CSEs and financial end users for uncleared swaps. Further, section 4s(e), read together with section 2(i) of the CEA,[358] applies the margin rules to a CSE's swap activities outside the United States, regardless of the domicile of the CSE (or its counterparties). Because the Commission found no information that indicates that there are material differences in the costs and benefits discussed herein between foreign and cross-border swaps activities of CSEs and financial end users affected by the rule, the Commission's consideration of the costs and benefits of the final rule applies to all swap activities, domestic and cross-border, to which the final rule applies. CSEs, wherever domiciled, by definition are involved in a large volume of swaps activity in, or significantly affecting, United States markets and are registered with the Commission. Accordingly, they can be expected already to have in place personnel and infrastructure for compliance with United States law. To the extent that there may be differences in the particulars of costs to foreign CSEs or financial end users, the record of this proceeding generally did not provide information that would permit the evaluation of any such differences.[359]

In the sections that follow, the Commission considers: (i) The costs and benefits associated with its choices regarding the scope and extent to which it would apply its margin rule to uncleared swaps of a CSE and certain financial end users; (ii) the alternatives considered by the Commission and the costs and benefits relative to the approach adopted herein; and (iii) impact of the margin rule on the market and the public, in light of the 15(a) factors, as applicable. In the proposing release, the Commission addressed the costs and benefits of the proposed rules, taking into account the considerations described above. The Commission also requested comments on these assessments and for any data or other information that would be useful in estimation of the quantifiable costs and benefits of this rulemaking. A total of 59 comment letters were received. Some commenters generally addressed the cost-and-benefit aspect of the proposed rule;[360] one commenter provided quantitative data and analysis of the Commission's proposal. The discussion of the costs and benefits that follows is largely qualitative in nature, although where possible the Commission attempts to quantify these benefits and costs.

B. Final Rule

1. Covered Entities: CSEs and Financial End Users

Margin requirements apply to uncleared swaps entered into by CSEs[361]—and by extension, to the counterparties to such swaps. Because different types of counterparties can pose different levels of risk, the final rule establishes three categories of counterparty: (i) CSEs; (ii) financial end users; and (iii) non-financial end users. Under the final rule, the initial and variation margin requirements apply to uncleared swaps of CSEs with certain counterparties, namely, other CSEs, swap entities that are not a CSE and financial end users (and in the case of initial margin, only those financial end users with material swaps exposure).[362] The final rule defines ''financial end user'' as a counterparty that is not a swap dealer or a major swap participant but which falls within one of the categories of entities primarily engaged in financial activities.[363] These categories are nearly identical to the Prudential Regulators' definition of ''financial end user.''[364]

In developing the definition of financial end user, the Commission was mindful of the significant new costs associated with the new minimum collateral requirements and has attempted to tailor the definition carefully to avoid undue burden on market participants, without undermining the objectives of the margin rules. Accordingly, the definition is intended to capture those market participants that by the nature and scope of their financial activities present a higher level of risk of default and are integral to the financial system, and thus, pose greater risk to the safety and soundness of their CSE counterparties and the stability of the financial system. Consistent with this risk-based approach to the definition, the definition specifically excludes entities that may be considered financial in nature but that perform different functions in the financial system than those included in the definition of financial end user. These include, among others, multi-lateral development banks, the Bank for International Settlements, and a subset

U.S. and financial end users could be advantaged or disadvantaged depending on how the Commission's margin rule compares with corresponding requirements in other jurisdictions.

[357] The Commission, in a separate rulemaking, will address the cross-border application of the Commission's margin rules, including the availability of substituted compliance and exclusion, as appropriate. The cross-border margin rules are intended to further promote global harmonization of margin rules and consequently, mitigate the potential for competitive distortions and market inefficiencies.

[358] *See* 7 U.S.C. 2(i). Section 2(i) of the CEA states that the provisions of the Act relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities (1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or (2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Wall Street Transparency and Accountability Act of 2010.

[359] As foreign jurisdictions put in place their own margin rules in the future, the existence of these rules may affect the costs and benefits of the Commission's rules for foreign CSEs and financial end users. However, the still developing state of foreign law in this area and the absence of specific information in the record of this proceeding does not permit a detailed evaluation of such possible effects in the present proceeding. As noted above, the Commission will be addressing certain issues relating to the effects of foreign margin rules, including the availability of substituted compliance, in a separate rulemaking.

[360] As discussed in this release, the relevant comments have informed the Commission's decisions regarding the final rule and are highlighted below.

[361] As discussed above, however, certain uncleared swaps of CSEs with their affiliates are not subject to initial margin; the related cost-benefit considerations are addressed below.

[362] The Commission recognizes that a CSE may enter into a swap with another non-CSE swap entity, which would result in the non-CSE swap entity collecting under the Prudential Regulators' margin regime. Therefore, this section does not consider costs and benefits as they relate to the non-CSE swap entity.

[363] § 23.151.

[364] The Commission notes that its definition of ''financial end user'' includes security-based swap dealers and major security-based swap participants, as these entities are included in the Prudential Regulators' definition of swap entities.

of financial entities that engage in swaps to hedge or mitigate commercial risks.

A number of commenters also requested that the Commission exclude from the financial end user definition structured finance vehicles, including securitization special purpose vehicles (''SPVs'') and covered bond issuers.[365] These commenters argued that margin requirements on structured finance vehicles would restrict their ability to hedge interest rate and currency risk and potentially force these vehicles to exit the swaps market since these vehicles generally do not have ready access to liquid collateral. Other commenters argued that pension plans should not be subject to margin requirements because they are highly regulated, highly creditworthy, have low leverage and are prudently managed counterparties whose swaps are used primarily for hedging and, as such, pose little risk to their counterparties or the broader financial system.[366]

The Commission is not excluding, as commenters urged, pension plans, and structured finance vehicles. The Commission observes that these entities engage in the same range of activities as the other entities encompassed by the final rule's definition of financial end user. The Commission notes that the increase in the material swaps exposure threshold, as finalized in the final rule, should address some of the concerns raised by these commenters regarding the applicability of initial margin requirements.[367]

The enumerated list in the definition of financial end user is intended to provide enhanced clarity to ease the burden associated with determining whether a counterparty is a financial end user.[368] The Commission also considered alternative definitions, including using a broad-based definition similar to that listed in section 2(h)(7)(C) of the CEA. The Commission is not adopting this approach because it believes that it would be difficult for the market participants to implement and the Commission to monitor. In addition, the broad-based definition would not provide the level of clarity that an enumerated list provides market participants when engaging in uncleared swaps.

Initial margin requirements apply only to those financial end users that meet the specified MSE threshold. The MSE threshold is intended to identify entities that engage in significant derivatives activity as measured by the end user's overall exposure in the market. In the proposal, the Commission proposed to define materiality as $3 billion average notional amount. The final rule increases the level of the aggregate notional amount of transactions that gives rise to MSE to $8 billion, which is broadly consistent with the €8 billion established by the 2013 international framework and consistent with the EU and Japanese proposals. The increased MSE threshold should further reduce the number of financial end users subject to the initial margin requirement in relation to the Commission's proposal.

The final rule defines ''material swaps exposure'' as the aggregate notional amount of swaps not only of a particular entity, but also of its affiliates and subsidiaries. The Commission recognizes that calculation of MSE on an aggregate basis across affiliates and subsidiaries would require new reporting and tracking systems. As discussed above, the aggregation requirement is primarily intended to address the potential circumvention, as CSEs may disperse their swap activities through their affiliates to avoid exceeding the MSE threshold. The aggregation approach provides the Commission with a more complete picture of a firm's systemic risk profile by measuring the risk at the consolidated level. The Commission believes that aggregating exposure across affiliates is necessary to achieve the objectives of the margin requirements.

The definition of MSE also contains a number of other changes from the proposed definition to address commenters' concerns. Notably, in response to commenters, a financial end user needs to count only one side of an inter-affiliate swap in calculating its MSE. The Commission believes that double counting (as proposed) would result in an inaccurate measure of the swaps exposure of a financial end user as it would inflate the total exposure within the consolidated group. By modifying the calculation in this way, the Commission believes that it is reducing the number of financial end users with MSE, which should lessen the costs for financial entities that would have exceeded the $8 billion threshold.[369]

The final affiliate definition uses financial accounting standards as the trigger for affiliation, rather than a legal control test. The Commission believes that determining affiliate status based on whether a company is or would be consolidated with another company on financial statements prepared in accordance with U.S. GAAP, the International Financial Reporting Standards or other similar standards, reflects a more accurate method for discerning control and should be less burdensome to apply.[370] The Commission expects that most entities prepare financial statements under an acceptable accounting standard. For companies that do not prepare these statements, the Commission believes that industry participants are more familiar with the relevant accounting standards and tests, and they will be less burdensome to apply.

2. Initial Margin

Initial margin is intended to address potential future exposure. That is, in the event of a counterparty default, initial margin protects the non-defaulting party from the loss that may result from a swap or portfolio of swaps, during the period of time needed to close out the swap(s). Initial margin augments variation margin, which secures the current mark-to-market value of swaps. Under the final rule, CSEs would be required to both collect initial margin from and to post initial margin to financial end users with material swaps exposure. This represents a departure from current industry practice and hence, introduces new costs for CSEs and their covered counterparties, but is in accordance with the BCBS–IOSCO framework and the Prudential Regulators' final rules.

These costs include the costs of the requisite collateral, namely, the cost of securing external funds or the foregone return from investments. It is difficult to estimate these costs due to the fact that funding costs would vary widely depending on the type of entities and

[365] *See* SIFMA, SFIG and ISDA.

[366] *See* ABA (pension plans should not be subject to margin and should be treated as non-financial end users); AIMA (benefit plans should not be subject to margin and there is ambiguity involving whether non-U.S. public and private employee benefit plans would be financial end users); JBA (securities investment funds should be exempt from variation margin).

[367] In addition, with respect to pension plans, the Commission notes that Congress explicitly listed employee benefit plans as defined in paragraph (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 in the definition of ''financial entity'' in the Dodd-Frank Act. As a result, pension plans do not benefit from an exclusion from clearing even where they use swaps to hedge or mitigate commercial risk.

[368] In this regard, the Commission recognizes that the definition—particularly, the test that deems an entity a financial end user if it were organized under the laws of the United States—may impose a greater incremental cost with respect to foreign counterparties. However, the Commission believes that it is necessary to cover all financial end users that are counterparties to a CSE, including those that are foreign-domiciled, to effectuate the purposes of the margin requirements.

[369] The Commission made a similar change to the definition of ''initial margin threshold amount'' as described in Regulation 23.151.

[370] Commenters raised the concern that the proposed ''control'' test was difficult to apply and over-inclusive. *See e.g.,* ACLI.

their sources of liquidity, differences in funding costs over time, differences on their return on investments and differences in the rate of return on different collateral assets that may be used to satisfy the initial margin requirements, among other things.[371]

At one extreme, it may be that some entities providing initial margin, such as pension funds and asset managers, will provide assets as initial margin that they already own and would have owned even if no requirements were in place. In such cases the economic cost of providing initial margin collateral is anticipated to be low. In other cases, entities engaging in uncleared swaps will have to raise additional funds to secure assets that can be pledged as initial margin. The greater the costs of their funding, relative to the rates of return on the initial margin collateral, the greater the cost of providing collateral assets.[372]

At the same time, a two-way exchange of initial margin protects both the CSE and the financial end user from the build-up of counterparty credit risk from uncollateralized credit exposures. As noted above, these entities are critical to the stability of the financial system and therefore, need the protection of initial margin in the event of the default of a CSE, as the potential of a cascading event is increased without the collection of initial margin by these financial end users. In regards to the CSE, posting margin restricts the CSE from accumulating too large of an exposure in relation to its financial capacity. Therefore, the two-way exchange of initial margin should increase the overall stability of the financial system.

Further, as a result of the reduced risk of default, the posting party could receive a benefit from changes to the relationship between the CSE and the counterparty. As a result of the reduction in the overall credit exposure with the CSE, the counterparty may be able to realize better credit terms when transacting with the CSE and it consolidated group. To the extent any such benefit is realized, it would offset a portion of the cost incurred in posting collateral.

Some commenters recommended that the Commission adopt a ''collect-only'' approach with respect to foreign end users.[373] In response, the Commission notes that, in contrast to the proposed Japanese and European margin regimes, which would cover a very broad array of financial entities, a collect-only regime under the U.S. regime would be applicable only to CSEs and thus could leave a large number of financial entities with significant uncollateralized future exposures to their swap dealers.[374]

The Commission is requiring that CSEs calculate initial margin on a daily basis and that initial margin be posted within one day after the date of execution. The Commission is adopting this approach to preserve the margin period of risk, *e.g.,* 10 day calculation period for initial margin models. Daily calculation is necessary as the risk factors and the portfolio are subject to daily change. If the Commission were to adopt a less restrictive timeframe for posting initial margin, the margin period of risk would increase, reducing the protection provided by initial margin. The Commission considered adding days to the 10 day margin period of risk to account for the additional time given to post initial margin collateral; however, the Commission believes that it would be difficult to implement as models would need to be adjusted to account for different posting timeframes, which could create difficulties for the Commission in validating the initial margin model calculations.

The Commission recognizes that the T+1 posting requirement may lead to additional funding costs in the form of excess margin being held at the custodian to meet the one day requirement.[375] However, the Commission expects that counterparties will post cash or some other eligible assets that can be pledged in one day and subsequently substitute other eligible assets for these highly liquid assets, which should mitigate the burdens placed by this requirement. The Commission notes that it has modified the date of execution to account for different time zones and holidays to further reduce the burdens associated with the T+1 requirement.

Under the final rule, consistent with the BCBS–IOSCO standard, initial margin will not be required to be collected or posted by a CSE to its covered counterparty, to the extent that the aggregate un-margined exposure to its covered counterparty remains below $50 million. In effect, the $50 million threshold will provide a certain level of relief to all counterparties that are required to post and collect initial margin. It should also serve to reduce the aggregate amount of initial margin—and consequently, incrementally reduce overall funding cost—of all covered counterparties. At the same time, the Commission recognizes that the $50 million threshold represents uncollateralized risk of potential future exposure. However, the Commission believes that this amount of uncollateralized swaps exposure, calculated on a consolidated basis within a corporate group, is acceptable in the context of initial margin, particularly in light of the benefits to the financial system. To further ease the transaction costs associated with the exchange of margin, the Commission is not requiring a CSE to collect or post any amount below the transfer amount of $500,000.[376]

3. Calculation of Initial Margin

Under the final rule, a CSE must calculate the required amount of initial margin daily, on the basis of either a risk-based model or a table-based method. The use of either model is predicated on the satisfaction of certain baseline requirements to ensure that initial margin is calculated in a manner that is sufficient to protect CSEs as intended. Further, the choice of two alternatives allows CSEs to choose the methodology that is the most cost efficient for managing their business risks and thereby better compete. The costs and benefits associated with the use of each approach are addressed below.

a. Risk-Based Model

Generally, the baseline requirements of this risk-based model reflect the current practice for calculating bank regulatory capital and value at risk

[371] Further, it is expected that due to the cost of the final rules, some market participants may be incentivized to use alternatives to uncleared swaps. Futures contracts and cleared swaps, which tend to be more standardized and liquid than uncleared swaps, typically require less initial margin; however, this may result in basis risk given the standardization of these products. A futures contract has a one day minimum liquidation time and a cleared swap has a three- to five-day minimum liquidation time; in contrast, under the final rule, a ten day minimum liquidation time is required for uncleared swaps.

[372] To the extent that the same funding could have been used to fund investment opportunities, there is also an opportunity cost on that lost investment.

[373] *See, e.g.,* ISDA.

[374] The Commission notes that under the latest EU proposal, if a counterparty to a European-registered entity is a non-European registered entity, then the European-registered entity must post initial margin to the non-European registered entity. See, Second Consultation Paper on draft regulatory technical standards on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP under Article 11(15) of Regulation (EU) No 648/2012 (for the European Market Infrastructure Regulation) (Jun. 10, 2015), available at *https://www.eba.europa.eu/documents/10180/1106136/JC-CP-2015-002+JC+CP+on+Risk+Management+Techniques+for+OTC+derivatives+.pdf.*

[375] The excess amount held at the custodian would only need to be the incremental change from day-to-day.

[376] This amount applies to both initial and variation margin transfers on a combined basis.

(''VaR'') and conform to the BCBS/IOSCO standard for calculating margin for uncleared swaps.[377] To the extent CSEs are familiar with these requirements and have infrastructure in place to calculate the initial margin amount under this model approach, burdens associated with utilizing the model should be mitigated.

Under this model, a CSE would be required to generally calculate their initial margin based on the assumption of a ''holding period'' of 10 business days with a one-tailed 99% confidence interval. The Commission believes that a 10 day close-out period is necessary to ensure that the non-defaulting party has sufficient time to close out and replace its positions in the event of counterparty default.[378] The Commission recognizes that certain swaps may not require a 10 day period to liquidate or replace and hence a 10 day close-out period may lead to excessive initial margin. However, the Commission expects that most of the instruments that could be liquidated in less than 10 days are currently being cleared, and therefore, the impact of the requisite 10 day close-out period may be limited. Moreover, the Commission believes that under market stress, these same instruments that may be replaced or liquidated in less than 10 days may not maintain that same level of liquidity.

The Commission considered the alternative of setting the individual margin period of liquidation for separate instruments or by broad asset class. However, under these alternatives, there would be substantial operational burdens on market participants in determining the appropriate margin period of risk for each individual swap or broad asset class. Substantial burdens would be imposed on regulators as well as they would be required to review each CSE's determination of appropriate liquidation periods, which would not be uniform across each CSE for each individual swap or asset class, resulting in disputes as a result of each CSE determining its own liquidation period for the specific swap or swap asset class.

The Commission is also requiring that the data used in calculating initial margin be based on an equally-weighted historical observation period of at least 1 year and not more than 5 years, and must incorporate a period of significant financial stress for each broad asset class that is appropriate to the uncleared swaps to which the initial margin model is applied. The Commission believes that this approach would give an estimation period that is more representative of the underlying risks over time and thus, mitigate the pro-cyclical nature of initial margin calculations. In addition, under the final rule, the initial margin model must be recalibrated on an on-going basis to incorporate any change that results from a current period stress. The Commission believes that this aspect of the final rule is necessary as the initial margin calculated without a period of financial instability would not be adequate to ensure the safety and soundness of CSEs or the stability of financial markets during a period of significant market volatility. The Commission understands that this stress period element may increase the level of initial margin required; however, in a time of stress, any change in the required margin amount should be not be pro-cycle, as the amount requirement would already contain a period of stress.

Under a risk-based model, offsetting risk exposures for a swap may be recognized only in relation to another swap in the same category; offsetting risk exposures may not be recognized across asset classes. This will result in a greater amount of initial margin, all things being equal. The Commission is concerned that cross-asset class correlations break down during times of stress, increasing the likelihood that in the event of default, the initial margin amount calculated using these correlations would be insufficient to cover the amount needed to replace the positions.

The risk-based model must also include material risks arising from non-linear price characteristics, as many swaps have optionality. The Commission understands that this requirement may increase costs in developing models and result in a greater amount of initial margin. However, the Commission believes that without this requirement the initial margin calculation would not be adequate to cover the inherent risks of the swap or a portfolio of swaps. Moreover, the Commission understands that these risks are already imputed in the price of the swap. Therefore, the incremental burden should be minimal.

A CSE using a risk-based model to calculate initial margin would be required to establish and maintain a rigorous risk controls process to re-evaluate, update, and validate the model as necessary to ensure its continued applicability and compliance with the baseline requirements. While certain of these measures may already be in place as part of a CSE's risk management program (established under section 23.600(c)(4)(i)), others will result in additional costs for CSEs.[379] The Commission believes that these measures are essential to ensuring the efficacy of risk-based models used by CSEs. In addition, given that a CSE subject to the Commission's margin rules may be affiliated with one or more prudentially-supervised swap entities, the Commission would closely coordinate with the Prudential Regulators for expedited review of the model. The expedited review process should reduce unnecessary delay or duplication.[380]

b. Standardized Approach

As an alternative to a risk-based model, a CSE may calculate initial margin using a standardized table. The standardized approach could result in excess initial margin being calculated. For this reason, the standardized approach is likely to appeal to those CSEs with smaller swap portfolios with limited offsets, for whom a risk-based margin model would not be cost-effective. Since many CSEs and financial end users with material swaps exposure tends to have large swaps positions with significant offsets, the Commission expects that the risk-based model will be more widely favored.

c. Netting

Netting should reduce overall initial margin in relation to initial margin that would result from a calculation based on a gross measure. Both the formula employed in the standardized method and the approach of the risk-based model require that offsets be reflected only for swaps that are subject to the same eligible master netting agreement

[377] The same model requirements have been proposed by the EU, Japan, and Singapore. *See* ''Consultation Paper: Draft regulatory technical standards on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP under Article 11(15) of Regulation (EU) No 648/2012,'' *available at https://www.eba.europa.eu/documents/10180/655149/JC+CP+2014+03+%28CP+on+risk+mitigation+for+OTC+derivatives%29.pdf*; ''Publication of draft amendments to the ''Cabinet Office Ordinance on Financial Instruments Business'' and ''Comprehensive Guidelines for Supervision'' with regard to margin requirements for non-centrally cleared derivatives,'' *available at http://www.fsa.go.jp/news/26/syouken/20140703-3.html*; and ''Policy Consultation for Margin for Non-Centrally Cleared OTC Derivatives,'' *available at http://www.mas.gov.sg/~/media/MAS/News%20and%20Publications/Consultation%20Papers/Policy%20Consultation%20on%20Margin%20Requirements%20for%20NonCentrally%20Cleared%20OTC%20Derivatives%201Oct.pdf*.

[378] Studies on capital requirements conducted by BCBS–IOSCO have shown that a 10 day margin period of risk is adequate to address the moves in the market. *See* ''Margin Requirements for Non-Centrally Cleared Derivatives,'' BCBS–IOSCO, Sept. 2013, *available at http://www.bis.org/publ/bcbs261.pdf*.

[379] *See* § 23.504(b)(4).

[380] Additionally, the final rule provides that a CSE may use models that have been approved by NFA.

(''EMNA''). The eligibility criteria for netting are consistent with industry standards currently being used for bank regulatory capital purposes,[381] which should reduce the administrative costs that would be incurred in connection with any renegotiation of the terms of existing netting agreements.

A number of commenters argued that, in order to allow close-out netting and contain costs, the final rule should not require new master agreements to separate pre- and post-compliance date swaps, and that parties should be permitted to use credit support annexes that are part of the EMNA instead of new master agreements to distinguish pre-and post-compliance date swaps.[382] In response to commenters, the final rule provides that an EMNA may identify one or more separate netting portfolios that independently meet the requirement for close-out netting[383] and to which, under the terms of the EMNA, the collection and posting of margin applies on an aggregate net basis separate from and exclusive of any other uncleared swaps covered by the agreement. This rule should facilitate the ability of the parties to document two separate netting sets, one for uncleared swaps that are subject to the final rule and one for swaps that are not subject to the margin requirements. A netting portfolio that contains only uncleared swaps entered into before the applicable compliance date is not subject to the requirements of the final rule.

Notably, for an agreement to qualify as an EMNA, the CSE must conduct sufficient legal review to conclude with a well-founded basis that the agreement, among other things, would be legal, valid, binding, and enforceable under the law of the relevant jurisdictions. The Commission recognizes that the requisite ''sufficient legal review'' will require, as a practical matter, a legal opinion, which will adversely affect costs for CSEs. Additionally, to the extent that a ''sufficient legal review'' cannot be obtained (*e.g.,* because the foreign jurisdiction is lacking in comparable close-out netting arrangements), a CSE would need to collect and post on a gross basis. Nevertheless, given the importance of a legally binding and enforceable netting arrangement in the event of default, the Commission is retaining the legal review requirement.

Finally, CSEs may include legacy swaps in the same EMNA through the use of multiple CSAs. This approach would allow CSEs to preserve the benefit of close-out netting with all their swaps with a specific counterparty. However, legacy swaps may not be included when multiple CSAs are used in calculating the initial margin amount for that counterparty. The Commission designed this approach to prevent cherry-picking as a CSE could select specific legacy trades that would reduce the amount of initial margin required on any certain day.

4. Variation Margin

Variation margin provides an important risk mitigation function by preventing the build-up of total uncollateralized credit exposure of outstanding uncleared swaps. Under the final rule, a CSE must collect variation margin from or pay variation margin to its counterparty on or before the business day after the date of execution of an uncleared swap. Variation margin would be required for all financial end users, regardless of whether the entity has material swaps exposure. In this regard, the final rule is consistent with the Prudential Regulators' rules and the 2013 International Standards. In addition, the Commission is requiring a daily, two-way exchange of variation margin since mark-to-market is based on unrealized gains of either party (*i.e.,* if one party has an unrealized gain, the other party has an unrealized loss).

The exchange of variation margin would result in additional costs to CSEs and financial end users that currently are exchanging variation margin or exchanging variation margin less frequently than daily. These financial entities may also need to adjust their portfolio to ensure the availability of eligible collateral for exchanging variation margin.[384]

The final rule requires certain control and validation mechanisms for the calculation of variation margin to ensure that the variation margin calculated would be adequate to cover the current exposure of the uncleared swaps, including the requirement to create and maintain documentation setting forth the CSEs' calculation methodology with sufficient specificity to allow the counterparty, the Commission and any applicable Prudential Regulator to calculate a reasonable approximation of the margin requirement independently; and evaluate the reliability of its data sources at least annually, and make adjustments, as appropriate. Implementation of these measures will result in additional costs to CSEs. Nevertheless, the Commission is adopting these control and validation mechanisms as they are necessary to ensure the accuracy of the variation margin calculation methodology used by a CSE.

There are, however, several factors that should have a mitigating effect on the cost of variation margin. First, as discussed below, the final rule expands the list of eligible collateral for non-CSE financial end users, which may reduce funding costs. In addition, the final rule will include a minimum transfer threshold of $500,000, which should mitigate some of the administrative burdens and counter-cyclical effects associated with the daily exchange of variation margin, without resulting in an unacceptable level of uncollateralized credit risk. In addition, competitive disparities may be lessened by the fact that daily exchange of variation margin is required with respect to all financial end users under both the final rule and international standards.

5. Eligible Collateral

Limiting eligible collateral to the most highly liquid categories could limit the potential that a CSE would incur a loss following default of a counterparty based on changes in market values of less liquid collateral that occur before the CSE is able to sell the collateral, and therefore could limit the potential for a default by the CSE to other counterparties. On the other hand, an overly restrictive eligibility standard could have the effect of draining liquidity from the counterparty in a way that may not be necessary to account for the CSE's potential future exposure to the counterparty, and may increase costs for both counterparties.[385] The Commission considered these competing concerns in developing the list of eligible collateral.

For example, the Commission is allowing certain equities as eligible collateral to prevent adverse effect on investment returns for collective investment vehicles, insurance companies, and pension funds.[386] To accommodate the concern of certain commenters that argued for an inclusion of money market mutual funds and bank certificates of deposit in the list of

[381] See 12 CFR 3.2, 12 CFR 217.2, and 12 CFR 324.2. Regulatory Capital Rules, Liquidity Coverage Ratio: Interim Final Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions, 79 FR 78287 (Dec. 30, 2014).

[382] *See* TIAA–CREF; CPFM; ICI; SIFMA; ISDA; SIFMA–AMG; ABA; JBA; CS; AIMA; MFA; FSR; Freddie; ACLI; and FHLB.

[383] *See* § 23.151 (paragraph 1 of the EMNA definition).

[384] The next section discusses the expanded eligible collateral for variation margin.

[385] This could also lead to a greater demand on a relatively few instruments.

[386] *See, e.g.,* ICI; ISDA; CPFM; GPC; SIFMA–AMG; IECA; Freddie; and CDEU.

eligible collateral for initial margin, the final rule also adds redeemable securities in a pooled investment fund that holds only securities that are issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury, and cash funds denominated in U.S. dollars.

Although the Commission received several comments concerning the proposal's treatment of the securities of certain GSEs, only modest changes have been made in the final rule. The Commission continues to believe the final rule should treat GSE securities differently depending on whether or not the GSE enjoys explicit government support, in the interests of both the safety and soundness of CSEs and the stability of the financial system. In other words, the treatment of GSE securities by market participants as if those securities were nearly equivalent to Treasury securities in the absence of explicit Treasury support creates a potential threat to financial market stability, especially if vulnerabilities arise in markets where one or more GSEs are dominant participants, as occurred during the summer of 2008. The final rule's differing treatment of GSE collateral based on whether or not the GSE has explicit support of the U.S. government helps address this source of potential financial instability and recognizes that securities issued by an entity explicitly supported by the U.S. government might well perform better during a crisis than those issued by an entity operating without such support.

In addition, the final rule prohibits the use of certain assets as collateral because their use might compound risk, *i.e.,* wrong way risk. The list of prohibited assets include instruments that represent an obligation of the party providing such asset or an affiliate of that party and instruments issued by bank holding companies, depository institutions, systemically important financial institutions, and market intermediaries. The Commission notes that the price and liquidity of securities issued by these entities are likely to lose value at the same time that the counterparty's obligation under the swap increases, resulting in an additional increase in risk. For this reason, notwithstanding the additional funding costs that may result, the Commission believes that including these instruments as eligible collateral would be inappropriate.

Under the final rule, for swaps between a CSE and a financial end user, the Commission is expanding the form of eligible collateral that can be posted for variation margin to accommodate the assets held by the affected financial end users. The Commission believes that this should mitigate the potential for investment drag of financial end users, as well as mitigate the pro-cyclical effects potentially resulting from restricting eligible collateral to cash.

As noted above, the Commission is limiting eligible collateral to cash for variation margin between CSEs since these entities pose a significant level of risk to the financial system and cash is the most liquid asset and holds its value in times of stress. Since CSEs currently exchange variation margin in cash, the cash-only requirement could have minimal impact on CSEs. On the other hand, the Commission understands that, in times of stress when cash may be difficult to obtain, it is possible that CSEs may be cash constrained and therefore, could fall into a technical default. The Commission considered these competing concerns in developing this requirement.

The Commission is adopting standardized haircuts on instruments other than cash.[387] For example, in the case where equities are used as eligible collateral, there is a requirement for a minimum 15 percent haircut on equities in the S&P 500 Index and a minimum 25 percent haircut for those in the S&P 1500 Composite Index but not in the S&P 500 Index.[388] The Commission is not allowing CSEs to use internal models to calculate haircuts on eligible collateral. The Commission recognizes that, as a result, more assets would be required to be posted as margin, which may result in additional funding costs.[389] On the other hand, a more conservative approach reflected in the final rule would result in a greater amount of assets posted, which provides a greater buffer to cover losses in the event of a default.

6. Segregation

Posted collateral must be properly protected in order to avoid undermining the benefits of the margin requirements. The Commission understands that, to the extent that the final rule's segregation requirements diverge from existing industry practices, CSEs may incur substantial administrative costs.

Under the final rule, required initial margin must be kept in accordance with the following: (1) All funds collected and posted as required initial margin must be held by a third-party custodian (unaffiliated with either counterparty to the swap); (2) the third-party custodian is prohibited from re-hypothecating, re-using, or re-pledging (or otherwise transferring) the initial margin; (3) the initial margin collected or posted may not be reinvested in any asset that would not qualify as eligible collateral; and 4) the custodial agreement is legal, valid, binding and enforceable in the event of bankruptcy, insolvency, or similar proceedings.

While several commenters supported the mandated use of a third-party custodian, others objected, citing concerns about complexities that additional parties bring to the relationship, as well as increased costs arising from the negotiation of custodial contracts and the cost of developing operational infrastructure as using a third-party custodian is not the current practice for certain financial entities.[390] The Commission is also aware that many custodians are affiliated with one or more CSE or financial end users; as a result, the mandated use of a third-party custodian may lead to collateral assets being held at a limited number of custodians.

The Commission believes that it is necessary to require the use of an independent third-party custodian to safeguard required initial margin in order to best ensure that those assets would be available to the non-defaulting counterparty in the event of a counterparty default. A custodian that is affiliated with either counterparty to a swap raises the concern that in the event of a default by its affiliate counterparty, the custodian's affiliation may compromise its ability to act swiftly to release funds to the non-defaulting counterparty. As to concerns regarding the high concentration of custodians that could result from the independence element, the Commission notes that segregated accounts would be protected—regardless of the concentration level of custodians—as they would not be part of the estate of the defaulting custodian under the current bankruptcy regime.

Several commenters recommended lifting the restriction on rehypothecation and reuse of initial margin collateral, either generally or on a conditional basis.[391] The Commission

[387] The Commission recognizes that these haircuts apply to certain currencies, under certain circumstances.

[388] As discussed in Appendix A, the Commission recognizes that due to certain investment constraints, including regulatory limitations, not every financial entity is going to be able to pledge all types of eligible collateral, which will have an effect on its funding costs of collateral.

[389] The Commission would expect that under the model based approach, calculated haircut would be less than the standardized haircut approach.

[390] *See* GPC.

[391] *See* CPFM; CCMR; IFM; ISDA; SIFMA; ABA; CS; and FSR.

is not allowing the rehypothecation of initial margin collateral. Rehypothecation would allow the collateral posted by one counterparty to be used by the other counterparty as collateral for additional swaps, resulting in rehypothecation chains and embedded leverage throughout the financial system. The increased leverage, along with the additional connections between market participants, resulting from rehypothecating margin, could have a destabilizing effect on the financial system.[392] The Commission understands that prohibition against rehypothecation will impose significant costs on market participants as this will increase their funding costs for margin.

The Commission is not allowing cash to be posted as initial margin collateral without it being converted into other eligible collateral. As noted above, cash held at a custodian in a deposit account can be used by the custodial bank and as such, posting of cash as initial margin would run afoul of the prohibition against rehypothecation. This requirement may lead to additional funding costs in the form of excess margin being held at the custodian. However, the Commission expects that counterparties will post some other form of eligible collateral and subsequently substitute the cash with other eligible assets, including a sweep vehicle, which should mitigate the burdens placed by this requirement.

7. Documentation

Comprehensive documentation of counterparties' rights and obligations to exchange margin allows each party to manage risks more effectively throughout the life of the swap and to avoid disputes regarding the terms of the swap during times of financial turmoil. In furtherance of that goal, the final rule requires that CSEs enter into contractual documentation with counterparties addressing, among other things, how swaps would be valued for purposes of determining margin amounts, and how valuation disputes would be resolved. To the extent that other Commission regulations address similar requirements, burdens on CSEs should be minimal.

8. Non-Financial End Users

The Commission's proposal did not require CSEs to exchange margin with non-financial end users as the Commission believes that such entities, which generally are using swaps to hedge commercial risk, pose less risk to CSEs than financial entities. Instead, the proposal would have required a CSE, for transactions with non-financial end users with material swaps exposure to such CSE, each day to calculate both initial and variation margin as if they were a CSE. These calculations would serve as risk management tools to assist the CSE in measuring its exposure and to assist the Commission in conducting oversight of the CSE. The majority of commenters opposed the hypothetical margin calculation requirement for non-financial end users.[393] Commenters generally noted the significant burdens this requirement may place on CSEs and the non-financial end user, who must monitor their swaps exposures to determine if they exceed the material swaps exposure threshold.

In response to the comments, the Commission is not adopting the hypothetical margin calculation requirements concerning non-financial end users. Although the Commission continues to believe that hypothetical margin calculation requirements would promote the financial soundness of CSEs, the Commission recognizes the additional administrative burdens such measure could impose on CSEs and on non-financial end users. The Commission has determined that removing the hypothetical margin calculation is appropriate, particularly in light of the comprehensive risk management program that all CSEs are required to establish and maintain under existing Commission regulations.[394]

The proposal also would have required documentation between a CSE and a non-financial end user to state whether margin is required to be exchanged and, if so, the applicable thresholds below which margin is not required. In response to commenters' concern that the standards are too burdensome and that other Commission regulations adequately address the subject, the Commission is not adopting any new documentation requirement for uncleared swaps with non-financial end users.[395]

9. Inter-Affiliate Swaps

Under the final rule, the Commission is requiring the exchange of variation margin for swaps between a CSE and its affiliate. Initial margin is required to be collected from an affiliate if the affiliate is in a jurisdiction without comparable margin requirements with respect to the affiliate's outward-facing (*i.e.,* third-party) transaction. In addition, where the risk is being transferred to the CSE through a chain of inter-affiliate swaps, with the risk originating from a third-party transaction, that third-party transaction must be subject to comparable margin requirements with respect to that particular transaction; otherwise, the CSE must collect initial margin from its affiliate counterparty.

The Commission understands that CSEs currently exchange variation margin when entering into swaps with their affiliates. Therefore, the Commission expects that CSEs will incur incremental costs associated with funding variation margin under the final rule. Because the Commission in most cases is not requiring posting and collection of initial margin for inter-affiliate swaps, this may result in a CSE, in the event of a default of an affiliate counterparty (or the default of any of the affiliates in a chain of inter-affiliate swaps that has a cascading effect), not having enough margin to cover its losses on an inter-affiliate swap. However, viewed as a consolidated entity, the overall risk to the entity and the financial system, in terms of credit risk and leverage, should not be increased, as a result of the Commission's requirement, as the affiliate entering into an outward-facing swap must collect margin or the CSE must collect margin from its affiliated counterparty. In addition, as these inter-affiliate trades are typically designed to move risk to the most liquid market (in terms of breath and depth), this will permit the CSE to efficiently manage that risk. In addition, by not posting initial margin on their inter-affiliate swaps, the affected affiliates may compete more effectively by passing the cost savings to clients.

The Commission believes that the Prudential Regulators' approach, which requires swap dealers subject to the Prudential Regulators' margin rules to collect only for initial margin, would be too costly to the extent that the subject inter-affiliate trade is viewed as shifting risks within the consolidated group. This difference may make it less costly

[392] For example, a default or liquidity event that occurs at one link along the rehypothecation chain may induce further defaults or liquidity events for other links in the rehypothecation chain as access to the collateral for other positions may be obstructed by a default further up the chain. Also, in the event of one default along the chain, there is an increased chance that each party along the chain will ask for the rehypothecated collateral to be returned to them at the same time, leaving just one party with the collateral. This spiraling event is the result of only one asset being pledged for all the positions along the rehypothecation chain.

[393] *See* ISDA; SIFMA; Joint Associations; JBA; FSR; ETA; NGCA/NCSA; CDEU; COPE; BP; Shell TRM; and CEWG.

[394] *See, e.g.,* § 23.600 of the Commission's regulations.

[395] *See* ISDA.

to conduct inter-affiliates swaps for Commission-regulated swap dealers than prudentially regulated swap dealers and CSEs. As a result of higher costs in transacting with prudentially regulated swap dealers than CSEs, the consolidated parent would favor inter-affiliates swaps with a CSE over a prudentially regulated swap entity.

10. Compliance Schedule

As discussed above, the Commission expects that affected entities will need to update their current operational infrastructure to comply with the provisions of the final rule, including potential changes to internal risk management and other systems, netting agreements, trading documentation, and collateral arrangements. In addition, the Commission expects that CSEs that opt to calculate initial margin using an initial margin model will modify such models and obtain regulatory approval for their use.[396] In this regard, the Commission recognizes that CSEs and other affected counterparties can benefit from additional time to come into compliance with the new margin regime; at the same time, it is important that the final rule is implemented without undue delay so as to protect CSEs and the U.S. financial system as Congress intended. Accordingly, the Commission has determined to adopt a phase-in schedule for compliance.[397] The phase-in schedule is also responsive to commenters supporting international harmonization of implementation dates for margin requirement.

Under the phase-in schedule, the largest and most sophisticated covered swap entities that present the greatest potential risk to the financial system comply with the requirements first. The Commission expects that this would be less of a burden on these entities as they currently have the infrastructure in place to meet the requirements and would require the least amount of modification.

C. Section 15(a) Factors

1. Protection of Market Participants and the Public

Under the final rule, the market and the public will benefit from the required collateralization of uncleared swaps. More specifically, the margin requirements should mitigate the overall credit risk in the financial system, reduce the probability of financial contagion, and ultimately reduce systemic risk.

The primary reason for collecting margin from counterparties is to protect an entity in the event of its counterparty default. That is, in the event of a default by a counterparty, margin protects the non-defaulting counterparty by allowing it to use the margin provided by the defaulting entity to absorb the losses and to continue to meet all of its obligations. In addition, margin functions as a risk management tool by limiting the amount of leverage that either counterparty can incur. Specifically, the requirement to post margin ensures that each counterparty has adequate collateral to enter into an uncleared swap. In this way, margin serves as a first line of defense in protecting an entity from risk arising from uncleared swaps, which ultimately mitigates the possibility of a systemic event.

Protecting financial entities from the risk of failure has direct benefit to the public as the failure of these entities could result in immediate financial loss to its counterparties or customers. Given the importance of these entities to the financial system, their failure could spill over to other parts of the broader economy, with detrimental impact on the general public.

The final rule may also have the effect of promoting centralized clearing. Specifically, the final rule's robust margin requirements for uncleared contracts may create incentives for participants to clear swaps, where available and appropriate for their needs.[398] Central clearing can provide systemic benefits by limiting systemic leverage and aggregating and managing risks by a central counterparty.

On the other hand, required margin may reduce the availability of liquid assets for purposes other than posting collateral and therefore affect the ability of CSEs to engage in swaps activities and financial end users to manage or hedge the risks arising from their business activities. In addition, as detailed below in Appendix A, the Commission's margin requirements will increase the cost of entering into a swap transaction. The final margin rule incorporates various cost-mitigating provisions—such as the initial margin thresholds, expansion of eligible collateral for variation margin for financial end users, and minimum transfer amount—to contain potentially adverse impacts on the market and the public.

2. Efficiency, Competitiveness, and Financial Integrity of Swap Markets

In finalizing the rule, the Commission strived to promote efficiency and financial integrity of the swaps market, and where possible, mitigate undue competitive disparities. Most notably, the Commission, in finalizing the margin rule, aligned the rule with that of the Prudential Regulators to the greatest extent possible. This should promote greater operational efficiencies for those CSEs that are part of a bank holding company as they may be able to avoid creating individualized compliance and operational infrastructures to account for the final rule and instead, rely on the infrastructure supporting the bank CSE.

The final rule also provides for built-in flexibilities that should enhance the efficiency in the application of the rule. For example, the final rule provides counterparties the flexibility to post a variety of collateral types to meet the margin requirements which may result in increased efficiencies for end users and promote the use of swaps to hedge or manage risks. For initial margin calculation methodology, the final rule provides CSEs with the choice of two alternatives to allow them to choose the methodology that is the most cost efficient for managing their business risks.

Proper documentation of swaps is crucial to reducing risk in the bilaterally-traded swaps market. Accordingly, the final rule requires that CSEs enter into contractual documentation with counterparties addressing, among other things, how swaps would be valued for purposes of determining margin amounts, and how valuation disputes would be resolved. Documentation of counterparties' rights and obligations to exchange margin should allow each party to manage risks more effectively throughout the life of the swap and to avoid disputes regarding the terms of the swap during times of financial turmoil.

The safety and soundness of CSEs—given the nature and scope of their activities—are critical to the financial integrity of markets. As discussed above, margin serves as a first line of defense to protect a CSE in the event of a default by its counterparty. It also

[396] The Commission understands that under current practices, CSEs already use models to calculate initial margin requirements for certain clients, including hedge funds.

[397] See § 23.161.

[398] As a result of the cost effects on the Commission's final rule, it is expected that some market participants may change their practice of using uncleared swaps to alternative instruments. Futures and cleared swaps, which tend to be more standardized and liquid than uncleared swaps, typically require less initial margin; however, this may result in basis risk, as a result of standardization of these products. A futures contract has a one day minimum liquidation time. A cleared swap has a three to five day minimum liquidation time whereas the Commission's margin rules requires a ten day minimum liquidation time for uncleared swaps.

helps to reduce the risk of a systemic event by containing the risk of a cascade of defaults occurring. A cascade occurs when one participant defaulting causes subsequent defaults by its counterparties, and so on, resulting in a domino effect and a potential financial crisis.

The Commission also notes that the final margin rule, like other requirements under the Dodd-Frank Act, could have a substantial impact on the relative competitive position of market participants operating within the United States and across various jurisdictions. U.S. or foreign firms could be advantaged or disadvantaged depending on how the Commission's margin rule compares with corresponding requirements under Prudential Regulators' margin regime or in other jurisdictions. To mitigate undue competitive disparities, the Commission, in developing the final rule, harmonized the final rule with those of the Prudential Regulators and the BCBS–IOSCO framework.

3. Price Discovery

The Commission is requiring a ten-day margin period of risk for uncleared swaps, as compared to a three- to five-day margin period of risk for cleared swaps. Also, the Commission is only allowing limited netting for uncleared swaps. Together, these provisions of the final rule may result in the use of more standardized products.

Increase in the use of standardized products may lead to greater transparency in the cleared swaps and futures markets. If market participants migrate to standardized products, price discovery process for such swaps and futures may improve with higher volumes. Conversely, lower volumes for uncleared swaps may negatively impact the price discovery process for such swaps. However, the Commission believes that since these uncleared swaps are customized, the potential reduction in the efficacy of the price discovery process for uncleared swaps is less of a concern.

4. Sound Risk Management Practices

A well-designed risk management system helps to identify, evaluate, address, and monitor the risks associated with a firm's business. As discussed above, margin plays an important risk management function. Initial margin addresses potential future exposure. That is, in the event of a counterparty default, initial margin protects the non-defaulting party from the loss that may result from a swap or portfolio of swaps, during the period of time needed to close out the swap(s). Initial margin augments variation margin, which secures the current mark-to-market value of swaps. This, in turn, forces market participants to recognize losses promptly and to adjust collateral accordingly and helps to prevent the accumulation of large unrecognized losses and exposures.

The final rule permits CSEs to calculate initial margin by using either a risk-based model or standardized table method. The choice of two alternatives may enhance a CSE's risk management program by allowing the CSE to choose the methodology that is the most effective for managing their business risks.

The Commission is also requiring a ten-day margin period of risk for uncleared swaps and only a five-day margin period of risk for cleared swaps. Thus, the rule may result in the use of more standardized cleared swaps at the expense of more customized swaps which may be harder to evaluate and risk manage; however, this may encourage market participants to use less ideal hedging techniques, as noted above, which may result in a different type of risk at a firm.

Finally, the Commission is imposing strong model governance, oversight and control standards that are designed to ensure the integrity of the initial margin model and provide margin requirements that are commensurate with the risk of uncleared swaps. For the foregoing reasons, the final rule promotes sound risk management practices by CSEs.

5. Other Public Interest Considerations

The Commission has not identified any additional public interest considerations related to the costs and benefits of the final rule.

Appendix A to the Preamble

In this Appendix, the Commission provides its estimate of the funding costs related to the final initial and variation margin requirements and discusses certain key aspects of overall administrative costs. As noted below, there are a number of challenges presented in conducting a quantitative analysis of the costs associated with the final rule. In this exercise, the Commission looked to data sources that were representative of the current swaps market and scaled the data to limit its estimate to CSEs and their uncleared swaps. Given the complexity of this final rule and its inter-relationship to other rulemakings, the Commission's estimate is subject to considerable uncertainty. The Commission's estimates are based on available data and assumptions set out below.

In the proposal, the Commission requested commenters to provide data or other information that would be useful in estimation of the quantifiable costs and benefits of this rulemaking. No commenters, with the exception of NERA, provided any data; NERA provided its estimate of the overall costs of the margin requirements under the Prudential Regulators' and Commission's proposed rules.[399] The Commission's estimate of the funding cost of initial margin diverges from that of NERA, as explained below.

I. Margin Costs

A. Funding Cost

The Commission reviewed various industry studies estimating the total cost of initial margin that would be required by the margin rules, as proposed, by the Prudential Regulators and the CFTC.[400] These studies rely on a different set of assumptions in calculating the funding costs of the margin rules, as explained below. The Commission used this set of industry data, which provides global estimates of the margin required under such rules, to construct its own estimates of costs. The cost estimates include two major components. The first component is an estimate of the amount of initial margin subject to the Commission's margin regime, constructed by scaling the global estimates of the margin to the relevant basis. The second component is an annual funding cost. The Commission multiplied these two components in order to obtain an annual cost of funding margin as required by the rules. This methodology is similar to that used by the Prudential Regulators in their quantitative analysis in finalizing their margin rules. Details of the methodology are described in the text that follows.

Table A, below, presents estimated amounts of initial margin that would be required for CSEs under the final rule.[401] These estimates are based on the assumption that the final rule is effective (*i.e.,* in the post-transitional period).

The initial margin estimates in Table A are based on two different studies that estimate the potential impact of the 2013 international framework: BCBS and IOSCO[402] and

[399] NERA provided recommendations for reducing the costs for the final rule; these recommendations are discussed above.

[400] As discussed below, these studies did not distinguish between CSEs and prudentially-regulated swap dealers.

[401] The Commission is unable to quantify certain swaps that may fall under the final rule. Specifically, there are swaps entered into by some non-U.S. swap dealers and foreign counterparties that would be swept into this rulemaking under a 2(i) analysis (relating to the Commission's authority to regulate cross-border swaps) that are not reported. The Commission acknowledges that these costs are not reflected in the Commission's estimates because the Commission does not require regulatory reporting of all transaction data on swaps transacted globally by derivatives dealers covered by the rule. Hence, the Commission notes the limitation of the estimates shown in Table A, but is unable to make a reasonable estimate of the notional amount of derivatives not covered by its estimates.

[402] *See* Basel Committee on Banking Supervision and the International Organization of Securities Commissions (2013), *Margin Requirements for Non-Centrally Cleared Derivatives: Second Consultative Document,* report (Basel, Switzerland: Bank for International Settlements, February).

ISDA[403] studies. Each study reports an estimate of the global impact of margin requirements, which is displayed under the column heading ''Global ($BN).'' Most notably, these studies provide estimates based on the assumption that margin requirements apply to all uncleared swaps of all market participants covered by the 2013 international framework.

To estimate the funding costs of the initial margin requirement, the Commission modified the ISDA and BCBS IOSCO survey estimates in two stages. In the first stage, the Commission multiplied the survey estimates by 57% to align the global estimates better with the impact of the U.S. rules. The Commission utilized Swap Data Repository (SDR) data on uncleared interest rate swaps, which represent the majority of the notional value associated with uncleared swaps, to compute the 57% scale factor. The 57% scaling is designed to represent the notional amount of uncleared interest rate swaps reported to the SDRs as a fraction of the global notional amount of uncleared interest rate swaps represented in the surveys. The Commission's Weekly Swaps Report shows $100.9 trillion in notional outstanding for uncleared interest rate swaps reported to SDRs as of June 5, 2015, whereas the BCBS–IOSCO survey represents $175.6 trillion in global notional outstanding of uncleared interest rate swaps. Hence, the ratio between the two is approximately 57% (100.9/175.6 = 57.46%). The Commission applied this 57% scale factor to the global notional amount of margin estimated in each of the surveys.[404]

These estimates inherit the limitations of the global estimates provided by the underlying studies, which applied rules that are similar, but not identical, to the Commission's rules. For example, the BCBS–IOSCO survey results do not apply the $8 billion material swaps exposure threshold, and in fact did not apply any such threshold. It also did not exclude swaps with a non-financial end user as a counterparty. The results are likely to be conservative and overstate the actual impact of the U.S. rules.

In a second stage, the Commission multiplied the results obtained in the first stage by 25%. This 25% scale factor reduces the estimates to account for the narrower scope of the Commission's rule as compared to the scope of SDR data. For a variety of reasons, many of the uncleared swaps reported to the SDRs do not require margin under the Commission's rule. For example, margin may instead be required under the Prudential Regulators' rule. Alternatively, margin would not be required if a covered swap entity's counterparty to a swap is a non-financial end user. The Commission has used SDR data to compute this 25% scale factor applied in its cost estimates. This scale factor is computed by comparing the notional amount of swaps covered by the Commission's rule to the total notional amount represented by SDR data.[405] The Commission believes that 25% is an appropriate scale factor to adjust the total notional value of uncleared swaps, reported to the SDR, to the relevant notional value.

The Commission has estimated this 25% scale factor based on the uncleared outward-facing open interest rate swaps reported to DTCC as of June 5, 2015. The scale factor compares the notional value of swaps covered by the Commission's rule to the total notional value of all swaps reported to the SDR. Because the identity of both counterparties to a trade is relevant for the computation, notional values for each trade side are utilized to construct the ratio (*i.e.,* notional values are double-counted). If both counterparties of a swap are subject to the Commission's margin rule, the notional amount is counted twice (once for each counterparty).If one counterparty is subject to the Commission's margin rule, but the other counterparty is subject to the Prudential Regulators' margin rule, the notional amount is counted once (for the counterparty covered by the Commission's rule).

Based on the SDR data, the Commission estimates that the total notional amount of uncleared interest rate swaps subject to the Commission's initial margin requirement is roughly $42 trillion (where both trade sides are potentially counted). The total notional value, reported to the SDR, used in this calculation is $202 trillion (which is twice the $100.9 trillion, one-sided, total notional value noted earlier). The ratio of these two values is therefore 21% (which equals 42 divided by 202). To be conservative, the Commission assumes that the total notional amount between the CSEs and their covered counterparties account for roughly 25% of the total notional value of uncleared swaps reported to the SDRs.[406]

The net effect of applying these two scale factors to the survey estimates is to multiply the raw, survey estimates of initial margin by approximately 14% (57% x 25% = 14.25%). These estimates are displayed in Table A under the column heading ''Covered Swap Entities ($BN).''[407]

Table A presents a range of estimates based on the ISDA and BCBS–IOSCO studies. Both the ISDA's low estimate and the BCBS–IOSCO estimate assume that all initial margin requirements are calculated according to an internal model with parameters consistent with those required by the final rule. The ISDA's high estimate assumes that all initial margin requirements are calculated according to a standardized gross margin approach. Further, the ISDA standardized approach does not allow for the recognition of any netting offsets.[408] The Commission anticipates that most entities will use internal models to calculate initial margin.

[403] Documents on initial margin requirements are available on the International Swaps and Derivatives Association Web site.

[404] The BCBS–IOSCO survey estimate is based on a global notional amount outstanding of $281.3 trillion of uncleared swaps. We apply the ratio 100.9/175.6 = 57% to each of the global margin figures to reduce them to the relevant basis for the rule.

[405] For the purposes of this calculation, the impact of the $8 billion material swaps exposure threshold for financial end users was approximated in the following manner. Entities estimated to have had less than $8 billion total notional of open IRS swaps on June 5, 2015 were considered not to have material swaps exposure. The Commission understands that it is possible that its estimate of the number of financial end users with material swaps exposure may over- or underestimate the total number of covered counterparties as certain instruments that are used in the calculation are not included in this estimate and certain entities that may be excluded from the Commission's margin rule may be included.

[406] The Commission assumed that on June 5, 2015, there were 54 CSEs. The Commission based this number on the number of provisionally registered swap dealers and major swap participants.

[407] The BCBS–IOSCO impact study discusses the impact of several different margin regimes, *e.g.,* regimes with and without an initial margin threshold. In addition, the estimate costs reported in Table A from the BCBS–IOSCO study reflects an estimate from the study that is most comparable to the Commission's final rule.

[408] The ISDA study was conducted based on the BCBS–IOSCO February 2013 consultative document which did not include any recognition of offsets in the standardized initial margin regime. Recognition of offsets was included in the final 2013 international framework.

Applying the standardized approach on SDR data for June 5, 2015, the Commission estimated total gross initial margin due to the new margin requirements at $1.174 trillion for IRS and CDS, which is less than the ISDA-standardized initial margin estimates of $1,454 billion shown in Table A.

TABLE A—ESTIMATED INITIAL MARGIN REQUIREMENTS FOR OUTWARD FACING SWAPS, BASED ON PRIOR ESTIMATES OF GLOBAL MARGIN REQUIRED

Source	Method	Global ($BN)	Covered swap entities * ($BN)
ISDA	Standardized	10,200	[409] 1,454
ISDA	Model Based	800	[410] 114
BCBS–IOSCO	Model Based	900	[411] 128

* Assumes uncleared swaps between CSEs and their covered counterparties is approximately 14% of global notional outstanding, as described in the text.

Table B presents a matrix of the annual cost estimates associated with the initial margin requirements.[412]

The three rows of the matrix correspond to the ISDA Standardized, ISDA Model Based, and BCBS–IOSCO Model Based approaches for determining initial margin amounts that are presented and discussed above (in relation to Table A). The matrix includes four columns, two of which contain final funding-cost estimates for initial margin required under the final rule. The two funding-cost columns identify the Commission's estimated lower-end and upper-end range for funding costs based on three different methods (*i.e.,* BCBS–IOSCO, ISDA Model Based, and ISDA Standardized).

For the purposes of this matrix, the Commission assumed that the opportunity cost of funding initial margin is between 25 basis points and 160 basis points. The Commission acknowledges that this opportunity cost range is expansive, but based on the Commission's experience and understanding of the entities covered by its margin rule (*e.g.,* swap dealers, insurance companies, collective investment vehicles), it believes that range addresses the idiosyncrasies of these entities. As noted above, some entities covered under the margin rule (*e.g.,* certain registered mutual funds) will be able to post eligible collateral that are already on their balance sheets (*i.e.,* investments). Given this possibility, the Commission makes a conservative assumption that the opportunity cost of pledging collateral on the lower end is 25 basis points.

For the purposes of determining the higher-end of opportunity costs, the Commission accepted Duff & Phelps' weighted average cost of capital of 4.6% for large security brokers and dealers, and then subtracted the 3% return on 30-year Treasury collateral to arrive at 1.6% of funding costs.[413] The Commission assumes that the 160 basis points address situations where, for example, a swap dealer does not have sufficient eligible collateral on its balance sheet. As a result, the swap dealer would need to raise capital by issuing debt or equity to purchase eligible collateral, for instance, 30-year Treasuries to meet the final rule's initial margin requirements. Under this hypothetical, the swap dealer's opportunity costs related to posting eligible collateral are increased.[414]

Each annual funding cost estimate in table B is computed by multiplying the initial margin amount for CSEs (from Table A) identified in each row by the opportunity cost of funding initial margin identified in each column. The amounts presented in Table B are reported in billions.

TABLE B—ESTIMATED ANNUAL COST OF INITIAL MARGIN REQUIREMENTS FOR CSEs AND THEIR COVERED COUNTERPARTIES

Source	Method	Final cost ($BN)	
		Opportunity cost of funding initial margin (at 0.25%)	Opportunity cost of funding initial margin (at 1.6%)
ISDA	Standardized	[415] 3.64	[416] 23.26
ISDA	Model	[417] 0.29	[418] 1.82
BCBS–IOSCO	Model	[419] 0.32	[420] 2.05

The estimated annual cost of the initial margin requirements depend on the specific initial margin estimate (which depends in large part on whether the standardized or model approach is used) and opportunity cost of funding initial margin. As discussed above, the Commission expects the costs of the final margin rule to be more consistent with the amounts based on the model approach (both ISDA and BCBS–IOSCO), rather than the standardized approach for determining initial margin amounts. Using the estimates based on the model-based approaches, the Commission therefore, expects that the costs of the final rule would most likely range from $290 million to $2.05 billion.

B. Variation Margin

Under the final rule, the Commission is requiring the daily exchange of variation margin. The requirement is intended to mitigate the build-up of uncollateralized risk at swap counterparties. In requiring the exchange of daily variation margin the Commission acknowledges that there will additional costs to some market participants,

[409] 10,200 × 14.25% = 1,454.

[410] 800 × 14.25% = 114.

[411] 900 × 14.25% = 128.

[412] The cost of funding initial margin for CSEs or covered counterparties is a function of the entities' business model, including their financial structure, financial activities and services, and risk profile. The most direct cost of providing initial margin is generally the difference between the cost of funding the required margin, including the opportunity cost on the use of the margin, less the rate of return on the assets used as margin. In some cases, for example, certain registered investment companies will have no additional incremental funding costs, as they will be able to post assets that they currently hold on their balance sheet as eligible collateral. Alternatively, certain entities may have to raise additional funds to purchase eligible assets, as they may not have any or may need more of eligible collateral.

[413] For SIC code 621, Security Brokers, Dealers, Flotation, the Weighted Average Cost of Capital (''WACC'') is computed to be 4.6% for large firms as of March 31, 2015 by Duff & Phelps, ''2015 Valuation Handbook: Industry Cost of Capital.'' WACC is estimated over a time horizon that includes a stressed period.

[414] It should be noted that the entity is also forgoing the use of the borrowed funds, as an investment asset. Therefore, this opportunity cost is also imbedded in this cost.

[415] 1,454 × 0.25% = 3.64.

[416] 1,454 × 1.6% = 23.26.

[417] 114 × 0.25% = 0.29.

[418] 114 × 1.6% =1.82.

[419] 128 × 0.25% = 0.32.

[420] 128 × 1.6% =2.05.

particularly to those who are not currently exchanging variation margin daily.[421]

Presuming that a CSE maintains a relatively flat swap book,[422] the cost of the cash only requirement is small when the CSEs collect enough cash to post to other CSEs.[423] However, when a CSE needs to convert non-cash collaterals collected from financial end users into cash to post to their swap dealer and major swap participant counterparties,[424] it places additional costs on a CSE.[425] In this case, a CSE may use a repurchase agreement to turn non-cash collaterals into cash. The cost of repo transactions depend on many factors, including duration and quality of collateral posted. For example, on September 2, 2015, Bloomberg quotes one week treasury GC repo rate of 0.24%.[426] However, in times of severe financial stress, the repo market may not provide access to market participants. If this happens, a CSE may not be able to turn non-cash collateral into cash which might cause technical defaults. In order to avoid technical defaults, a CSE may elect to pay for a committed repo agreement that gives them the right to enter into a repurchase agreement for a fee at a predetermined repo rate (presumably at a rate significantly above the normal repo rate).[427] This additional cost may be priced into a non-cleared swap agreement and eventually be passed onto financial end users who post non-cash collaterals.[428] A CSE might also require financial end users to only post cash, matching it collateral exposure.[429] Despite these possibilities, the Commission notes that most of the variation margin by total volume continues to be in the form of cash exchanged between swap dealers.[430]

The Commission anticipates that many CSEs will have cheaper access to liquidity than most financial end users and may be able to pass along this cost savings to financial end users.[431] The cash only variation margin requirement only holds for swaps between a CSE and another swap entity. The cash only variation margin requirement does not apply to swaps between a CSE and a financial end user. This change from the proposal should provide the flexibility to financial end users to post and to hold the same types of financial instruments in their portfolios for variation margin, as they did prior to the final rule, which should result in less performance drag.[432] Financial end users may still end up paying for the liquidity demanded on CSEs, but, overall, the CSEs' costs are likely to be lower compared to the alternative of requiring cash only variation margin for financial end users, because CSEs may be able to pass on their liquidity advantage to financial end users.

C. Administrative Costs

CSEs and financial end users will face certain startup and ongoing costs relating to technology and other operational infrastructure, as well as new or updated legal agreements. These administrative costs related to margin for uncleared swaps are difficult to quantify at this time; the Commission will discuss these costs qualitatively instead.[433]

The per-entity costs related to changes in technology, infrastructure, and legal agreements are likely to vary widely, depending on each market participant's existing technology infrastructure, legal agreements, and operations, among other things. As discussed in the preamble and below, the Commission expects that certain aspects of the final rule—such as minimum initial margin threshold and expanded list of eligible collaterals—will have mitigating impact on the overall costs to an affected entity. Moreover, the higher degree of harmonization between various regulators and jurisdictions should result in lower administrative costs.[434] Longer lead times for industry to build out compliance systems will lower administrative costs, because it gives industry more time to plan and execute buildouts, which should result in less operational errors and costs.

Examples of the key documents related to administrative costs include: (1) Certain self-disclosure documents, (2) credit support annexes; and (3) tri-party segregation of margin collateral that have to be arranged by the parties involved.[435]

The Commission expects that counterparties will have to make certain representations regarding their status. These representations will impose certain costs on CSEs and their swap entity and financial end user counterparties. There are at least three types of information when making self-disclosures: (a) Jurisdictional information, (b) status information, and (c) initial margin information. Jurisdictional information anticipates possible multi-jurisdictional counterparties. Status information would include, among other information, whether a party is a Commission-registered swap dealer and material swaps exposure information. Initial margin information includes among other information the amount of initial margin for the consolidated group.

There may be multiple credit support annexes between counterparties executing swaps because, among other reasons, the final rule provides for a separate netting treatment of legacy swaps and for calculation of initial margin by netting sets of broad asset classes. Consequently, market participants will need to amend or enter into new credit support agreements to account for the differences from the current arrangement(s), resulting in additional administrative costs.

Tri-party segregation agreements will have to be negotiated as well.[436] These arrangements can be costly as they involve multiple parties and typically customized to the counterparties' needs.[437]

The Commission is aware of certain industry initiatives to standardize documentation in order to create efficiencies and mitigate costs. For example, ISDA plans to implement the following: (1) ISDA Amend Platform, (2) ISDA bookstore for Master Agreements and CSAs, and (3) Protocols.[438] The ISDA Amend Platform is technology that would allow swap contracts between counterparties to be standardized, but with customized options to reduce costs.

ISDA is also planning to create a database of standardized Master Agreements and CSAs, updated to reflect the new margin requirements. This initiative should result in more standardized agreements and lower the costs to market participants.

Finally, ISDA is considering developing protocols to facilitate the creation of multilateral agreements based on multiple bilateral agreements. These protocols should

[421] As discussed above, it should be noted that the Commission's final rule includes a minimum transfer amount, which is designed to mitigate some of the costs of exchanging variation margin daily.

[422] The Commission is assuming this as CSEs are dealers and typically do not take proprietary long or short positions, in contrast to other market participants (*e.g.,* hedge funds).

[423] According to the 2015 ISDA Margin Survey, each of the largest dealers receives and pays, on average, roughly 6 billion USD variation margin on a given day. When a swap dealer receives more cash than it needs to pay, or an equal amount, the cost is minimal.

[424] As the final rule requires cash to be posted between a CSE and its swap entity counterparty, while permitting all types of eligible collateral when it transacts with a financial end user, this may result in a collateral mismatch.

[425] For instance, this might happen when a CSE has posted all the non-cash collateral that it can with financial end users as variation margin.

[426] According to the 2015 ISDA Margin Survey, each of the largest dealers receives and pays, on average, roughly 6 billion USD variation margin on a given day. If 1 percent of variation margin received is non-cash collateral which needs to be turned into cash using a repo agreement, then the daily cost will be roughly $400, which is calculated as 60 million × 0.24%/360.

[427] This is similar to a market participant paying a fee to access to a revolving credit facility.

[428] To the extent that these predetermined repos are used as a funding mechanism for the entire operations of the entity, these costs might not be completely passed on in the price or other aspect of the relationship between the CSE and the financial end user.

[429] It should be noted that this requirement may result in better pricing terms or possibly some other beneficial change in the relationship with the CSE.

[430] According to the 2015 ISDA Margin Survey, 77 percent of variation margin received and 75 percent of variation margin delivered is in the form of cash. *Available at https://www2.isda.org/functional-areas/research/surveys/margin-surveys/.*

[431] The CSE may be able to pool liquidity needs for end users. Due to CSE liquidity demands, they may need to establish or maintain relationships with banks that have access to cheaper liquidity through the payment system and the Federal Reserve System, in general.

[432] As suggested by NERA, this change should reduce the possibility of pro-cyclicality in time of stress.

[433] In the proposal the Commission requested comments regarding the administrative costs involved in implementing its proposed margin rule; however, the Commission did not receive any quantitative data to assist it in its analysis therefore, the Commission is undertaking a qualitative analysis.

[434] As discussed above, the Commission's final rule is very similar to the Prudential Regulators' final margin rule and the 2013 International Standards.

[435] Costs of these requirements are estimated above in the PRA section.

[436] The Commission notes that some of these agreements will need to be re-negotiated as a result of the final rule.

[437] The final rule's requirements should provide some level of standardization.

[438] In discussions with ISDA, the Commission understands that these initiatives are currently in progress.

provide efficiencies and lower the cost of documentation.

Appendix B to the Preamble

Seq.	Date received	Organization
1	11/11/2014	Chris Barnard.
2	11/21/2014	Japan Financial Markets Council (JFMC).
3	11/24/2014	ICI Global.
4	11/24/2014	Investment Company Institute.
5	11/24/2014	Committee on Capital Markets Regulation.
6	11/24/2014	Structured Finance Industry Group.
7	11/24/2014	ISDA (International Swaps and derivatives Association).
8	11/24/2014	Global FX Division (GFXD) of the Global Financial Markets Association (GFMA).
9	11/24/2014	Alberta Investment Mgt Corp; British Columbia Investment Mgt Corp; Caisse de dépôt et placement du Québec; Canada Pension Plan Investment Bd; Healthcare of Ontario Pension Plan Trust Fund; OMERS Administration Corp; Public Sector Pension Investment Bd.
10	11/24/2014	American Public Gas Association (APGA).
11	11/24/2014	Securities Industry and Financial Markets Association.
12	11/24/2014	State Street Corporation on behalf of itself, Northern Trust Corporation and Bank of New York Mellon Corporation.
13	11/24/2014	Metropolitan Life Insurance Company.
14	11/24/2014	SIFMA.
15	11/24/2014	Skadden, Arps, Slate, Meagher & Flom LLP (on behalf of the Global Pension Coalition).
16	11/24/2014	Institute of International Bankers.
17	11/24/2014	TIAA–CREF.
18	11/25/2014	Securities Industry and Financial Markets Association (SIFMA).
19	11/25/2014	American Bankers Association (ABA).
20	11/25/2014	Credit Suisse.
21	11/25/2014	KfW Bankengruppe.
22	11/26/2014	Credit Suisse.
23	11/27/2014	Instituto de Crédito Oficial (“ICO”).
24	12/2/2014	Japanese Bankers Association (JBA).
25	12/2/2014	Alternative Investment Management Association (AIMA).
26	12/2/2014	Managed Funds Association.
27	12/2/2014	TriOptima.
28	12/2/2014	MFX Solutions, Inc. (MFX).
29	12/2/2014	The Financial Services Roundtable.
30	12/2/2014	White & Case LLP.
31	12/2/2014	FMS Wertmanagement.
32	12/2/2014	MasterCard International Incorporated First Data Corporation Vantiv, Inc.
33	12/2/2014	Public Citizen.
34	12/2/2014	American Gas Association American Public Power Association Edison Electric Institute Electric Power Supply Association Large Public Power Council National Rural Electric Cooperative Association.
35	12/2/2014	National Corn Growers Association & Natural Gas Supply Association.
36	12/2/2014	Freddie Mac.
37	12/2/2014	National Rural Utilities Cooperative Finance Corporation.
38	12/2/2014	CME Group.
39	12/2/2014	Coalition of Physical Energy Companies (COPE).
40	12/2/2014	Sutherland Asbill & Brennan LLP on behalf of the Federal Home Loan Banks.
41	12/2/2014	National Economic Research Associates, Inc.
42	12/2/2014	American Council of Life Insurers.
43	12/2/2014	International Energy Credit Association.
44	12/2/2014	Coalition for Derivatives End users.
45	12/2/2014	BP Energy Company.
46	12/2/2014	Shell Trading Risk Management.
47	12/2/2014	Sutherland Asbill & Brennan LLP on behalf of The Commercial Energy Working Group.
48	12/2/2014	Better Markets.
49	12/9/2014	Vanguard.
50	12/2/2014	National Rural Electric Cooperative Association (NRECA).
51	12/2/2014	Americans for Financial Reform (AFR).
52	12/3/2014	INTL FCStone Inc.
53	12/18/2014	KfW Bankengruppe.
54	12/11/2014	Australia and New Zealand Banking Group Commonwealth Bank of Australia Macquarie Bank Ltd National Australia Bank Ltd Westpac Banking Corp.
55	3/12/2015	Global Pension Coalition.
56	5/15/2015	Managed Funds Association.
57	6/1/2015	The Clearing House Association L.L.C. (TCH); American Bankers Association (ABA); ABA Securities Association (ABASA), and the Securities Industry and Financial Markets Association (SIFMA).
58	6/9/2015	William J Harrington.
59	8/7/2015	ISDA (International Swaps and Derivatives Association).

List of Subjects

17 CFR Part 23

Swaps, Swap dealers, Major swap participants, Capital and margin requirements.

17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

For the reasons discussed in the preamble, the Commodity Futures Trading Commission amends 17 CFR chapter I as set forth below:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

■ 2. Add subpart E to part 23 to read as follows:

Subpart E—Capital and Margin Requirements for Swap Dealers and Major Swap Participants

Subpart E—Capital and Margin Requirements for Swap Dealers and Major Swap Participants

§§ 23.100–23.149 [Reserved]

§ 23.150 Scope.

(a) The margin requirements set forth in §§ 23.150 through 23.161 shall apply to uncleared swaps, as defined in § 23.151, that are executed after the applicable compliance dates set forth in § 23.161.

(b) The requirements set forth in §§ 23.150 through 23.161 shall not apply to a swap if the counterparty:

(1) Qualifies for an exception from clearing under section 2(h)(7)(A) of the Act and implementing regulations;

(2) Qualifies for an exemption from clearing under a rule, regulation, or order issued by the Commission pursuant to section 4(c)(1) of the Act concerning cooperative entities that would otherwise be subject to the requirements of section 2(h)(1)(A) of the Act; or

(3) Satisfies the criteria in section 2(h)(7)(D) of the Act and implementing regulations.

§ 23.151 Definitions applicable to margin requirements.

For the purposes of §§ 23.150 through 23.161:

Bank holding company has the meaning specified in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

Broker has the meaning specified in section 3(a)(4) the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)).

Business day means any day other than a Saturday, Sunday, or legal holiday.

Company means a corporation, partnership, limited liability company, business trust, special purpose entity, association, or similar organization.

Counterparty means the other party to a swap to which a covered swap entity is a party.

Covered counterparty means a financial end user with material swaps exposure or a swap entity that enters into a swap with a covered swap entity.

Covered swap entity means a swap dealer or major swap participant for which there is no prudential regulator.

Cross-currency swap means a swap in which one party exchanges with another party principal and interest rate payments in one currency for principal and interest rate payments in another currency, and the exchange of principal occurs on the date the swap is entered into, with a reversal of the exchange of principal at a later date that is agreed upon when the swap is entered into.

Currency of Settlement means a currency in which a party has agreed to discharge payment obligations related to an uncleared swap or a group of uncleared swaps subject to a master netting agreement at the regularly occurring dates on which such payments are due in the ordinary course.

Day of execution means the calendar day at the time the parties enter into an uncleared swap, provided:

(1) If each party is in a different calendar day at the time the parties enter into the uncleared swap, the day of execution is deemed the latter of the two dates; and

(2) If an uncleared swap is—

(i) Entered into after 4:00 p.m. in the location of a party; or

(ii) Entered into on a day that is not a business day in the location of a party, then the uncleared swap is deemed to have been entered into on the immediately succeeding day that is a business day for both parties, and both parties shall determine the day of execution with reference to that business day.

Data source means an entity and/or method from which or by which a covered swap entity obtains prices for swaps or values for other inputs used in a margin calculation.

Dealer has the meaning specified in section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)).

Depository institution has the meaning specified in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

Eligible collateral means collateral described in § 23.156.

Eligible master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the covered swap entity the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 *et seq.*), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4617), or the Farm Credit Act of 1971, as amended (12 U.S.C. 2183 and 2279cc), or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (2)(i) in order to facilitate the orderly resolution of the defaulting counterparty; or

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i) of this definition;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(4) A covered swap entity that relies on the agreement for purposes of calculating the margin required by this part must:

(i) Conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

(A) The agreement meets the requirements of paragraph (2) of this definition; and

(B) In the event of a legal challenge (including one resulting from default or from receivership, conservatorship, insolvency, liquidation, or similar proceeding) the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions; and

(ii) Establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of this definition.

Financial end user means—

(1) A counterparty that is not a swap entity and that is:

(i) A bank holding company or a margin affiliate thereof; a savings and loan holding company; a U.S. intermediate holding company established or designated for purposes of compliance with 12 CFR 252.153; or a nonbank financial institution supervised by the Board of Governors of the Federal Reserve System under Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5323);

(ii) A depository institution; a foreign bank; a Federal credit union or State credit union as defined in section 2 of the Federal Credit Union Act (12 U.S.C. 1752(1) and (6)); an institution that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(D)); an industrial loan company, an industrial bank, or other similar institution described in section 2(c)(2)(H) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(H));

(iii) An entity that is state-licensed or registered as:

(A) A credit or lending entity, including a finance company; money lender; installment lender; consumer lender or lending company; mortgage lender, broker, or bank; motor vehicle title pledge lender; payday or deferred deposit lender; premium finance company; commercial finance or lending company; or commercial mortgage company; except entities registered or licensed solely on account of financing the entity's direct sales of goods or services to customers;

(B) A money services business, including a check casher; money transmitter; currency dealer or exchange; or money order or traveler's check issuer;

(iv) A regulated entity as defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20)) or any entity for which the Federal Housing Finance Agency or its successor is the primary federal regulator;

(v) Any institution chartered in accordance with the Farm Credit Act of 1971, as amended, 12 U.S.C. 2001 *et seq.* that is regulated by the Farm Credit Administration;

(vi) A securities holding company; a broker or dealer; an investment adviser as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), a company that has elected to be regulated as a business development company pursuant to section 54(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–53(a)), or a person that is registered with the U.S. Securities and Exchange Commission as a security-based swap dealer or a major security-based swap participant pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(vii) A private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80–b–2(a)); an entity that would be an investment company under section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) but for section 3(c)(5)(C); or an entity that is deemed not to be an investment company under section 3 of the Investment Company Act of 1940 pursuant to Investment Company Act Rule 3a–7 (§ 270.3a–7 of this title) of the Securities and Exchange Commission;

(viii) A commodity pool, a commodity pool operator, a commodity trading advisor, a floor broker, a floor trader, an introducing broker or a futures commission merchant;

(ix) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002);

(x) An entity that is organized as an insurance company, primarily engaged in writing insurance or reinsuring risks underwritten by insurance companies, or is subject to supervision as such by a State insurance regulator or foreign insurance regulator;

(xi) An entity, person, or arrangement that is, or holds itself out as being, an entity, person, or arrangement that raises money from investors, accepts money from clients, or uses its own money primarily for investing or trading or facilitating the investing or trading in loans, securities, swaps, funds, or other assets; or

(xii) An entity that would be a financial end user described in paragraph (1) of this definition or a swap entity if it were organized under the laws of the United States or any State thereof.

(2) The term ''financial end user'' does not include any counterparty that is:

(i) A sovereign entity;

(ii) A multilateral development bank;

(iii) The Bank for International Settlements;

(iv) An entity that is exempt from the definition of financial entity pursuant to section 2(h)(7)(C)(iii) of the Act and implementing regulations;

(v) An affiliate that qualifies for the exemption from clearing pursuant to section 2(h)(7)(D) of the Act; or

(vi) An eligible treasury affiliate that the Commission exempts from the requirements of §§ 23.150 through 23.161 by rule.

Foreign bank means an organization that is organized under the laws of a foreign country and that engages directly in the business of banking outside the United States.

Foreign exchange forward has the meaning specified in section 1a(24) of the Act.

Foreign exchange swap has the meaning specified in section 1a(25) of the Act.

Initial margin means the collateral, as calculated in accordance with § 23.154 that is collected or posted in connection with one or more uncleared swaps.

Initial margin model means an internal risk management model that:

(1) Has been developed and designed to identify an appropriate, risk-based amount of initial margin that the covered swap entity must collect with respect to one or more non-cleared swaps to which the covered swap entity is a party; and

(2) Has been approved by the Commission or a registered futures association pursuant to § 23.154(b).

Initial margin threshold amount means an aggregate credit exposure of $50 million resulting from all uncleared swaps between a covered swap entity and its margin affiliates on the one hand, and a covered counterparty and its margin affiliates on the other. For purposes of this calculation, an entity shall not count a swap that is exempt pursuant to § 23.150(b).

Major currencies means—

(1) United States Dollar (USD);

(2) Canadian Dollar (CAD);

(3) Euro (EUR);

(4) United Kingdom Pound (GBP);

(5) Japanese Yen (JPY);

(6) Swiss Franc (CHF);

(7) New Zealand Dollar (NZD);

(8) Australian Dollar (AUD);

(9) Swedish Kronor (SEK);

(10) Danish Kroner (DKK);

(11) Norwegian Krone (NOK); and

(12) Any other currency designated by the Commission.

Margin affiliate. A company is a margin affiliate of another company if:

(1) Either company consolidates the other on a financial statement prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards,

(2) Both companies are consolidated with a third company on a financial statement prepared in accordance with such principles or standards, or

(3) For a company that is not subject to such principles or standards, if consolidation as described in paragraph (1) or (2) of this definition would have occurred if such principles or standards had applied.

Market intermediary means—

(1) A securities holding company;

(2) A broker or dealer;

(3) A futures commission merchant;

(4) A swap dealer; or

(5) A security-based swap dealer.

Material swaps exposure for an entity means that the entity and its margin affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for June, July and August of the previous calendar year that exceeds $8 billion, where such amount is calculated only for business days. An entity shall count the average daily aggregate notional amount of an uncleared swap, an uncleared security-based swap, a foreign exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time. For purposes of this calculation, an entity shall not count a swap that is exempt pursuant to § 23.150(b) or a security-based swap that qualifies for an exemption under section 3C(g)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c–3(g)(4)) and implementing regulations or that satisfies the criteria in section 3C(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78–c3(g)(4)) and implementing regulations.

Minimum transfer amount means a combined initial and variation margin amount under which no actual transfer of funds is required. The minimum transfer amount shall be $500,000.

Multilateral development bank means:

(1) The International Bank for Reconstruction and Development;

(2) The Multilateral Investment Guarantee Agency;

(3) The International Finance Corporation;

(4) The Inter-American Development Bank;

(5) The Asian Development Bank;

(6) The African Development Bank;

(7) The European Bank for Reconstruction and Development;

(8) The European Investment Bank;

(9) The European Investment Fund;

(10) The Nordic Investment Bank;

(11) The Caribbean Development Bank;

(12) The Islamic Development Bank;

(13) The Council of Europe Development Bank; and

(14) Any other entity that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member or which the Commission determines poses comparable credit risk.

Non-financial end user means a counterparty that is not a swap dealer, a major swap participant, or a financial end user.

Prudential regulator has the meaning specified in section 1a(39) of the Act.

Savings and loan holding company has the meaning specified in section 10(n) of the Home Owners' Loan Act (12 U.S.C. 1467a(n)).

Securities holding company has the meaning specified in section 618 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1850a).

Security-based swap has the meaning specified in section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)).

Sovereign entity means a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government.

State means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

Swap entity means a person that is registered with the Commission as a swap dealer or major swap participant pursuant to the Act.

Uncleared security-based swap means a security-based swap that is not, directly or indirectly, submitted to and cleared by a clearing agency registered with the Securities and Exchange Commission pursuant to section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78a–1) or by a clearing agency that the U.S. Securities and Exchange Commission has exempted from registration by rule or order pursuant to section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78a–1).

Uncleared swap means a swap that is not cleared by a registered derivatives clearing organization, or by a clearing organization that the Commission has exempted from registration by rule or order pursuant to section 5b(h) of the Act.

U.S. Government-sponsored enterprise means an entity established or chartered by the U.S. government to serve public purposes specified by federal statute but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government.

Variation margin means collateral provided by a party to its counterparty to meet the performance of its obligation under one or more uncleared swaps between the parties as a result of a change in value of such obligations since the trade was executed or the last time such collateral was provided.

Variation margin amount means the cumulative mark-to-market change in value to a covered swap entity of an uncleared swap, as measured from the date it is entered into (or in the case of an uncleared swap that has a positive or negative value to a covered swap entity on the date it is entered into, such positive or negative value plus any cumulative mark-to-market change in value to the covered swap entity of an uncleared swap after such date), less the value of all variation margin previously collected, plus the value of all variation margin previously posted with respect to such uncleared swap.

§ 23.152 Collection and posting of initial margin.

(a) *Collection*—(1) *Initial obligation.* On or before the business day after execution of an uncleared swap between a covered swap entity and a covered counterparty, the covered swap entity shall collect initial margin from the

covered counterparty in an amount equal to or greater than an amount calculated pursuant to § 23.154, in a form that complies with § 23.156, and pursuant to custodial arrangements that comply with § 23.157.

(2) *Continuing obligation.* The covered swap entity shall continue to hold initial margin from the covered counterparty in an amount equal to or greater than an amount calculated each business day pursuant to § 23.154, in a form that complies with § 23.156, and pursuant to custodial arrangements that comply with § 23.157, until such uncleared swap is terminated or expires.

(b) *Posting*—(1) *Initial obligation.* On or before the business day after execution of an uncleared swap between a covered swap entity and a financial end user with material swaps exposure, the covered swap entity shall post initial margin with the counterparty in an amount equal to or greater than an amount calculated pursuant to § 23.154, in a form that complies with § 23.156, and pursuant to custodial arrangements that comply with § 23.157.

(2) *Continuing obligation.* The covered swap entity shall continue to post initial margin with the counterparty in an amount equal to or greater than an amount calculated each business day pursuant to § 23.154, in a form that complies with § 23.156, and pursuant to custodial arrangements that comply with § 23.157, until such uncleared swap is terminated or expires.

(3) *Minimum transfer amount.* A covered swap entity is not required to collect or to post initial margin pursuant to §§ 23.150 through 23.161 with respect to a particular counterparty unless and until the combined amount of initial margin and variation margin that is required pursuant to §§ 23.150 through 23.161 to be collected or posted and that has not been collected or posted with respect to the counterparty is greater than $500,000.

(c) *Netting.* (1) To the extent that one or more uncleared swaps are executed pursuant to an eligible master netting agreement between a covered swap entity and covered counterparty, a covered swap entity may calculate and comply with the applicable initial margin requirements of §§ 23.150 through 23.161 on an aggregate net basis with respect to all uncleared swaps governed by such agreement, subject to paragraph (c)(2) of this section.

(2)(i) Except as permitted in paragraph (c)(2)(ii) of this section, if an eligible master netting agreement covers uncleared swaps entered into on or after the applicable compliance date set forth in § 23.161, all the uncleared swaps covered by that agreement are subject to the requirements of §§ 23.150 through 23.161 and included in the aggregate netting portfolio for the purposes of calculating and complying with the margin requirements of §§ 23.150 through 23.161.

(ii) An eligible master netting agreement may identify one or more separate netting portfolios that independently meet the requirements in paragraph (1) of the definition of ''eligible master netting agreement'' in § 23.151 and to which collection and posting of margin applies on an aggregate net basis separate from and exclusive of any other uncleared swaps covered by the eligible master netting agreement. Any such netting portfolio that contains any uncleared swap entered into on or after the applicable compliance date set forth in § 23.161 is subject to the requirements of §§ 23.150 through 23.161. Any such netting portfolio that contains only uncleared swaps entered into before the applicable compliance date is not subject to the requirements of §§ 23.150 through 23.161.

(d) *Satisfaction of collection and posting requirements.* A covered swap entity shall not be deemed to have violated its obligation to collect or to post initial margin from a covered counterparty if:

(1) The covered counterparty has refused or otherwise failed to provide, or to accept, the required initial margin to, or from, the covered swap entity; and

(2) The covered swap entity has:

(i) Made the necessary efforts to collect or to post the required initial margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, including pursuant to § 23.504(b)(4), if applicable, or has otherwise demonstrated upon request to the satisfaction of the Commission that it has made appropriate efforts to collect or to post the required initial margin; or

(ii) Commenced termination of the uncleared swap with the covered counterparty promptly following the applicable cure period and notification requirements.

§ 23.153 Collection and posting of variation margin.

(a) *Initial obligation.* On or before the business day after the day of execution of an uncleared swap between a covered swap entity and a counterparty that is a swap entity or a financial end user, the covered swap entity shall collect the variation margin amount from the counterparty when the amount is positive, or post the variation margin amount with the counterparty when the amount is negative as calculated pursuant to § 23.155 and in a form that complies with § 23.156.

(b) *Continuing obligation.* The covered swap entity shall continue to collect the variation margin amount from, or to post the variation margin amount with, the counterparty as calculated each business day pursuant to § 23.155 and in a form that complies with § 23.156 each business day until such uncleared swap is terminated or expires.

(c) *Minimum transfer amount.* A covered swap entity is not required to collect or to post variation margin pursuant to §§ 23.150 through 23.161 with respect to a particular counterparty unless and until the combined amount of initial margin and variation margin that is required pursuant to §§ 23.150 through 23.161 to be collected or posted and that has not been collected or posted with respect to the counterparty is greater than $500,000.

(d) *Netting.* (1) To the extent that more than one uncleared swap is executed pursuant to an eligible master netting agreement between a covered swap entity and a counterparty, a covered swap entity may calculate and comply with the applicable variation margin requirements of this section on an aggregate basis with respect to all uncleared swaps governed by such agreement subject to paragraph (d)(2) of this section.

(2)(i) Except as permitted in paragraph (d)(2)(ii) of this section, if an eligible master netting agreement covers uncleared swaps entered into on or after the applicable compliance date set forth in § 23.161, all the uncleared swaps covered by that agreement are subject to the requirements of §§ 23.150 through 23.161 and included in the aggregate netting portfolio for the purposes of calculating and complying with the margin requirements of §§ 23.150 through 23.161.

(ii) An eligible master netting agreement may identify one or more separate netting portfolios that independently meet the requirements in paragraph (1) of the definition of ''eligible master netting agreement'' in § 23.151 and to which collection and posting of margin applies on an aggregate net basis separate from and exclusive of any other uncleared swaps covered by the eligible master netting agreement. Any such netting portfolio that contains any uncleared swap entered into on or after the applicable compliance date set forth in § 23.161 is subject to the requirements of §§ 23.150 through 23.161. Any such netting portfolio that contains only uncleared swaps entered into before the applicable compliance date is not subject to the

requirements of §§ 23.150 through 23.161.

(e) *Satisfaction of collection and payment requirements.* A covered swap entity shall not be deemed to have violated its obligation to collect or to pay variation margin from a counterparty if:

(1) The counterparty has refused or otherwise failed to provide or to accept the required variation margin to or from the covered swap entity; and

(2) The covered swap entity has:

(i) Made the necessary efforts to collect or to post the required variation margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, including pursuant to § 23.504(b)(4), if applicable, or has otherwise demonstrated upon request to the satisfaction of the Commission that it has made appropriate efforts to collect or to post the required variation margin; or

(ii) Commenced termination of the uncleared swap with the counterparty promptly following the applicable cure period and notification requirements.

§ 23.154 Calculation of initial margin.

(a) *Means of calculation.* (1) Each business day each covered swap entity shall calculate an initial margin amount to be collected from each covered counterparty using:

(i) A risk-based model that meets the requirements of paragraph (b) of this section; or

(ii) The table-based method set forth in paragraph (c) of this section.

(2) Each business day each covered swap entity shall calculate an initial margin amount to be posted with each financial end user with material swaps exposure using:

(i) A risk-based model that meets the requirements of paragraph (b) of this section; or

(ii) The table-based method set forth in paragraph (c) of this section.

(3) Each covered swap entity may reduce the amounts calculated pursuant to paragraphs (a)(1) and (2) of this section by the initial margin threshold amount provided that the reduction does not include any portion of the initial margin threshold amount already applied by the covered swap entity or its margin affiliates in connection with other uncleared swaps with the counterparty or its margin affiliates.

(4) The amounts calculated pursuant to paragraph (a)(3) of this section shall not be less than zero.

(b) *Risk-based models*—(1) *Commission or registered futures association approval.* (i) A covered swap entity shall obtain the written approval of the Commission or a registered futures association to use a model to calculate the initial margin required in §§ 23.150 through 23.161.

(ii) A covered swap entity shall demonstrate that the model satisfies all of the requirements of this section on an ongoing basis.

(iii) A covered swap entity shall notify the Commission and the registered futures association in writing 60 days prior to:

(A) Extending the use of an initial margin model that has been approved to an additional product type;

(B) Making any change to any initial margin model that has been approved that would result in a material change in the covered swap entity's assessment of initial margin requirements; or

(C) Making any material change to modeling assumptions used by the initial margin model.

(iv) The Commission or the registered futures association may rescind approval of the use of any initial margin model, in whole or in part, or may impose additional conditions or requirements if the Commission or the registered futures association determines, in its discretion, that the model no longer complies with this section.

(2) *Elements of the model.* (i) The initial margin model shall calculate an amount of initial margin that is equal to the potential future exposure of the uncleared swap or netting portfolio of uncleared swaps covered by an eligible master netting agreement. Potential future exposure is an estimate of the one-tailed 99 percent confidence interval for an increase in the value of the uncleared swap or netting portfolio of uncleared swaps due to an instantaneous price shock that is equivalent to a movement in all material underlying risk factors, including prices, rates, and spreads, over a holding period equal to the shorter of ten business days or the maturity of the swap or netting portfolio.

(ii) All data used to calibrate the initial margin model shall be based on an equally weighted historical observation period of at least one year and not more than five years and must incorporate a period of significant financial stress for each broad asset class that is appropriate to the uncleared swaps to which the initial margin model is applied.

(iii) The initial margin model shall use risk factors sufficient to measure all material price risks inherent in the transactions for which initial margin is being calculated. The risk categories shall include, but should not be limited to, foreign exchange or interest rate risk, credit risk, equity risk, and commodity risk, as appropriate. For material exposures in significant currencies and markets, modeling techniques shall capture spread and basis risk and shall incorporate a sufficient number of segments of the yield curve to capture differences in volatility and imperfect correlation of rates along the yield curve.

(iv) In the case of an uncleared cross-currency swap, the initial margin model need not recognize any risks or risk factors associated with the fixed, physically-settled foreign exchange transactions associated with the exchange of principal embedded in the uncleared cross-currency swap. The initial margin model must recognize all material risks and risk factors associated with all other payments and cash flows that occur during the life of the uncleared cross-currency swap.

(v) The initial margin model may calculate initial margin for an uncleared swap or netting portfolio of uncleared swaps covered by an eligible master netting agreement. It may reflect offsetting exposures, diversification, and other hedging benefits for uncleared swaps that are governed by the same eligible master netting agreement by incorporating empirical correlations within the following broad risk categories, provided the covered swap entity validates and demonstrates the reasonableness of its process for modeling and measuring hedging benefits: Commodity, credit, equity, and foreign exchange or interest rate. Empirical correlations under an eligible master netting agreement may be recognized by the model within each broad risk category, but not across broad risk categories.

(vi) If the initial margin model does not explicitly reflect offsetting exposures, diversification, and hedging benefits between subsets of uncleared swaps within a broad risk category, the covered swap entity shall calculate an amount of initial margin separately for each subset of uncleared swaps for which such relationships are explicitly recognized by the model. The sum of the initial margin amounts calculated for each subset of uncleared swaps within a broad risk category will be used to determine the aggregate initial margin due from the counterparty for the portfolio of uncleared swaps within the broad risk category.

(vii) The sum of the initial margin calculated for each broad risk category shall be used to determine the aggregate initial margin due from the counterparty.

(viii) The initial margin model shall not permit the calculation of any initial margin to be offset by, or otherwise take

into account, any initial margin that may be owed or otherwise payable by the covered swap entity to the counterparty.

(ix) The initial margin model shall include all material risks arising from the nonlinear price characteristics of option positions or positions with embedded optionality and the sensitivity of the market value of the positions to changes in the volatility of the underlying rates, prices, or other material risk factors.

(x) The covered swap entity shall not omit any risk factor from the calculation of its initial margin that the covered swap entity uses in its model unless it has first demonstrated to the satisfaction of the Commission or the registered futures association that such omission is appropriate.

(xi) The covered swap entity shall not incorporate any proxy or approximation used to capture the risks of the covered swap entity's uncleared swaps unless it has first demonstrated to the satisfaction of the Commission or the registered futures association that such proxy or approximation is appropriate.

(xii) The covered swap entity shall have a rigorous and well-defined process for re-estimating, re-evaluating, and updating its internal margin models to ensure continued applicability and relevance.

(xiii) The covered swap entity shall review and, as necessary, revise the data used to calibrate the initial margin model at least annually, and more frequently as market conditions warrant, to ensure that the data incorporate a period of significant financial stress appropriate to the uncleared swaps to which the initial margin model is applied.

(xiv) The level of sophistication of the initial margin model shall be commensurate with the complexity of the swaps to which it is applied. In calculating an initial margin amount, the initial margin model may make use of any of the generally accepted approaches for modeling the risk of a single instrument or portfolio of instruments.

(xv) The Commission or the registered futures association may in its discretion require a covered swap entity using an initial margin model to collect a greater amount of initial margin than that determined by the covered swap entity's initial margin model if the Commission or the registered futures association determines that the additional collateral is appropriate due to the nature, structure, or characteristics of the covered swap entity's transaction(s) or is commensurate with the risks associated with the transaction(s).

(3) [Reserved]

(4) *Periodic review.* A covered swap entity shall periodically, but no less frequently than annually, review its initial margin model in light of developments in financial markets and modeling technologies, and enhance the initial margin model as appropriate to ensure that it continues to meet the requirements for approval in this section.

(5) *Control, oversight, and validation mechanisms.* (i) The covered swap entity shall maintain a risk management unit in accordance with § 23.600(c)(4)(i) that is independent from the business trading unit (as defined in § 23.600).

(ii) The covered swap entity's risk control unit shall validate its initial margin model prior to implementation and on an ongoing basis. The covered swap entity's validation process shall be independent of the development, implementation, and operation of the initial margin model, or the validation process shall be subject to an independent review of its adequacy and effectiveness. The validation process shall include:

(A) An evaluation of the conceptual soundness of (including developmental evidence supporting) the initial margin model;

(B) An ongoing monitoring process that includes verification of processes and benchmarking by comparing the covered swap entity's initial margin model outputs (estimation of initial margin) with relevant alternative internal and external data sources or estimation techniques. The benchmark(s) must address the model's limitations. When applicable the covered swap entity should consider benchmarks that allow for non-normal distributions such as historical and Monte Carlo simulations. When applicable validation shall include benchmarking against observable margin standards to ensure that the initial margin required is not less than what a derivatives clearing organization would require for similar cleared transactions; and

(C) An outcomes analysis process that includes back testing the model. This analysis shall recognize and compensate for the challenges inherent in back testing over periods that do not contain significant financial stress.

(iii) If the validation process reveals any material problems with the model, the covered swap entity must promptly notify the Commission and the registered futures association of the problems, describe to the Commission and the registered futures association any remedial actions being taken, and adjust the model to ensure an appropriately conservative amount of required initial margin is being calculated.

(iv) In accordance with § 23.600(e)(2), the covered swap entity shall have an internal audit function independent of the business trading unit and the risk management unit that at least annually assesses the effectiveness of the controls supporting the initial margin model measurement systems, including the activities of the business trading units and risk control unit, compliance with policies and procedures, and calculation of the covered swap entity's initial margin requirements under this part. At least annually, the internal audit function shall report its findings to the covered swap entity's governing body, senior management, and chief compliance officer.

(6) *Documentation.* The covered swap entity shall adequately document all material aspects of its model, including management and valuation of uncleared swaps to which it applies, the control, oversight, and validation of the initial margin model, any review processes and the results of such processes.

(7) *Escalation procedures.* The covered swap entity must adequately document—

(i) Internal authorization procedures, including escalation procedures, that require review and approval of any change to the initial margin calculation under the initial margin model;

(ii) Demonstrable analysis that any basis for any such change is consistent with the requirements of this section; and

(iii) Independent review of such demonstrable analysis and approval.

(c) *Table-based method.* If a model meeting the standards set forth in paragraph (b) of this section is not used, initial margin shall be calculated in accordance with this paragraph.

(1) *Standardized initial margin schedule.*

Asset class	Gross initial margin (% of notional exposure)
Credit: 0–2 year duration	2
Credit: 2–5 year duration	5
Credit: 5+ year duration	10
Commodity	15
Equity	15
Foreign Exchange/Currency	6
Cross Currency Swaps: 0–2 year duration	1
Cross Currency Swaps: 2–5 year duration	2
Cross Currency Swaps: 5+ year duration	4
Interest Rate: 0–2 year duration	1

Asset class	Gross initial margin (% of notional exposure)
Interest Rate: 2–5 year duration	2
Interest Rate: 5+ year duration	4
Other	15

(2) *Net to gross ratio adjustment.* (i) For multiple uncleared swaps subject to an eligible master netting agreement, the initial margin amount under the standardized table shall be computed according to this paragraph.

(ii) Initial Margin = 0.4 × Gross Initial Margin + 0.6 × Net-to-Gross Ratio × Gross Initial Margin, where:

(A) Gross Initial Margin = the sum of the product of each uncleared swap's effective notional amount and the gross initial margin requirement for all uncleared swaps subject to the eligible master netting agreement;

(B) Net-to-Gross Ratio = the ratio of the net current replacement cost to the gross current replacement cost;

(C) Gross Current Replacement cost = the sum of the replacement cost for each uncleared swap subject to the eligible master netting agreement for which the cost is positive; and

(D) Net Current Replacement Cost = the total replacement cost for all uncleared swaps subject to the eligible master netting agreement.

(E) In cases where the gross replacement cost is zero, the Net-to-Gross Ratio shall be set to 1.0.

§ 23.155 Calculation of variation margin.

(a) *Means of calculation.* (1) Each business day each covered swap entity shall calculate variation margin for itself and for each counterparty that is a swap entity or a financial end user using methods, procedures, rules, and inputs that to the maximum extent practicable rely on recently-executed transactions, valuations provided by independent third parties, or other objective criteria.

(2) Each covered swap entity shall have in place alternative methods for determining the value of an uncleared swap in the event of the unavailability or other failure of any input required to value a swap.

(b) *Control mechanisms.* (1) Each covered swap entity shall create and maintain documentation setting forth the variation methodology with sufficient specificity to allow the counterparty, the Commission, the registered futures association, and any applicable prudential regulator to calculate a reasonable approximation of the margin requirement independently.

(2) Each covered swap entity shall evaluate the reliability of its data sources at least annually, and make adjustments, as appropriate.

(3) The Commission or the registered futures association at any time may require a covered swap entity to provide further data or analysis concerning the methodology or a data source, including:

(i) An explanation of the manner in which the methodology meets the requirements of this section;

(ii) A description of the mechanics of the methodology;

(iii) The conceptual basis of the methodology;

(iv) The empirical support for the methodology; and

(v) The empirical support for the assessment of the data sources.

§ 23.156 Forms of margin.

(a) *Initial margin*—(1) *Eligible collateral.* A covered swap entity shall collect and post as initial margin for trades with a covered counterparty only the following types of collateral:

(i) Immediately available cash funds denominated in:

(A) U.S. dollars;

(B) A major currency;

(C) A currency of settlement for the uncleared swap;

(ii) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of Treasury;

(iii) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency (other than the U.S. Department of Treasury) whose obligations are fully guaranteed by the full faith and credit of the U.S. government;

(iv) A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20 percent risk weight under the capital rules applicable to swap dealers subject to regulation by a prudential regulator;

(v) A publicly traded debt security issued by, or an asset-backed security fully guaranteed as to the timely payment of principal and interest by, a U.S. Government-sponsored enterprise that is operating with capital support or another form of direct financial assistance received from the U.S. government that enables the repayments of the U.S. Government-sponsored enterprise's eligible securities;

(vi) A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the Bank for International Settlements, the International Monetary Fund, or a multilateral development bank;

(vii) Other publicly-traded debt that has been deemed acceptable as initial margin by a prudential regulator;

(viii) A publicly traded common equity security that is included in:

(A) The Standard & Poor's Composite 1500 Index or any other similar index of liquid and readily marketable equity securities as determined by the Commission; or

(B) An index that a covered swap entity's supervisor in a foreign jurisdiction recognizes for purposes of including publicly traded common equity as initial margin under applicable regulatory policy, if held in that foreign jurisdiction;

(ix) Securities in the form of redeemable securities in a pooled investment fund representing the security-holder's proportional interest in the fund's net assets and that are issued and redeemed only on the basis of the market value of the fund's net assets prepared each business day after the security-holder makes its investment commitment or redemption request to the fund, if the fund's investments are limited to the following:

(A) Securities that are issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury, and immediately-available cash funds denominated in U.S. dollars; or

(B) Securities denominated in a common currency and issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20 percent risk weight under the capital rules applicable to swap dealers subject to regulation by a prudential regulator, and immediately-available cash funds denominated in the same currency; and

(C) Assets of the fund may not be transferred through securities lending, securities borrowing, repurchase agreements, reverse repurchase agreements, or other means that involve the fund having rights to acquire the same or similar assets from the transferee, or

(x) Gold.

(2) *Prohibition of certain assets.* A covered swap entity may not collect or post as initial margin any asset that is a security issued by:

(i) The covered swap entity or a margin affiliate of the covered swap entity (in the case of posting) or the counterparty or any margin affiliate of the counterparty (in the case of collection);

(ii) A bank holding company, a savings and loan holding company, a

U.S. intermediate holding company established or designated for purposes of compliance with 12 CFR 252.153, a foreign bank, a depository institution, a market intermediary, a company that would be any of the foregoing if it were organized under the laws of the United States or any State, or a margin affiliate of any of the foregoing institutions, or

(iii) A nonbank financial institution supervised by the Board of Governors of the Federal Reserve System under Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5323).

(3) *Haircuts.* (i) The value of any eligible collateral collected or posted to satisfy initial margin requirements shall be subject to the sum of the following discounts, as applicable:

(A) An 8 percent discount for initial margin collateral denominated in a currency that is not the currency of settlement for the uncleared swap, except for eligible types of collateral denominated in a single termination currency designated as payable to the non-posting counterparty as part of the eligible master netting agreement; and

(B) The discounts set forth in the following table:

STANDARDIZED HAIRCUT SCHEDULE

Cash in same currency as swap obligation	0.0
Eligible government and related debt (e.g., central bank, multilateral development bank, GSE securities identified in paragraph (a)(1)(iv) of this section): Residual maturity less than one-year	0.5
Eligible government and related debt (e.g., central bank, multilateral development bank, GSE securities identified in paragraph (a)(1)(iv) of this section): Residual maturity between one and five years	2.0
Eligible government and related debt (e.g., central bank, multilateral development bank, GSE securities identified in paragraph (a)(1)(iv) of this section): Residual maturity greater than five years	4.0
Eligible corporate debt (including eligible GSE debt securities not identified in paragraph (a)(1)(iv) of this section): Residual maturity less than one-year	1.0
Eligible corporate debt (including eligible GSE debt securities not identified in paragraph (a)(1)(iv) of this section): Residual maturity between one and five years	4.0
Eligible corporate debt (including eligible GSE debt securities not identified in paragraph (a)(1)(iv) of this section): Residual maturity greater than five years	8.0
Equities included in S&P 500 or related index	15.0
Equities included in S&P 1500 Composite or related index but not S&P 500 or related index	25.0
Gold	15.0
Additional (additive) haircut on asset in which the currency of the swap obligation differs from that of the collateral asset	8.0

(ii) The value of initial margin collateral shall be computed as the product of the cash or market value of the eligible collateral asset times one minus the applicable haircut expressed in percentage terms. The total value of all initial margin collateral is calculated as the sum of those values for each eligible collateral asset.

(b) *Variation margin*—(1) *Eligible collateral*—(i) *Swaps with a swap entity.* (A) A covered swap entity shall post and collect as variation margin to or from a counterparty that is a swap entity only immediately available cash funds that are denominated in: U.S. dollars;

(B) Another major currency; or

(C) The currency of settlement of the uncleared swap.

(ii) *Swaps with a financial end user.* A covered swap entity may post and collect as variation margin to or from a counterparty that is a financial end user any asset that is eligible to be posted or collected as initial margin under paragraphs (a)(1) and (2) of this section.

(2) *Haircuts.* (i) The value of any eligible collateral collected or posted to satisfy variation margin requirements shall be subject to the sum of the following discounts, as applicable:

(A) An 8% discount for variation margin collateral denominated in a currency that is not the currency of settlement for the uncleared swap except for immediately available cash funds denominated in U.S. cash funds or another major currency; and

(B) The discounts for initial margin set forth in the table in paragraph (a)(3)(i)(B) of this section.

(ii) The value of variation margin collateral shall be computed as the product of the cash or market value of the eligible collateral asset times one minus the applicable haircut expressed in percentage terms. The total value of all variation margin collateral shall be calculated as the sum of those values of each eligible collateral asset.

(c) *Monitoring obligation.* A covered swap entity shall monitor the market value and eligibility of all collateral collected and posted to satisfy the margin requirements of §§ 23.150 through 23.161. To the extent that the market value of such collateral has declined, the covered swap entity shall promptly collect or post such additional eligible collateral as is necessary to maintain compliance with the margin requirements of §§ 23.150 through 23.161. To the extent that the collateral is no longer eligible, the covered swap entity shall promptly collect or post sufficient eligible replacement collateral to comply with the margin requirements of §§ 23.150 through 23.161.

(d) *Excess margin.* A covered swap entity may collect or post initial margin or variation margin that is not required pursuant to §§ 23.150 through 23.161 in any form of collateral.

§ 23.157 Custodial arrangements.

(a) *Initial margin posted by covered swap entities.* Each covered swap entity that posts initial margin with respect to an uncleared swap shall require that all funds or other property that the covered swap entity provides as initial margin be held by one or more custodians that are not the covered swap entity, the counterparty, or margin affiliates of the covered swap entity or the counterparty.

(b) *Initial margin collected by covered swap entities.* Each covered swap entity that collects initial margin required by § 23.152 with respect to an uncleared swap shall require that such initial margin be held by one or more custodians that are not the covered swap entity, the counterparty, or margin affiliates of the covered swap entity or the counterparty.

(c) *Custodial agreement.* Each covered swap entity shall enter into an agreement with each custodian that holds funds pursuant to paragraphs (a) or (b) of this section that:

(1) Prohibits the custodian from rehypothecating, repledging, reusing, or otherwise transferring (through securities lending, securities borrowing, repurchase agreement, reverse repurchase agreement or other means) the collateral held by the custodian except that cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase an asset described in

§ 23.156(a)(1)(iv) through (xii), such asset is held in compliance with this section, and such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin; and

(2) Is a legal, valid, binding, and enforceable agreement under the laws of all relevant jurisdictions including in the event of bankruptcy, insolvency, or a similar proceeding.

(3) Notwithstanding paragraph (c)(1) of this section, a custody agreement may permit the posting party to substitute or direct any reinvestment of posted collateral held by the custodian, provided that, with respect to collateral posted or collected pursuant to § 23.152, the agreement requires the posting party, when it substitutes or directs the reinvestment of posted collateral held by the custodian.

(i) To substitute only funds or other property that would qualify as eligible collateral under § 23.156, and for which the amount net of applicable discounts described in § 23.156 would be sufficient to meet the requirements of § 23.152; and

(ii) To direct reinvestment of funds only in assets that would qualify as eligible collateral under § 23.156, and for which the amount net of applicable discounts described in § 23.156 would be sufficient to meet the requirements of § 23.152.

§ 23.158 Margin documentation.

(a) *General requirement.* Each covered swap entity shall execute documentation with each counterparty that complies with the requirements of § 23.504 and that complies with this section, as applicable. For uncleared swaps between a covered swap entity and a counterparty that is a swap entity or a financial end user, the documentation shall provide the covered swap entity with the contractual right and obligation to exchange initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by §§ 23.150 through 23.161.

(b) *Contents of the documentation.* The margin documentation shall:

(1) Specify the methods, procedures, rules, inputs, and data sources to be used for determining the value of uncleared swaps for purposes of calculating variation margin;

(2) Describe the methods, procedures, rules, inputs, and data sources to be used to calculate initial margin for uncleared swaps entered into between the covered swap entity and the counterparty; and

(3) Specify the procedures by which any disputes concerning the valuation of uncleared swaps, or the valuation of assets collected or posted as initial margin or variation margin may be resolved.

§ 23.159 Special rules for affiliates.

(a) *Initial margin.* (1) Except as provided in paragraph (c) of this section, a covered swap entity shall not be required to collect initial margin from a margin affiliate provided that the covered swap entity meets the following conditions:

(i) The swaps are subject to a centralized risk management program that is reasonably designed to monitor and to manage the risks associated with the inter-affiliate swaps; and

(ii) The covered swap entity exchanges variation margin with the margin affiliate in accordance with paragraph (b) of this section.

(2)(i) A covered swap entity shall post initial margin to any margin affiliate that is a swap entity subject to the rules of a Prudential Regulator in an amount equal to the amount that the swap entity is required to collect from the covered swap entity pursuant to the rules of the Prudential Regulator.

(ii) A covered swap entity shall not be required to post initial margin to any other margin affiliate pursuant to §§ 23.150 through 23.161.

(b) *Variation margin.* Each covered swap entity shall post and collect variation margin with each margin affiliate that is a swap entity or a financial end user in accordance with all applicable provisions of §§ 23.150 through 23.161.

(c) *Foreign margin affiliates.* (1) For purposes of this section, the term outward facing margin affiliate means a margin affiliate that enters into swaps with third parties.

(2) Except as provided in paragraph (c)(3) of this section, each covered swap entity shall collect initial margin in accordance with all applicable provisions of §§ 23.150 through 23.161 from each margin affiliate that meets the following criteria:

(i) The margin affiliate is a financial end user;

(ii) The margin affiliate enters into swaps with third parties, or enters into swaps with any other margin affiliate that, directly or indirectly (including through a series of transactions), enters into swaps with third parties, for which the provisions of §§ 23.150 through 23.161 would apply if any such margin affiliate were a swap entity; and

(iii) Any such outward facing margin affiliate is located in a jurisdiction that the Commission has not found to be eligible for substituted compliance with regard to the provisions of §§ 23.150 through 23.161 and does not collect initial margin for such swaps in a manner that would comply with the provisions of §§ 23.150 through 23.161.

(3) The custodian for initial margin collected pursuant to paragraph (c)(1) of this section may be the covered swap entity or a margin affiliate of the covered swap entity.

§ 23.160 [Reserved]

§ 23.161 Compliance dates.

(a) Covered swap entities shall comply with the minimum margin requirements for uncleared swaps on or before the following dates for uncleared swaps entered into on or after the following dates:

(1) September 1, 2016 for the requirements in § 23.152 for initial margin and in § 23.153 for variation margin for any uncleared swaps where both—

(i) The covered swap entity combined with all its margin affiliates; and

(ii) Its counterparty combined with all its margin affiliates, have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps in March, April, and May 2016 that exceeds $3 trillion, where such amounts are calculated only for business days; and where

(iii) In calculating the amounts in paragraphs (a)(1)(i) and (ii) of this section, an entity shall count the average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign-exchange forward, or a foreign exchange swap between an entity or a margin affiliate only one time and shall not count a swap or a security-based swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)).

(2) March 1, 2017 for the requirements in § 23.153 for variation margin for any other covered swap entity for uncleared swaps entered into with any other counterparty.

(3) September 1, 2017 for the requirements in § 23.152 for initial margin for any uncleared swaps where both—

(i) The covered swap entity combined with all its margin affiliates; and

(ii) Its counterparty combined with all its margin affiliates, have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps in March,

April, and May 2017 that exceeds $2.25 trillion, where such amounts are calculated only for business days; and where

(iii) In calculating the amounts in paragraphs (a)(3)(i) and (ii) of this section, an entity shall count the average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign-exchange forward, or a foreign exchange swap between an entity or a margin affiliate only one time and shall not count a swap or a security-based swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)).

(4) September 1, 2018, for the requirements in § 23.152 for initial margin for any uncleared swaps where both—

(i) The covered swap entity combined with all its margin affiliates; and

(ii) Its counterparty combined with all its margin affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps in March, April, and May 2018 that exceeds $1.5 trillion, where such amounts are calculated only for business days; and where

(iii) In calculating the amounts in paragraphs (a)(4)(i) and (ii) of this section, an entity shall count the average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign-exchange forward, or a foreign exchange swap between an entity or a margin affiliate only one time and shall not count a swap or a security-based swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)).

(5) September 1, 2019 for the requirements in § 23.152 for initial margin for any uncleared swaps where both—

(i) The covered swap entity combined with all its margin affiliates; and

(ii) Its counterparty combined with all its margin affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps in March, April, and May 2019 that exceeds $0.75 trillion, where such amounts are calculated only for business days; and where

(iii) In calculating the amounts in paragraphs (a)(5)(i) and (ii) of this section, an entity shall count the average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign-exchange forward, or a foreign exchange swap between an entity or a margin affiliate only one time and shall not count a swap or a security-based swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)).

(6) September 1, 2020 for the requirements in § 23.152 for initial margin for any other covered swap entity with respect to uncleared swaps entered into with any other counterparty.

(b) Once a covered swap entity and its counterparty must comply with the margin requirements for uncleared swaps based on the compliance dates in paragraph (a) of this section, the covered swap entity and its counterparty shall remain subject to the requirements of §§ 23.150 through 23.161 with respect to that counterparty.

(c)(1) If a covered swap entity's counterparty changes its status such that an uncleared swap with that counterparty becomes subject to a stricter margin requirement under §§ 23.150 through 23.161 (for example, if the counterparty's status changes from a financial end user without material swaps exposure to a financial end user with material swaps exposure), then the covered swap entity shall comply with the stricter margin requirements for any uncleared swaps entered into with that counterparty after the counterparty changes its status.

(2) If a covered swap entity's counterparty changes its status such that an uncleared swap with that counterparty becomes subject to less strict margin requirement under §§ 23.150 through 23.161 (for example, if the counterparty's status changes from a financial end user with material swaps exposure to a financial end user without material swaps exposure), then the covered swap entity may comply with the less strict margin requirements for any uncleared swaps entered into with that counterparty after the counterparty changes its status as well as for any outstanding uncleared swap entered into after the applicable compliance date under paragraph (a) of this section and before the counterparty changed its status.

§§ 23.162–23.199 [Reserved]

■ 3. In § 23.701 revise paragraphs (a)(1), (d), and (f) to read as follows:

§ 23.701 Notification of right to segregation.

(a) * * *

(1) Notify each counterparty to such transaction that the counterparty has the right to require that any Initial Margin the counterparty provides in connection with such transaction be segregated in accordance with §§ 23.702 and 23.703 except in those circumstances where segregation is mandatory pursuant to § 23.157;

* * * * *

(d) Prior to confirming the terms of any such swap, the swap dealer or major swap participant shall obtain from the counterparty confirmation of receipt by the person specified in paragraph (c) of this section of the notification specified in paragraph (a) of this section, and an election, if applicable, to require such segregation or not. The swap dealer or major swap participant shall maintain such confirmation and such election as business records pursuant to § 1.31 of this chapter.

* * * * *

(f) A counterparty's election, if applicable, to require segregation of Initial Margin or not to require such segregation, may be changed at the discretion of the counterparty upon written notice delivered to the swap dealer or major swap participant, which changed election shall be applicable to all swaps entered into between the parties after such delivery.

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

■ 4. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2(a)(12), 12a, 13(c), 13(d), 13(e), and 16(b).

■ 5. In § 140.93, add paragraph (a)(6) to read as follows:

§ 140.93 Delegation of authority to the Director of the Division of Swap Dealer and Intermediary Oversight.

(a) * * *

(6) All functions reserved to the Commission in §§ 23.150 through 23.161 of this chapter.

* * * * *

Issued in Washington, DC, on December 18, 2015, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioner Giancarlo voted in the affirmative. Commissioner Bowen voted in the negative.

Appendix 2—Statement of Chairman Timothy G. Massad

The rule this Commission is adopting today is one of the most important elements of swaps market regulation set forth in the Dodd-Frank Act. Although we have mandated clearing for standardized swaps, there will always be a large part of the market that is not cleared. This is entirely appropriate, as many swaps are not suitable for central clearing because of limited liquidity or other characteristics. Our clearinghouses will be stronger if we exercise care in what is required to be cleared. However, we must take steps to protect against such activity posing excessive risk to the system. That is why margin requirements for uncleared swaps are important.

The rule we are adopting today is strong and sensible. It requires swap dealers and major swap participants (''covered swap entities'' or ''CSEs'') to post and collect margin with financial entities with whom they have significant exposures. It requires initial margin, which is designed to protect against potential future loss on a default, as well as variation margin, which serves as mark-to-market protection. It allows for the use of a broad range of types of collateral, but only with appropriate haircuts. It requires a greater level of margin than for cleared swaps, given that uncleared swaps are likely to be less liquid. It requires segregation of margin with third party custodians, and prohibits rehypothecation.

While there are costs to this rule, they are justified in light of the potential risks that uncleared swaps can pose. We learned this firsthand in the global financial crisis, which resulted in dramatic suffering and loss for American families.

The swap activities of commercial end-users were not a source of significant risk in the financial crisis, and we must make sure that they can continue using the derivatives markets effectively and efficiently. Accordingly, an important feature of our rule is that these margin requirements do not apply to swaps with commercial end-users. This was an element of our proposed rule and is in accordance with the intent of Congress. Instead, our rule focuses on those entities that create the greatest risks to our system through uncleared swaps: The large financial institutions with the greatest amount of swap activity.

Our rule is practically identical to the rules of the United States banking regulators, and substantially similar to international rules. Harmonization is critical to creating a sound international framework for regulation. Shortly after I took office, I committed to doing all we could to achieve such harmonization, and we have succeeded. For example, a year ago there were significant differences between proposals by the CFTC as well as the prudential regulators on the one hand, and international regulators on the other. But today, all these rules are substantially similar. This is true with respect to a number of provisions, including a two-way ''post and collect'' obligation; the material swaps threshold that determines when the requirements apply; the minimum transfer amount; the types of permissible collateral; the haircuts used in valuing types of collateral; the general provisions on models for calculating margin; segregation requirements; and the use of different currencies for collateral. We have also taken into account concerns related to the timing of when margin must be posted and made changes to address the complexities of cross-border transactions.

Today's rule is designed to address the potential risks that can arise if a CSE or large financial entity defaults on transactions with another CSE or large financial entity. We are particularly seeking to reduce the risk that such a default leads to further defaults by those counterparties, given the interconnectedness of our financial system. We became all too familiar with that risk in 2008. Margin is designed to reduce the risk of cascading defaults by enabling the non-defaulting party to recover its loss. Some will characterize this as expensive insurance, as both parties must post initial margin as protection against potential future loss, even though in default, only one would actually recover against the margin. But we need only remember the costs of the crisis to our economy to recognize that this is, on the contrary, quite sensible.

The issue of how our rule should apply to inter-affiliate transactions has received a lot of attention. I believe we should look at this issue in terms of the goals of the rule, which are first and foremost to avoid the potential for the buildup of excessive risk from bilateral transactions between unaffiliated parties. Inter-affiliate transactions are not outward-facing and thus do not increase the overall risk exposure of the consolidated enterprise to third parties. Instead, they are typically a means for the consolidated enterprise to centrally manage risk related to the activities of multiple subsidiaries. Imposing the same third-party transaction standards on these internal activities of consolidated entities is likely to significantly increase costs to end-users without any commensurate benefit. Nevertheless, we have imposed some protections and requirements.

First, we must make sure that inter-affiliate transactions are not used as a loophole or as a means to escape the obligation to collect margin from third parties. This could occur, for example, if an affiliate in a jurisdiction that does not have comparable margin requirements enters into a swap with a third party without collecting margin, and then enters into an affiliate swap to transfer that risk. Our rule imposes a strong anti-evasion standard. A CSE is required to collect margin from an affiliate if that affiliate is, directly or indirectly, engaging in an outward facing swap in a situation where it should be, but is not, collecting margin. In addition, our proposal on the cross-border application of our margin rule, which is the subject of a separate rulemaking, also addresses this. The proposal provides that any affiliate that is consolidated with a U.S. parent is subject to requirements to collect margin from third parties no matter where the affiliate is located and whether or not it is guaranteed by the U.S. parent.

We have seen how global financial institutions have changed their business models to ''deguarantee'' the transactions of their overseas swap dealers so as to circumvent certain U.S. requirements. Whether guaranteed or not, swap risk created by an affiliate abroad could harm our financial system. That is why we have a strong anti-evasion standard in this rule and why we are addressing this through the cross-border aspects of the rule. I hope that we can finalize that part of the rule early next year.

In addition, our rule requires segregation of margin and prohibits rehypothecation, which prevents the affiliate that created the outward exposure from using the margin for something else, thus leaving itself more vulnerable to a default.

Second, we have required that variation margin be exchanged for all inter-affiliate swaps. This provides mark-to-market protection to either side, and prevents the potential buildup of a liability owed by one affiliate to another.

Third, we have required that inter-affiliate swaps be subject to a centralized risk management program that is reasonably designed to monitor and to manage the risks associated with such transactions. Some have suggested that, even if inter-affiliate swaps do not increase exposure to third parties, we should require initial margin for all inter-affiliate swaps to enhance that internal risk management. But that would be a very costly and not very effective way for us as a regulator to enhance such risk management. For example, it would not make sense to have a rule that required initial margin on, say, a $100 million inter-affiliate swap, when one affiliate could loan the other $100 million and not collect *any* margin. Similarly, a CSE could collect Treasury securities (or other non-cash collateral) from an affiliate as initial margin, but then loan the same amount of other securities back to the affiliate in a separate transaction which is not subject to requirements. The point is, if the concern is the adequacy of central risk management, then we should focus on that subject more generally. We should not attempt to address it by imposing on all inter-affiliate trades an initial margin requirement that is designed to address default risk on trading relationships between unaffiliated parties.

It is also important to remember that the definition of ''affiliate'' in our rule is limited to consolidated entities. This means that any swap with an affiliate that is not consolidated would be subject to the same margin requirements as third party swaps. This would be the case, for example, if a swap dealer enters into a swap with a mutual fund managed by an affiliate.

The fact that we are not generally requiring an exchange of initial margin in inter-affiliate transactions is also consistent with the rule this Commission adopted in 2013, which provided an exception to the clearing mandate for inter-affiliate transactions. In that rulemaking, the Commission considered,

but decided against, requiring the exchange of initial margin *or* variation margin as a condition for electing the exemption. It did so out of a concern that such requirements ''would limit the ability of U.S. companies to efficiently allocate risk among affiliates and manage risk centrally.'' A requirement to exchange initial margin on all uncleared inter-affiliate transactions would effectively contravene the inter-affiliate clearing exemption, as it would likely be cheaper to clear the inter-affiliate swap. However, I think the case for variation margin is different, and that is why I support imposing a general requirement for exchange of variation margin for inter-affiliate swaps. While this goes further than what the Commission did in 2013, I believe it is a necessary and reasonable addition to the overall protections of the rule.

In addition to the goal of minimizing systemic risk, I also considered our desire to harmonize with the prudential regulators and international standards as much as possible, so that we do not create inconsistencies in the regulatory framework or incentives for regulatory arbitrage. The prudential regulators' rules require the exchange of variation margin in inter-affiliate transactions, as ours do. They did not require the two-way exchange of initial margin; instead they required a ''collect only'' approach. This is similar to what federal law already requires, as Section 23 A and B of the Federal Reserve Act imposes requirements on inter-affiliate transactions by insured depositary institutions designed to protect the insured depository institutions. Those requirements do not apply to CSEs subject to our rule. In addition, if we were to adopt a collect only approach to initial margin, it would result in the two-way approach for transactions between the CFTC's CSEs and the CSEs subject to the prudential regulators' rules that the prudential regulators did not adopt. Instead, we have required the posting of initial margin to affiliated CSEs regulated by the prudential regulators to ensure consistency with the requirements of the prudential regulators' rules. By doing so, we can help enforce the prudential regulators' goal and the existing Section 23 framework.

With respect to international harmonization, we expect the rules to be adopted soon by Europe and Japan to not require initial or variation margin for inter-affiliate swaps. Similarly, the joint Basel Committee on Banking Supervision and the International Organization of Securities Commissions standards agreed upon in 2013 stated that the exchange of initial or variation margin for inter-affiliate swaps is ''not customary'' and expressed concern that imposing such requirements would result in ''additional liquidity demands.'' Our rule is somewhat more conservative than the international standards, but I believe the differences are not so great as to create significant international disparities.

In conclusion, the differences in our views on inter-affiliate margin do not reflect differences in the level of concern about the safety of the system or avoiding the problems of the past. They reflect differences in our analysis of what is accomplished by inter-affiliate initial margin. I believe the rule we are adopting today is a strong and sensible approach that will contribute to the strength and resiliency of our financial system.

Appendix 3—Dissenting Statement of Commissioner Sharon Y. Bowen

I commend the staff, the Chairman, and Commissioner Giancarlo for their work on this final rule. This rule has many benefits for the American public and is an important step towards further girding the financial system. Unfortunately, as compared to our September, 2014 proposal and the rule passed by the prudential regulators, this final rule fails to meet statutory intent and it puts swap dealers we regulate at greater risk in times of financial stress because of its treatment of interaffiliate margin.

In 2008, our financial system was brought to its knees as a tidal wave of financial risk washed away the savings of many, destroyed confidence in the financial system, and swept away platitudes about large, sophisticated, financial players' ability to manage their own credit risks. This crisis was considerably compounded by derivatives transactions that were unregulated and woefully under-collateralized.

While these large players were bailed out by taxpayers, today they have returned to record profits. Many of those same taxpayers had no similar help. No recourse to the financial institutions that harmed them. No help to pick up the pieces and rebuild a financial future.

In the aftermath, the international regulatory community recognized that margin requirements for uncleared swaps are a critical safeguard against repeating these mistakes. They provide covered entities with protections against counterparty default. Crucially, initial margin is a protection paid by the ''defaulter.'' These defaulter-paid protections help entities recognize the risk they take and impose on others. Variation margin, on the other hand, force entities to recognize losses they have already incurred. Together, variation margin and initial margin reduce systemic risk and excess leverage. They help ensure the parties have the capacity to perform on the swap over time.

In 2010, the Dodd Frank Wall Street Reform and Consumer Protection Act (''Dodd Frank'') recognized the higher risk swap dealers faced from using uncleared swaps. Dodd Frank mandated margin requirements to protect the safety and soundness of swap dealers using uncleared swaps.

In 2011, the Group of Twenty (G20) added margin requirements on uncleared derivatives to the global financial reform agenda.

In September, 2013, following the G20 agenda, the Basel Committee on Banking Supervision (''BCBS'') and International Organization for Securities Commissions (''IOSCO'') released a framework for margin requirements for uncleared derivatives (the ''BCBS/IOSCO Framework'').[1] This framework highlighted the increased risk posed by uncleared derivatives as the ''same type of systemic contagion and spillover risks''[2] involved in the 2008 financial crisis. The Framework also found that margin requirements for uncleared derivatives would promote central clearing.[3]

In September, 2014, the Commission re-proposed its 2011 rule on uncleared margin, updating it to reflect the Framework and working with the prudential regulators to develop a proposal that was consistent with theirs.

Unfortunately, the rule before us is a considerable retreat from the September proposal. This final rule provides an exemption for swap dealers, excusing them from collecting initial margin when entering into transactions with most affiliated parties including prudentially regulated swap dealers, *i.e.*, swap dealers that are also banks. It also includes, in most cases, under-capitalized affiliates, foreign affiliates, and even unregulated affiliates.

As the prudential regulators noted in their recently released final rule, these swaps ''may be significant in number and notional amount.''[4] As I understand from our staff, interaffiliate transactions likely make up nearly half of all uncleared transactions by notional volume.

Initial margin functions like a performance bond. Collected from your counterparty, it helps ensure that even as one party defaults on you, you will be able to perform on your obligations to others. Posted and collected across the financial system, it is a critical shock absorber for the bumps and potholes of our financial markets and for the risk of contagion and spillovers.

The large financial institutions that benefit from this exemption have tremendously complicated organizational structures, webs of hundreds, sometimes thousands, of affiliates spread across the globe. These complicated structures allow these banks to shift risk across the globe through different legal entities in their quest to earn higher returns on capital.

The difference in political, financial, and legal systems across these interconnected, international affiliate webs makes it difficult, likely impossible, to fully predict how risk unfolds across the global entity in a period of severe financial stress.

Think of immunizations. We have them to protect our population against the risk of infectious disease, not just for us as individuals, but to keep disease from spreading across our communities. Immunizations are not always enough, people still get sick, but they are a vital protective measure. People do forgo them, perhaps hoping that they either are not going to get sick, or if they do, that they can be treated. But, we know, hope is not enough. The whole point of immunizations is protecting against dangerous, but preventable, risks.

Initial margin fulfills a similar role. Legally, the affiliates we are talking about here are separate entities, even if they are part of a larger company structure. If their transactions across affiliates create risk, that risk should be addressed. For uncleared

[1] BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (''BCBS/IOSCO Framework'') (September 2013).

[2] *Id.* at 2.

[3] *Ibid.*

[4] 80 FR 74840 (November 30, 2015) at 74889.

swaps, initial margin helps immunize individuals, institutions and ultimately the whole financial system from financial disease and contagion.

In November of this year, the prudential regulators decided to allow, subject to conditions, dealers to collect but not post initial margin with affiliates. The prudential regulators noted this accommodation would meet the twin goals of ''protect[ing] the safety and soundness of covered swap entities in the event of an affiliated counterparty default'' while not ''permit[ting] such inter-affiliate swaps . . . to remain unmargined and thus to pose a risk to systemic stability.'' According to the statute, our rules are to be comparable, ''to the maximum practicable'' to those of our fellow prudential regulators.[5]

While this rule today is, in many respects consistent with that of the prudential regulators, regarding interaffiliate initial margin it is neither comparable to that of the prudential regulators, nor does it protect safety and soundness of swap dealers we oversee. It places the swap dealers we regulate, and thus, their customers, at unnecessary risk in times of financial stress.

The situation of a CFTC-regulated swap dealer transacting with a prudentially regulated swap dealer is particularly problematic. Not only does the CFTC-regulated swap dealer not have the benefit of collecting initial margin, it has to post initial margin to the prudentially-regulated swap dealer. For entities with high volumes of affiliate transactions, this can leave these CFTC-regulated swap dealers in a huge hole in the case of default. By not collecting initial margin, this rule places the swap dealers we regulate at greater risk in times of severe financial stress. That cannot be consistent with the intent of a statute mandating us to protect the ''safety and soundness'' of our swap dealers.

By not requiring the collection of interaffiliate initial margin for this significant number of trades, we lose a vital financial shock absorber that is intended to help immunize institutions and the system against the risk of default.

We should not minimize the risk of this action. One could say that having our swap dealers collect initial margin is not necessary because a large financial institution is never going to let one of its affiliates go under. Do we want to risk the health of our economy on that bet? Especially since, relying on financial entities to properly risk manage, without regulatory limitations, did not work in 2008?

The rationale noted in this rule for allowing this loophole seems to be in order to reduce the margin amount collected by the overall enterprise. But, we are charged with protecting the ''safety and soundness'' of swap dealers.[6] We need to address the risks that cause a particular swap dealer to fail. Especially, those risks that might cause a swap dealer to fail to meet its obligations to its customers or protect its customers' funds.

I do not know, for a particular swap dealer, what circumstances might arise that would send it careening towards another financial crash. I cannot predict whether collecting interaffiliate initial margin will be enough to protect the swap dealer and ultimately its customers. I do know that having collateral in the form of initial margin makes it more likely the swap dealer will meet its obligations than not having it.

This decision seems to reflect a forgetfulness about how we, as a country, allowed the last financial crisis to happen. It is easy to believe that large, complex financial institutions can manage their risks. They are smart people. They make a lot of money. They have to know what they are doing.

However, the risks we are dealing with are hard to quantify. They are the kinds of risks that humans have shown, throughout history, they are quite poor at managing.

Most institutions for whom these transactions are relevant, failed in 2008 to manage the risk of these transactions. This action today seems to be a return to blindly trusting in large financial institutions' ability and willpower to manage their risks adequately. Are we really willing to make that bet again?

I am not.

Our prudential colleagues have agreed that initial margin is the correct tool to manage the risks of transactions across affiliates. We should not be trying to guess whether a large, complex financial institution's global risk controls will be sufficient to protect the swap dealers we regulate. Our failure to provide comparable protection for our swap dealers is inexplicable to me.

I have been responsible for dealing with customers who have lost their life savings when complex financial entities collapse. I cannot vote for a rule that places the swap dealers we regulate, and most importantly, their customers, at risk. Accordingly, I vote no.

Appendix 4—Statement of Commissioner J. Christopher Giancarlo

Today's final rule regarding margin requirements for uncleared swaps is far from perfect. The Commission had the unenviable task of harmonizing its rule with the prudential regulators' rules and with standards issued by the Basel Committee on Banking Supervision and the International Organization of Securities Commissions (BCBS/IOSCO). While there are particular provisions of the final rule that I do not support, I think the final rule is far better balanced than the previous proposal.

Much of the discussion in finalizing this rule has been focused on margin requirements for inter-affiliate swaps. That discussion must begin with the recognition that inter-affiliate swaps transactions do not involve transactions between distinct financial institutions that was at issue in the 2008 financial crisis and do not pose the systemic risk that the Dodd-Frank Act[1] was ostensibly designed to address. Congress expressed no particular intention to subject inter-affiliate transactions to clearing or inter-affiliate margin.

Accordingly, the CFTC adopted a rule in April 2013 to exempt certain inter-affiliate swaps from mandatory clearing.[2] That rulemaking, supported by former Chairman Gensler and Commissioners Wetjen, Chilton and O'Malia, recognized that inter-affiliate swaps provide an important risk management role within corporate groups. They enable use of a single conduit on behalf of multiple affiliates to net affiliates' trades, which reduces the overall risk of the corporate group and the number of outward-facing swaps into which the affiliates might otherwise enter. This, in turn, reduces operational, market, counterparty credit and settlement risk.[3] Rather than increasing risk, inter-affiliate swaps allow entities within a corporate group to transfer risk to the group entity best positioned to manage it.

Moreover, in exercising its authority under Section 4(c) of the Commodity Exchange Act to exempt qualifying inter-affiliate swaps from the mandatory clearing requirement, the Commission found that the exemption promotes responsible financial innovation, fair competition and is consistent with the public interest.[4] It further found that the exemption, which was conditioned on having certain risk mitigating measures in place,[5] would not have a material effect on the Commission's ability to discharge its regulatory responsibilities.[6]

When the CFTC issued its proposed rule in September 2014, I noted that subjecting inter-affiliate swaps to the higher costs of uncleared margin[7] could not be logically or prudentially justified with the clearing exemption for inter-affiliate swaps that the Commission adopted in 2013.[8] The

[5] 7 U.S.C. 6s(e)(3)(D)(ii).

[6] 7 U.S.C. 6s(e)(3)(A)(i).

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

[2] Clearing Exemption for Swaps Between Certain Affiliated Entities, 78 FR 21750 (Apr. 11, 2013); 17 CFR 50.52.

[3] *Id.* at 21753.

[4] *Id.* at 21754.

[5] For example, the clearing exemption may be elected only if the affiliates' financial statements are consolidated, which increases the likelihood that the affiliates will be mutually obligated to meet the group's swap obligations; the affiliates must be subject to a centralized risk management program; and outward-facing swaps must be cleared or subject to an exemption or exception from clearing. *Id.* at 21753.

[6] *Id.* at 21754.

[7] The costs of posting margin for uncleared swaps will likely be substantially higher than the costs associated with clearing. For example, the minimum liquidation time for cleared agricultural, energy and metals swaps is one-day for purposes of calculating initial margin, and five days for cleared interest rate and credit default swaps. Commission Regulation 39.13(g)(2). Under the final rule, initial margin for uncleared swaps may be calculated under either a standardized table-based method or a model-based method. Under the table-based method, initial margin for commodity swaps must equal 15 percent of gross notional exposure. The model-based method requires a ten-day close out period for all swaps regardless of the underlying liquidity characteristics.

[8] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Proposed Rule, 79 FR 59898, 59936 (Oct. 3, 2014) (Statement of Commissioner J. Christopher Giancarlo), *available at http://www.cftc.gov/idc/*

Continued

Commission's 2013 findings remain valid on this issue. I am aware of no facts that have come to light that would change the original assessment made by our predecessor Commission.

In fact, since issuing the proposed rule for notice and comment, an independent cost-benefit analysis of the rule recommended, among other things, exempting inter-affiliate swaps from initial margin requirements as a means to reduce the ''excessively onerous'' impact of the rule on competition, price discovery and overall market efficiency without allowing additional systemic risk.[9] I concur with that recommendation.

Earlier this year, I testified before the U.S. House of Representatives Committee on Agriculture Subcommittee on Commodity Exchanges, Energy, and Credit. In response to a question, I explained that the cost of any requirement to impose initial margin in inter-affiliate transactions would have two likely impacts: first, it would raise the cost of commercial risk hedging for American end-users; and second, it would encapsulate risk in the U.S. marketplace and thus increase the risk of systemic hazard in American financial markets.[10]

The final rule before us today is not naïve or reckless concerning inter-affiliate swaps transactions. It recognizes that they are not without risk and sets appropriate safeguards. First, the rule requires operation of a centralized risk management program for such swaps. Second, variation margin will be required. Third, the rule requires covered swap entities to collect initial margin from non-U.S. affiliates that are not subject to comparable initial margin collection requirements for their own outward-facing swaps with financial entities. These measures appropriately address the risks associated with uncleared inter-affiliate swaps.[11]

In other regards, I am satisfied that the threshold for measuring material swaps exposure has been raised from $3 billion to $8 billion, which brings our requirement roughly in line with the BSBS/IOSCO standard of €8 billion.[12] I am also pleased that the swaps of commercial end-users, agricultural and energy cooperatives that are classified as financial institutions and small banks will not be subject to the margin requirements if they qualify for an exclusion or exemption. That is one small assist to America's remaining small banks to get their heads back above water in the toppling wake of the Dodd-Frank Act.

I disagree, however, with the definition of ''financial end user,'' which is overly broad. It includes entities that are unlikely to act as counterparties to swaps such as floor brokers, introducing brokers and futures commission merchants acting on behalf of customers, among others. These entities may not ultimately be captured by the rule because they are unlikely to have material swaps exposure triggering application of the rule, but I question the logic behind their inclusion. Good regulation means precisely crafted rules, not ones that are deliberately overly-broad.

I also continue to object to the ten-day liquidation horizon that must be incorporated into initial margin models for all types of uncleared swaps. The ten-day requirement is a made up number that is not tailored to the true liquidity profile of the underlying swap instruments. I call upon my fellow regulators to revisit this issue as we gain more experience with initial margin models.

Another item that requires further Commission action is to codify by rule the no-action letters providing clearing relief to certain Treasury affiliates acting as principal.[13] The prudential regulators were unwilling to recognize the no-action relief in their final rules, but have indicated that if the Commission acts to exclude these entities by rule, they would also be excluded from the prudential regulators' rules. The Commission should act to issue a rule without delay.

In addition, I remain concerned about the cross-border implications for this rule, which remain unfinished because they were proposed separately from the rule finalized today.[14] As I stated at the time of the cross-border rule proposal, I have many concerns and questions surrounding that rulemaking, including: (1) The shift away from the transaction-level approach set forth in the July 2013 Cross-Border Interpretive Guidance and Policy Statement; (2) the revised definitions of ''U.S. person'' (defined for the first time in an actual Commission rule) and ''guarantee'' and how these new terms will be interpreted and applied by market participants across their entire global operations; (3) the scope of when substituted compliance is allowed; and (4) the practical implications of permitting substituted compliance, but disallowing the exclusion from CFTC margin requirements for certain non-U.S. covered swap entities.[15]

An appropriate framework for the cross-border application of margin requirements for uncleared swaps is essential if we are to preserve the global nature of the swaps market. I reiterate a few of my concerns with the yet-to-be-finished cross-border element of the margin for uncleared swaps regime because that proposal and this final rule must work in harmony. We must avoid further fragmenting the global swaps markets by imposing another regulatory framework that is inconsistent, confusing or burdensome. Doing so will only result in yet another competitive disadvantage between American institutions and their international counterparts.

I am disappointed that the Commission decided to treat the results of portfolio compression of legacy swaps as new swaps subject to the margin rule at this time. In 2013 the Division of Clearing and Risk (DCR) determined that it would not recommend enforcement action for the failure of market participants to submit to clearing amended or replacement swaps that are generated as part of a multilateral portfolio compression exercise and are subject to required clearing, provided that certain conditions are met.[16] Staff recognized in issuing the no-action relief that ''multilateral portfolio compression allows swap market participants to net down the size and/or number of outstanding swaps, and decrease the number of outstanding swaps or the aggregate notional value of such swaps, thereby reducing operational risk and, in some instances, reducing counterparty credit risk.'' [17]

Portfolio compression is of great benefit to the safety and soundness of the market. It should be incentivized, not penalized. Treating swaps created by compressing legacy swaps as new swaps subject to margin requirements may well discourage portfolio compression. Moreover, it is inconsistent with the DCR staff no-action relief. This is a missed opportunity. I urge the Commission to revisit this issue prior to implementation of the margin requirements.

From my perspective, the most objectionable aspect of today's rule is its foundation in the superficial logic that, if the cost of margining uncleared swaps is forced high enough, then market participants will use more cleared instruments.[18] That foundation is not supported by either reason or experience. If no clearinghouse is willing to clear a particular swap, then no amount of punitive cost will enable it to be cleared.

I know this because I was involved before the financial crisis in one of the first

groups/public/@lrfederalregister/documents/file/2014-22962a.pdf.

[9] Cost-Benefit Analysis of the CFTC's Proposed Margin Requirements for Uncleared Swaps, NERA Economic Consulting (Dec. 2, 2014), *available at http://www.nera.com/content/dam/nera/publications/2014/NERA_Margin_Requirements_Uncleared_Swaps.pdf.*

[10] Hearing before the Subcommittee on Commodity Exchanges, Energy, and Credit of the Committee on Agriculture, House of Representatives, 114th Congress, First Session, Serial No. 114–7, Transcript at 193–194 (Apr. 14, 2015), *available at http://agriculture.house.gov/uploadedfiles/114-07_-_93966.pdf.*

[11] AIG often did not post initial margin or pay variation margin on its outward facing swaps. *See* Opening Statement of Commissioner Michael V. Dunn, Public Meeting on Proposed Rules Under Dodd-Frank Act (Apr. 12, 2011). Both are required under today's rule.

[12] I note an inconsistency between the $8 billion *de minimis* threshold for purposes of determining who must register as a swap dealer or major swap participant and the $8 billion threshold for measuring material swaps exposure. Foreign exchange swaps, foreign exchange forwards and hedging swaps must be included in the calculation of material swaps exposure; they are not included in calculating the *de minimis* threshold.

[13] *See* CFTC No-Action Letter No. 13–22 (Jun. 4, 2013); CFTC No-Action Letter No. 14–144 (Nov. 26, 2014).

[14] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements; Proposed Rule, 80 FR 41376 (Jul. 14, 2015), *available at http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2015-16718a.pdf.*

[15] *Id.* at 41407.

[16] CFTC Letter No. 13–01.

[17] *Id.* at 2.

[18] *See* Chair Janet L. Yellen, Opening Statement on the Long-Term Debt and Total Loss-Absorbing Capacity Proposal and the Final Rule for Margin and Capital Requirements for Uncleared Swaps, Board of Governors of the Federal Reserve System, Oct. 30, 2015, *available at http://www.federalreserve.gov/newsevents/press/bcreg/yellen-statement-20151030a.htm*; *see also* Madigan, Peter, US Margin Rules Threaten Clearing Bottleneck, Risk.net, Dec. 14, 2015.

independent efforts by non-Wall Street banks to develop a central clearing house for credit default swaps.[19] For years, I have expressed my support for increased central counterparty clearing of swaps [20] and continue to support it where appropriate. Yet, I also recognize that central counterparty clearing is not a panacea for counterparty credit risk.[21] As regulators, we must be intellectually honest and acknowledge that there are legitimate and vital needs for both cleared and uncleared swaps markets in a modern, complex economy.

As I have previously said,[22] uncleared swaps allow businesses to avoid basis risk and obtain hedge accounting treatment for more complex, non-standardized exposures. Uncleared swaps are an unmatched tool for customized risk management by businesses, governments, asset managers and other institutions whose operations are essential to American economic growth. Their precise risk transfer utility generally cannot be replicated with standardized cleared derivatives without resulting in improper or imperfect hedges or hedges that fail hedge accounting treatment under U.S. GAAP.

Today's rule also reflects a disingenuous reading of the Dodd-Frank Act to favor cleared derivatives over uncleared swaps. In fact, there is no provision in the law directing regulators to set punitive levels of margin to drive hedging market participants toward cleared products. Imposing punitive margin levels will hazard a range of adverse consequences from raising the commercial cost of risk hedging to reducing trading liquidity in uncleared swaps markets and incentivizing movement of products otherwise unsuitable for clearing into clearinghouses into which counterparty risk is already increasingly concentrated. More critically, punitive margin on uncleared swaps will increase the amount of inadequately hedged risk exposure on America's corporate balance sheets exacerbating volatility in earnings and share prices.

Yet, I know that my voice alone cannot reverse the course of the present prevalence of ''macro-prudential'' regulation that prioritizes systemic stability over investment opportunity, market vibrancy and economic growth. Only time will show that systemic risk cannot be managed through centralized economic planning. In fact, rather than being managed, systemic risk is being transformed today from counterparty credit exposure to jarring volatility spikes and liquidity risk across the breadth of financial markets, with ramifications that will be even harder to manage in the future.

Unfortunately, today's rule will not reverse these trends. I will vote for the rule, not because it is the right prescription for uncertain markets, but because it is much better than originally proposed and less harmful than likely alternatives.

I commend the CFTC staff for their hard work, thoughtfulness and, ultimately, the generally improved rulemaking that is before us today.

[FR Doc. 2015–32320 Filed 1–5–16; 8:45 am]

BILLING CODE 6351–01–P

[19] *See, e.g.,* GFI Group Inc. and ICAP plc To Acquire Ownership Stakes In The Clearing Corporation, PRNewswire, Dec. 21, 2006, *available at http://www.prnewswire.com/news-releases/gfi-group-inc-and-icap-plc-to-acquire-ownership-stakes-in-the-clearing-corporation-57223742.html*; *see also,* Testimony Before the H. Committee on Financial Services on Implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 112th Cong. 8 (2011) (statement of J. Christopher Giancarlo) (''In 2005, GFI Group and ICAP Plc, a wholesale broker and fellow member of the WMBAA, took minority stakes in the Clearing Corp and worked together to develop a clearing facility for credit default swaps. That initiative ultimately led to greater dealer participation and the sale of the Clearing Corp to the Intercontinental Exchange and the creation of ICE Trust, a leading clearer of credit derivative products.'').

[20] *See* Testimony Before the H. Committee on Financial Services on Implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 112th Cong. 8 (Feb. 21, 2011), *available at dia/pdf/021511giancarlo.pdf*; *see also* WMBAA Press Release, WMBAA Commends Historic US Financial Legislation, Jul. 21, 2010, *available at http://www.wmbaa.com/wp-content/uploads/2012/01/WMBAA-Dodd-Frank-Law-press-release-final123.pdf.*

[21] *See* CFTC Commissioner J. Christopher Giancarlo, Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: Return to Dodd-Frank (Jan. 29, 2015), *available at http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/sefwhitepaper012915.pdf.*

[22] *See* Opening Statement of Commissioner J. Christopher Giancarlo, Open Meeting on Proposed Rule on Margin Requirements for Uncleared Swaps and Final Rule on Utility Special Entities, Sept. 17, 2014, *available at http://www.cftc.gov/PressRoom/SpeechesTestimony/giancarlostatement091714.*

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Part IV

The President

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 9385 of December 31, 2015

National Mentoring Month, 2016

By the President of the United States of America

A Proclamation

At the heart of America's promise is the belief that we all do better when everyone has a fair shot at reaching for their dreams. Throughout our Nation's history, Americans of every background have worked to uphold this ideal, joining together in common purpose to serve as mentors and lift up our country's youth. During National Mentoring Month, we honor all those who continuously strive to provide young people with the resources and support they need and deserve, and we recommit to building a society in which all mentors and mentees can thrive in mutual learning relationships.

By sharing their own stories and offering guidance and advice, mentors can instill a sense of infinite possibility in the hearts and minds of their mentees, demonstrating that with hard work and passion, nothing is beyond their potential. Whether simply offering a compassionate ear or actively teaching and inspiring curiosity, mentors can play pivotal roles in young peoples' lives. When given a chance to use their talents and abilities to engage in their communities and contribute to our world, our Nation's youth rise to the challenge. They make significant impacts in their communities and shape a brighter future for coming generations.

My Administration is committed to fostering opportunities for mentorship—because when our children have strong, positive role models to look up to, they grow up to be good neighbors and good fellow citizens. Through the My Brother's Keeper initiative, we are working with local governments, businesses, and charitable organizations across our country to connect more of our youth to effective mentoring programs and support networks to reinforce the fact that all young people are valued and to empower them with the skills they need to reach their full potential. We have achieved the highest high school graduation rate on record—82 percent—and we remain focused on setting high standards that will help our students graduate ready for college and careers. In addition, we are supporting job-driven training initiatives like apprenticeships so our doers and dreamers can earn and learn at the same time. And through First Lady Michelle Obama's Reach Higher initiative, we are working to ensure every student has the opportunity to pursue their education and life goals.

Every young person can benefit from having a mentor, and all people carry unique ideas and experiences they can employ as a mentor. I encourage all Americans to visit *www.Serve.gov/Mentor* to learn more about opportunities to make a lasting difference in the lives of our youth. This month, let us pledge our support for our Nation's young people, and let us honor those who give of themselves to uplift our next generation. Working together, we can provide every child with the tools, guidance, and confidence they need to flourish and succeed.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2016 as National Mentoring Month. I call upon public officials, business and community leaders, educators, and Americans across the country to observe this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of December, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2016–00114
Filed 1–5–16; 11:15 am]
Billing code 3295–F6–P

Presidential Documents

Proclamation 9386 of December 31, 2015

National Slavery and Human Trafficking Prevention Month, 2016

By the President of the United States of America

A Proclamation

One hundred and fifty years ago, our Nation codified the fundamental truth that slavery is an affront to human dignity. Still, the bitter fact remains that millions of men, women, and children around the globe, including here at home, are subject to modern-day slavery: the cruel, inhumane practice of human trafficking. This month, we rededicate ourselves to assisting victims of human trafficking and to combating it in all its forms.

Human trafficking occurs in countries throughout the world and in communities across our Nation. Children are forced to fight as soldiers, young people are coerced into prostitution, and migrants are exploited. People from all walks of life are trafficked every day, and the United States is committed to remaining a leader in the global movement to end this abhorrent practice. My Administration has made addressing human trafficking issues in supply chains a priority. Earlier this year, the White House brought together private sector and non-governmental organizations to discuss ways to prevent and eliminate trafficking-related activities in Federal contracts and in private sector supply chains. Our National Convening on Trafficking and Child Welfare helped promote partnership and establish coordinated action plans to end human trafficking. Additionally, my Interagency Task Force to Monitor and Combat Trafficking in Persons has proposed a robust set of initiatives. Our anti-trafficking efforts are supported by a newly established Federal Office on Trafficking in Persons, under the Department of Health and Human Services, which helps ensure trafficking victims can access the services they need.

As we work to end human trafficking here in the United States, we will continue to lead the effort to root it out around the world. Our intelligence teams have devoted more resources to identifying trafficking networks, law enforcement officers have been working to dismantle those networks, and prosecutors have striven to punish traffickers. We have also enhanced our domestic protections so foreign-born workers better understand their rights. Additionally, my Administration has been working closely with technology companies and law enforcement to better utilize technology to combat human trafficking. And our Nation will continue promoting development and economic growth across the globe to address the underlying conditions that enable human trafficking in the first place.

All nations have a part to play in keeping our world safe for all people—regardless of age, background, or belief. During National Slavery and Human Trafficking Prevention Month, let us recognize the victims of trafficking, and let us resolve to build a future in which its perpetrators are brought to justice and no people are denied their inherent human rights of freedom and dignity.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2016 as National Slavery and Human Trafficking Prevention Month, culminating in the annual celebration of National Freedom Day on February 1. I call

upon businesses, national and community organizations, families, and all Americans to recognize the vital role we can play in ending all forms of slavery and to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of December, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2016–00116
Filed 1–5–16; 11:15 am]
Billing code 3295–F6–P

Presidential Documents

Proclamation 9387 of December 31, 2015

National Stalking Awareness Month, 2016

By the President of the United States of America

A Proclamation

Every person deserves to live freely and without the fear of being followed or harassed. Stalking is a violation of our fundamental freedoms, and it insults our most basic values as a Nation. Often perpetrated by those we know—and sometimes by strangers—stalking is a serious offense that occurs too frequently and goes unreported in too many cases. During National Stalking Awareness Month, we stand with victims of stalking, pledge to bring their stalkers to justice, and rededicate our efforts to ridding our schools, workplaces, and neighborhoods of this crime.

A repeated display of unwanted attention that instills fear, stalking affects people from all walks of life and makes us all less safe. Seven and a half million people are stalked in the United States each year, and 1 in 6 women will experience it at some point in their lives. People are stalked under a variety of circumstances and through a number of mediums. Text messages, emails, and phone calls are some of the most common means by which a stalker will harass someone, and offenders usually, although not always, have a prior association with the victim. Often offenders are or have been in an intimate relationship in which they have abused the victim, and in many instances stalking is a part of ongoing violence. Stalking is not only a tremendous breach of one's privacy and liberty, but its purpose is to cause victims to feel scared or anxious, terrorizing them and sometimes causing anxiety, insomnia, social dysfunction, and depression. It also has the potential to cause post-traumatic stress symptoms such as flashbacks, nightmares, and being constantly on guard. It is an affront to our basic humanity, and in some cases it can lead to more violent acts by the offenders.

In 2013, I signed the reauthorization of the Violence Against Women Act (VAWA)—a groundbreaking law that recognizes stalking as the crime it is and provides more resources to victims. The Act also created new protections for lesbian, gay, bisexual, and transgender victims, as well as for immigrants and Native American women. Earlier this year, I signed an Executive Order that allows victims to use sick leave for absences related to stalking and that protects victims' privacy in the workplace. In my 2016 budget, I proposed additional funding to assist people being stalked who must make emergency moves to safer and more stable housing. And to build on these efforts, my Administration has implemented measures requiring institutions of higher education to collect and report information on stalking and other crimes as outlined in VAWA. Under the new regulations, these institutions are required to make their disciplinary processes more transparent and to provide ongoing prevention and awareness campaigns for students and employees—because our classrooms should be safe havens where everyone can pursue their dreams and fulfill their potential free from the fear of being stalked or harassed.

As we embark on a new year, let us resolve to make it one in which every person can safely and confidently make of their lives what they will. By holding stalkers accountable and providing victims and survivors with the support and assistance they need, we can ensure ours is a Nation dedicated to promoting safety, common decency, and respect.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2016 as National Stalking Awareness Month. I call upon all Americans to recognize the signs of stalking, acknowledge stalking as a serious crime, and urge those affected not to be afraid to speak out or ask for help. Let us also resolve to support victims and survivors, and to create communities that are secure and supportive for all Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of December, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2016–00136
Filed 1–5–16; 11:15 am]
Billing code 3295–F6–P

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FEDERAL REGISTER PAGES AND DATE, JANUARY

CFR PARTS AFFECTED DURING JANUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

This is final list of public bills from the First Session of the 114th Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 1321/P.L. 114–114
Microbead-Free Waters Act of 2015 (Dec. 28, 2015; 129 Stat. 3129)

S. 2425/P.L. 114–115
Patient Access and Medicare Protection Act (Dec. 28, 2015; 129 Stat. 3131)

Last List December 23, 2015

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